OFFICIAL REPORT
AITHISG OIFIGEIL

Solicitors in the Supreme Courts of Scotland (Amendment) Bill Committee

Tuesday 17 December 2019

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

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SOLICITORS IN THE SUPREME COURTS OF SCOTLAND (AMENDMENT) BILL COMMITTEE

2nd Meeting 2019, Session 5

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Bill Bowman (North East Scotland) (Con)

COMMITTEE MEMBERS

*Daniel Johnson (Edinburgh Southern) (Lab)
*John Mason (Glasgow Shettleston) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Gregor Clark (Drafting Adviser to Society of Solicitors in the Supreme Courts of Scotland)
Sarah Erskine (Society of Solicitors in the Supreme Courts of Scotland)
Robert Shiels (Society of Solicitors in the Supreme Courts of Scotland)
Donald Skinner-Reid (Society of Solicitors in the Supreme Courts of Scotland)
Douglas Thomson (Society of Solicitors in the Supreme Courts of Scotland)

CLERK TO THE COMMITTEE

Felicity Hollands

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Solicitors in the Supreme Courts of Scotland (Amendment) Bill Committee

Tuesday 17 December 2019

[The Convener opened the meeting at 10:31]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the second meeting of the Solicitors in the Supreme Courts of Scotland (Amendment) Bill Committee. I remind everyone present, including those who are at the table, to switch their mobile phones and tablets off, or to silent.

Agenda item 1 is consideration of whether to take in private item 3, which is a discussion on the evidence that we will hear today and the committee's approach to scrutiny of the bill at the preliminary stage. Are we agreed?

Members *indicated agreement.*

Solicitors in the Supreme Courts of Scotland (Amendment) Bill: Preliminary Stage

10:31

The Convener: Under agenda item 2, we will take evidence from the promoter of the bill, which is the Society of Solicitors in the Supreme Courts of Scotland. I welcome Douglas Thomson, president of the society; Sarah Erskine, vice-president; Donald Skinner-Reid, treasurer and collector—we need to find out what a collector is; Robert Shiels, secretary; Christine Wilcox, keeper of the library; and Gregor Clark, drafting adviser to the society on the bill. If there are problems with the bill, it will all land on you, Mr Clark.

Do you want to make an opening statement?

Douglas Thomson (Society of Solicitors in the Supreme Courts of Scotland): Thank you for inviting us to attend and give evidence. Members will have had an opportunity to read the papers that we have submitted and will be aware of the history of the society. I believe that some members had an opportunity to visit our premises recently, so they will be familiar with their layout.

The purposes of the bill are set out in full in our papers. We are happy to take questions from members on any matters arising.

The Convener: I will start us off. Is the promoter confident that none of the alternative approaches that are set out in the promoter's memorandum would be more appropriate?

Robert Shiels (Society of Solicitors in the Supreme Courts of Scotland): We are a society of 220 lawyers and there is always a danger that we end up with 220 opinions on how best to proceed. We have taken advice and reached agreement that it is better to consider the legislation. The alternatives are ad hoc or pragmatic approaches that would be used as the circumstances arose or dictated. With the bill, we are anxious to lay out specific powers or authorities on the statute book now, which might be used later.

The Convener: I am tempted to say that they will be "oven ready", but I think that we should not use that expression.

Douglas Thomson: They will be there if they are required.

Robert Shiels: It might be that the powers in the bill, if it becomes an act, will never be used, because it might be that the society will continue to prosper for years to come. However, we are acutely aware of changes in the legal profession and society in general, and we are anxious to

ensure that, in the future, we will not be seen as having done nothing.

The bill sets out specific powers to enable members to take decisions in five, 10 or 20 years' time. It is important to note that we have no pressing problem that urgently requires action. The alternatives that were considered would react to difficulties that had arisen, but we do not want to take that approach. If, for example, the society was to close, we would prefer that that was done in an orderly fashion, rather than with urgent action before the Court of Session.

The Convener: Will you briefly elaborate for the record on the changes that have taken place that have led to you bringing a private bill to the Parliament?

Robert Shiels: I estimate that we had about 330 members before the first world war. We are now down to about 220. It is a voluntary society; people are not required to join, but join freely. Although the number of members has been stable for some years, the demography of the membership has changed, and younger people are not joining in numbers that suggest that there will be enough people who are fit and able to administer the society in 10 or 20 years' time. As members might know, the society owns a substantial building and we have financial assets in support of the widows fund, but all of that takes administration, which is quite time-consuming. If we do not have people who are fit and able to do that, the society might drift into serious difficulties.

The Convener: The mention of serious difficulties leads me to ask what the implications would be if the bill was not passed and the status quo pertained.

Robert Shiels: If the bill was not passed, the society would continue as it is, but—we think—without the power to close it other than through emergency action before the Court of Session or something along those lines. If the bill is passed and the society was to close in five, 10 or more years' time, it could at least be done in accordance with the powers that the statute granted.

There are two aspects—the society and the widows fund, which we want to rename as the "dependents fund". The two aspects might be dealt with separately. We might recommend to the membership that the dependents fund be closed, which might ensure that the society continues for another 50 or 100 years, but that is uncertain. The problem is the break in the habit of people joining such societies.

The Convener: Perhaps my colleagues will ask about the mechanics of other closures and changes.

The legal structure of the society is difficult to follow. Will you explain the relationship between the articles of association, the royal charter and the Solicitors in the Supreme Courts of Scotland Act 1871, so that I can understand it?

Robert Shiels: In the 1750s, there were lawyers hanging about in the Court of Session—

The Convener: They still do.

Robert Shiels: That lot were unruly—

The Convener: They still are.

Robert Shiels: I do not know about that.

In 1754, an act of sederunt was signed to get people who were going to appear regularly with counsel to identify themselves, in order to introduce some regulation. In 1784, the society was founded. The book on the society's history explains what was involved and how it developed. It was essentially for solicitors who were supporting counsel, because counsel were in court, doing opinion work or whatever. The term "clerk" is deceptive, because it sometimes means a qualified solicitor as opposed to someone who just does clerking, which in those days meant keeping papers.

The society became sufficiently established to ensure that it was a cohesive body. By the mid-19th century, it controlled something like three quarters of all the business for counsel that went into the Court of Session, so it became almost monopolistic. The royal charter was intended to produce cohesion, stability and—I am afraid to say—respectability, which was fine.

By the 1870s, the Scottish legal profession had begun to become much more cohesive. The then Lord Advocate, George Young—later Lord Young—produced several bills through Parliament to establish various societies in an attempt to regulate the solicitor branch of Scotland. The result was that the members of the SSC Society felt that they were sufficiently well appointed and dug in to be able to get their own legislation and secure their position. The difficulty is that they either never anticipated that the society would one day no longer exist or deliberately did not put something into the bill to allow the society to close. They perhaps regarded it as a society that would continue in perpetuity.

The Convener: Can a firm instruct at the Court of Session if it is not an SSC firm?

Robert Shiels: Yes.

The Convener: So it is not monopolistic in that way, just as the Society of Writers to Her Majesty's Signet in Scotland, or the WS Society, is not.

Douglas Thomson: In the 19th century, the legal profession was still not centrally regulated. There was no central body for lawyers in Scotland.

The Convener: There was no Law Society of Scotland.

Douglas Thomson: The Law Society did not exist until 1949. Each area of Scotland had its own local faculty with its own rules. For the Court of Session, either writers to the signet or solicitors to the Supreme Court were required to instruct counsel, but that did not apply in the rest of the country.

The Convener: I think that I understand the purpose of the society—you have explained it from its genesis.

How are decisions currently made in the management of the society? We have heard that one of the problems with the society's ageing population, as it were, is the administration. How does it work and what powers do the various office bearers have? Let us start with what the office bearers do.

Robert Shiels: The membership is spread throughout Scotland. It used to be concentrated in our building near the Court of Session, but we now have people all over the place. For that reason, although the society does not run itself, the three statutory meetings a year are enough to allow the general administration of the society to be dealt with by the agreement of its members. I do not recall there being a serious dispute that involved a vote or fighting among members since I joined in 1980. The society just seems to be there and to have been run—like the House of Lords.

The Convener: That is a controversial comparison.

The society has assets—a building and a fund. How are they managed? There must be daily or monthly work in relation to them.

10:45

Donald Skinner-Reid (Society of Solicitors in the Supreme Courts of Scotland): You asked earlier what the collector's job is. The collector is, in effect, the treasurer of the widows fund. In that capacity, I collect the subscriptions that are due.

The Solicitors in the Supreme Courts of Scotland (Amendment) Order Confirmation Act 1979 allowed us to invest more widely. The assets of the widows fund are managed by a firm of stockbrokers, which pays the income to the bank account that I maintain. Twice a year, we pay out to the widows the annuity that has been agreed. The annuity fund is reviewed every five years, and in the 25 years for which I have held the post, the annuity has increased at each event. When I started as collector, there were around 100 widows, and there are now 46. That is where we see the demographic changing.

Day to day, the widows fund work can be quiet or, as in May and November, when we pay out the annuities, it can involve a whole day's work for me. It needs somebody who can write a ledger and operate a bank account, which are not necessarily things that every lawyer can do.

The Convener: You made the president, at least, laugh about that worry.

Donald Skinner-Reid: The treasurer's job is more of a day-to-day job that involves considerably more admin. The widows fund job is not hugely busy, but the job as the society's treasurer is busier.

I liaise with Christine Wilcox, who is our librarian, every day. When I was working full time, Christine would post me invoices to settle. These days, we tend to use new technology, so we scan and email things back and forward. The bank operates using new technology—I have not written a cheque for years—so it is all done in that fashion from home. There is not a massive amount of admin in that regard.

Managing the leases of the premises is currently an active matter. There are events going on—we are dealing with rent reviews and various other things.

The biggest improvement for me has been with technology. There are currently 12 council members so, although I have become the mouthpiece and I deal with a lot of the communications with outside parties, I am only a team player and not the leader of the pack. People tend to come to me with questions and, by email, I go to the council and say, "What do you think, folks?", before replying with the majority view. The council members receive at least one or two emails from me a day so, in general, the council is actively involved in the management of what is going on. The members become involved in the general meetings that take place three times a year, as stated, if anything needs to be more widely discussed.

The Convener: Does the annual contribution or levy from members go into the widows fund?

Donald Skinner-Reid: Yes.

The Convener: What about the rent from the building?

Donald Skinner-Reid: No. They are two distinct things. There is the society, which owns the building and receives the rents and members' subscriptions. The widows fund has a portfolio of investments and it has no interest whatsoever in the building. It receives its quarterly income from

the stockbrokers into its own separate finances. In March, at the end of each financial year, I produce annual accounts for each—one set for the widows fund and one for the society. They are totally separate.

The Convener: I will leave more detailed questions on that to colleagues. We have two former accountants sitting here, so you are with friends, or perhaps not, as the case may be.

Donald Skinner-Reid: I am not sure that I will be able to answer all those questions in detail, but I will do my best.

The Convener: I will pass over to Bill Bowman, who is one of the former accountants.

Bill Bowman (North East Scotland) (Con): I sort of still am an accountant.

The Convener: I beg your pardon.

Bill Bowman: I thank Robert Shiels for showing me, John Mason and the clerks around the building the other day. It was interesting to see the building and how it works.

I have a couple of questions under the general heading of notifications. Paragraph 4 of the promoter's statement says:

"The Bill does not include any provision affecting heritable property",

but that, as a "matter of courtesy", you will inform the tenants about what you are doing. Did that happen?

Robert Shiels: I wrote to the Faculty of Advocates to say that we intended to introduce a bill, but I did not do anything more than that.

Bill Bowman: Did you get a response?

Robert Shiels: I do not think that I did.

Bill Bowman: Did you not write to the tenants of the lower part of the building?

Robert Shiels: No, but Donald Skinner-Reid deals with the company regularly. At the time when I wrote, I did not anticipate that we would move quite as quickly as we have done.

Bill Bowman: If the bill is passed, will it change the legal arrangement between the society and the tenants? Could they use it as a break?

Douglas Thomson: No.

Robert Shiels: No.

Donald Skinner-Reid: No.

Bill Bowman: Would they just have to accept the position that they were in?

Donald Skinner-Reid: It would not affect their position in any regard. At the moment, if we chose—and subject to leases—we would be free to sell the building to anyone we wished, and all that would happen would be that the tenants' landlord would change. It would not significantly alter their position.

Bill Bowman: It is just that the paragraph that I mentioned goes on to say that tenants

"will be sent as a matter of courtesy intimation of the Bill and the accompanying documents."

Donald Skinner-Reid: I simply do not know whether Robert did everything.

Bill Bowman: It is still a work in progress.

Robert Shiels: Yes.

Bill Bowman: In paragraph 5 of the statement, you explain that the society's members were sent a "strategic options paper" and then an update to that, and that

"a memorandum was sent to Council members with a copy of the draft Bill"

with accompanying documents.

In June 2019, papers were sent for a statutory meeting in July. The members considered the purpose of the bill and the associated documents. How many members attended that meeting?

Robert Shiels: Perhaps 10 or 12 members attended the meeting, but all members received the papers.

Bill Bowman: That is 10 or 12 out of how many members?

Robert Shiels: There are 200 members.

Bill Bowman: Is that the normal level of attendance?

Douglas Thomson: It is not an unusual number of members to attend a statutory meeting. The meetings take place at 5pm in Parliament House in Edinburgh, so it tends to be Edinburgh members who attend. Everybody receives the information by email, but the number of members who attend in person tends to be quite low.

Bill Bowman: Do you have a process for proxy voting?

Donald Skinner-Reid: No, not formally. It might help to understand the demographics of the membership. At the previous count that I did—assuming that it did not get too lost in my Excel document—there were 82 retired members, 65 public sector or country members and 44 Edinburgh members. That is the mix.

Bill Bowman: Do they have equal rights?

Donald Skinner-Reid: Yes.

Bill Bowman: If you came to wind up, would each vote carry the same weight?

Donald Skinner-Reid: Absolutely.

Bill Bowman: What are your rules for passing a motion in a meeting? Is it just a simple majority of those attending?

Robert Shiels: It is generally taken to be the spirit of the discussion and how people view matters. I do not recall ever having got to the stage at which we had to take a vote.

Bill Bowman: Would you take a vote on something such as winding up?

Robert Shiels: Oh yes. If it got to the point at which we had to take a serious decision that would affect the future of the society, the widows fund or both, we would consider requiring a vote or, at least, a written answer from each member on what they thought.

Bill Bowman: You would want an answer from more than the 10 members who might turn up for such a meeting. After all, probably half of those 10 are here today.

Donald Skinner-Reid: Absolutely. The only member who commented indicated that he thought that there should be a fixed percentage in relation to any decision on the closure of the fund or society. That is not wrong. We would want to know that the majority of the members agreed and that it was not just a majority of the members who happened to turn up, not least because if we operated on the basis that 10 people were at the meeting and they all said yes, there might be nearly 200 who would have said no, and that could lead to litigation. We are not an organisation that works in that fashion.

Bill Bowman: I am not implying that you are. It is just how such things sometimes turn out.

Other than at the July meeting, have you had any feedback from members?

Robert Shiels: I do not think so. I think that members are content to allow us to proceed as we are doing, because they appreciate that the proposed legislation amounts to a set of powers and authorities for future use.

Bill Bowman: How would you get that feeling when only 10 out of 220 members turn up?

Robert Shiels: We sent out a hard copy to the more elderly members who preferred that, and we sent out emails. If members had strong views about their opposition, we would hear from them. There is no doubt about that.

The Convener: Would you want to put something in the bill to address Bill Bowman's point on there having to be a quorum of members for decisions to be taken? I share the concern that so few people might be taking decisions. I understand that things have proceeded in a gentlemanly way—I use that term broadly, because women are involved, too—but you are coming to quite serious issues, particularly in relation to winding up. Those are heavy duties.

Donald Skinner-Reid: We considered that. One of the chief difficulties is that we started discussing these issues two years ago and it has taken two years to arrive at where we are today. Having looked at the demographic of the society's members, I am keen not to be aged 85 and the only official left sitting at the table, with no ability other than to promote another bill—which would need to come back to Parliament—to give the authority to do what needed to be done, which would have become blindingly obvious. My concern about building a fixed percentage into the bill is that I would be left with legislation that tells me that that is the only way in which it can be done.

I reassure the committee and, more importantly, our membership that we would not propose the closure of either the widows fund or the society without a majority of 55 per cent of the membership saying so. However, if that is built into the statute and I am aged 85 and the only person left at the table, all that I will be able to do is resign from office, walk away and leave an organisation that still exists with nobody to manage it. It is a separate corporate body and legal entity; it is not me or us collectively as human beings.

The costs of the exercise for the society are not ridiculous but they are high, and it has taken two years and an enormous amount of work from our secretary, Robert Shiels, to get us to this point. I am not sure that I will have the energy when I am 85 to come back and ask whether we can make the change, so that we are able to make the decision ourselves.

Bill Bowman: I appreciate what you have said, but there could be some form of quorum rules, with a provision that something else would happen if those were not met. To have nothing at all does not sit so readily with me.

Donald Skinner-Reid: I hear that. The one member who raised the issue gave the Brexit vote as an example and asked whether a percentage should have been built into that legislation. I am not really interested in that discussion, but I see the point of principle that you are making. My point is that if the members of the committee who are left are aged 85, and if we are left with an act that says that we have to have a certain percentage, it will cost us X thousand pounds over a number of years to come back here and try to put the thing through again. That would be a disadvantage. We are looking for flexibility among a group of people who are capable of coming to a perfectly sensible way forward.

John Mason (Glasgow Shettleston) (SNP): Often, we use a percentage as a quorum, so I am struggling to understand why that would be a problem even if the membership diminished, as long as you could get 10 per cent.

Donald Skinner-Reid: It would not be a problem, but putting a fixed percentage in an act of Parliament would restrict the society's ability to manage itself.

John Mason: However, if you were down to one member, that one member would be the 10 per cent, so that would not be a restriction.

Donald Skinner-Reid: I might not be the only member, but I might be the only official.

The Convener: Having raised that issue, we will chew it over and consider it.

11:00

John Mason: I will build on Bill Bowman's questions and ask about the consultation that is going on. Did the whole membership get to see the draft bill, or did the members not get into that level of detail?

Robert Shiels: We sent the bill and the accompanying documents to them. We have referred them to the Scottish Parliament website, where everything is.

John Mason: They have all seen the bill. That is fair enough.

I understand that there was an advertisement in *The Scotsman* and that one public library in every local authority area has a copy. Were the beneficiaries contacted or involved?

Donald Skinner-Reid: The annuitants were not. There is no risk to them in any of this.

John Mason: However, there is the possibility of a lump sum being paid at some stage, but you did not feel that you needed to ask them.

Donald Skinner-Reid: No.

John Mason: I understand that you got an opinion of counsel, which is private and has not been published. Have the members seen the opinion of counsel?

Robert Shiels: No, I do not think that I sent that out to them. However, in the documents that I sent out, I made reference to the council having taken the opinion of counsel.

John Mason: You certainly told us that. Subsequently, the committee has seen the opinion of counsel. Is it still your position that you would prefer us not to quote from it and that it should not be published?

Robert Shiels: Yes.

John Mason: Can we ask you questions about it?

Robert Shiels: Yes.

Douglas Thomson: The members of the council have all seen the advocate's opinion but, as I recollect it, it was not sent out to the general membership.

John Mason: Fair enough. I will come back to that issue later.

The Convener: I will come back to Mr Skinner-Reid—my collector. We have the information somewhere but, to put it on the record, how many beneficiaries are there currently?

Donald Skinner-Reid: There are 46.

The Convener: I know that this might be quite a difficult question, but how many members have partners and children who could potentially call on the fund in the future?

Donald Skinner-Reid: Off the top of my head, I think that the answer is 203.

The Convener: How much is in the fund?

Donald Skinner-Reid: This week, the valuation was about £11 million.

The Convener: It is interesting that you said that there is a review every five years. A lot of money is in the fund—I wish I knew where they were investing. How do you review the amounts? Is it £3,000 per payment at the moment?

Donald Skinner-Reid: The 1871 act requires an actuarial valuation. For a number of years, we worked with a company called William Mercer, and then we moved to work with a firm in Glasgow—whose name I cannot immediately remember—which has merged with another business. Andy Thomson was the actuary.

I write to all members to say that it is time for the five-yearly review and to ask whether they have married or divorced and whether they have had any more children—people forget to tell us these things. They fill out a form, which comes back to me, and I fill out a spreadsheet that I send to the actuary, who prepares a report based on the information that I have provided from the members, and then comes back with a range of recommendations on where we could increase the annuity or the contributions that people make. The actuary revises the calculation. Every member has the ability to redeem the rates—it is a bit like the way in which people used to redeem their feu duty. There is a set table that says, for example, that someone who is 65 years old and pays £300 or whatever no longer needs to continue to pay into the widows fund. That is how it is done. The report comes back to the council, which makes a decision on whether to increase the annuity.

The Convener: I got a wee bit lost there. I am looking at Bill Bowman, who is our current accountant, to explain things to me. I thought that the membership fees had nothing to do with the widows fund.

Donald Skinner-Reid: Two fees are paid each year.

The Convener: Ah!

Donald Skinner-Reid: If you are a practising member in Edinburgh, you pay £165 to the society and £35 to the widows fund. There are two payments.

The Convener: That has clarified things for me. I thought that we were talking simply about the shareholding returns.

Donald Skinner-Reid: No. I think that the members' contributions raise about £6,000 a year for the widows fund.

The Convener: That is helpful.

Have you taken legal advice on the legal duties of trustees if and when you close the fund?

Donald Skinner-Reid: The society holds the assets in trust. The basic difficulty is that it is not a trust that you would necessarily recognise as such. There is no trust deed in the way that people think of such a thing, so the trustees do not act in the way that people think of trustees acting. We hold the assets in trust—the society, that is, not the individual members. The society has obligations in relation to the management of the fund that are exercised through the council and the office bearers. That is basically how it works.

The Convener: So, beyond the specific provisions in the bill, what other general legal duties do the trustees have in relation to this unusual trust, which I assume is not registered with the Office of the Scottish Charity Regulator?

Donald Skinner-Reid: It is not. The duties are those that one would have as a trustee. It is not our money; we are looking after that money for other people. Therefore, our obligation is to ensure that there is a balance between providing the income requirement to fund annuities and securing the capital. When I was appointed, the then stockbroker came up with a whizz of an idea of investing half the fund in Japan. My only response to that was that the only thing that I know about the Japanese stock market is that you do not invest for dividend, because it does not pay any; you are only investing for capital. I was trying to manage a fund that paid out annuities, and, therefore, it needed to create some income. We ended up dismissing that stockbroker's services.

We are looking after other people's money. However, it is not a trust in the sense of someone leaving their estate in trust for their third husband with the understanding that the money will move on to someone else in the family after that. That is an easily understood trust; we are dealing with something slightly different.

The Convener: I turn to my professional acquaintance beside me at this point.

Bill Bowman: How is the money in the fund protected? If you wanted to build a new building, could you just take that money?

Donald Skinner-Reid: No; it is separate—

Bill Bowman: I know that it is in a different account.

Donald Skinner-Reid: The widows fund is not available to the society.

Bill Bowman: And the independent trustees are the ones who would control—

Donald Skinner-Reid: The society holds it in trust.

Bill Bowman: Are there no what I would call professional trustees, such as a bank?

Donald Skinner-Reid: No.

Bill Bowman: We are just talking about the people who are here today.

Donald Skinner-Reid: Yes.

Bill Bowman: You said that you write to beneficiaries to ask if they have children—

Donald Skinner-Reid: We write to contributors to ask that.

Bill Bowman: Contributors, sorry. Is the right of the recipient of the annuity determined by the contributor saying that that person is entitled to it, or are they entitled because they are a child, for example?

Donald Skinner-Reid: In 25 years, only two children have been beneficiaries of the annuity. Their father had died and their mother remarried reasonably quickly thereafter, which meant that she was no longer the widow, so the children took the annuity. I ask about what children people have because we could have beneficiaries who are under 21.

Entitlement is based on the member having died and there being a death certificate and a marriage certificate, and the couple not having divorced. It is a simple question of whether someone was married or not.

Bill Bowman: That is the present situation, but the new situation would be different.

Donald Skinner-Reid: It could be. We have not fully worked out the mechanics of what would happen if cohabitants are brought in. It is an area where, frankly, the law is continuing to evolve. The

vice-president did a lot of work around cohabitation and family law, and could give us quite useful input into how we could identify that. At the moment, the marriage certificate is the important consideration.

Bill Bowman: That is what we understood, and that is relevant to the issue of legal children. There could now be questions about other children or other partners. How will you deal with that?

Donald Skinner-Reid: I can think of one member who died who was still married but who was living with somebody else. In that case, the answer to your question is that the widow receives the annuity. I think that the fund could be opened up to claims by cohabitants, and I think that we could have to look at claims under section 28 or 29—Sarah, help me out here; which section is it?

Sarah Erskine (Society of Solicitors in the Supreme Courts of Scotland): I am sorry, I cannot tell you exactly which one. I can check and get back to you.

Donald Skinner-Reid: The Family Law (Scotland) Act 2006 brought in claims on death for cohabitees. I think that one might have to look at some sort of decision from the court with regard to what entitlement the cohabitee might have. The annuity would be part of the assets of the deceased, who, in those circumstances, would have died intestate. There might be something there that we would have to look at.

Bill Bowman: I presume that your actuaries would want to know more in that regard if they are valuing the fund. It is a new scenario for them.

Donald Skinner-Reid: Yes. At the moment, I do not ask about cohabitees, because I do not have to. However, it would entail asking whether someone has cohabitees and then adding another column to the Excel spreadsheet.

The Convener: I have a question about winding up the fund. Proposed new section 51A(5)(c) talks about members of the society being notified; it does not talk about notifying beneficiaries. It says that proceedings may be commenced only after

"all members of the Society have been notified in writing, or by electronic means, of the stated general meeting convened to consider the recommendation"

that the dependents fund be closed. I know that section 51A(3) talks about annuitants being offered a lump sum, but that is after the point at which the closure decision has been made. Would it be appropriate to notify beneficiaries that the fund will be closed and to tell them what their options are?

Donald Skinner-Reid: I think that you would have to notify them, because you would need to get agreement that they were willing to accept what the actuarial calculation would produce.

The Convener: So you are saying that that is implied.

Donald Skinner-Reid: Yes. You would have to notify them, because you would have to know that you have their agreement.

The Convener: But section 51A(3) says:

"If the fund is closed ... any person who is an annuitant at, or who but for that closure would have become an annuitant after, the date of closure, shall be offered"

a lump sum. Does that cover the issue that I have raised? Has the decision not already been taken by that point?

Donald Skinner-Reid: I do not think that it will happen in a hurry—that is my point. The previous actuaries—this is going back 15 years or so—came up with a suggestion along those lines and my response was that we did not have the power to do any of that. The current actuary would have a view on it and on how it could be accomplished. It will depend fundamentally on computations and calculations that the actuary does, based on information that I will have to get. That process will take at least two years; it is not going to happen quickly.

The Convener: The situation is complex. It involves people coming on stream as claimants.

Donald Skinner-Reid: Yes. There are people who, in my previous incarnation, we referred to as shadow liferents—people hovering around on the edge of the séance table who have an interest, but only through the member.

The Convener: I love your metaphors.

Donald Skinner-Reid: If one was to consult every annuitant, there would be issues. For example, if you are dealing with someone of childbearing years, how long do we keep consulting and who do we consult?

The Convener: There would have to be a cut-off point, obviously.

Donald Skinner-Reid: You have to know the actual people you are dealing with.

The Convener: If you were able to close the fund tomorrow and you paid off—I do not mean that in a bad way—or gave lump sums to the existing claimants on the cut-off date, what would happen with the rest of the money? Why should it go back to the society? Does it not belong to the claimants? After all, it is their fund.

11:15

Donald Skinner-Reid: The fund has been built up over the best part of two centuries and,

originally, if my recollection is right, it was not separate from the society. Where would the remainder of the fund go? I argue that it should go back to assist the society's continued existence. I cannot see where else its natural home would be.

The surplus might be considerably smaller than one imagines. Split between 46 people, £11 million sounds like a lot of money, but it would potentially be split between 246 people. If we look at the ages of the members and annuitants, and note that an annuitant died recently who had been in receipt of an annuity for around 40 years, we see that the lump sums might be quite considerable.

Bill Bowman: I would like to ask that question the other way around. If there was a deficit on the fund, would the society be obliged to pick it up?

Donald Skinner-Reid: That is a good question. No, it would not have to do so, as far as I can see. We discussed that some time ago. It is not a pension fund; it is an annuity fund that would be provided by me, for example, for my husband, if I died first.

Bill Bowman: So it can pay out only what it has got.

Donald Skinner-Reid: Yes.

John Mason: In proposed new section 52B, the bill requires a resolution to wind up the society, but it does not require a resolution to decide the arrangements to achieve the winding up. I am struggling to fully understand section 52B(5), which talks about whether such arrangements are made. Section 52B(5)(b) says that, if no arrangements have been made,

"the Council must implement that decision in such manner as it considers expedient."

Will you explain the thinking behind how the society could be wound up in such manner "as it considers expedient"?

Robert Shiels: We have, say, 200 members, but we might have four or five council members at a council meeting and 10 or 12 members at the members meeting later the same day.

Somehow or other, the society has survived for more than 200 years because of light management. Everybody has the same ultimate aim, which is being solicitors of the supreme courts, and powers have varied from time to time. From what I know, there have been no power meetings at which major decisions have split the membership. The society has evolved and survived, which it continues to do, because of light management.

The demographic imbalance of members creates a real danger that we end up with very few practising members involved with the society. I recall that, about two years ago, one of our members died in east Africa. He had been in the services in the second world war and then he came out, qualified as a solicitor, joined the SSC Society in 1950 or 1951, went to east Africa and nobody had seen him since. He paid his money every year and we were sad to hear of his death, but his participation in the society had been minimal. Looking at some of the old books from before the second world war, we find that society members turned up from time to time in Vancouver, Brisbane and so on. They qualified and became members of the society, but then they went on to other things.

There is a risk with our tradition of light management and declining membership that there are not many people left to wind up the society and take the necessary decisions. If we want large percentages, we need to have people there but, in a few years' time, there might only be a couple of dozen people who have the time or inclination to get involved.

John Mason: I understand that and I appreciate that the society has been run with a light touch, which has worked. Largely, you have continued to do the same or similar things that have been done in the past.

The committee is just trying to think of the worst-case scenario. If it became clear that winding up was to happen and a lot of money was involved, sadly, that could be the touchpaper that would create tensions. We hope that, as you said, you do not have to come back with another piece of legislation in a few years' time. I think that that would be the desire of the Parliament, too. Although we hope that the light-touch management continues, we are trying to think about what will happen if it stops working.

I take your point that you do not want more detail in the bill about the winding-up arrangements, which takes me to my next point. There are details in the bill about the disposal of extra funds from the dependents, or widows, fund, which would return to the society. However, there are no equivalent provisions for what would happen to the disposal of the assets of the society should it be wound up. Perhaps that needs to be in the bill.

Donald Skinner-Reid: That would be a matter for the members. One of our well-known members—the committee might know of him—was the late John Gray, who was president of the society in the 1980s and a well-kent face in Edinburgh. I can hear John sitting on my shoulder saying that, on the final winding up, a lot of the money should go to charity. That might well be his argument and there would be a group that would support him in suggesting that. However, these

are in essence private assets, so it would be for the membership at that time to decide.

One of the problems that I used to find in the work that I did on winding up estates was finding a specific reference in a will to a charity that no longer existed and having to decide what to do with the money. I am probably out of date with this, but there used to be a cy-près scheme, whereby we could go to the Court of Session and ask that we give the money to a charity that was very similar to the one named in the will.

Fundamentally, these are private assets and it would be for the members to decide what to do. I can hear John on my shoulder suggesting that charities could be the recipients, but who knows? I might be dead by then.

The Convener: You are such a cheery person to say, "I am very old—I might be dead."

John Mason: When you took counsel opinion, did they have an opinion on whether there should be more detail in the bill on this matter?

Donald Skinner-Reid: No.

John Mason: I will try to be devil's advocate. You have suggested the scenario that it be proposed to members that any remaining assets be given to charity. I presume that another option is that the remaining members at the point of winding up split the money between themselves. I do not know whether, if other solicitors became aware that a lump sum might appear around the corner, they might suddenly start joining the society.

Donald Skinner-Reid: If there was a sudden influx of members, there would be no need to close the society. It is as simple as that.

The demographic is due to having had generations of law graduates being pumped out of universities following the crash of 2008 who have not got jobs. At the end of my time as a business partner, there were very few people under the age of 30 working in the company—I am talking about all the staff—and there is a big gap in the demographic of lawyers under 30. There are loads of people at my end of the table and not so many further down. If we had loads more members, the issue of closing the society would not arise.

Daniel Johnson (Edinburgh Southern) (Lab): I would like to continue John Mason's line of devil's advocacy for a moment.

You want to have this legislation because you are concerned about dwindling membership and the society finding itself in a position in which the fund is unsustainable and needs to be wound up. Do you not need to specify how the decisions are likely to be made? Even if the fund is divided between a number of members, we are talking about a likely minimum of several thousands of pounds. Given that there is an argument that could be made about who has interests, because we are dealing with beneficiaries and with members of the society, would it not be better to specify, not in detail but at a high level, what would have to happen in terms of the contents of a resolution at a meeting of the society, as well as the precise criteria that would have to be met at that meeting, such as a quorum, which I do not believe is specified in the bill?

Donald Skinner-Reid: The straightforward answer is that I do not know. I think that binding the hands of an organisation with regard to precisely what will happen in 20 or 30 years' time is complex and fraught with difficulty.

Robert Shiels: That is particularly the case if numbers are falling.

Daniel Johnson: Indeed but, with respect, none of us is discussing binding people or even specifying anything in advance; rather, I am talking about seeing what categories of decision would need to be made in order for that decision to wind up to be valid. I am not saying that the provisions for how the society would be wound up should be put in the bill; I am saying that it would be good if there was a statement of how such a winding up would have to take place. What would be the disadvantage of saying, at a high level, what the dimensions of that decision or resolution at such a meeting would be?

Donald Skinner-Reid: I think that that is already there. Proposed new section 52B(3) says:

"The procedure by which a decision to wind up the Society is to be taken may be determined by the Society—

(a) at a stated general meeting other than the special general meeting referred to in subsection (2) of this section; or

(b) by means of bye-laws under section 52 of this Act."

We will have to sit down and concentrate on that in the circumstances that arise at that time, if that time arrives.

The Convener: The promoter's memorandum states that it is envisaged that a decision to wind up the society

"would require to be unanimous or nearly so."

However, that is not in the bill.

Robert Shiels: That is something that could be put in a byelaw that could be made under the 1871 act.

The Convener: That escaped me—I had not realised that.

To continue the devil's advocate approach, how do members have security in that regard? The procedure by which such a decision could be

taken could be determined under a byelaw, but it would not have to be done that way. Proposed new section 52B(3) says that the procedure may be determined

"at a stated general meeting other than the special general meeting ... or ... by means of bye-laws".

That means that we are talking about alternatives—it is a case of "or" not "must".

Donald Skinner-Reid: It is a facility.

The Convener: I know that it is a facility; I am just saying that it could be a big thing to do this. You have a large piece of heritable property in a prime position, which is worth quite a lot of money, notwithstanding the fact that there might still be tenants in there. I am thinking about the requirement to protect yourselves, as a society. You are good people; I do not think that you are going to do anything underhand, but we do not know what will happen in the future. Therefore, we need to future proof this. Winding up the society might be a big thing, and there might be substantial assets involved. How do we ensure that there is no jiggery-pokery? I love such technical terms.

If the bill said something like, "and by means of bye-laws", rather than,

"or by means of bye-laws",

the provision could be strengthened. I know that we could not do that exactly, but doing something like that would strengthen the bill so that there would be the unanimous or near-unanimous agreement that the memorandum talks about, and there would be certainty that the decision—whether it involved giving the money, or some of it, to charity or whatever—was the clear will of the membership.

11:30

Donald Skinner-Reid: I cannot really answer your question.

The Convener: I know. I did not like that look—I did not know what it meant. Does that mean that I am wrong? Should we be pursuing the matter?

Robert Shiels: In the recent to distant past, I do not understand there to have been any huge divergence of views between the members. We are all solicitors and we are all qualified in Scotland. We are all members of the society voluntarily, and there has been a great deal of unanimity of thought over the years. It might be, as you said, that dividing up assets brings out the worst in people.

The Convener: It does.

Robert Shiels: I am sure that there would be suitable resistance elsewhere in the society if any faction tried to take over, but I am not aware of any factions, groups or counter revolution.

Sarah Erskine: We have described to the committee the process at our meetings. Information about all matters that we have in mind and intend to discuss at a meeting—particularly the issue of how we would dispose of a building, if that was to come up—is circulated to lawyers.

The Convener: It is at 5 o'clock in Edinburgh, is it not?

Sarah Erskine: It is at 5 o'clock in Edinburgh, but we have training meetings, for instance, in Edinburgh at 5 o'clock, and lawyers get to them from all parts of the country. If an important meeting were to take place at which the society was thinking about disposing of its widows fund or its buildings in a way that prejudiced a member, who would receive the papers either by mail or by email, they would get there. They are lawyers and members. We need the powers, in circumstances in which we are all getting older—

The Convener: I understand that. However, the memorandum says that

"such a decision would require to be unanimous or nearly so",

but that seems to have been lost in translation in the bill. I am not trying to be difficult. As you know, when making legislation, we need to future proof it as much as we can—we cannot totally future proof it, but we should do so as much as possible.

Sarah Erskine: With all respect, and as I am sure you know, that is exactly what we are trying to do.

The Convener: I know.

Sarah Erskine: As far as process is concerned, I detect a concern that our meetings are small and that people are not attending. That is because members get the papers and trust that the decisions that are made by the members who are there follow the views of the person who receives the paperwork for the meeting. If paperwork arrived that indicated that a meeting would deal with a particular issue that was very close to a member's heart, they would be there, even if it was at 5 o'clock.

The Convener: I understand that, and I have complete faith in you—I am not challenging that. My point is that, given that the promoter's memorandum says that, why does the bill not say that a decision to wind up should be required to be "unanimous or nearly so"? I am just curious to know why no such provision is there.

Donald Skinner-Reid: It is partly there in proposed new section 52B(4), which says:

"Without prejudice to the generality of subsection (3) ... a determination under that subsection may include a provision as to the voting threshold required."

Bill Bowman: I will follow up on a slightly related point. The bill contains a new section that would create new forms of membership—"corporate", "trainee" and "associate" membership—and another section that would allow a member to resign for a reason

"unconnected with disciplinary matters or retirement."

The witnesses have talked about how the membership interacts at the moment. However, if you are going to introduce different types of membership, do you not have to define the rights and powers of the existing membership a little more?

Douglas Thomson: Does section 52A(3) not cover the restricted membership categories? It expressly states that membership

"does not include an entitlement—

(a) to participate in the Dependents' Fund"

or to use the title "SSC". Those members would have a different status from that of the full members of the society, so their voting rights and their rights within the society would be different from those of full paid members. That difference is already set out in the bill.

Daniel Johnson: Does that not get to the heart of what we are circling around here? The concern is not so much about the size of your meetings, when they take place or how they are conducted; it is more that there are no specific provisions for how or for what purposes a decision to wind up would be taken, and there are circumstances in which such a decision could be disputed. In particular, creating new categories of membership will provide more grounds for such a decision to be disputed. All that we are seeking to do is to consider whether things could be done to minimise the possibilities for dispute. Whatever decision is made—if it is ever made—should be beyond dispute, and there should be clarity about how and for what purposes the decision has been made by having that in the bill.

Robert Shiels: Although the sections that have been mentioned sit next to each other, they represent different strategic options. The power to create new forms of membership is for the short term. We are trying to increase membership, so we are creating the ad hoc or temporary membership to try to have more people moving about the library and using the facilities. The following section, which is on the power to wind up, relates to the long term. Temporally, sections 52A and 52B are hugely different.

Daniel Johnson: Let me give you a scenario. The decision to wind up relates to the medium to long term, and the provisions on membership relate to the short term. However, if you change the make-up of the society, with new members joining, it is quite conceivable that there could be a very small number of full members and a large number of new members. A decision could then be made by the small number of members who, frankly, at that point, would no longer be the body of the society. I would have thought that the associate members might have something to say about that.

Robert Shiels: It is not anticipated that those who take up the new forms of membership that are to be created, which will be distinct from full membership, will be members for ever. A trainee membership, by definition, is for a trainee who will, in the fullness of time, become a qualified lawyer and stop being a trainee. An associate membership might be for two or three years. When you join the SSC Society, it is anticipated that you are choosing to join a society for as long as you are a solicitor.

In relation to Daniel Johnson's scenario, I suggest that there might be an issue if there was a substantial corporate membership, but the council and the members at the statutory meetings could easily discuss the matter and make adjustments. If it looked as though a wedge of people were coming in who were threatening the stability or integrity of the organisation for full members, there would be a reaction.

The Convener: What do you get if you become a corporate member? Do you just get access to the library? I do not mean "just" in a trivial fashion, but is that it? Are corporate members not able to use the term SSC?

Robert Shiels: We have not developed what it would mean because we do not have the power yet.

The Convener: What are your thoughts on corporate membership?

Robert Shiels: The large firms sometimes look for assistance from the keeper of the library. It might be that corporate membership would mean getting additional assistance in library research, or something such as that.

The Convener: I can see that because, in that case, they would not become an SSC—that is, a solicitor in the supreme courts. I also understand what trainee membership would mean. What about being an associate member? Would that be similar to being a corporate member?

Donald Skinner-Reid: We have had a few overseas students and lawyers who were qualified in other jurisdictions who have wanted to use the library facilities and could not get access anywhere else.

Sarah Erskine: That is the point of membership of the society. It is not because we own property—that we do came as a surprise to me after I became a member. Neither is it because of the widows fund—when people are younger, they do not think about such things or consider those elements to be the important things. When they join, they do so to join the very good library.

The Convener: I understand that. I just wanted the matter to be clarified. I appreciate why there is a distinction and that, at winding up, it would be SSC Society members who would take a view.

Do members want to pursue anything else along those lines?

Bill Bowman: Will the panel explain why they want a provision that would enable members to resign other than through retirement or being pushed out through disciplinary processes?

Robert Shiels: There appears not to be a power to resign now. Once people have joined, that is them forever. People have sometimes drifted away and said that they would no longer be a member, but there is nothing in the 1871 act on that.

Donald Skinner-Reid: It did not feel clear enough.

Bill Bowman: Even if someone does not pay, are they still a member?

Robert Shiels: They kind of drift away, if you know what I mean. [*Laughter*.]

The Convener: I love your style.

Douglas Thomson: If someone fails to pay for two years, their membership automatically ceases, but it is a rather unwieldy process. We might have a number of members who exist only in theory and not in the real world.

Bill Bowman: Why do you want to abolish the offices of librarian and fiscal?

Robert Shiels: The 1871 act originally had powers to discipline members. There was a fiscal—like a procurator fiscal—who presented the prosecution case at disciplinary hearings. That does not apply now because we have the Law Society of Scotland, the Scottish Legal Complaints Commission and various bodies such as that. We do not need a fiscal.

In the past, the keeper of the library kept the books in order, but they were not necessarily a qualified librarian. Since 1871, like everything else, the profession of librarian has risen and fallen, but there are still qualified librarians and we have a librarian at the society. However, the librarian to the society is a title that is given to a solicitor who has no training in librarianship, so we simply want to adjust the terminology in order to meet the changes that have occurred since 1871.

Bill Bowman: You can still have a librarian, but not in such a formal way.

Douglas Thomson: The librarian would no longer be required to be a qualified lawyer.

The Convener: I want to ask about the current provisions for widows and orphans, to use the old-fashioned term. You said that £3,000 is paid to claimants. Is that £3,000 to the widow and £3,000 to each of the children, or is it £3,000 in total?

Donald Skinner-Reid: The children come in only if there is no widow, widower or surviving civil partner, who take precedence.

The Convener: In the scenario in which there are children whose mum and dad are both dead, at what age is the current cut-off for receiving a payment? Is the payment per child?

Donald Skinner-Reid: The cut-off age is 21.

The Convener: It is 21. Is the payment £3,000 per child?

Donald Skinner-Reid: In the case to which I referred, I split it between the two daughters. The children shared the one annuity for the member who passed away.

The Convener: They received £1,500 each.

Donald Skinner-Reid: When one of them hit the age of 21, her sister got the whole lot.

11:45

The Convener: Will that continue? I think that, at the moment, parents can be called on to contribute towards a child up to the age of 24 or 25, if they are in full-time education—something like that is lurking in my mind. Does the bill give you an opportunity to extend the payment and redefine what happens with residential charges in those circumstances, up to the age of 21, whether we are talking about college or university?

Sarah Erskine: There is a rule of aliment in family law, which is very specific about a child claiming aliment from a parent. However, I do not think that that necessarily applies to what is happening here.

The Convener: I am just asking whether there is an opportunity to address that issue in the bill. You are refreshing the situation with regard to who is a child of the deceased and so on, so it seems to me that there is an opportunity to think about the situation that I raise. The child will not have to pay tuition fees, at least, but they still have other costs to meet, and they would have a claim on the parent. In a case in which one parent still survives,

maybe you could bump up the amount from the £3,000—

Donald Skinner-Reid: In part, that comes down to the actuarial advice. Yes, the fund has a lot of money in it, but it has been built up over two centuries. The individual contributors are not paying huge amounts of money annually. My thinking has been along these lines: for a modest contribution, members get quite a good deal—well, not the member, because they will be dead, but their family. If we were to go down the route of widening all that and increasing the payments to four children, for example, we might have to think about having different levels of contribution from members based on the number of kids that they have or whatever. That is starting to become something that is considerably more complicated than an annuity fund.

I am not disputing the idea, and I can see where you are coming from; I am simply saying that it would have quite a number of knock-on ramifications in relation to the fund overall.

The Convener: Indeed. It was just a fleeting thought, and it has floated off now, as far as I am concerned.

John Mason: I have a question about a relatively minor point. Sections 1(6) and 1(10) change the titles of two sections of the 1871 act so that the words "Widows' Fund" are replaced by "Dependents' Fund". However, the title of section 34 of the 1871 act will still include the words "Widows' Fund". Does that need to be changed, too?

Gregor Clark (Drafting Adviser to Society of Solicitors in the Supreme Courts of Scotland): I think that that is probably something that has been missed. We will consider the issue and attend to it.

The Convener: I do not think that we have any further questions. Is there anything that you wish to add? Is there anything that we have missed or have misunderstood? Do you have any other interesting metaphors, as I am a collector?

Robert Shiels: We are grateful for your attention to this issue and the care that you have taken as you have looked into it. However, I stress the point that we started with: we are not dealing with an immediate problem and we are not panicking about it. We are looking to 10, 20 or even 35 or 40 years from now—I do not know; the issue is to do with the demography of the society in which we find ourselves.

The Convener: We appreciate that, and the point about the changing environment. Thank you for your evidence. That concludes the public part of this meeting.

11:48

Meeting continued in private until 12:12.

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