OFFICIAL REPORT
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Social Security Committee

Thursday 26 October 2017

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CONTENTS

Col.
DECISION ON TAKING BUSINESS IN PRIVATE 1
SOCIAL SECURITY (SCOTLAND) BILL: STAGE 1 2

SOCIAL SECURITY COMMITTEE
20th 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:

Norman Kerr (Scottish Fuel Poverty Forum)
Suzanne Munday (Minority Ethnic Carers of People Project)
Heather Noller (Carers Trust Scotland)
Amy Woodhouse (Children in Scotland)
Derek Young (Age Scotland)

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Security Committee

Thursday 26 October 2017

[The Convener opened the meeting at 09:00]

Decision on Taking Business in Private

The Convener (Sandra White): Good morning, everyone, and thank you for coming along. Welcome to the 20th meeting in 2017 of the Social Security Committee. I remind everyone to turn off their mobile phones, because they interfere with the sound system.

Under agenda item 1, it is proposed that we take agenda item 4 in private. Is that agreed?

Members *indicated agreement.*

Social Security (Scotland) Bill: Stage 1

09:00

The Convener: Under agenda item 2, we continue our evidence taking on the Social Security (Scotland) Bill at stage 1. Today, we will hear from two panels of witnesses. I welcome our first panel: Heather Noller is the policy and parliamentary officer at the Carers Trust Scotland, and Amy Woodhouse is the head of policy at Children in Scotland. Thank you very much for coming along at this early hour.

I will begin with a general question. In previous evidence sessions, we have asked our witnesses for their views on the Scottish social security principles and the proposed Scottish social security charter. What are your views on the principles and the charter? How will they influence the organisational culture of the new Scottish social security agency?

Heather Noller (Carers Trust Scotland): In line with what other organisations have said in evidence, Carers Trust Scotland welcomes the fact that the principles and the charter have been included in primary legislation, because that inclusion will be the major driver of cultural and organisational change. The principles around human rights are particularly important in that regard, and the setting out of the view of social security as an investment in the people of Scotland is an extremely positive step, which will be useful in driving cultural change in how social security is seen.

Amy Woodhouse (Children in Scotland): Children in Scotland is also very supportive of the principles and the charter. It is welcome that the principles are set out right at the start of the bill—they are the first thing that people see. We would be supportive of that continuing to be the case.

The emphasis on human rights is very important. If the opportunity were to be taken to emphasise an extension of child rights, that would be welcomed by us. Dignity is equally important, so we are pleased that the term has been included in the bill. We would like it to be threaded throughout the rest of the bill, where appropriate.

One potential gap in the principles that we are keen to address is to do with recognition that the purpose of social security is to address poverty and inequalities. We suggest that an additional principle relating to that be inserted in the bill.

The Convener: Thank you. I note that you made that point in your submission.

You mentioned the culture. Once the principles have been agreed, do you think that agencies might need training on them?

Amy Woodhouse: We would welcome that; I am sure that it is a good idea. In addition, more detail in the charter might help people to understand how the principles can be put into practice and what that will mean with regard to how the system works and operates. Human relationships are the most obvious interface in the system, so training on how to put positive relationships at the heart of the system would be welcome; we would encourage inclusion in the charter and the implementation process of emphasis on the importance of relationships.

The Convener: Would you like to add to that, Heather?

Heather Noller: I reiterate that we would always welcome training for agencies, particularly as there will be two different systems working alongside each other. Many carers will still receive reserved benefits or will support people who receive those benefits, so it will be beneficial to make sure that there is an understanding of how the systems interact.

Positive relationships will be important, too, and there will be a need to reiterate the difference that a Scottish social security system will make. Many people are quite reticent about the changes because they have had quite negative experiences of the current system. It will be important to make sure that staff who deal with people who have had those negative experiences recognise that and are willing to support them.

The Convener: You have hit on a very important point. Obviously, 15 per cent of the social security powers are coming to the Scottish Parliament, but the rest will remain with Westminster. On information from agencies, should the information be in written form for people who use the system? We hope that the charter will be pinned on walls so that people can see what their rights are. Should there be written information to let people know about the differences and what they can claim, and to direct them where to go?

Heather Noller: That would be useful. Information should be available in the agencies and online, and it should be provided directly in claim forms. A lot of people will prefer paper claim forms to applying online. Information should be available in any way that people can access it; it is really important that information be as accessible as possible.

Amy Woodhouse: I agree with Heather Noller. It will be important that there are easy to read and accessible versions of the information. I know that the issue is complicated, but it is important to have ways in which we can clearly articulate to people whose first language is not English what their entitlements are.

Jeremy Balfour (Lothian) (Con): Good morning, and thank you very much for coming to the meeting.

I want to dig down into two issues to do with the carers allowance. The first is about the current link between the number of hours for which a person cares for an individual and that individual having a certain award himself or herself. Should there be a division such that it does not matter whether that individual is getting an award—if someone cares for that individual for a certain number of hours, the carer gets an award—so we separate the two awards? I would be interested in your views on that.

Secondly, there is currently one award only: if a person reaches 35 hours a week—I think—they get the award. Obviously, some people care for 15, 20 or 25 hours and do not get any award. Should there be tiering up to the 35 hours, so that a person who cares for 20 hours gets £X and a person who cares for someone for 25 hours gets more, rather than there just being one straightforward award that people get all of if they hit that number? Should there be a more tiered, downward approach?

Heather Noller: Both issues come up regularly when we consult and speak with carers.

On the first question, the link between carers allowance and the qualifying benefits has been explored: we have discussed it with the Scottish Government and carers. As with anything, there are positives and negatives in it. Currently, for a person who meets all the eligibility criteria for the carers allowance, it is quite an easy benefit to receive. The application process is quite straightforward, which is obviously beneficial for carers and their families.

However, the downside is that some people have significant caring responsibilities for people who do not receive a qualifying disability benefit. This is anecdotal but, for example, quite often people who look after frail elderly parents who are not eligible for attendance allowance—which has quite strict eligibility criteria—do not qualify. That can cause problems for that age group, who are usually in older middle age and may be balancing work and childcare with that caring responsibility. There would be a definite benefit there in removing the link between carers allowance and the qualifying benefits, but that would also make the carers allowance application process more complicated, and there would have to be a different way of assessing whether a person is providing care. At this stage, I am not sure how that would be done, how complicated it would be, and how much assessments would cost. That needs to be explored more widely.

On the second question, on tiered amounts of carers allowance, 35 hours of care or more a week is a substantial amount. I am sure that it is quite obvious to the committee that people who provide fewer hours of care than that still provide substantial amounts of care, which will impact on their ability to stay in employment or to have enough leisure time outside their caring role. We would be interested in exploring that issue more.

Again, the approach has positives and negatives. I presume that there would be not a means-testing approach, but an assessment of how the caring could be done and what the levels of benefit and the hours of caring would be. There will always be a cut-off in such things, whereby some people will just not meet the required hours and will not be eligible, which would cause difficulties for them. The idea would need to be looked at in a lot more detail before we could make a definitive statement on whether the tiered approach would be appropriate.

Amy Woodhouse: Children in Scotland is particularly concerned about young carers, who are really disadvantaged by the current system in terms of financial support for their role. We welcome the young carers grants announcement, but we have questions about how carers assistance and carers allowance will work for younger carers. We are interested in whether a pro rata approach would work—an approach that would recognise that many young carers mix significant caring responsibilities with being in school, for example.

In the context of the bill's proposal for the carers allowance supplement, we have a question about the link to jobseekers allowance, for which 18 to 24-year-olds get a lower rate. We would like clarity on whether the supplement will be at the higher rate for everybody, including people in the 18 to 24 age range.

We want to ensure for carers the principle of parity, regardless of their age. One way in which that will need to be addressed is by recognising that although younger carers are less likely to be caring for 35 hours a week, they still have significant caring responsibilities. More flexibility and an exploration of a pro rata approach would be welcome.

Mark Griffin (Central Scotland) (Lab): I will continue on the eligibility criteria for carers allowance, particularly for people who care for more than one person. At the moment, to qualify for carers allowance, a person has to be caring for a single person for 35 hours. However, a person could be caring for two people—individually, for less than 35 hours, but cumulatively for longer than that—but not qualify for carers allowance. Should the Scottish Government look at the eligibility criteria in that respect?

On the Government's commitment to increasing carers allowance for parents who care for more than one disabled child, should that increase apply across the board to people who care for more than one person, rather than only for more than one disabled child? Should the Government look at that issue?

Heather Noller: We have approached the Scottish Government about that; it comes up a lot in general campaigns about carers allowance and when we gather carers' views, and we have mentioned it in our written evidence. As Mark Griffin mentioned, situations in which a person cares for more than one person, which takes them way above the 35 hours a week eligibility criteria, are prevalent. We do not hear a lot about it, but it happens for sure, and it disadvantages people. A person who has multiple caring roles is more unlikely than others to be able to stay in paid employment, so it is important that they have access to benefits and to an income for providing that care.

Amy Woodhouse: I would probably defer to the expert and agree with Heather Noller that additional caring responsibilities should be considered and recompensed accordingly.

Mark Griffin: The Government says that it will not look at eligibility criteria until it is further down the line in implementing its policy on paying carers allowance for more than one disabled child. Should it be looking at eligibility criteria now?

Heather Noller: The matter should perhaps be looked at in policy terms, but I understand the Government's reasons for not wanting to look at it until we are further down the line. It is a big change to introduce a new social security agency and to transfer benefits across: we need to look at all the different aspects in that. It is more important to get that right, to implement the initial commitment to increasing the carers allowance through the supplement and to ensure that carers in Scotland are supported as soon as the benefits transfer.

I believe that the issue is being looked at from a policy perspective. We are consulting carers on that to ensure that there is enough evidence and information available to the Government and others, so that decisions can be made in the correct way.

09:15

Alison Johnstone (Lothian) (Green): Carers allowance is currently defined as an "income replacement benefit". Several of the submissions suggest that, if that is the case, people would be being paid £2 an hour. Clearly, £2 an hour is no sort of salary for someone who could be looking after several people: it is neither the minimum wage nor a living wage. How adequate is the benefit? Is it possible to deliver dignity and respect if people simply do not have enough cash in the first place?

Heather Noller: Broadly, I do not think that it is an adequate benefit. As Alison Johnstone has identified, as an income replacement benefit, it is not particularly substantial. As we mention in our written submission, raising carers allowance to the level of jobseekers allowance is not necessarily the correct approach, because although people can stay on jobseekers allowance for a long time, it is meant to be a temporary benefit while they look for work. I am not sure of the exact figures, but substantial numbers of carers have been on carers allowance for more than five years and will never not receive the benefit while they are providing care. It is a long-term benefit that people need in order to survive. Therefore, further down the line, we will need to consider what is an adequate income replacement for people who provide substantial amounts of care.

That is also being considered from a policy perspective. We need more evidence on what an adequate level of carers allowance would be, and we need to consult carers about that. We also need to know what is financially sustainable—that probably needs to be considered to ensure that there are no unintended consequences in the long term.

Amy Woodhouse: From a children’s perspective, there should be a recognition of the number of unknown carers who get no support, at the moment. In respect of children who have to look after their parents when they come home from school, which is a huge responsibility, and who have very little services support, let alone financial support, it is difficult to see where dignity and respect feature. It might be slightly outwith the scope of the social security system to address that fully, but in applying the principles, it is important that consideration be given to how children and young people are recompensed for carrying out their caring responsibilities.

The Convener: You mentioned young carers: obviously, we have the young carers grant coming in. I am sure that we have all met kids who have found it very difficult to go to college and university. I have spoken to such people, and they welcome the grant, even though it is only £300. Do you have any ideas about how we could support kids who are under 16? Could it be through a grant or through something other than monetary support? A committee that I was on previously did an investigation on the issue and found that a lot of young kids do not want people to know that they are caring for parents, because there is stigma attached to that. You said that it might not just be the social security system that can deal with the issue, so perhaps the committee could help by passing information to the Equalities and Human Rights Committee. What are your thoughts in respect of those who are under 16? There are people who, because of stigma, do not want to talk about their caring.

Amy Woodhouse: Yes. Obviously with younger children, direct payment is not appropriate. There are also a number of young children who do not realise that they are carers: they just do it and do not realise that it is not a normal part of everyday life and that they should be getting support for it. There should be adequate service provision to enable children to be children by taking those responsibilities off them.

We would hugely welcome the committee taking a role in advocating that as part of the wider system, because social security sits within the wider context of social care and social support. It would be very welcome if the role of social security, within broader social care, in addressing poverty and disadvantage and ensuring the wellbeing of the population, were to be recognised within the charter.

Heather Noller: I echo Amy Woodhouse. It is absolutely about the provision of services and making sure that there is adequate support for young people. We work on the principle that young carers under the age of 16 should have relief from their appropriate caring roles: services should be put in place for the person whom they look after. That should happen as a matter of principle.

Young people can have a lot of positive experiences through caring and living in a family in which someone needs care; it is not always feasible to say that no aspect of such help should be provided by them because that is not how families work. A young person who lives in a family in which someone is ill or disabled will support them and help them in some way. There is an emotional impact of that, as well as it involving practical tasks. That is not something that can be relieved.

However, we need to make sure that there are adequate young carer support services, that young carers have opportunities for respite and breaks from caring, and that their schooling is not interrupted, which requires a number of services and supports to be put in place for them. It is important that adequate funding be available for that.

Mark Griffin: I agree with the point that, for people under 16, there should be wider support through health and social care to alleviate their caring responsibilities. However, with the cuts to local government and other areas, although that is a great principle to have, sometimes it is just not a realistic picture of what is happening on the ground.

Someone who is 15, in their fourth year at school—a challenging year, with exams—could have the same caring responsibilities at home as someone in the same year group who happens to have turned 16 already and is therefore getting support. Is it appropriate to look at a payment in trust through a parent, or something along those lines, to make sure that people who happen to be below that age threshold but are still providing the same level of care are being recognised and supported?

Heather Noller: There are two issues there. It comes back to what the convener mentioned about different legislation and how to influence different spheres of policy. Under the Carers (Scotland) Act 2016, which is being implemented next year, young carers are defined as carers who are under 18 or who are 18 but are still at school, so there is potentially a bit of a mismatch with legislation that supports young people up to the age of 16. In the wider Scotland sphere of children and young people's policy, young people are quite often defined as people who are under the age of 26, so there are quite a lot of different levels there.

Were you talking about supporting families in general rather than supporting the young carer directly?

Mark Griffin: I was just recognising that it might not be appropriate to pay someone under the age of 16 through the social security system. There could be other avenues, such as a payment in trust to the parent rather than one that goes direct to the child, to recognise the child's caring responsibilities and efforts in the same way that those of someone who is six months older than them are recognised.

Heather Noller: Absolutely. In the consultation around the bill and in last year's consultation, which looked at wider principles of social security, the parents of young carers gave their opinions and experiences, and said that they should be the ones who financially support their children. The majority of young carers live in family situations where that is possible.

Although the young carers grant and other financial provisions for young carers will be useful, it is usually wise to take a whole-family approach. Whether it comes through a payment in trust, just making more money or support available to the family as a whole will generally be beneficial.

Amy Woodhouse: I agree. I do not have anything to add.

Adam Tomkins (Glasgow) (Con): I have a very specific question that might have a very quick answer; I do not know. There is in Glasgow, the city that I represent—and elsewhere as well, for all I know—increasing concern about a gap in welfare and family law provision for kinship carers. When it is scrutinising the bill, does the committee need to take anything into account to make sure that that gap is plugged by the provisions of the bill, if the gap is there and can be plugged?

Heather Noller: Kinship care is a quite specific issue and it is not my area of expertise. Although kinship carers are defined as carers, they are not within the client group that we work with, unless care provision is happening, such as when a kinship carer is looking after children who have additional needs. From what I have read and understand, there can be a gap, and it is down to whether the local authority has recognised the kinship caring relationship and whether it has been formalised. That has an impact on the kinship carer's access to money.

The issue definitely needs to be looked at just to make sure that families are not missing out. From the perspective of Carers Trust Scotland and other national carer organisations, if there is a caring relationship within the kinship caring relationship, that also has to be recognised.

Amy Woodhouse: This is another area where different bits of legislation and policy overlap. Clarity on that would be really welcome. I echo Heather Noller's point that quite a few kinship carers and foster carers care for children who have disabilities—the figure is higher than it is for the general population, so the issue needs more exploration. We should certainly be looking for where that links into the changes that have been made in the Children and Young People (Scotland) Act 2014.

Adam Tomkins: You are absolutely right that there seems to be some variation between local authorities in Scotland in the extent to which kinship care is recognised as being an informal variant of foster care, where people might or might not be liable for local authority financial support. Are kinship carers not eligible for carers allowance?

Heather Noller: They are if they provide care to a young person who has a disability or an illness. Again, it all depends on income. If they do not meet the eligibility criteria for carers allowance, they will not get it. To be honest, I am not sure how any payment that they receive for kinship care affects their eligibility for other benefits. It is not something I am an expert on. The issue needs to be looked at.

The Convener: Does Amy Woodhouse want to come in?

Amy Woodhouse: No. I am not an expert on kinship care either. It is probably worth getting a bit more specific evidence on that issue from a relevant organisation such as Kindred.

The Convener: Lots of kinship carers are grandparents looking after their grandchildren, but they are not guardians. Whether benefits would be affected was something that we had to really look at before we introduced the kinship care allowance. If a kinship carer got that extra money, it had a knock-on effect on any benefits that they were claiming. That is why we went for the kinship care allowance rather than money through social security or anything else. I think we should perhaps explore that avenue further.

Does anyone want to come in on that issue?

Pauline McNeill (Glasgow) (Lab): I believe that there is a gap around kinship carers, and I note that the Children in Scotland submission talks about how the principles of the bill do not specifically mention poverty or inequality—it is right about that.

What strikes me about the gap is that kinship carers who might not get the proper support because they are not in a formalised arrangement are more likely to fall into the category of people who face poverty inequality. As the convener says, grandparents often become involved because they do not want the child to be cared for by the local authority. They are doing the right thing, but they are penalised for it.

I acknowledge what was said in answer to Adam Tomkins, which was that the carers allowance applies only where there is a disability or illness. However, we are not talking about that. I think there will be an impact on children, depending on the situation of the grandparents or whoever the kinship carer is. It is worth the children's organisations thinking about the impact on children.

09:30

Amy Woodhouse: You are right. Poverty and inequality are not equally distributed across Scotland. Kinship carers certainly experience more disadvantage than others. Organisations in the children's sector that work more directly in this area have been campaigning for adequate support for kinship carers for many years. I recognise that there has been progress and development in the area recently, but I am sure that those organisations would say that there is more to be done and that they would welcome additional attention being paid to the matter.

The Convener: The committee will certainly consider that.

Do members wish to ask any further questions? Is there anything that the witnesses wish to ask the committee?

Amy Woodhouse: Yes.

The Convener: I am sorry that I said that. [*Laughter*.] No, it is okay—on you go.

Amy Woodhouse: There are a number of areas. I will try to be brief. We are particularly interested in top-up benefits. I would like the committee to consider how that part of the bill could be explored and developed a bit further. We feel that it is quite limited in what it offers.

We are part of the give me five campaign to top up child benefit, which the committee will be well aware of. We would welcome whatever potential there is to include that issue within the scope of the bill. I would be interested to hear members' views on that.

The other area on which I would be interested to hear members' thinking concerns scrutiny. We feel that that aspect is very limited in the bill as introduced. We would welcome greater emphasis on independent scrutiny of progress and on what the markers and indicators of the bill's success will be. We would welcome linking that directly to reducing poverty, particularly child poverty.

That is a question of how the Social Security (Scotland) Bill links with the Child Poverty (Scotland) Bill, which is also going through the Parliament and which refers directly to social security as a mechanism for reducing poverty. There is therefore a clear need to link the two bills together, but it is not evident that that is happening. I would like to hear members' thoughts and reflections on how that could happen.

Heather Noller: I, too, have a couple of points to make. To reiterate what you have heard in previous evidence sessions, we would align with the idea that, if benefits can be offered as benefits in kind or as cash payments, there should be a choice for the recipient. First and foremost, cash should be the default. That aligns to the principles of dignity and respect: it is more appropriate, in most cases, for people to have a choice.

Our written evidence and the submissions from the national carer organisations make points about short-term assistance for people challenging decisions. The issue can be overly complex. In line with other organisations that have submitted evidence, we think that it would generally be more appropriate for carers and for people with ill health and disability simply to have a continuation of benefit, rather than having to make a specific and different application for short-term assistance. I know that the provisions in the bill on that are quite broad and that the detail will be in regulations, but that is definitely something to consider. There is already a run-on for carers allowance in some instances, such as when the cared-for person dies or if they are admitted to hospital. It is possible for that to happen.

The Convener: Thank you. I am glad that I asked the question.

Adam Tomkins: Heather Noller has anticipated a little bit of what I was going to say in response to Amy Woodhouse's prompts, which were very helpful.

A number of the issues that Amy Woodhouse raised are not dealt with in the bill, because the scheme in the bill is that those issues will be dealt with in regulations that are to be made under the bill. One of the concerns that the committee has been keen to explore with witnesses throughout our inquiry into the bill is whether the balance is right between what is in the bill—or "on the face of the bill"—and what is to be left for secondary legislation. Further, whatever your response to that issue, do you think that there are adequate means for scrutinising the making of secondary instruments under the bill, whether that is scrutiny in the Scottish Parliament or by an independent body that might need to be set up, perhaps modelled on the United Kingdom's Social Security Advisory Committee?

The convener invited you to ask questions of us and my response is to ask those questions of you, if that is permitted.

The Convener: Absolutely.

Amy Woodhouse: That seems fair enough.

We will always want things to be in primary legislation because that makes it more secure and future proofs it, so that we know where we are and what the system will be. However, I recognise that that will not always be possible.

There could be more in the bill—in primary legislation—than there currently is, particularly with regard to scrutiny and accountability. Accountability is covered by section 6—it is currently just an annual report, which does not feel sufficient. The bill could say something about an independent commission, whether that is the poverty and inequality commission that the Poverty Alliance has suggested, or something else. Some of it will have to go into regulations, but there could be more in the bill than there is at the moment.

Heather Noller: To echo Amy Woodhouse's point and the points that I have heard in other evidence sessions, we expected there to be a little bit more in the bill, but we understand the reasons for that—for example, the complexities around what the bill is trying to achieve and the fact that it can be easier to amend or change regulations at short notice, although there are negative aspects to that. I agree that primary legislation is more secure and is open to more scrutiny.

On the second point that Adam Tomkins made about scrutiny by Parliament or by an external body, we think that it would be appropriate to set up scrutiny bodies, and we would be interested to hear more about the kind of scrutiny bodies that might be set up to ensure that there is adequate sight of what is changing.

Jeremy Balfour: I thank Heather Noller for helpfully summing up. I return to her point whether benefits should be cash or in kind, and that the default should be cash. I think that that is absolutely right. Have your organisations done any work on costing a benefit in kind? It could prove to be more expensive than a cash payment. Do you know whether there is any information that the committee could look at to see how much it would cost if someone said that their preference was to have a carer come in for two hours a day, or something like that, instead of the cash?

Heather Noller: I am not sure whether anything like that is available at the moment. I will have a look and get back to the committee at a later date if such information is available and I can source it.

A lot of comparisons are made with the Scottish welfare fund and similar set-ups, but they are different as they are for emergency assistance. For example, it might be more appropriate for a household appliance such as a fridge to be purchased if that is the defined need in the emergency.

In terms of a benefit in kind taking the form of social care support, such as a care worker coming in, I am not sure whether that would always be appropriate. There is already quite a lot of confusion as to how social security interacts with social care provision. That is particularly the case with self-directed support, now that people receive direct payments. I have spoken to a lot of carers and people who receive such support who are not sure whether social care support will affect their benefits or vice versa.

That is potentially more complicated than it needs to be. If someone is eligible for support, that should not interact with the social security system. Obviously, the issue needs to be considered in further detail. If somebody is not eligible for support but is eligible for benefits, that may be more appropriate for them. It is difficult to give a broader approach because it is so dependent on people's specific situations. However, I reiterate my earlier point that providing cash benefits is far more aligned with principles of dignity, respect and investment in people through social security.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): At the beginning of her evidence, Amy Woodhouse warmly welcomed the approach of basing the ethos of the new social security system and the bill in dignity and respect, as I do. Is she content that the drafting of the principle in section 1(c) reflects those values and that ethos?

Amy Woodhouse: Broadly, yes. It is really welcome that the bill frames social security in terms of human rights, and it is important to use words such as "dignity". The important thing to have in the bill is not only principles but how they are applied and how they work. For example, does it feel as if they are embodied in the system?

I guess that the principles are a starting point. I reiterate my earlier point that we need to consider whether there is potential specifically to highlight children's rights in the principles. Although human rights affect all humans regardless of age, we should recognise the particular focus on children's rights that we have in Scotland, and we should recognise them in the social security system. The bill could also specifically mention the system's role in addressing poverty and inequalities. You might also want to consider including the principle of accessibility and simplicity where possible—that is, the principle that we make things as easy for people as we can.

There are some additions that could be made to section 1 but, generally speaking, what is there already is good. We do not want to be critical of it. It is a good way of framing things.

The Convener: Thank you very much. You have certainly given us food for thought. I am sure that we have all written down the issues that you raised, and we will have a chat about them.

I suspend the meeting for a couple of minutes while we bring in our next set of witnesses.

09:43

Meeting suspended.

09:44

On resuming—

The Convener: I welcome our second panel of witnesses: Derek Young, senior policy officer, Age Scotland; Norman Kerr, vice-chair, Scottish fuel poverty forum; and Suzanne Munday, director, Minority Ethnic Carers of People Project.

As with the previous panel, I will start by asking an overarching question first. In earlier evidence sessions, we have asked for views on the social security principles and the proposed social security charter. What are your views and in what ways do you see the principles and the charter influencing the organisational culture of the new agency?

Derek Young (Age Scotland): Norman Kerr seems to be indicating that I should start.

We welcome the principle-based approach. It is perhaps not the most common format or model of legislation, but there are other examples of it being adopted. In particular, we welcome the first three principles, which we think are clear and explicit. There are some queries about the practical implications of some of the later principles, and some of those have been articulated in our written evidence and the written evidence that you have received from organisations such as the Health and Social Care Alliance.

The broader point concerns what practical impact the principles will have on a day-to-day level. I know that Mr Tomkins has raised that point with witnesses in previous evidence-taking sessions. At the lowest possible level, the effect of the principles could be purely symbolic, which would be regrettable.

It may well be that the principles help to shape administrative practice and the decisions that are made by the officials who are working for the agency, for example, but that will depend to a great extent on the practical operations of the agency, which are not in the bill because the Government has chosen an executive agency model.

A final point on the principles is the extent to which individual applicants and recipients can rely on them when making their applications or challenging decisions. That is not clear in the bill and we would prefer that it was.

We have largely viewed the charter as a way of explaining in ordinary language to potential recipients and claimants what their expectations and entitlements should be. To that extent, it will be helpful. It is also helpful that the Scottish Government has made the point that it wants the charter to be co-produced pretty broadly, so the experience of users of the system will inform what the charter says. We also agree with the point that was made by witnesses in your first panel that the charter should be accessible, particularly to people with cognitive challenges—which is the issue that we are particularly concerned about—and other accessibility requirements.

The bill says that there will be annual reporting on the extent to which the charter is being implemented. However, there are certainly more robust forms of accountability available. We are not sure that an annual report will be the most effective form of accountability with regard to translating the principles, which are extremely valuable and welcome, into day-to-day practice.

Norman Kerr (Scottish Fuel Poverty Forum): The fuel poverty forum represents quite a wide range of interests, from the energy regulator to colleagues at Age Scotland. Our response has been fairly narrow and focuses on two specific areas. However, I do not think that we would disagree with what our colleagues from Age Scotland have said in their response. It is helpful that the charter gives more explanation to help people understand the system. The principle-based approach is one that we have seen elsewhere. For example, the regulator in the energy industry talks about moving to a principle-based approach. Therefore, we are not unhappy with that.

Suzanne Munday (Minority Ethnic Carers of People Project): Like colleagues, we welcome the principle-based approach. However, by their nature, principles are aspirational, and we have a concern about how they will be applied in the day-to-day operation of the new social security system in Scotland. We see the charter playing a role but, based on feedback from our service users, we are aware that there are issues about how the application of the charter will be monitored and about the accountability of the system.

With regard to the application of the charter, one issue that came out clearly from our work with carers was the idea that the charter should be underpinned by a set of standards that we feel are more robust and measurable. Again, that is about people having redress if they feel that the system has not operated as it should have.

There is also a vital role for independent advocacy in enabling people to hold the system to account for their personal experience of it.

The Convener: Members of the panel have talked about the charter being robust, about accountability and about the principles being challenging—Derek Young mentioned that latter point. Could you expand on what you mean by that? I do not want to get into courts of law or whatever, but I feel that you are going along that line.

Derek Young: In our written evidence, we point out that principle (d) is that

> “the Scottish ministers have a role in ensuring that”

people receive what they are entitled to, whereas provisions elsewhere in the bill specify that the Scottish ministers “must” do something. That rather implies that it ought to be possible for it to be articulated that the Scottish ministers have a duty to ensure something, rather than simply having a role. That would be a far more reassuring form of language.

We alluded to the fact that the Health and Social Care Alliance has made points, which we endorse, about what evidence would be relied on for principle (e), I think, and how continuous improvement is defined for the purposes of principle (f).

The final principle reflects efficiency and value for money, which is a noble ideal in a time of constrained public finances. However, it is notable that, in debates that have taken place elsewhere about social security, the ideas of efficiency and value for money are sometimes used as a pretext for restricting either the eligibility criteria or the way in which they are applied. Our question regarding the final principle is, what happens when there might be conflict between that principle and some of the other principles, such as the one that establishes that social security is a human right? The bill is not clear—perhaps it does not need to be—but some clarity, whether in the bill or elsewhere, would be helpful with regard to how to resolve issues where the principles seem to come into conflict.

The Convener: Suzanne Munday, do you want to come in on that point, given that you specifically mentioned the charter?

Suzanne Munday: I might come back to that later, if that is okay.

The Convener: Absolutely. You are allowed to think about it.

Pauline McNeill: My compliments on the submissions, which are comprehensive and clear. I was drawn to the point that has just been made in response to the convener about whether the bill, as drafted, will deliver a principle-based approach. It is worth spending a wee bit of time on that, because other witnesses have said something similar. Everyone wants a principle-based approach, but we do not know whether the bill, in its current form, will deliver that.

Suzanne Munday, you spoke about a set of standards and redress for individuals. That is the most important thing. Can individuals rely on the principles that are contained in the bill to enforce their particular issue, whether that is a speedy decision or an appeal decision? That applies to everything. Could you go into that in a bit more detail? If the committee were to take a similar view, how could we go about fixing the bill?

For example, should the bill include a set of standards? If it included a principle that everyone is entitled to a speedy decision by the new social security agency, what would that actually mean? Does that suggest that there should be a set of more specific standards, for example about timescales? What will people be able to rely on if we have a principle but we all have different views about it?

I know that I am going over the same ground, but I am really interested to get a bit more detail if that is possible, because I think that the committee needs to look at this area in some depth.

Suzanne Munday: That is a difficult one because, very often, timescales will depend on local circumstances. Although we can talk about reasonable timescales, those are difficult to define. However, I do not think that there is any harm in looking at a timescale that should not exceed X number of weeks.

Derek Young: The only time limit in the bill relates to the mandatory redetermination provisions. If redetermination is not made within 28 days, an automatic trigger occurs, which is different from the way in which mandatory reconsideration happens at the UK level. There will certainly have to be detail of that kind. Whether it is necessarily required in the bill is a matter of debate. I do not know. In the Westminster model, we see a lot of that type of detail in the regulations that follow primary legislation.

On standards of decision making and how people feel that they have been treated by the decision-making process, there are good models elsewhere that can be followed. There has been a recent update of the national health and care standards, which are framed very much in terms of outcomes. A lot of the planning for the delivery of the new agency also seems to be outcome based and that is a welcome approach. I would not give evidence to the effect that that must be in statute—the national health and care standards are not in statute—but we have yet to see what practical impact they have and the actual improvement of quality in regulated care settings.

We should try the model that is being proposed, but be willing to reconsider it and see whether a more robust, statutory definition of what standards of decision making are to be applied might be necessary.

Suzanne Munday: There are certain situations in which we need to look at quicker timescales. For example, in our focus group, the issue of assistance with funeral payments was raised. Individuals who are applying for assistance are experiencing difficulties with both the time that it takes to establish eligibility and the time that it can take to process payments. When somebody has passed away, the burial of the body has to take place within a set time period. We have had situations where communities have had to fundraise in order to pay funeral costs up front before people have been able to establish whether they can get assistance with the costs. There are particular circumstances where we need to look at whether we can speed up decision making.

The Convener: Can I clarify something? Is that situation with funeral payments something that is happening at the moment?

Suzanne Munday: Yes.

The Convener: Obviously, we are looking at a different approach.

Suzanne Munday: Yes.

Pauline McNeill: That was really helpful.

My second question is on something that I was not aware of, which you have drawn to my attention. The bit that caught my attention is:

> “as of September 2018, when the UC mixed-age couples rules come into effect, it will no longer be possible for new claimants to receive Pension Credit until the younger of the couple has also attained Pension Credit age.”

I was quite staggered by that. I suppose that the size of the age gap might determine how annoyed people will be about it. Anyway, I just wanted to get that on the record. It would be really helpful if you could speak to it.

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

Suzanne Munday: I do not recall that being in our submission.

The Convener: Okay. I think it is in Age Scotland’s submission.

10:00

Derek Young: It is in Age Scotland’s submission, and we have sought to highlight the issue. It is little known about, so I am not surprised that it came as a surprise even to you, Ms McNeill. As you have alluded to, there could well be couples who live in the same household between whom there is a significant age difference, the older of whom would become eligible for pension credit first. When the mixed-age couples rules come into effect, that eligibility will cease until their younger partner also becomes eligible.

That will have a number of potentially detrimental effects. First, because pension credit is probably worth about £100 a week more than universal credit, their household income will be significantly reduced. Secondly, universal credit is subject to the sanctions regime—someone must prove their eligibility for work and their willingness to meet specific, agreed targets and so on—whereas pension credit is not, which may affect the household income even though there is somebody of pension credit age in it.

The change may also bring into effect some of the rules that do not apply to pension credit but that apply to universal credit, the principal one—for the committee’s inquiry and for the bill—being the underoccupancy charge rule for housing benefit, which will become the housing cost element of universal credit. At the moment, the underoccupancy charge rule does not apply to a pension credit recipient but it does apply to a universal credit recipient. Therefore, for the period of time for which a mixed-age couple are not both of pension credit age, when the rules change—unlike the situation now—somebody of pension credit age or above could be subject to the underoccupancy charge.

Because the Scottish Government’s policy is to mitigate the effects of the underoccupancy charge through discretionary housing payments, that means that a group of people will have a greater call on the discretionary housing payment budget at least until the rules implementing the underoccupancy charge can be changed. There will, therefore, also be a financial impact on the Scottish Government through the operation of those rules, even though they are a reserved matter in the operation of universal credit.

It is a complex area that I have found difficult to explain to people who have been unaware of it, and it shows that there could be a benefit to improving the uptake of pension credit now, before September 2018. If couples who would be affected by the rules and who have not yet claimed pension credit were to do so, they would come in before the rules changed and that would reduce the potential extra liability on discretionary housing payments for a while.

There is the potential for the Scottish Government to save money by increasing the uptake of a reserved benefit—pension credit. Benefit uptake campaigns are usually a double-edged sword because the more successful they are, the greater the financial draw on the Government’s spending is. If the Scottish Government increased the benefit uptake rate in this case, more people would get access to the money that they are already entitled to and a potential future spend by the Scottish Government, resulting from a change in a reserved matter and the Scottish Government’s own policy, would be obviated.

I have tried to make that as clear as possible; I do not know whether I have succeeded.

Pauline McNeill: I will read the *Official Report*.

That is really helpful, not just in relation to the bill but in the context of the on-going debate about universal credit. The pension credit system was introduced to stop pensioners falling into poverty, and I imagine that there might even be an argument about age discrimination. People would certainly think twice before marrying somebody 10 years younger than them if they thought that far ahead. [*Laughter*.]

Derek Young: It is not the only area in which the issue arises, but it could be argued that the change will offer a financial incentive for couples who are on low incomes not to stay together. They might be financially better off if they separated and did not live in the same household, because the person of pension credit age could then claim pension credit and would not be undercut because they lived with someone who was under the pension age.

Pauline McNeill: I will leave it there, but I will put that in my social media columns, because £100 a week is a significant amount to lose through the system being changed. Thank you for highlighting that.

Ben Macpherson: Good morning, panel. I have a number of questions about the principles, which I know we have talked about already.

My first question is for Derek Young, in particular. It relates to the earlier discussion about scrutiny, accountability and redress. Should the principles have a greater link to Scots or international law, as other witnesses have proposed?

Derek Young: I am aware of the international law on the right to social security, although I was not terribly aware of it before the start of the bill process. It is in a different position from a number of other international human rights instruments, particularly the European convention on human rights, which applies to everything that the Parliament, Government and public bodies in Scotland do, so I think that it is a useful guide to the aspirations on which we ought to hold ourselves accountable.

I know that it is suggested somewhere in the policy memorandum that one of the ambitions for the system should be to avoid international criticism that the Government has not lived up to the right to social security. That is slightly unfortunate language: we ought to articulate a much more aspirational and positive purpose for the system than the avoidance of criticism.

However, it is certainly valuable to articulate social security as a human right. As the committee has heard in previous evidence sessions, that does not necessarily mean that people have a human right to individual forms of assistance—that is not what is intended. What is intended is that there is a functioning and effective system that is designed to ensure that people do not fall into destitution and poverty, that the rules are clear, that the processes are fair and that things are explained to people in a way that they can understand. If we meet those aspirations, we will have gone a long way towards meeting the international right to social security.

There is a substantive element to the right to social security, but as is the case with many human rights, it is couched in very broad terms, just as the principles are. We can say that people should not be left in destitution, but there is a broad debate to be had about what that means in practice in terms of amounts of money and the regularity with which money is paid to individuals. It is principally for the Parliament to determine those issues.

The difficulty with having the debate now is that those details are not in the bill: they are to be left to regulations to which a different form of parliamentary scrutiny will be applied when they are eventually made. An independent scrutiny body along the lines of the Social Security Advisory Committee would assist in allowing detailed and well informed scrutiny of the regulations, when they eventually come before Parliament.

Ben Macpherson: Would that be preferable to binding the principle in Scots or international law in the bill?

Derek Young: Age Scotland does not have a specific view about what form the binding nature of the principle should take, but we think that it is very important that that be clarified in the bill because, as Professor Tom Mullen and others have said in their written submissions, if the position were to remain uncertain, that would have to be resolved through litigation, which would be expensive, time consuming and probably unnecessary.

Ben Macpherson: Thank you. That was very helpful.

As no other members of the panel want to come in on that point, I will move on. In its submission, the Minority Ethnic Carers of People Project raised the issue of accessibility. I took part in a workshop on that with Suzanne Munday and MECOPP service users. The Scottish Government's position is that detailed rules on equality and accessibility will be dealt with in subordinate legislation and in the charter, and that the charter will be co-produced. I think that there is strong support for that.

As far as another principle on accessibility is concerned, would that accessibility be at a very high level? Would it be very general? Are you arguing for a clear principle?

Suzanne Munday: I am aware that other witnesses have asked for what has been described as an equality clause to be included in the bill, but I am not sure what shape that would take. I would certainly like the committee to consider an additional principle that was based on the principles of equity of access, because I feel that that would encapsulate many of the practical measures that would be necessary.

For example, in our evidence, we cautioned against overreliance on digital technology, because many people do not have access to computers and may not be digitally literate. It was good to see that there has been consideration of face-to-face support from the new agency. Equity of access is an important principle to consider.

Ben Macpherson: Thank you for clarifying that.

My final point is about a right to advocacy, which you have also raised and which other witnesses have mentioned as a potential principle for inclusion in the bill. If there was a right to advocacy, should it be for certain individuals in certain circumstances rather than a blanket right? Does MECOPP, which supports minority ethnic carers, recognise that advocacy would be meaningful and important in specific circumstances for specific individuals?

Suzanne Munday: The current benefits system is very complex, even for people who are steeped in it. Therefore, it is difficult to ask a layperson to navigate their way through it without support. If people have to go between two systems—Westminster-based benefits and Scotland-based benefits—that will potentially add another layer of complexity.

It is difficult to determine in what circumstances people have a right to advocacy: many people self-select. Clearly, people who are in more straightforward circumstances and who are competent will feel that they can do it all with minimum support. Advocacy comes in when people experience difficulties. Someone who has applied for a benefit and disagrees with the outcome might need advocacy to take forward an appeal or a review of the decision.

To go right back to basics, and to echo what previous witnesses have said, the system needs to be as simple as possible and as easily navigable as possible. However, on whether people should have a blanket right to advocacy or only a right in certain circumstances, I would not like to say in which circumstances people need advocacy. There are individuals who will perhaps require more help at the start of the process. For example, people with cognitive difficulties, whom we have talked about, should have the right to advocacy.

Ben Macpherson: That is really helpful. Just for information, my consideration is about whether a blanket right to advocacy is required or whether we need to make sure that such services are available only for those who really need them. It is clear from what you are saying that if we get the system right and it is simplified and accessible, there will be people who do not need advocacy, but in certain circumstances and in situations where there are more complicated steps to go through—for example, if there is a challenge to a decision, as you suggested—advocacy is clearly important for the service users whom you see regularly.

Suzanne Munday: Yes.

It is also important to distinguish between advocacy and other forms of support. For the communities with whom I work, a lot of what we provide is language support, which is very different from advocacy. It is important to make that distinction.

Ben Macpherson: Absolutely. Thank you very much.

The Convener: Jeremy Balfour and Alison Johnstone want to come in with supplementaries.

Jeremy Balfour: My question is on a new area, convener.

The Convener: Alison, do you have a supplementary?

Alison Johnstone: Yes. I want to pick up on what Suzanne Munday said about the complexity of the new system—in particular, when it is running in tandem with the Westminster system.

Some complexity is probably inevitable, but a way to deal with that is to offer benefits without an application, which section 35 of the bill allows for. The social security agency could actively look at what someone might be entitled to, without their having to go through another application. That is a bit like our system for cold weather and winter fuel payments, which many people do not have to apply for—they are passported from other benefits. That would also help to tackle low take-up of benefits. Should Scotland's social security system take that approach?

10:15

Derek Young: Our written evidence and broader communications make the point that the social security system should not be considered exclusively, because people who have entitlements to social security probably have other needs, for which the different assessment processes can be time consuming and difficult. For example, it is common for older people with disabilities also to have care needs, and so they also undergo a care assessment. If, as a result of getting older and having established care needs, they want to move closer to family, for example, they may need to go through another care needs assessment with a different local authority, because those benefits are not passported automatically. Similarly, certain types of disability benefit, such as attendance allowance, do not passport the person automatically to entitlement to a vehicle blue badge, for example.

People would find it extremely advantageous if there were an opportunity to look at the different forms of assessment, including and beyond the social security system, and how the processes could be streamlined. We hear quite a bit from older people who complain about having to answer the same questions several times.

Suzanne Munday: What Alison Johnstone asked about happens on a small scale—perhaps with individual organisations. For example, benefits clinics that are run by citizens advice bureaux often look at underlying entitlements to other benefits or services and provide advice and information, which has been useful.

The Convener: We talked earlier about choice, in cash or in kind, and it brought to mind winter fuel payments and fuel poverty. Norman Kerr's group looked at that issue in its submission. What are the panel's thoughts on the choice between cash and in kind, and about winter fuel and cold weather payments?

Norman Kerr: Choice would be appropriate for some people, who I am sure would welcome it and say, "Please provide that money direct to my supplier". However, there are a variety of fuels; if that payment was simply made to electricity or gas suppliers, our concern would be for someone who is off the gas grid and relies heavily on oil, for example.

Timing of the payment is also an issue. Your colleague in Westminster, Mike Weir, has raised that issue time and again, particularly with regard to people who are off the gas grid and buy oil, and who are not able to buy a full tank because the payment timing means that they do not have all the cash up front.

If the payment is given to a supplier, it limits the consumer's ability to shop around for a good deal, probably more so if they rely on oil, solid fuel or liquefied petroleum gas. If it is paid to a gas or electricity supplier, it ties the individual in to that supplier. Some people may be happy with that, but it disengages them from the market. We are doing a lot to get people more engaged in the market—to shop around and to think about changing their payment method and supplier. For some people, it will be entirely right—they will be very happy and settled and will want to continue with that method—but others might use the cash payment to shop around for a better deal. Giving payments to the supplier is not necessarily right for everybody.

Suzanne Munday: We stated in our submission that there would be merit in looking at whether the winter fuel payment could be extended beyond its current constituency. Fuel poverty is a significant issue for people with disabilities and long-term conditions—and sometimes, by association, carers, if they are living within such a household. There is a significant body of evidence that shows that winter fuel costs disproportionately impact on those groups of people. It may be that by virtue of the illness or disability that someone has, they need to turn their heating on earlier in the year or set it at a higher temperature. However, people who do not fall within the current criteria are not eligible for that payment, so we believe that there would be merit in looking at extending that.

We would also like to highlight a particular group of people we work with—the Gypsy Traveller community, who live on sites. It has been brought to our attention that the utility account is very often held by the local authority. That makes it problematic because people do not have individual accounts so they cannot shop around for the cheapest tariff. That increases fuel poverty for particular groups of people.

Derek Young: I am delighted that the committee is looking at winter heating assistance because although it is not the most significant amount of money of the current spend across the £2.9 billion that is to be devolved, it is the payment that touches the lives of the most people. I think that altogether, 1.4 million people receive one or more of the benefits articulated in the bill and 1.1 million of them are winter fuel payment recipients.

I agree entirely with Norrie Kerr’s points about off-grid properties in particular. The broader point about non-cash payments is that I do not think that any witness has suggested that there should be anything other than a system in which the potential recipient would have to elect first to receive a non-cash form of support rather than have it foisted upon them, which I do not think is anyone’s intention. That being the case, it would be helpful to have that clarified in the bill.

Other forms of non-cash support exist in the public sector—we have alluded to the Azure payment cards that are used for refugees and asylum seekers. Those are beset by difficulties. They involve a certain amount of stigma and they restrict choice about where people can spend their money. That certainly does not seem to us to accord with the broad principle of dignity and respect that is articulated at the outset of the bill. For all those reasons, we think that there should be a specification that a recipient should articulate a desire for the non-cash payment first, before that form of assistance is provided.

On the broader issues around winter fuel, we have not touched on the eligibility issue, but we have tried in our evidence to make a powerful case for the current system and why it works well. Although it is perfectly reasonable for people to think that there may be an opportunity to save some money through targeting, every attempt to do so would increase the administrative cost for the agency because it would have to implement whatever restriction is put in place, whether it is a means test or something else. Also, whenever a barrier is placed in the way of people accessing an entitlement, it tends to be the people who are the most articulate and the most assertive who are able to negotiate that hurdle; those people tend not to be, in the main, the people who are in the greatest need.

We are very pleased to see the commitments that different politicians and parties have already made to the principle that winter fuel should remain a universal benefit. We strongly support that position and are grateful that it seems to be generally supported. However, there is still a provision on winter heating assistance in the schedule to the bill that allows assistance to be restricted on the terms of the finances of the individual.

Various parties have made a commitment. It was stated during the UK general election that the universal basis for the winter fuel payment might be re-examined but, following the results of the election, that seems less likely to happen. If there is a robust political consensus in Scotland on maintaining the winter fuel payment, that is great but we would like the bill to reflect that more directly.

Ruth Maguire (Cunninghame South) (SNP): I have a supplementary question that, I hope, will not be too controversial, given what Derek Young has just said.

I was interested to hear Suzanne Munday say that there are other folk in our communities who could benefit from a winter fuel payment. Derek Young made himself clear, but I want to hear everyone else’s reflection on whether there might be value in targeting some of the payment of other people in need rather than giving a blanket payment to everyone of a certain age.

Suzanne Munday: We talked previously about underlying entitlements and passporting. If we were talking about extending the winter fuel payment system, one way to do it may be to use receipt of disability-related benefits as a way of targeting it. However, that would not be to cut across the existing provision; it would extend it to another group.

Norman Kerr: The eligibility for the £25-a-week cold weather payments provides a list of people who are considered to be vulnerable and in need of additional heating support. It may be possible to extend the payment through that. I am not going against what Derek Young said about universality. However, if we have a group that, by virtue of age, is universally accepted for the winter fuel payment, we might have a secondary group that would be eligible by virtue of need but that would not necessarily be universal. I do not think that anybody is arguing that we should take away the universality, but it could be supplemented by the list of groups who are eligible for cold weather payments.

Pauline McNeill: My question relates to the high importance of fuel poverty and energy. Under winter heating assistance, the Age Scotland submission says:

> "There are some possibilities here around, for example, securing discounts from energy suppliers."

How could that be done?

Norman Kerr: Scotland is neatly split in two for the distribution of electricity. There is a district network operator, as it is called, that operates in the north of Scotland—by that, we mean from around Perth upwards—and one that operates in the south of Scotland. The distribution and network charges in the north of Scotland mean that consumers pay a higher unit rate there. It is around about £70 a year more per house like for like simply because of the additional network costs. That immediately places those consumers at a disadvantage. The cold weather payment is simply £25. That will buy a bit more in the south of Scotland than it will in the north. Therefore, there is an opportunity to adjust winter fuel payments or, indeed, cold weather payments by virtue of where the occupant stays. There are clear and defined boundaries in place for that, so we could do it by postcode area.

10:30

Derek Young: I would like to come in briefly on the fuel poverty issue. Sixteen years ago, in a piece of housing legislation, the Parliament articulated a desire to abolish fuel poverty within a 15-year timescale. That seemed to be a realistic ambition at the time, but the aim was not met by 2016, so we are going to articulate a new desire and a new strategy to tackle fuel poverty. Even for the last few years of the strategy's operation, the rates of fuel poverty did not decline; they increased.

There is a good amount of evidence that winter fuel payments, as they currently are, put money directly in the hands of those in the age group that is most at risk of age-related illness and deaths. Every year, a fairly grim set of statistics on excess winter deaths is published that points to the fact that they are beyond what we would see even on a seasonal basis because of how people are affected by cold-related illness. Winter fuel payments are therefore an extremely valuable form of assistance, and they work.

There is also a lot of evidence that people spend their winter fuel payments on fuel costs, which are the single greatest element of household spend that has proportionately increased over the past decade. Although there is a perfectly legitimate and understandable thought process that says that some more efficiency might be available there, the current model works well, and changing it without consulting widely with the people who would be most directly affected would be wrong and politically difficult.

Jeremy Balfour: Good morning. I declare again that I receive the higher rate of the personal independence payment.

I will start with two issues for Derek Young, although others might respond too. First, we do not know yet what the Government's thinking about attendance allowance is and whether that will simply be brought over from the present system. My impression is that it is harder to get the attendance allowance than it is to get some kinds of PIP. Does the attendance allowance and the criteria for it need to be looked at again?

Secondly, if a person is over 65, they will never be entitled to the mobility component, however immobile they are. With an ageing population, would you look to change that within the financial restraints? Should the age limit be raised? Is there a discrimination issue in a challenge that, if a person is 64, they can get that for life but if they are 65, they will never get it?

How much of that would you like to be in the bill? How much of it would you be content to have in regulations and secondary legislation at a later date?

The Convener: Who wishes to start off on that question? Derek Young looks keen. On you go.

Derek Young: What Mr Balfour said was directed at least partly to me, so it is perhaps appropriate for me to start off.

I am very grateful for Mr Balfour's question, which touches directly on the principal issue for us that can be tackled during the parliamentary passage of the bill, albeit that it is not answered in the bill, as it is one of the issues that will be left to regulation.

I will answer the second question first, as it is, in a sense, much more clean and straightforward. We strongly support the idea that the current system is indefensible in its effect on people of different ages—not in terms of their age now, but in terms of the age at which they are able to qualify for disability-related support. As Mr Balfour explained, if a person is over the age of 65 when they first establish that they have a disability that would entitle them to financial support, the question whether their mobility needs are such that they would deserve a higher level of support is never even asked, because that level of support is simply not available. It does not matter whether the person would meet exactly the same test that they would have met a week, a month or a year before—that support is simply not available. We consider that to be a form of discrimination, and the Equality and Human Rights Commission seems to agree with us. It has pointed to the fact that there will be a difficulty around the public sector equality duty if the Scottish Government goes through the process of reviewing the eligibility and does not tackle what seems to be a very clear case.

Other recent examples have gone to litigation. For example, there was a case involving the Student Awards Agency for Scotland in which the approach was ruled to be illegal and had to be addressed.

A substantial amount of money is involved. At the higher rate, which is about £57 a week, it can mean a difference of well over £3,000 a year to the claimant, yet the award is made purely on the basis of their age, not their condition or its impact. We would very much like the Government to tackle the issue and the Parliament to continue to have a strong focus on it.

We acknowledge that there would be substantial financial effects simply to abolish the distinction or to extend mobility component availability to all attendance allowance recipients. We did some analysis that suggested that we are talking about hundreds of millions of pounds. However, because the question is not asked, we do not have very reliable bits of data.

In some respects, the cleanest and most satisfactory approach might be to abolish altogether the distinction between attendance allowance and the working age disability benefits but, again, because of the nature of the bill, it is not clear from the bill whether the Scottish Government is contemplating that. It would allow the possibility to think about, for example, how paying for care needs, as well as for the additional costs of living with a disability, might be treated in a more coherent and holistic way. We have not articulated a very specific costed-out proposal about how that could be done within current funds.

The most important thing is that the age discriminatory element should cease. Age should cease to be a factor in the quality of financial support that someone gets based on disability. If the committee can keep a focus on that and the Government can respond to it, we would be delighted.

The Convener: Have you met the Minister for Social Security or officials and raised that issue with them?

Derek Young: Yes, we have. I met the minister and the lead official for the bill two or three weeks ago and the meeting was very positive. Obviously, the minister will appear before the committee later and it is probably best that she reports on the outcome of that meeting rather than me. However, I must say that they are aware of that issue. They have been responsive in acknowledging that it is a difficulty and, in particular, that the fact that there is a legal problem on the discrimination basis changes the nature of the conversation about whether it can be resolved and on what timescale it might be resolved.

We understand that the immediate focus will be on areas in which there has already been a public commitment, whether in a manifesto or a statement in Parliament, to shift the way in which the system operates. It is also true that the most important thing by far—we agree with this—is that there is a seamless transition so that payments that are made on the day before the transition to the new agency continue to be made. That is vital and it could well be problematic to try to disrupt the eligibility too much.

We know that there is a special expert group that is led by Dr Jim McCormick—he has given evidence to the committee already—that looks at disability and carers in the broader sense. We hope that, whether in the short term or a slightly longer term—but not too long—the fundamental discriminatory problem is resolved in a way that is satisfactory for everyone.

The Convener: We will certainly ask that question.

Suzanne Munday: I echo what Derek Young eloquently said. We believe that it is an artificial distinction that cannot be justified.

Jeremy Balfour: I return to the last part of my question, which was about how much should be in the primary legislation and in the secondary legislation. My colleague Adam Tomkins might ask about that, too. We cannot have everything in the primary legislation but, if we are going to keep attendance allowance, would you want that in there? If the Government was moved to say that everyone, no matter their age, would be entitled to PIP, would you want that in the primary legislation, too?

The Convener: Would Derek Young like to come in first on that one?

Derek Young: You keep coming to me first, convener.

The Convener: You nodded, so I took it that you wanted to answer.

Derek Young: We said in our written evidence that a balance in favour of greater provision in legislation would be justified. When you look at many of the cases that happen under the present system, several involve testing whether the regulations meet the statutory definitions and criteria that are set out in primary legislation. People have a greater level of certainty about their expectations if something is articulated in primary legislation, and primary legislation can be used as a basis to challenge whether secondary legislation is consistent with it. We understand the desire for flexibility that has been articulated. That is perfectly legitimate, but there is also a need for consistency and certainty.

There is a further point, which has been made before, about parliamentary scrutiny. Meetings such as this one are an opportunity for external organisations such as ours to influence the primary legislation process. We do not enjoy a similar opportunity through the affirmative resolution procedure as, for example, there is no opportunity to lodge amendments. If the meat and drink, or the great substance, of what people will enjoy and on what eligibility basis is entirely, or for the greater part, in regulation, that would limit the committee’s ability to get access to expert evidence and to ask questions in the back-and-forth way that we have done today. That would be regrettable and there would be an advantage in having greater certainty in the bill.

I do not know whether that needs to be at the full level that exists under the Westminster model, as I do not know what practical possibilities there might be between the two positions. However, a greater level of certainty would improve not just outcomes for people, but the process of scrutiny so that Parliament could be sure that it had set up a system that was robust and which led to better outcomes.

The Convener: Does any other member of the panel want to respond?

Suzanne Munday: We agree. Given that we do not know what shape any external oversight body might take, we believe that there is a strong case to be made for having more in primary legislation, particularly in relation to accountability and scrutiny.

The Convener: Thank you very much. We move into private session.

10:41

Meeting continued in private until 11:10.

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