



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 12 November 2019

Session 5



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Tuesday 12 November 2019

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
CONSUMER SCOTLAND BILL: STAGE 1	2

ECONOMY, ENERGY AND FAIR WORK COMMITTEE

31st Meeting 2019, Session 5

CONVENER

*Gordon Lindhurst (Lothian) (Con)

DEPUTY CONVENER

*Willie Coffey (Kilmarnock and Irvine Valley) (SNP)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Jamie Hepburn (Minister for Business, Fair Work and Skills)
Stephen Rees (Scottish Government)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 12 November 2019

[The Convener opened the meeting at 09:45]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning and welcome to the 31st meeting in 2019 of the Economy, Energy and Fair Work Committee. Agenda item 1 is a decision by the committee on whether to take items 3, 4 and 5 in private. Does the committee agree to take those items in private?

Members *indicated agreement.*

The Convener: Thank you.

Consumer Scotland Bill: Stage 1

09:46

The Convener: Agenda item 2 is consideration of the Consumer Scotland Bill. Today we have with us the Minister for Business, Fair Work and Skills, Jamie Hepburn. He is joined by Scottish Government officials Lorraine King, head of the consumer policy unit; Laura McGlynn, Consumer Scotland Bill manager; and Stephen Rees, legal directorate. I welcome the minister and his team. I understand that you have a brief opening statement.

The Minister for Business, Fair Work and Skills (Jamie Hepburn): Yes, thank you, convener. I am very pleased to be before you today to ensure that the Consumer Scotland Bill receives the scrutiny and debate that it deserves. It is a small bill but its potential is significantly greater than its size might suggest, and it is right that we work together, to ensure that its potential can be realised.

I want to take a moment to set out why we have spent so much time considering how the advocacy and advice powers that were devolved in 2016 can be used, and why the limits on our powers cannot be the limits on our ambition. That goes beyond the need for a consumer body and is a more fundamental point about the need for a system in Scotland that works more proactively to understand and protect consumers and also recognises their enormous capacity to deliver change.

The first and perhaps most obvious reason is that fairness demands that consumers be treated well. If consumers start to believe that that is not the case, their trust in other areas of civic life will also be jeopardised. The second reason is that we know that uncertainty about the future will bring ever more complex challenges for consumers, whether that be related to Brexit, to climate change or to the opportunities and challenges that will be brought by technological change. The third reason is that consumers and their spending power are a fundamental part of our economy, and safeguarding their interests is the role of any responsible Government.

The bill is, of course, not the answer to all those challenges, but it is an important step forward in creating something new and potentially transformative. It will create a dedicated organisation that will work exclusively to champion the needs of consumers.

The creation of a new public body has been driven by the people and organisations that work to protect consumers and best understand the difficulties in doing so. The creation of consumer

Scotland was the recommendation in 2015 of an independent working group made up of consumer protection experts, including representatives of Citizens Advice Scotland, trading standards, the Scottish Public Services Ombudsman and Which?. Their conclusion was unambiguous: we need an independent public body with technical expertise and an unashamed focus on consumer interests.

However, underpinning that conclusion is an extensive and detailed exploration of the current system, which reflects the care that the working group put into its deliberations. It found that, although individual organisations worked well to represent consumers, the United Kingdom Government's abolition of Consumer Focus left significant gaps and a lack of strategic oversight. That, in turn, limited the system's overall effectiveness and weakened the consumer voice in public debate. The recommendations and analysis of the working group have continued to be echoed by consumer experts in Scotland in the formal consultation responses, in the day-to-day work to develop the policy around the body and, of course, in the evidence provided to this committee in the past few months.

That is not surprising. The abolition of Consumer Focus was met with disquiet even when it was first announced in 2010, including from trading standards organisations. It was a move that the Scottish Government and many others opposed. Nonetheless, the UK Government pressed ahead with the abolition, and it has taken the devolution of some, albeit limited, consumer powers for us to try to rebuild what has been lost. That is not to say that we simply want to recreate Consumer Focus. I recognise that we must respond to the system that exists now, as well as to the new challenges and opportunities that consumers face. We want to create a new body that takes an evidence-led approach to identifying and tackling consumer detriment. It will conduct rigorous investigations into the most serious aspects of consumer harm, so that it goes beyond simply highlighting that consumers are being harmed, and instead makes credible, achievable recommendations for change.

Working in co-operation with other organisations will be built into its foundations. The bill already includes an explicit reference to collaboration, and that approach will be an integral part of its culture and working practices.

The body's role will be to support other organisations; it will help to prioritise resources, rather than add duplication or confusion. The result will be an organisation that strengthens the whole consumer system so that it works to reduce consumer harm, increase consumer confidence when dealing with business and increase the

extent to which public authorities consider consumer interests.

Of course, I accept and welcome that we must continue to build on our extensive work with consumer experts, regulators and enforcement agencies, to ensure that consumer Scotland has that impact. I am fully committed to that, because, if we take the time to get it right, we can make a difference not only for consumers but for those who already work to support them.

That is also true of the consumer duty that would apply to public authorities in Scotland. We are the first nation in the United Kingdom to develop such a duty, and we have done so in response to the clear support for it that was demonstrated through the consumer Scotland consultation. Together, the duty and the body will ensure that consumers are protected from the unintended consequences of policy making and that their potential to drive change is recognised and encouraged.

As with the body, the duty's design and implementation will be done collaboratively. I am aware of the danger that it could become either a token gesture or another burden for public authorities to deal with. The bill therefore requires that the authorities to which it potentially applies will be consulted, to better shape how the duty works in practice.

As I said at the start of my remarks, the bill is only a first step. I do not underestimate the challenge that we have to ensure that it delivers in practice. However, we should not underestimate the potential gains if we are successful.

I am grateful to the committee for furthering a constructive dialogue that will bring us closer to realising those gains, and I hope that my appearance today will help in that process.

The Convener: Thank you, minister. I will start with a few questions. You talked about the desire to avoid duplication and confusion; you also criticised the abolition of Consumer Focus. A lot of the witnesses that we have heard from have been unclear about what consumer Scotland would do in practice. Do you agree with them that a bit more clarity on that would be helpful?

Jamie Hepburn: We have set out a clear set of functions for consumer Scotland. Its primary goal will be

"to develop and advocate for practical solutions"

to areas of consumer detriment that it might identify.

To achieve that, it will have four key functions. First, it will

"provide strategic oversight of the consumer landscape to develop a full understanding of how markets work for

consumers in Scotland and ensure resources are targeted to tackle that harm.”

Secondly, its primary area of activity will be

“to conduct in-depth investigations into areas where”,

as an independent body, it considers

“harm in Scotland is most acute”.

Thereafter, it will recommend solutions on how we tackle that harm.

Thirdly, it is also designed

“to facilitate access to a consumer advice system that meets individual consumer needs and aggregates collective data”

that exists across a range of organisations to better

“support prevention work”.

Fourthly, it will

“comment on Scottish Government policy with significant impact on consumers”

and make sure that public authorities are compliant with the statutory consumer duty that we have put in place.

What we have laid out is clear, but if it is considered that we could further refine something in or outwith the bill and make it clearer still, I am open to that. That is the purpose of my coming to the committee; that is the purpose of refining a bill.

The Convener: Let us take the duty on public bodies as an example. How would an individual enforce that duty? There is nothing in the bill to give them a direct right to enforce that.

Jamie Hepburn: No, but, when it comes to creating an enforcement agency, some of the powers that have been devolved to us are limited. Consumer Scotland will have a responsibility to publish, on a three-yearly basis, a state of the nation report on the position of consumers in Scotland. A critical aspect of that will be to—

The Convener: But that will be at a high level.

Jamie Hepburn: Yes, that is right.

The Convener: Am I correct in saying that the bill is not intended to give individuals any rights in terms of the duties on public bodies?

Jamie Hepburn: Do you mean individuals on the ground?

The Convener: Yes.

Jamie Hepburn: That is right—the bill does not include a redress function. Ultimately, the consumer duty is designed to ensure that the public bodies to which it relates consider the place of consumers, just as we require such bodies to carry out equalities impact assessments and to

consider how any policy that they take forward might impact on the environment, for example.

The bill does not have a redress function, and I do not think that we could legislate for one. However, the bill is designed to ensure that public bodies are better at thinking through the place of consumers when they design public policy. That is a good and sensible thing to do.

The Convener: So, the bill is more about how public bodies and the Scottish Government relate to each other, as opposed to it being for individuals.

Jamie Hepburn: It is not so much about how public bodies and the Government relate to each other as it is about how the policies of public bodies might relate to and impact on the position of consumers in the Scottish economy. The bill will ensure that public bodies are cognisant of that when they develop their policies.

The Convener: Surely, there is then no need for the bill, because the Scottish Government could ensure that bodies are aware of Government policy anyway.

Jamie Hepburn: The point is not about being aware of Scottish Government policy; it is that public bodies must be cognisant of the place of consumers in Scotland when they construct their policies and initiatives. I think that we can drive change by putting such a duty into statutory effect, in the same way as we have done with equalities impact assessments and a raft of other duties of which public bodies must be cognisant.

The Convener: Some people would respond to that by saying that, at the end of the day, such duties amount to box-ticking exercises and do not make any real difference, particularly if no means are provided for in statute for individuals to enforce the duties.

Jamie Hepburn: I am cognisant that that concern has been raised with you. I am determined that this will not be a box-ticking exercise. If that is the perception, it could be argued that that is the case with a range of other duties that public bodies have a responsibility to fulfil. I am not convinced that that is the case in relation to the current duties, nor am I convinced that it will necessarily be the case in relation to the duty that we are discussing. However, it is important that we consult the public bodies to which the duty might relate not only to ensure that it is meaningful and impactful and can drive change, but to ensure that it is not overly burdensome in bogging down a public body so that it cannot get on with making the policies that it wants to make. It is about trying to strike that balance.

I am totally cognisant of the concern that the duty could become a box-ticking exercise, but I am determined that we avoid that. That is partly why I referred to the statutory responsibility on consumer Scotland: it will be incumbent on it to publish regularly a state of the nation report on the position of consumers in Scotland. A critical aspect of that will be considering how the duty is performing and functioning.

The Convener: If you are satisfied with the framework that is set out in the bill, will the Government—and you, as the responsible minister—provide additional clarity on, and deal with, issues that have been raised by witnesses before the committee, by way of a statement or otherwise?

Jamie Hepburn: Absolutely. That is the purpose of my being here. If the committee wants to follow up on anything at any stage, I will, of course, do that.

The bill has been pulled together through extensive consultation, and there is widespread support for the consumer duty from a range of bodies. Of course, we have still to think through precisely to which public bodies the duty will relate. Local authorities are a fairly obvious example and we have seen the Convention of Scottish Local Authorities respond positively to the creation of the consumer duty. Aberdeen City Council and Glasgow City Council have also given evidence to say that they support it.

There is widespread support for the aims and ambitions of the bill, but if any further clarity is required, we will respond to that at any stage.

10:00

The Convener: We now come to questions from Jackie Baillie.

Jackie Baillie (Dumbarton) (Lab): Minister, you will be aware that Citizens Advice Scotland has called for its role as a consumer advocate to be codified in the bill. Does the Government intend to lodge any amendments to that effect?

Jamie Hepburn: I am aware of that call. CAS has discussed it with me directly. At this juncture, I do not intend to do that. The statutory responsibilities of the equivalents of CAS in England and Wales and the Consumer Council of Northern Ireland in relation to the areas on which we seek to legislate are not long standing. It is not as if there is a long history of citizens advice being set out in statute in these areas.

To be honest, I am not convinced of the necessity of it. I am a huge supporter of the citizens advice bureaux network and Citizens Advice Scotland. They do critical work. You and I spoke in the recent members' business debate on

the 80th anniversary of the citizens advice bureaux network in Scotland. Given that they have been around for 80 years, giving advice and providing advocacy without any form of statutory function, I am not necessarily convinced that they need to be set in statute.

I also observe that there are other organisations that perform a not dissimilar function, albeit they perhaps serve a slightly different part of the population, or perhaps are structured differently, such as Which? or Advice Direct Scotland. They perform a similar function but we do not intend to name them in statute.

All that said, I recognise the particular situation of citizens advice bureaux and CAS, and that they require to be supported in order to undertake their work. They still have a really important role to play in the gathering of intelligence, data and information through the practical experience of interacting with a huge range of members of the public, particularly those who are vulnerable. Citizens Advice Scotland has a particular responsibility to consider the position of vulnerable consumers. All that evidence and experience that citizens advice bureaux pass on to CAS is important, and it needs to be sustained.

We have engaged with CAS on how we will continue to support that. For the coming financial year, we have made a commitment to uplift CAS's grant funding, so that it can continue that work. We will continue to have that dialogue about how we maintain support for CAS.

Jackie Baillie: You will be aware that CAS used to have statutory underpinning under the Consumers, Estate Agents and Redress Act 2007. That still applies to the citizens advice network in England, Wales and Northern Ireland. I assume that you do not want the Scottish citizens advice network to enjoy a lesser status than they have elsewhere in the United Kingdom. Although you are not persuaded at the moment, could I ask you to talk to CAS—I am sure that you do that regularly—and reflect on that? CAS seeks reassurance through the codification of its role in the bill. That is sensible, and I would welcome a Government amendment on that. I am inviting you to go back to CAS and talk about that.

Jamie Hepburn: I can accept the invitation, but I assure Ms Baillie that I did not need it. As she knows, I have regular dialogue with CAS about these matters and a range of other issues.

I have laid out my position—it would be disingenuous of me not to. However, to go back to my response to the convener, we will continue to discuss the issues and, if a good case can be made, I will reflect on the matter. I genuinely do not see that CAS would be disadvantaged through the process of what we seek to do. It has been

looking to get a clear commitment that it will have a role in the future consumer landscape, and I am clear that it will. I am less convinced that we need to set that out in primary legislation, but I maintain an open mind.

Jackie Baillie: I am sure that you would not want to see it disadvantaged, relative to the citizens advice networks in England, Wales and Northern Ireland.

You mentioned money, which is a great hook for me. I appreciate the financial commitment that you have made to Citizens Advice Scotland, but the uplift is for one year only. An organisation of that size and scope requires to plan in the long term, not just in the short term. Can you appreciate that to give it an uplift for one year does not give it long-term security? What do you propose to do to provide it with the reassurance that it seeks?

Jamie Hepburn: That comes back to the age-old issue of how we can provide a longer-term budget position in our own process of annual budgeting. It is not impossible, but it is sometimes difficult. I have laid out directly to Citizens Advice Scotland—I lay this out clearly and publicly today—that we commit to continue that dialogue and to support the organisation to perform its role.

We provide more than £8 million to Citizens Advice Scotland and the bureaux network through a range of funding sources that come directly through the Scottish Government or the levy funding, for which Scottish ministers now have responsibility. Obviously, a lot of that investment goes to the bureaux network, as I am sure Ms Baillie and others would expect, because that is the front-facing part of the citizens advice service in Scotland. We already provide significant resource, but we will, of course, continue the dialogue.

Jackie Baillie: I will finish on this point. I am driving at the fact that you do not seem to want to codify Citizens Advice Scotland's role in the bill, and you cannot offer it assurance of funding beyond one year. You can understand why that lack of certainty in the long term is exercising minds. Therefore, I return to my question: how do you provide the reassurance—that I know that you want to—in a way that does the trick for Citizens Advice Scotland?

Jamie Hepburn: I recognise that that issue is exercising minds and I can understand why; the process of change can sometimes cause uncertainty for people. I do not want to exercise minds and cause concern.

This ultimately comes down to a funding issue. We could put Citizens Advice Scotland in the bill, but in and of itself, that would not necessarily commit to it having any particular pocket of funding. I am still open to the possibility of

dialogue about and a potential amendment for including the organisation in the legislation. However, there are other ways in which we could set out that role outwith the bill. For example, the bill places a clear requirement on consumer Scotland to collaborate with other players, and Citizens Advice Scotland is an obvious example of such a player.

I am trying to provide as much reassurance as I can on funding. I have committed in public to continuing to have a dialogue. I meet the organisation regularly, and we have offered it reassurance for the coming financial year. Clearly, we then need to discuss how we support it in the longer term, and I am committed to doing that.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I want to get a better understanding before I move on to my own questions. How will consumer Scotland provide strategic oversight to the consumer landscape in Scotland?

Jamie Hepburn: That brings us back to the manner in which we ensure that there is a collaborative process between consumer Scotland and the range of other bodies that already perform a function in relation to consumers in Scotland. The obligation to collaborate in that fashion is included in the bill.

There has been a specific call for consumer Scotland to oversee some version of a Scottish consumer protection partnership, which would gather all the players in the same room to fulfil that strategic role. It is important to reassure those bodies that, when we talk about consumer Scotland having an oversight role, we are talking about oversight of the landscape, rather than a role in giving direction to and overseeing those bodies. That is not what we intend and it would not be in the spirit of collaboration.

By bringing all those bodies together and encouraging them to work closely, we can strengthen the position of consumers in Scotland.

Gordon MacDonald: Currently, enforcement powers are reserved to the UK Government and the only part of the consumer organisation landscape that has any enforcement powers is trading standards. How do you see the new body working alongside trading standards services and supporting them in carrying out their enforcement duties?

Jamie Hepburn: Trading standards services are a very obvious example of the type of organisation that would be involved in the partnership approach that we envisage. Their involvement would be sensible and obvious.

Your question was about how consumer Scotland will support trading standards, but I think that it is mutual: trading standards will gather a lot

of intelligence on the ground through people coming to them with particular issues, which they will identify and pass on to consumer Scotland, which will then determine whether it is an issue into which it wants to launch a detailed investigation. If it does, that might result in a series of recommendations on how we could go about better resolving some of the problems. If trading standards officers or the overarching trading standards bodies in Scotland—there are two such bodies: the Society of Chief Officers of Trading Standards in Scotland and Trading Standards Scotland—determine that the issue is something that they want to consider, they can do so on that basis. Equally, there is scope for information to travel in the opposite direction. That is how I envisage it working.

Gordon MacDonald: Given that the Scotland Act 2016 devolved to the Scottish ministers the power to make a reference to the Competition and Markets Authority, if consumer Scotland were to carry out an investigation into a specific area and wanted to refer the matter, how would that work in practice?

Jamie Hepburn: It is important to mention that consumer Scotland will be independent of the Scottish ministers and will primarily be accountable to Parliament. When consumer Scotland pulls together a report on the back of a particular investigation that it has undertaken, it will have to lodge a copy of that report with Parliament so that members and committees can consider it—the Economy, Energy and Fair Work Committee is an obvious example of a committee that might be interested in doing that. Consumer Scotland will also have to provide a copy of the report to the Scottish ministers. In that, it could specifically ask us to make a reference to the CMA or the Scottish ministers could look at the content of the report and determine whether it was an issue that should be taken to the CMA. It would be up to the CMA to consider the issue thereafter.

Gordon MacDonald: I understand that the power to make a reference to the CMA is jointly exercised with the UK Government. There will be competing demands on the CMA to consider various aspects of the markets. Is there an element of veto in the legislation? For example, if there is a Scotland-only aspect, such as parcel delivery charges, and there are other issues south of the border that the UK Government might consider more important, if the reference power is exercised jointly between the Scottish and UK Governments, does it mean that the UK Government in effect has a veto?

been drafted. You would not be surprised to hear me say that my perception is that it is not entirely necessary for the provision to have been drafted that way, but it has been.

It should be mentioned that the Scottish Government actually has a pretty good relationship with the Competition and Markets Authority, which is establishing a significant presence in Scotland. The authority tells me that that is specifically for the purpose of being more responsive to the types of issue that might be more prevalent in Scotland than in other parts of the United Kingdom. Postal delivery charges, which you have just mentioned, are a very obvious example.

The legislation that you refer to is the Scotland Act 2016, not the Consumer Scotland Bill. I might have liked the provision to have been drafted slightly differently, but it is the way it is, and we will work with it. On a practical basis, I do not foresee any significant challenges but, if we do encounter them, we will need to reflect on them and have some dialogue with our counterparts in the UK Government to see whether we can consider the matter further.

Andy Wightman (Lothian) (Green): What are the general principles of the bill?

Jamie Hepburn: Do you mean in the strict legalistic sense?

Andy Wightman: The committee is tasked to report to Parliament on whether it recommends to Parliament that it agree the general principles of the bill at stage 1, so I am just wondering what the general principles of the bill are.

Jamie Hepburn: At a high level, the general principles are the establishment of consumer Scotland and the creation of a consumer duty that public bodies will have to follow.

Andy Wightman: The Scottish Consumer Council was the last statutory body that was broadly concerned with the same matters. I think that it existed between 1975 and 2008. Do you have an example of a consumer issue that has arisen over the past 10 years, say, that would have been avoided had the bill's provisions been enacted 10 years ago?

Jamie Hepburn: It is hard for me to speculate as to whether anything might have been avoided, but the very good example that has just been provided by Mr MacDonald of postal delivery charges is an obvious one. Of course, that will impact on other parts of the UK—I am not suggesting otherwise for a moment—but we know that those delivery charges have a particular impact on rural communities, especially in the Highlands and Islands, and sometimes in the most obscure of fashions. At the invitation of Richard

10:15

Jamie Hepburn: I am loth to call it a form of veto. It is what it is—that is how the legislation has

Lochhead, who has done a lot of good work in this area, I recently visited his constituency, where I saw things in practice. I was in an area where delivery vans would refuse to deliver, because of the postcode that people lived in, but they would drive past that area to get to an area where they would deliver, and that seemed rather obscure.

That is the type of specific issue that consumer Scotland might wish to investigate. It is of course important to put it on record that consumer Scotland will be an independent organisation, which will determine its own body of work and those areas that it thinks are particularly important to look into. That could be one such example.

Andy Wightman: Do you have others?

Jamie Hepburn: None is occurring to me off the top of my head.

Andy Wightman: Would they include the process of buying a house?

Jamie Hepburn: They potentially could.

Andy Wightman: The Scottish Consumer Council vigorously championed one issue—quite surprisingly—during the abolition of feudal tenure. Many consumers were not allowed to do bed and breakfast or whatever, because of ridiculous conditions in their titles and so on.

The delivery charges that we have discussed and the process of making big investments in houses are classic consumer issues. We heard evidence last week from Professor Iain Black on behalf of a range of academics. I am sure that you have read their evidence, which was very well put. It says that the bill sets out narrow and outdated views of a consumer and consumption. It goes on to say that we should have a definition that is more understanding of the consumption life cycle. For example, housing is a good issue now in Lothian, because many of my constituents cannot sell their houses, which have zero valuations because of cladding issues. They are entirely innocent of that as consumers and they had no warning of it. That issue arose 10 years after they purchased properties. Are you sympathetic to what Professor Iain Black and his colleagues set out?

Jamie Hepburn: If, on the back of that evidence, you want to discuss it further with me, I am open to looking at how we define “consumer” in the bill. Broadly, I think that we have it right. However, there has been a call from others to include small businesses within the scope and definition of “consumer”, and some of the questioning might take us to that area. If it is of particular interest to Andy Wightman or any other member of the committee or the Scottish Parliament, I am happy to have that dialogue and consider whether it seems sensible for us to look at it again.

Andy Wightman: For example, the classic definition is restricted to the transactional nature of consumption, which is when someone pays money to another party in order to buy something.

Jamie Hepburn: Yes.

Andy Wightman: Yet there are downstream impacts of consumption on, for example, the environment. There are also emerging peer-to-peer markets on websites such as Gumtree, which raise issues to do with the buying and selling of things in unregulated markets, because the vendors are not subject to the same kind of laws that retailers or companies are. The academics’ view is that consumption has moved on a long way since it emerged in the 1960s as a big public issue. We are in a different place and therefore need different definitions. We will reflect on their evidence.

Jamie Hepburn: I do not disagree with what Mr Wightman has laid out. That is why, at the start, I made the point that the landscape has changed and continues to change. On that basis, we want an organisation that is responsive to changes that are happening now and some that we cannot foresee. We do not know what will happen in the future. If there is a concern about the definition that has practical impact, I am happy to pick up on that. However, when it comes to the intent, we are not on separate pages.

Andy Wightman: I have a final small point. Section 6(3) says:

“Consumer Scotland must have regard to—

(a) the activities carried on by any other public bodies with the same functions as, or similar functions to, Consumer Scotland”.

There has been debate about what the functions of consumer Scotland should be. Why would there ever be another public body with the same functions?

Jamie Hepburn: It goes back to the area that I mentioned earlier, which is the collaboration with other organisations that are in the same landscape of consumer interests. They are not likely to have identical functions, but they might have functions that relate to the position of consumers. That is what the specific provisions are about, but I will ask Stephen Rees to comment more specifically on the drafting.

Stephen Rees (Scottish Government): The intention was to allow simply for the possibility that other public bodies might operate in a similar landscape. It could take us into competition areas. It may be that bodies are set up in England and Wales or elsewhere that have similar functions. It is supposed to be a two-part test. The first part relates to public bodies that have similar functions. Then, the second part, in section 6(3)(b), relates to

any other person with whom it might be desirable to work in collaboration.

Andy Wightman: My question was not about the “similar functions”, which have been covered, but about the reference to the “same functions”. Why would a bill ever envisage having regard to another public body with the same functions? Surely there are no bodies with the same functions.

Jamie Hepburn: Stephen Rees’s point is that they may be furth of Scotland.

Stephen Rees: It may be that England and Wales follow our lead and set up a similar body. In that scenario, it would be useful and worth while for consumer Scotland to have regard to what that body is doing. The phrase

“the same functions as, or similar functions to”

is broad enough to catch all the scenarios.

Colin Beattie (Midlothian North and Musselburgh) (SNP): It has been suggested that consumer Scotland should have only the power to commission—rather than to provide—advice. The Scottish Government has chosen to give consumer Scotland wide powers in that area. How is it intended that they be used?

Jamie Hepburn: That goes back to the point that Stephen Rees has just made, which is that we need to ensure that the body is able to respond to future developments. It goes back to the limited scope of what has been devolved, which is advice and advocacy. It would be strange to establish consumer Scotland and to say that it had no scope or role in the provision of advice. That said, our current intention is that consumer Scotland will be focused on the high-level assessment of strategic issues, so that it can investigate them thoroughly, publish reports arising from those investigations and make a series of recommendations on how others, such as the Scottish Government, might go about resolving the issues that consumer Scotland has identified.

Advice can take many forms. Consumer Scotland might feel that it is necessary, on the back of some of the issues, to run an awareness campaign. I would consider that to be included in provision of advice. That is why we have drafted the bill in the way that we have.

Colin Beattie: There are other organisations that already provide advice of various kinds. If the Scottish Government were to commission direct provision of consumer advice through Advice Direct Scotland, that might create uncertainty. Do you think that that could confuse things?

Jamie Hepburn: No. I can understand why people might posit that at this juncture, because consumer Scotland does not yet exist. We have

set out a very clear direction for its responsibilities. Once it has been established, the body will have to find and establish its place in the landscape, working with those organisations. It will be obliged to do that under statute. I have already referred to the partnership approach for which others have suggested that consumer Scotland should have responsibility. That should allow all the organisations to come together to ensure that there is little or no duplication, except when those bodies feel that it would be sensible to have such overlap.

Colin Beattie: Will consumer Scotland have the role of ensuring that there is no duplication of the advice that is given?

Jamie Hepburn: No. I do not think that it can do that. Many of the other organisations are independent of Government, and they will all be independent of consumer Scotland, so it cannot be directive in that sense. However, there is a desire for all the bodies that are involved in that area of activity to come together to operate on a sensible basis so that such duplication is minimised.

Colin Beattie: Will consumer Scotland have a role to play in facilitating the organisations that provide advice and nudging them down the right path so as to avoid duplication?

Jamie Hepburn: Yes and no. I again make the point that we are talking about independent organisations, which are rightly able to determine the work that they want to undertake. It is not a question of nudging them; it is a case of giving them an opportunity to come together to discuss issues of mutual interest, to understand the activities that they are undertaking and to determine individually and collectively how they might best move forward from having such dialogue on an on-going basis.

10:30

Colin Beattie: There are two areas where it is suggested that consumer Scotland should have a role: alternative dispute resolution and quality assurance of advice. What consideration has the Scottish Government given to those areas?

Jamie Hepburn: Alternative dispute resolution has not been included in the bill for the simple reason that, if we had included it, we would have been straying into a reserved area. That is not something that we could do.

As far as quality assurance of advice is concerned, I go back to the point that I have just made: it is a case of ensuring that organisations come together to have open dialogue about what they are involved in undertaking.

Consumer Scotland could identify that the provision of advice was an issue for consumers and could undertake an investigation into that, but it will not be a body that has oversight over other independent organisations that have a role to play in the provision of advice. That is not what we intend.

Colin Beattie: I want to go back to the important area of alternative dispute resolution. The evidence that we have seen indicates that ADR is generally not reserved but that there are elements of European Union rights to access consumer ADR that might be. There are mixed views, but there still seems to be some potential for consumer Scotland to have a role to play in relation to ADR. Will the Scottish Government consider that?

Jamie Hepburn: As I hope that I have indicated clearly, I am open to discussing any of those aspects with any committee member who wants to pursue them. If what you have suggested is something that we can do, we will consider it—although that is not to say that we will ultimately agree that it is something that consumer Scotland should do. However, we are open to having that dialogue.

Jackie Baillie: I want to check whether the power to co-ordinate and disseminate information and advice to consumers covers areas where there is a significant community safety issue. I am thinking of the recent debate that we had about the major recall of electrical products that present a significant risk to consumers, such as the malfunctioning Whirlpool tumble dryers, around 500,000 of which remain in people's homes across the UK. Will consumer Scotland have sufficient power to deliver in that area?

Jamie Hepburn: Yes. It will not be able to issue edicts about the recall of products and so on—it will not have that function. It could identify the issue as something that it wanted to look into, and it would then be incumbent on consumer Scotland to report on its findings and make recommendations on how the Scottish Government and others should respond.

Richard Lyle (Uddingston and Bellshill) (SNP): Do you believe that companies adhere to the consumer's right to return a product within a guaranteed period and receive a refund? If not, could consumer Scotland look at that issue?

Jamie Hepburn: There is probably a mixed landscape on that. We know that some companies are better at it than others—I will not name any particular company.

Richard Lyle: Is that not where all the complaints come in? When people take something back, they have to stand and haggle to get their

money back, but they did not need to stand and haggle when they paid their money over.

Jamie Hepburn: No. A lot of that would still come under the responsibility of trading standards. If there was a recurring theme and it was felt that that needed to be looked at strategically, consumer Scotland would be well capable of looking into that and reporting its findings thereafter.

On the specific instance of an individual consumer having a poor experience, that is not likely to be something that consumer Scotland will seek to resolve by seeking redress for that individual. There are other bodies that undertake that function—I have cited the example of trading standards bodies. Citizens advice bureaux may take up cases for individuals; I am aware of them having done that for some of my constituents. Indeed, even members of the Scottish Parliament occasionally get involved in trying to resolve such matters for their constituents, but I do not foresee that being a specific role of consumer Scotland on an individual, one-to-one basis. However, if that is something that I become aware of as being widespread in a particular instance or on a particular issue, consumer Scotland could look at the matter on a more strategic basis.

Richard Lyle: That is reassuring.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): Good morning, minister. I want to ask a couple of questions about data sharing and access to the data that various organisations will have. When consumer Scotland is established, it will not have any information at the outset—I suppose that that goes without saying. What are the mechanisms for the organisation to gain access, by agreement or through the use of its powers, to information that already exists in the consumer landscape? Will the organisation be able to do that simply by agreement, or does there need to be some kind of legislative permission for organisations to share information with consumer Scotland?

Jamie Hepburn: Good morning to you, Mr Coffey. You are right: when consumer Scotland starts, it will not have any data immediately. We will have to have a clear indication that Parliament is supportive of the creation of consumer Scotland, and that will be put to the test at the end of the stage 1 proceedings. We intend to create a shadow body as a forerunner of the statutory body, so that it can begin to examine such issues.

There is a rich vein of information out there, as I mentioned in response to Jackie Baillie's question about Citizens Advice Scotland. This is a critical area. CAS and other organisations, such as trading standards bodies, Advice Direct Scotland and various parts of local authorities—which have

responsibility for hosting trading standards officers—will all have rich sources of information that could greatly assist the activities of consumer Scotland.

We need a framework that will enable information to be shared between those organisations and which will make it possible for consumer Scotland to share information with those organisations. I do not think that that necessitates our having any other form of primary or secondary legislation to facilitate that, because the legislation that organisations must adhere to regarding the sharing of information already exists. For example, the general data protection regulation may require some form of memorandum of understanding or agreement between the organisations concerned. We would seek to ensure that they put that in place between themselves, so that they can share data.

We are cognisant of the need for those matters to be considered, and that is why we have established a working group on data sharing. It first met last month, and its activities are on-going. All the information will be shared publicly via the Scottish Government website. Of course, if there are specific details that committee members would like to see, we will be happy to provide them. The organisations on the working group include Citizens Advice Scotland, Advice Direct Scotland, Which?, some of the various ombudsmen, trading standards organisations and some digital groups. We have a range of players at the table, who are looking into these issues.

Turning to the other area of information gathering, consumer Scotland will be able, on a statutory basis, to require organisations to provide it with information. That is written into the bill. As for information sharing, I hope that I have given you enough reassurance that we are thinking that through and will make sure that it happens.

Willie Coffey: Do you view consumer Scotland as being a central focal point where the information-gathering process in Scotland can be housed? I presume that it will not have the same sets of data as the other organisations that it will work with. I am curious to know what kind of data and information consumer Scotland might have, and what kind of information organisations such as Citizens Advice Scotland might have. I would not imagine that we are going to be sharing and duplicating data sets all over the place. What kind of relationship do you think that there will be between the organisations?

Jamie Hepburn: Consumer Scotland is being set up for a specific purpose, so it will potentially be able to aggregate the data that has been provided. Its fundamental role will not be to be a store or repository of lots of data sets; its real responsibility will be to use the information that it

has. It will be incumbent on consumer Scotland to ensure that it has the requisite staffing to undertake some data-gathering activity itself. That goes back to the point that I made about the organisation's statutory powers.

Consumer Scotland's real role will be to use the data that it gathers to good effect through the inquiries and investigations that it will undertake. Clearly, it will obtain information through the process of conducting those investigations and through the agreements that it will strike with other organisations. As long as it is compliant with legislation, I do not see any problem with consumer Scotland being able to share that information with the other organisations or, indeed, publicly, as it sees fit.

Dean Lockhart (Mid Scotland and Fife) (Con):

I have a follow-up question about the information-gathering powers and the work of the working group. Is there a case for the information-gathering powers to include more organisations, such as local authorities and Citizens Advice Scotland?

Jamie Hepburn: There could be a case for that. As I said, I am willing to discuss and hear about those things. It is incumbent on us to ensure that consumer Scotland is able to gather the information that it needs. Citizens Advice Scotland will be looking for reassurance at this stage. I am instinctively loth to suggest that an independent charitable organisation of that nature might be statutorily compelled, although there could still be an argument for it. I am open minded on that.

Stephen Rees: We have included in the bill a regulation-making power to add to the categories of persons who will be subject to the information-gathering power, so it will be possible to expand on that in future, if that is thought to be desirable.

Dean Lockhart: Thank you—that is helpful.

In the bill as introduced, the definition of “consumer” would exclude small businesses and microbusinesses. We have heard evidence that microbusinesses have very much the same consumer protection needs as individuals. Does the Scottish Government intend to exclude microbusinesses from the protection of the bill?

Jamie Hepburn: No—not from the protection of the bill. It is almost inevitable that, even as we have devised the bill at present, and through the process of work that is being undertaken, many of the findings of the investigations and inquiries that consumer Scotland will undertake will be just as relevant for small businesses and microbusinesses as they will be for those who we might conventionally think of as individual consumers.

10:45

I did not make a conscious decision not to include smaller businesses or microbusinesses. However, I am mindful that that matter has been raised with the committee, and I am open to considering it again. In doing so, I would want to be conscious of two things. First, would including such businesses widen the scope of what consumer Scotland has to undertake so much that it would make its work difficult? To counterbalance that argument, it could be said that consumer Scotland will determine its own programme of work—albeit that it has to consult on it, and Parliament has a role to play in scrutinising the activity of consumer Scotland. The other thorny issue might be what the cut-off point is for a small business.

Those are my ponderings on the issue. I am happy to look at the matter and to see whether we can consider it at stage 2.

Dean Lockhart: That is very helpful. You are right: the committee has heard evidence from a number of witnesses that, in practice, the existing agencies help small businesses and microbusinesses, especially sole traders who are acting in a business capacity but who are individuals. We will take you up on your kind invitation to consider that again at stage 2. Thank you.

Jackie Baillie: If the minister wants to be on a roll here, I wonder whether he would also look kindly on evidence from stakeholders—

Jamie Hepburn: Before you finish asking—

Jackie Baillie: You could just say yes.

Jamie Hepburn: Yes.

Jackie Baillie: Excellent. I now have no need for a further answer.

I will ask my question anyway.

The Convener: I think that we need to know for the record what the question is.

Jackie Baillie: Yes—we do.

Jamie Hepburn: Actually, I think that I need to know, too.

Jackie Baillie: We have heard from many witnesses about having a flexible definition of “vulnerable”, because it is important that that relates to context, rather than simply to an individual characteristic. The example that has been given is that of a 60-year-old person who may be vulnerable not generally as a result of their age, but because of their particular circumstances. Will the Scottish Government lodge amendments to reflect those concerns? You have said yes already, which is great.

Jamie Hepburn: I am cognisant that the issue has arisen. The bill gives specific examples, for want of a better term, of what might be felt to constitute “vulnerable consumers” although, as is noted, the list is not exhaustive. Yes—I am happy to follow that up and to explore the matter further.

Jackie Baillie: Thank you, convener.

The Convener: I think that those thanks go to the minister.

Richard Lyle: It is not clear from the bill or the policy memorandum which bodies will be covered by the consumer duty. Can you give us any further information about the Scottish Government's plans in that area?

Jamie Hepburn: I had a bit of dialogue with the convener on this matter earlier. We should not underestimate the potential power of the consumer duty. We will be the first country in the UK to take such measures, and there has been a clear call from stakeholders that we should do that. We should not underestimate the power of the duty to influence change in the thinking of public bodies in ensuring the position of consumers—albeit there is now some dialogue between us about how we might define “consumers”, which I am happy to follow up on—and in ensuring that the public bodies to which the duty may relate give requisite thought to the position of consumers in their policy making. That is a good thing to do.

It was important for us to engage in consultation with a range of bodies that the duty may apply to, so as to understand how it might work in practice. That work is under way, and it will continue. I will be happy to provide further detail to the committee.

Richard Lyle: It has been suggested that it will be difficult for the consumer duty to have a practical impact, given all the other duties that public bodies may have to consider. How does the Government plan to address that?

Jamie Hepburn: That goes back to the question that the convener asked me. I am cognisant of the concerns that exist; I think that the convener used the term “box-ticking exercise”, and I want to avoid that.

That is part of the reason why we are having the consultation with public bodies: it is a matter of ensuring that the duty is meaningful and impactful, and something that they would be able to undertake. It should not become so burdensome that it becomes impractical for organisations. That is part of the process of consultation.

Consumer Scotland will have to publish an annual report and lay it before Parliament—as well as publishing on a three-yearly basis the consumer welfare report that I referred to, and

laying that before Parliament, too—in order to demonstrate whether the consumer duty is making any impact. That will be important, because it will enable Parliament to consider the matter and question consumer Scotland about it. The Parliament could bring in individual organisations and ask them about the duty, too; for example, it could ask how they are putting the consumer duty into practical effect. If a committee has concerns about whether an organisation is doing that, it can ask questions about it.

Jamie Halcro Johnston (Highlands and Islands) (Con): It has been noted that there is support for the bill from a number of stakeholders, but that there is perhaps a lack of understanding about how the new body may come together. You mentioned that the bill is just a first step. Could you briefly outline your vision for consumer Scotland not just in the next few years but further in the future? Where do you think that it will play a role? How might it take on other responsibilities and expand as an organisation?

Jamie Hepburn: I do not want to be too speculative about new powers and functions. You might expect me to say—and I will say—that a more comprehensive range of consumer policies probably could have been devolved to become the legislative responsibility of the Scottish Parliament and the administrative responsibility of the Scottish Government and, by extension, devolved to consumer Scotland, which we are setting up. That is not the case but, if it were to be the case in the future, there is the clear possibility that consumer Scotland could take on some of those functions.

As for where I want us to be in the future, I want the bill to be the catalyst by which we place the consumer—the individual person, or a wider definition of that term, which I am open to—at the heart of public policy making. I think that the consumer duty has a significant role to play, and I hope that that will lead to significant improvements in the position of the consumer in Scotland.

I hope that some of the issues that have been mentioned by Mr MacDonald and Mr Wightman, who posited some specific examples, are greatly reduced and may not arise in the future—or, if they do, that they can be resolved as quickly as possible.

Jamie Halcro Johnston: I accept those points. You mentioned parliamentary scrutiny of the body and said that the bill will be a catalyst. How will you measure performance? What targets can you set? How will you judge the success of the new body in achieving its objectives and making a difference to the consumer landscape?

Jamie Hepburn: Unless the body determines for itself—potentially through dialogue with the Parliament—that it should have specific targets, it

will not be a target-driven body. We are not establishing it as such in the bill, and I do not intend to legislate for it to be such. The body could determine that it wants to set specific targets; it would be perfectly possible for it to do that.

The member asked about measuring the organisation's success, and it will be incumbent on the Parliament to do that. It is important that Parliament is empowered to have a scrutiny function, and it is important for consumer Scotland not only to be seen to be independent of the Scottish Government but to be independent of the Scottish Government, while being accountable to Parliament as a whole. It will be for Parliament to determine that, I think.

The organisation's primary focus will be to investigate and prosecute areas of consumer harm or detriment—to examine that and then to make suggestions about how that might be remedied. In that sense, it will be for others who may have the responsibility to resolve that and to be held to account, as much as it would be for consumer Scotland.

The Convener: There are no further questions from the committee. I thank the minister and his team very much for coming in today.

10:55

Meeting continued in private until 12:33.

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