OFFICIAL REPORT
AITHISG OIFIGEIL

Economy, Energy and Fair Work Committee

Tuesday 14 January 2020

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 14 January 2020

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ECONOMY, ENERGY AND FAIR WORK COMMITTEE
1st Meeting 2020, 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:

Richard Dennis (Accountant in Bankruptcy)
Kelly Donohoe (Accountant in Bankruptcy)
Stacey Dunn (Accountant in Bankruptcy)

CLERK TO THE COMMITTEE

Alison Walker

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Economy, Energy and Fair Work Committee

Tuesday 14 January 2020

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Gordon Lindhurst): Good morning and welcome to the first meeting in 2020 of the Economy, Energy and Fair Work Committee. Under agenda item 1, the committee will decide whether to take items 5 and 6 in private. Do we agree to do so?

Members *indicated agreement.*

Protected Trust Deeds Inquiry

10:03

The Convener: Agenda item 2 is on protected trust deeds. Today, from the Accountant in Bankruptcy agency, we have Richard Dennis, who is the Accountant in Bankruptcy and agency chief executive; Kelly Donohoe, who is head of the debt arrangement scheme and trust deeds; and Stacey Dunn, who is the trust deed team leader. Welcome to you all. I understand that Mr Dennis has a brief opening statement to make.

Richard Dennis (Accountant in Bankruptcy): I thank the committee for finding the time to take our views on this topic and giving us the chance to talk to you about protected trust deeds. If it is not too late, I wish you and committee members a happy new year.

You will be aware that we have been wrestling with issues to do with protected trust deeds since long before I became the Accountant in Bankruptcy five years ago. You may have seen from our written submission that some of the concerns are much the same as those that the Cullen committee looked into between 1907 and 1910. There are some pretty intractable issues about getting the balance right and many attempts have been made to address them over the years.

Front and centre, I urge the committee, and the agency as we think about our policy, to make sure that the interests of the person who is in unsustainable debt are kept at the forefront of our minds.

There are two main issues. The first is whether there is any evidence to suggest that those taking out protected trust deeds do not really need debt relief—that goes to the heart of quite a lot of the material that has been submitted to the committee. The second is whether there is any evidence that those people who are granted trust deeds would be better off in an alternative debt solution. You will have seen from the submissions that stakeholders do not agree on the answers to those questions.

I have quite a lot of sympathy for the difficulties that credit unions and other small creditors have experienced when those to whom they have lent money sign a trust deed, but the fundamental questions remain whether the individual needed debt relief when they signed the deed and whether they should be given a genuinely fresh start through the process.

In thinking about what, if any, changes might be needed—you will be aware that we have consulted twice on sets of proposals—two issues have very much been in the centre of our minds.

The first is that a trust deed is, in essence, a voluntary agreement between a debtor and their creditors. Assuming that creditors are content with what the debtor has proposed, why should we as a regulator have a role to get involved? It is a voluntary agreement and both sides are happy, so why should the state or the regulator take an interest? The question then is whether we know and can demonstrate that creditors are generally content. Our proposals to change the voting system were intended to make that crystal clear, while giving us far more information about the nature of debts held in trust deeds on which creditors were voting for or against. Again, you will have seen that topic reflected in the material that stakeholders have sent to you.

Our second concern is that the current arrangements do not pass the test of what a person in the street might think of as being fair. Proposals where someone makes 48 monthly payments, 40 of which are simply to cover the costs of the process seem quite hard to defend. Much the same thing happens in many bankruptcies. You will be aware that in four out of five bankruptcies creditors get nothing. Is it different when debt relief is administered by a private firm that is perceived to be driven by a profit motive, or is it the same? Raising the minimum debt level in trust deeds is one thing that we looked at precisely to address that issue.

The committee is aware—you have pressed us on this—of the need to look at all the debt solutions together. We are progressing our proposals on individual debt solutions with that in mind, and you will have heard the minister committing the Scottish Government to a more generic review.

I will mention a couple of points about the interrelationship between trust deeds and the rest of the system. The committee kindly agreed to the recent changes on the debt arrangement scheme. They are intended, at least in part, to alter the dynamics of the relationship between trust deeds and the DAS, but it will be some time before we know whether we have achieved that. It will take anywhere between four and five years for us to assess the impact of the changes that we have made to the system

I also draw it to the committee's attention that, from 2013 to 2015, people in trust deeds made four years of contributions, but people in bankruptcy made only three years of contributions. In 2015, the period was standardised to four years in both. It is noticeable that the relative trend between those two products completely changed when that adjustment was made.

That brings us to one of the fundamental questions, which the Institute of Chartered Accountants of Scotland put to the committee. How far is it for the individual debtor to choose what is the right product for them, and how far should that be determined for them by their circumstances?

There are lots of questions in the evidence that you have received and we will do our best to answer them. I have brought along folk who deal with trust deeds day to day, so I hope that we can give you lived experience beyond the theory.

The Convener: Thank you very much for that introduction. You gave the example of a debtor spending 40 months paying for the process and eight months paying off the debt and you talked about the possibility of increasing the amount of debt that had to be involved before a protected trust deed could be used. What would the alternative to your example be?

Richard Dennis: A key question is how long it is appropriate for someone to make a contribution towards paying off their debts.

Let us look at trust deeds that are for debts of just more than the minimum debt threshold—say, £5,001. The average contribution in the lowest 10 per cent of cases is about £110. Over the four years, in 48 monthly payments, the debtor pays £4,800 in contributions towards a debt of £5,000. The debtor would still need debt relief, as they could not make the full payment. Would it be fair for us to say that the debtor should make contributions for another six months, through a debt arrangement scheme, and pay off their debt in full? Or, would people like that be better off in a bankruptcy? There are potentially alternatives, but bankruptcy and protected trust deeds are different products with different implications. That is why we need to test the question of how long it is fair to ask an individual to make a contribution.

The Convener: It also depends on whether the debtor wishes to go down the bankruptcy route. For whatever reason, they may not wish to do so. They may choose the other route, which might be more expensive.

Richard Dennis: Yes. At the moment, it is the debtor's choice. It is already in the regulations that, if a debt would be fully paid off within the 48 monthly payments, a person is not entitled to a trust deed.

The Convener: You referred to the perception that how the protected trust deeds are set up is not necessarily fair. What are the considerations when looking at whether the 48 month scenario that you posit is fair enough?

Richard Dennis: It comes down to a political judgment. Whatever debt relief product we put in place will have a cost that needs to be covered. If we abolished protected trust deeds, a large number of those people might make debtor applications for bankruptcy. It is not obvious that that would generate any higher dividends for creditors.

It is a question of balance and how far we want to come back to the fundamental choice. Is it the debtor's choice, based on the implications for them? How far do we need to take into account the creditor's interests and how far do we need to take into account wider public interests in the costs of running the process and the implications that that has for the cost of credit for the rest of us?

The Convener: Do we have the right balance in the way that it is set up at the moment?

Richard Dennis: I have the great advantage of being not only a chief executive fully accountable to the Scottish Government but an independent officer of the court, so I am allowed to have personal feelings. My feeling is that, for trust deeds at the minimum debt level, the balance is not right. It is hard to defend a product where almost all the debtor's payments are consumed by fees when, in other options, those payments could have been used to settle the debt. Although there is inevitably a cost to the process, I do not think that we have the balance between the debtor's and the creditor's interests quite right. The burden on creditors of those particular trust deeds is not easy to defend.

The Convener: Richard Lyle will ask a brief follow-up question.

Richard Lyle (Uddingston and Bellshill) (SNP): Mr Dennis mentioned the debtor's choice. In my experience, people who are in debt or owe money, tend to hide it, forget about it, stick the letters in the bin and bury their heads in the sand. Eventually, they come across someone who gives them a panacea and says, "I'm going to solve your problem." Is that not why people enter into such agreements? At the end of the situation, perhaps after many months of a company trying to deal with them, the debtor falls into the trap of going to someone who charges those exorbitant fees. Is that not the case?

Richard Dennis: That comes back to the key question whether there is evidence that individuals are advised to take out solutions that are not in their best interest.

There is a lot in the regulations that requires firms selling or offering different debt products to make sure that the client is fully advised of all their options. We can talk about the exact details of that. If the committee wants, we can set out the requirements that are in the legislation.

10:15

It is the role of the recognised professional bodies to go in and check that that process is happening through random sampling of a significant volume of cases. I believe that you are taking evidence from representatives of the RPBs who can set out that process and the changes that they have made, particularly for the big volume providers. You will have seen in the evidence given to you that the level of complaints—the number of people who will let us know that they think that they have been badly advised—is remarkably low. There is a lot of anecdote about individual cases that look cut and dried. We have not necessarily had the chance to look at those particular cases unless a complaint has been raised with us. There is no hard body of evidence to suggest that large numbers of people are being put into inappropriate products.

You will have noticed that we have consulted on giving us a generic power to refuse protection in cases in which we think a protected trust deed is not the right solution. Stakeholders, quite rightly, raised the concern that that leaves the individual at risk because they will have gone through a process for some months leading towards getting them debt relief and then suddenly we might say, "Actually, we don't think this is the right product for you."

Richard Lyle: I hope that the convener will allow me one more question on that point. To sort that, should we introduce a set fee? That would ensure that of the £6,000 or whatever debt, £5,000 went to the creditor and £1,000 went to the trust deed administrator, rather than the switched around situation in which, as Gordon MacDonald made out, less than a third of the debt is paid off. Would a set fee be a way to fix it? In my experience, at the end of a big problem people want a solution and they are willing to listen to anybody who says that they can solve the problem.

Richard Dennis: You could move to a situation of a minimum dividend, which was consulted on some years ago, but what would you do about all those individuals who do not have sufficient surplus income to provide that minimum dividend? What would happen to the folk who need debt relief when they could not find someone who was willing to administer a protected trust deed on their behalf, because the requirement to pay a minimum dividend meant that there was no guarantee that the administrator's fees and charges would be covered?

As I say, the evidence suggests that if those people instead put forward a debtor application for bankruptcy, creditors would not receive anything further.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I will set the scene before I ask about the supervisory roles of the AIB and others. The latest bulletin on your website suggests that there was a 33 per cent increase in the number of trust deeds registered in 2018-19. Is there any reason for that substantial increase in that year? The figure went from 5,958 in 2017-18 to 7,915 in 2018-19.

Richard Dennis: Yes, that is right, and I would expect trust deed numbers to be up again this year.

The committee will be aware of the statistics on the general level of consumer debt in society. Our experience is that changes in total consumer borrowing precede people coming to statutory debt products by about two years—in other words, there is around a two-year lag between changes in total consumer borrowing and people coming to statutory debt solutions. All the evidence suggests that there are far more people in Scotland who need debt relief than are accessing it, with some estimates suggesting that the number of people who are in problem debt is something like 10 times the number of people who are coming forward to take advice. As all of that begins to bite, as we move on through the economic cycle, we would expect more people to come forward for solutions.

There has been a follow-on question: why are more people ending up in trust deeds and, increasingly, the debt arrangement scheme than are going through the bankruptcy process? Again, the evidence given to the committee sets out a number of advantages to individuals going down the trust deed route, particularly if they have equity to protect or are in certain types of employment. There are also capacity constraints, which is an issue that has been raised with the committee. If someone wants to make an appointment to see a money adviser at their local citizens advice bureau, they may face a wait of a month to six weeks before the advisers can find a time to talk to them, whereas a PTD company can probably talk to them immediately. When it comes to debtor choice, as has been said, once someone reaches crisis point, they want to take action straight away.

Gordon MacDonald: According to your website, in 2010-11 there were two complaints about the PTD process. For a number of years, the number of complaints was zero, and it has been an average of two per year for the past eight years. In 2018-19, however, there were 23 complaints. What was the reason for that substantial jump?

Richard Dennis: My recollection—I will correct this if I have got it wrong—is that a significant number of those complaints were raised by individual credit unions. You will have seen in the evidence provided to the committee that protected trust deeds are a very live and increasing issue for the credit unions. It is 23 complaints out of a total caseload of 30,000.

Gordon MacDonald: I accept that, but, given that there was an average of two complaints a year for the previous eight years, the trend shows a substantial increase.

Richard Dennis: That is certainly true.

Gordon MacDonald: The AIB has the power to audit the accounts of a PTD trustee. How many cases do you audit a year?

Stacey Dunn (Accountant in Bankruptcy): We compiled the data for the past three years and we have completed 66 audits in that period.

Gordon MacDonald: That is 22 a year out of 8,000 registered in a year.

Stacey Dunn: Yes. There are two different ways in which an audit can be completed. A creditor or a debtor can request it, or, if we believe that there may be an issue in a case, we will request it.

Gordon MacDonald: What is the main reason behind the 22 audits that you do in an average year? Is it the concerns of the creditor, the debtor or the AIB?

Stacey Dunn: It is primarily the AIB's concerns.

Gordon MacDonald: What is the nature of those concerns?

Stacey Dunn: We complete supervision checks on each of the cases. If anything is picked up that we believe should not be there, or if we find any reason at all for concern in annual reports, proposals and so on, we will ask for case files and complete a full audit of the case to check that everything adds up, that everything is there that should be there and that there are invoices to match any payments that have gone out. We ensure that the case files are as they should be.

Gordon MacDonald: When you carry out those audits, do you publish the concerns that you find? The reason I ask is that, according to the Insolvency Practitioners Association's website, the IPA issued five warnings to insolvency practitioners in a two-month period. It said that there was a failure

"to address a significant voting omission that materially affected the outcome of a creditors' meeting."

It said that

"Fees were miscalculated, and remuneration was drawn in excess of what was allowable"

and that fees were

"drawn from estate funds at a time when"

the insolvency practitioner

"did not have approval to do so."

It said that remuneration was

"more than the time costs incurred without approval."

Finally, it talked about

"inappropriately banked third party funds in the Insolvency Service Account".

Are those reasons that you have picked up when you have carried out audits?

Stacey Dunn: Some of them, perhaps. When we complete an audit, we issue a determination. For any fees that have been included in the case that we do not believe should be there or that cannot be invoiced, we will determine a set fee that is based on what evidence there is and what we believe is correct. If we believe that there is an issue with the files or the invoices, or if we believe that the case needs to be escalated, we will then refer the issue to the RPB. As you say, if the RPB upholds that finding and a warning is issued, that information is published.

Gordon MacDonald: What action can you take to stop such practices happening if, for example, a large organisation regularly defaults?

Stacey Dunn: In individual cases, we can restrict the fees that are charged. If, when we complete an audit, we discover what we think might be a wider issue across a number of cases, we can ask for further files. If the evidence is not there or if it is incorrect, the practitioner's fees will be restricted. If further action needs to be taken, the case will be passed to the RPB.

Gordon MacDonald: Is there anything that is not in law at the moment that would assist the AIB in investigating these audits and these types of defaults, to achieve best practice?

Stacey Dunn: I am not sure. That is probably more a question for the RPB.

Dean Lockhart (Mid Scotland and Fife) (Con): In previous evidence sessions, we have heard that customers have been subject to pressurised selling, without independent advice, by lead generators who receive information about people with potentially problematic debt via the internet and other sources. What steps can the AIB take to prevent lead generators from mis-selling protected trust deeds to those consumers or clients?

Richard Dennis: To be honest, there is not a great deal that the AIB can do about that. When we find websites that contain misleading adverts, we get those adverts taken down. We often report such sites to the Advertising Standards Authority and to the Financial Conduct Authority. Over the past year, we have had in the region of 50 websites taken down. However, as you know, as soon as you take one website down, another one goes up.

It is important to realise that the individual insolvency practitioner becomes fully responsible for the information once the lead generator has passed it on to them. It is the insolvency practitioner's job to make sure that the client has had the correct advice and the correct choice. Regardless of whether the lead generator has already taken the client through the process and said that the right answer for them is a trust deed, it is the insolvency practitioner's responsibility to make sure that the client has been given genuinely impartial advice, that they understand the options and that they still want to go ahead with a trust deed. Some of the material that the RPBs offer indicates that they will listen to conversations between clients and IP firms to make sure that that has happened.

Although the lead generator might have given a very strong steer, that does not necessarily result in what you might call mis-selling. I know that there are concerns about the extent to which these products are advertised, but, as is mentioned in the evidence that you have in front of you, raising people's awareness of the products can be valuable in itself, without necessarily meaning that clients end up with the wrong product.

You may have seen that the RPBs, the insolvency service and the FCA are moving towards a situation in which the volume providers, in particular, are expected to ensure that any lead generator they use is licensed and regulated by the FCA. That should largely help to resolve the issue.

You may also have seen that some social media platforms, such as Google, have said that they will no longer accept advertising that is not from FCA-authorised companies. Steps are being taken to tackle the issue. However, that does not mean that there will not be misleading Facebook pop-up adverts, and, if you Google "debt", you might see adverts for a Government-backed scheme to write off 90 per cent of your debt. We do what we can about those adverts but, as you know, it is a bit like playing whack-a-mole.

Dean Lockhart: It strikes me that there are a number of loopholes in that approach. If adverts are not allowed on Google, they can find their way on to Facebook and other social media platforms.

You mentioned that insolvency practitioners are expected to deal only with lead generators that are FCA regulated. Is that a hard requirement or is it best practice?

10:30

Richard Dennis: My understanding is that, at the moment, it is best practice.

Rather like what happens when I issue guidance—firms are required to take that into account and, if they were challenged, they would have to demonstrate good reasons for having set that guidance aside—the recognised professional bodies have set out clearly that they expect the IPs to be operating that particular business model. If they had concerns about that, they would pursue the matter in their regular discussions.

On advertising, it is important to say that the lead generator cannot, themselves, get people into a trust deed. They generate a lead that says that a trust deed might be appropriate for a particular individual, which they will pass on, but it is the IP and the firms themselves that are responsible for ensuring that the client knows exactly what they are getting themselves into and that the product is the right solution for them.

Dean Lockhart: We have heard evidence that more than a quarter of all protected trust deeds fail and that, when they fail, the client finds themselves in a worse position than they were in to start with. I presume that that failure rate is partly down to mis-selling, although I know that there will be other reasons for it.

It sounds to me as though the regulatory requirements are a bit loose, given that we are talking about guidance and best practice, and given that other forms of internet advertising and mis-selling can take place. Do you agree that the regulations in this area need to be tightened up?

Richard Dennis: It is difficult. I suspect that I might say this quite a few times this morning, but the essence of a protected trust deed is a voluntary agreement between an individual and their creditors. Clearly, we want the individual to be appropriately protected and to know what they are doing. Ever since the Cullen committee, every time the issue has been looked at, a bit more regulation has been added. The Cullen committee started that process with auditing fees. We have gone on to make requirements about the fee model; there are also the cramdown requirements and requirements regarding the voting arrangements. Every time we have looked at the issue, we have put more regulation in place, which partly drives up the cost and reduces flexibility.

The issue of failure rates is interesting. I am not sure that everyone who has supplied evidence to the committee uses the same definition of failure rates. We have done some work to provide our best guess on what the real position is regarding failure rates—members will have seen the additional statistics that we published on our website after we had made our submission to the committee. We have looked only at those protected trust deeds that were granted in 2013-14, because that is the most recent year for which we expect the vast majority of trust deeds to have concluded, and we think that the real failure rate is about 15 per cent. We are talking about individuals whose trust deed is finished and who have not been discharged of their debt.

The committee has recently received evidence from Carrington Dean, which, as you will know, is the largest provider, on failure rates. It would say that the biggest issue behind failure rates is individuals stopping making their payments and not getting in contact with the company. It is hard to see what alternative we can put in place unless the individual is prepared to re-engage with the process.

There are many issues around failure rates, and we have not quite arrived at a proper understanding of what is going on there. I would be hesitant to reach the conclusion that failures are necessarily a result of mis-selling. The people we are talking about will inevitably be in financial difficulty or hardship. All of us face unexpected shocks and life changes, and there might be very good reasons for individuals being unable to maintain the obligations that they have signed up to for a period of four years.

Dean Lockhart: Thank you very much.

I have another question on regulation. Given some of the mis-selling and bad practice that are sometimes evident, are you in regular contact with the FCA and the Insolvency Service to feed back on that? What recommendations have you made to the regulators about changes to the regulations?

Richard Dennis: We are in very regular contact with the Insolvency Service. You will have seen from our submission that England and Wales have a similar product, the individual voluntary arrangement. IVAs are not a direct parallel to protected trust deeds, but the same firms tend to offer them, with the same business models and processes. We discuss concerns in that regard.

An issue on which we have been trying to work directly is disbursements and outlays. You will have seen that we have proposed rolling all those into the up-front fixed fee because, post-2013, when we introduced the fixed fee, we saw outlays significantly increase when our a priori expectation had been that they would decrease, given modern information technology and so on. We think that a move to a single, up-front fixed-fee model would give greater clarity. The Insolvency Service has been discussing with recognised professional bodies different ways of addressing the same issue, and we are in regular contact to discuss the matter.

Apart from that, we have focused on the bits of the regulatory framework that are pretty much under our control. We are in regular discussion with the FCA and report concerns to it, particularly around misleading advertising and lead generators. I sit on the FCA's anti-phoenixing task force, which deals with the recycling of money advisers, financial consultants and so on.

We work together as a family of regulators. I am fairly satisfied that that is working as well as it might do.

Dean Lockhart: Thank you.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Like many members, I suspect, I googled "protected trust deed" in advance of the meeting. I was then bombarded with offers to wipe out debt, from rather nebulous, unnamed bodies, which are difficult to identify. I understand that the FCA has no locus over the marketing and advertising of protected trust deeds. Is that correct? That is what it says in evidence that we have received.

Richard Dennis: It is tricky to give a black-and-white, yes-or-no answer to your question, unfortunately, Mr Beattie.

Colin Beattie: None of the adverts that I have seen says that the bodies concerned are monitored by the FCA, or anything like that.

Richard Dennis: FCA permissions are needed before someone can engage in what the FCA defines as debt counselling—

Colin Beattie: Is advertising debt counselling?

Richard Dennis: Not necessarily.

Colin Beattie: Is marketing debt counselling?

Richard Dennis: Not necessarily—

Colin Beattie: Do you agree that there is a bit of a gap there? If these stringers are providing introductions that are worth perhaps £1,000 a time—again, that comes from evidence that we have received—there must be a certain amount of pressure to follow through, because companies will not give £1,000 to people here and there without being reasonably certain that they will follow through.

Richard Dennis: I agree that companies are unlikely to buy leads unless some of the leads turn into products.

Colin Beattie: Do we know what percentage of leads turn into products?

Richard Dennis: I have no information on that. Statistics on what is going on in the lead generation market are virtually non-existent. Similarly, we know virtually nothing about the extent of non-statutory debt management plans, which are vaguely similar.

Colin Beattie: It appears that a whole area—marketing and advertising—is virtually unregulated, which is unique for a financial product. I have seen the examples myself, and the ways in which the adverts are worded and the products are promoted are shocking.

Richard Dennis: You will be aware that the Advertising Standards Authority, too, has a role. I agree that a lot of regulators need to work together to crack this. The evidence that has been presented to you—

Colin Beattie: But the Advertising Standards Authority will get involved only if there is a complaint. It does not proactively trawl through adverts to try to find dodgy ones.

Richard Dennis: We raise complaints with the Advertising Standards Authority when we come across such adverts.

Colin Beattie: How many complaints did you raise last year?

Richard Dennis: My recollection—and, as I said before, I can come back to the committee on this—is that we had about 50 websites taken down last year.

Colin Beattie: Fifty? I had more adverts than that offering me debt management. Anyway, that is a different matter.

We will move on to the issue of fees. You do audits from time to time on fees and the majority of the audits are initiated by you rather than by third-party complaints. Do you see any systemic problems in fees? Is there a recurring problem?

Richard Dennis: It partly comes back to the fundamental philosophical question here in that the fees are made clear to creditors at the start of the process and creditors have a vote on whether the offer that is put in front of them is acceptable. If we see the basic nature of the product as being a voluntary arrangement between an individual and their creditors, and the creditors have approved it, why would we get involved? We might get involved if we saw those fees dramatically increasing systemically or saw outlays or disbursements that we thought were unjustified. However, we would do that reactively rather than proactively, because creditors get information and, to the extent that it is a private, voluntary arrangement between them and the individual, there is not necessarily a role for us to police that and say to creditors that, although they have accepted something, we do not think that it is in their best interests.

Colin Beattie: So the fee side is pretty much open as to what people can charge, provided that the poor sod who has the debt signs off.

Richard Dennis: No. The debtor's contribution is determined through the common financial tool, which we have discussed many times at this committee. The debtor's contribution therefore has to be their full service income as determined by that tool. If that is not sufficient to cover the costs of the process, they will struggle to get someone to run a trust deed on their behalf.

Colin Beattie: I will give you a non-philosophical example. It is from one of my constituents and I have permission from the family to talk about it. It involves a lady who had a debt of £20,000. She repaid £6,000 but had the misfortune to die before the end of the protected trust deed period. That seems to have triggered a huge amount of additional fees, of which I will give you some examples—and we must bear it in mind that, on paper, she was down to a £14,000 debt. The statutory interest was £7,000; the trustee fee was £2,500; the trustee realisation fee contributions were £1,270; the trustee fee lump sum was £3,000; and legal fees were £3,000. In addition, there was the Accountant in Bankruptcy advertising fee, registration fee and supervision fee; software fees; courier fees; and bank charges. Now, that debt, which was paid down to £14,000, is back up to almost £28,000. The only asset is the equity in the house, which the family had of course hoped to inherit—that is gone. It might be legal, but is it fair and is it moral?

Richard Dennis: It is very hard to comment on the specifics of an individual case.

Colin Beattie: I thought that it would be easier to comment on an individual case where you have some hard figures in front of you.

Richard Dennis: If you send us the details of that case, we will look into it, call the files in and do an audit on it.

Colin Beattie: I am just using that case as an example of a protected trust deed that it seems to me did not work.

Richard Dennis: When the client took out that trust deed, they agreed to make their £6,000-worth of payments across the four-year period.

Colin Beattie: I am not saying that it was £6,000 over the four-year period; I am saying that that was what they had paid up to the point of death.

Richard Dennis: Right. And when that trust deed was advertised, the trust deed that went to creditors would have said, "Our fees for administering this are the fixed fee that you quoted, plus 25 per cent of whatever we ingather and we will also have to meet the AIB's fees, which is a statutory requirement." Already creditors would have been aware that a significant share of the contributions would have been for covering the administration costs.

Whether the individual gets debt relief in that situation comes down to the terms of the trust deed that they have completed and signed; it has nothing to do with the contributions that they have made vis-à-vis the overall debt that they started with.

10:45

I am very sorry for the family in the situation that you have described. They are obviously in a very sad predicament because of that individual's death. We will look into that case.

Colin Beattie: The case is important, but the principle behind it is more so. Such an approach is neither fair nor moral, no matter how legal it might be. How do we prevent such cases from happening?

Richard Dennis: A protected trust deed is designed to provide debt relief to an individual who cannot pay their debts. An IP makes an offer on their behalf to their creditors, who accept that offer. If the individual meets the requirements of that trust deed, which will largely involve making their stream of payments over the agreed length of the trust deed, the individual will then be granted relief from their debts. That is how it is supposed to work. There is nothing in a trust deed about any guaranteed return to creditors; that is down to what creditors choose to accept when they vote. In the submissions the committee will have seen that a lot of the large voting blocks require 10p in the pound before they will vote in favour of a trust deed.

The question is whether the individual can afford to pay their debts. If the answer to that is no, we must then ask how the costs of administering their debt relief are to be met. The committee will have seen the material on the average costs of administering such products. In the case of someone who is able to afford a contribution of only £100 per month there will be very little left for creditors. Should we say that they are not allowed to access debt relief or that the public purse must somehow pay the costs of administering the process?

Colin Beattie: With respect, that is not really answering the problem that we have in front of us. We know what the rules are, and we are not saying that any of this is irregular, illegal or anything of that nature. What we are asking is whether we should be looking at the problem from the point of view of fairness to both the creditor and the debtor. The amount of money that is being taken by such intermediaries is completely disproportionate—it is absolute banditry, to be honest.

You have previously looked at consulting on options for reforming protected trust deeds. Nothing has been done, because there has been a lack of consensus on the matter. Are you going to take any further action on options for reform? I think that the public would be outraged at the level of the fees that I listed earlier—that is not what they expect.

Richard Dennis: I think that you have heard the minister say—and the question of a regulatory framework is one for him and the Scottish Government rather one than for me, as the Accountant in Bankruptcy—that we are very aware of the widespread concerns among stakeholders. We would not have consulted on options that we could put to the minister if we did not think that there was something that was worth doing.

We have twice proposed a package of proposals to stakeholders, suggesting that they might be a way forward. We have yet to be able to say to the minister, "Look, we have discussed these concerns with stakeholders and there is sufficient consensus for us to bring a package to you that will improve the situation."

Colin Beattie: But you are never going to get consensus as long as some of the parties are able to pull in fees like the ones that I listed earlier. Is there not a case for legislating or for changing the regulations—whatever it would take—now, even without consensus, because it would be the right thing to do?

Richard Dennis: The minister will be extremely interested to see the committee's recommendations on the way forward, and at the start of the session you heard me talk about what I think the right answer might be.

The premise of your question, however, is that some sort of super-profiteering is going on and that firms and third parties are charging fees that cannot be justified. I have not seen hard evidence that shows that that is the case.

Colin Beattie: I will give you a copy of the list of fees that I mentioned earlier. Imagine that the average man on the street is shown this—a £20,000 debt, of which £6,000 has been paid back, that now amounts to £28,000 because of the fees that have been piled on top of it. That is not fair, and fairness has to be at the basis of all legislation.

Richard Dennis: I entirely agree. We will look at the particular circumstances of that case. Had that trust deed been completed, the individual would have benefited from debt relief; the creditors might not necessarily have got a significantly larger share. Is the root of your question that the amount that has been used up in fees is unjustified? In other words, was the process much cheaper than the contribution and the fees that have been taken? I am sure that the committee will want to pursue that matter in future meetings when folk who sell PTDs are in front of you.

That is one of the things that creditors, among others, will look at very closely. The large voting blocks are content with fixed fees of a certain level, because that is their perception of what the products cost to administer. It is hard to second-guess that.

Colin Beattie: If change is to be initiated, would it come through the Accountant in Bankruptcy?

Richard Dennis: Change can come from us, from Parliament, from a minister or from outside stakeholders. We have looked very closely at all the proposals that have been suggested to the committee in evidence.

The Convener: You do not have the detail of the specific case that has been described to you by Colin Beattie, so it is difficult for you to comment on that. Rules will sometimes not, or will appear not to, work fairly in some individual cases. You have said that you will look at the case if he gives you the details. Would you, in certain circumstances, exercise power and authority, and do you even have such a power, to address excessive fees?

Richard Dennis: We have a general power to issue a direction to a trustee on how a PTD should be administered.

The Convener: Could you do that in a case in which the fees were, in the circumstances, utterly disproportionate?

Richard Dennis: As Stacey Dunn mentioned, we can call in a case file to check that there are appropriate invoices for everything that has been charged to that case. If there is no evidence to support particular fees being charged to a case, those can be struck out.

The Convener: Would that have to be raised with you, if you had not picked it up through the process that you described.

Richard Dennis: Yes.

The Convener: Is it a weakness in the system that you have audited only 60 cases over three years, out of several thousand cases every year? Do you not have the necessary number of people to look at the cases closely enough to pick up on something like that—bearing in mind that debtors in those circumstances might not know which way to turn, and therefore do not raise the issue specifically with you?

Richard Dennis: The nature of the product, essentially, is that it is a voluntary agreement between a debtor and the creditors. If both sides are content, we do not necessarily get involved. If one party is not content, they can be directed to plenty of channels in the area of rights through which to raise a complaint.

Largely, in a regulatory function, the AIB acts only on a reactive basis. The RPBs do not. They go in quarterly to the big firms, and they do live monitoring of their case loads, so that they can pick up trends, through direct access to information technology systems. They listen to a significant random selection of cases and they audit random files on—I am pretty sure of this—a quarterly basis. The committee can ask the RPBs for the details of that, when they are here.

The committee will have seen the evidence from RPBs that claim that the sector is more tightly regulated than any comparable sector, because of the roles of the various regulators. I do not want the committee to get the impression that only 60 per year out of 30,000 cases are looked at: significantly more than that are looked at, but it is done by different parts of the regulatory framework.

The Convener: I think you said that 60 were audited. They have been looked at and audited, as I understand it.

I do not know the circumstances of the case that Colin Beattie raised, but your point was that, for example, if creditors accept 10p in the pound, and there is £14,000 outstanding, that would reflect £140,000 of debt. The debtor still gets a substantial discount.

Richard Dennis: The debtor signs the trust deed, conveys their assets and agrees to make regular monthly payments to the IP, which passes that on to the creditors, once they are in a trust. Once creditors have accepted that, there is no relationship between the original level of debt and the contribution that is made. If the debtor meets the terms of the trust—if they make, as is the case increasingly these days—their 48 monthly payments, they are discharged from all their debts, regardless of the size of the contribution that they have made to them.

The Convener: Also, of course, fixed fees are not necessarily related to the work that is carried out in administering the protected trust deed.

Richard Dennis: Yes and no—there is no easy answer. IPs have to go through certain processes on all trust deeds, regardless of the size, so we expect them to review a client's financial circumstances at least annually, in order that they can make sure that the contribution is still affordable and sustainable. That needs to be done in all trust deeds.

In the stats that we have provided, you will see that there is a fascinating lack of relationship between the referral fees and the amount of debt that has been dealt with. For example, in trust deeds with an average debt of less than £6,000 that are being dealt with in four years, the average administration cost is £3,900. In trust deeds with an average debt of more than £10,000 that are being paid off in four years, the average fee is £5,400. That is a small increase in fees for possibly more than double the debt. That is why the concern is about trust deeds for between £5,000 and £7,000 of debt, in which the same level of contribution might pay off the debts in full through a debt arrangement scheme.

Willie Coffey (Kilmarnock and Irvine Valley) (SNP): I will briefly follow up the issue that Colin Beattie raised. Are debtors aware of the situation that they face if they default on payment? I want to mention credit unions in that regard, because they feel particularly vulnerable when there is a failure. Without going into specifics, do you think that families of debtors are aware of the consequences of a failed protected trust deed arrangement? Does more need to be done to ensure that they are aware, so that a proper and correct choice can be made?

Richard Dennis: We find many examples in which the family is completely unaware that an individual is involved in a statutory debt product. I do not feel that it is our responsibility to override the individual's decision about whether they choose to share that with the family.

Kelly Donohoe will run through the section 167 requirements that an IP has to go through with an individual debtor before they can sign off a deed.

11:00

Kelly Donohoe (Accountant in Bankruptcy): Every trust deed application that comes in to be protected is checked over. As part of the check, under the Bankruptcy (Scotland) Act 2016, the IP has to have a signed declaration to show that the individual is aware of what they are signing, and that all debt options have been discussed. It usually takes the form of one or two pages, in which the IP states that they have discussed DAS and bankruptcy with their client, and explained to them the consequences of going into a trust deed. The client has to sign the declaration to say that they have fully understood those consequences.

The question for us is how content we are that the client is aware of the consequences; perhaps they have merely said that they are aware. As you know, people who are in debt are quite often vulnerable and frantic, and want something to be done straight away to help them. Do they fully understand what has been discussed before signing? Do they take it in and ask questions about it? The question for us is how far we should go to check that. As part of the statutory process, the forms come in and we see that clients have signed the declaration that says, "I declare that I have read and understood the terms and conditions”. Should there be a further stage in that process?

Willie Coffey: I get that. What I am really asking is whether people ask about what will happen if they or their parent default through tragic circumstances. Do people know what they would face? Reading all the documents in advance is one thing, but are people fully aware of the consequences if tragic or other types of circumstances occur and there is a default on the arrangement?

Kelly Donohoe: I certainly hope that they are but, again, how do we measure that and check it, other than through a standard declaration in which the IP states that they have gone through everything and discussed it, and which the person signs?

Richard Dennis: I draw the committee’s attention to the evidence from customer surveys that firms have provided to it. Most say that only a minority of the folk whom they advise end up in trust deeds, which suggests that they are being given the full range of alternatives.

Willie Coffey: I do not know about the case that Colin Beattie raised—perhaps it is silly of me to comment—but I am prepared to guess that no family would be aware of the extent of the additional debt that mounts up on top of the arrangement after such circumstances occur and people sign up quite happily.

Richard Dennis: We certainly see many examples of families being unaware of the circumstances of a deceased or other individual.

Willie Coffey: I want to return to your opening remarks about credit unions. I declare that I am a member of Ayrshire Credit Union. You said that you had sympathy for credit unions and that there is sometimes discussion about whether a person needed a protected trust deed or should simply have started afresh. That is what I have noted from what you said. What did you mean by that? Why are credit unions saying that they are a bit more vulnerable than others are?

Richard Dennis: As you will know, credit unions are limited to 3.6 per cent a month in the annual percentage rate that they can charge. They lend, at least partly, to a vulnerable client base, so we might expect them to be more exposed to the potential for bad debt and less able to cover the costs of bad debt, because they cannot offset it by charging their clients a higher APR.

In the case of an individual who signs a trust deed, a credit union might instantly lose 80 per cent of the loan amount. The question is whether the individual could have afforded to pay back their debts. If the answer is no, the credit union would have lost its money anyway; if the answer is yes, the individual did not need debt relief. That is why the fundamental question is whether people should be able to access trust deeds when they do not need debt relief. In my understanding, there is no evidence to suggest that that is the case. It is an issue that the committee might want to probe with other witnesses.

Willie Coffey: What would be the implications of credit unions being excluded from the PTD process?

Richard Dennis: That relates to my opening remarks. Does the individual need a fresh start? If the person is in unsustainable debt—they cannot afford to pay off their debts—should they be given a clean slate, or should the credit union debt be able to survive? Student loans and court fines, for example, survive. Should council tax debt survive? Where do we draw the line?

The emphasis has increasingly been, throughout all bankruptcy and debt relief products, on giving the individual an absolutely clean slate. If we believe that the individual needs a completely fresh start, there cannot be some debts that will survive.

Willie Coffey: Who decides whether the clean slate can be offered?

Richard Dennis: That is a political question for you folk.

Willie Coffey: Do the credit unions have any scope or influence in terms of clients being offered a clean-slate solution, instead of a PTD?

Richard Dennis: In effect, you are asking whether the credit union could write off a person’s debts.

I believe that the committee will have representatives of the money advice sector in front of it. I expect that there are situations in which a canny money adviser who knows individual creditors will say, “Look, my client needs debt relief. They’ll either go into a statutory debt product or I can give you 15p in the pound now, if you just write down their debt.” What would you do? I am sure that that kind of thing happens, but we just never know about it; it is just “debt adjusting”.

Willie Coffey: Okay.

Richard Lyle: I declare that I previously worked as a debt collection manager for the Royal Bank of Scotland.

As I have said before, I have come across situations in which people were misinformed. Mr Dennis has used the term “debt relief” during the past few minutes. There is no debt relief if a person enters into an unfair trust deed that is charging exorbitant fees, such as a fee of 50 per cent.

When a person needs and gets a loan but does not pay it back, the bank, building society or company that gave them the loan will, generally, sell it on to another company that will buy it for, say, 50p in the pound. That company might then sell the debt on to another company that buys it for 25p in the pound. Eventually, the person is being continually being bombarded with letters. Some people might hide and forget about it, then suddenly somebody offers them the panacea of a protected trust deed that they say will remove all their problems, and everything in the garden will be rosy if they pay £50 a month. They do not tell the debtor that £25 or £30 of that £50 is being taken in fees. The astonishing case that my colleague Colin Beattie talked about is totally outrageous.

There is also the significant area of concern about when protected trust deeds fail and trustees are discharged from their duties to the creditors, but the debtor is not discharged from their debts. In practice, that means that the debtor becomes responsible for paying their debts in full again. It is a never-ending cycle.

Do you agree that the whole situation or product—whatever you want to call it—needs to be looked at and resolved? A solution has to be found for people who, in most cases, want to pay their debts eventually and who can make an arrangement with a company. The problem is when, a couple of months or a year later, the company sends the debtor a letter that asks for income and expenditure information, and asks them to fill out a form and change the £50 a month payment to £100 or £150 in order to get the debt down lower.

Can you honestly defend protected trust deeds, given all the questions about them and the evidence that you have given this morning? Can you defend charging exorbitant fees of people who are in a situation in which they really need help?

Richard Dennis: I have a couple of things to say in response to that. First, 30,000 people are currently getting debt relief through protected trust deeds. Based on the assumption that those folk need debt relief, if we were to do away with protected trust deeds, we would need an alternative for them.

Secondly, Mr Lyle mentioned "exorbitant fees". Whatever the level of fees, the individual who signs the trust deed is no better or worse off. If the fees are exorbitant, it is the creditors who lose out: the individual pays their full surplus income, as calculated by the common financial tool, regardless of the levels of fees and charges over the period. Creditors lose out because of "exorbitant fees"—if such things exist—not the debtor.

Richard Lyle: What does someone who operates a protected trust deed really do? Supposedly, they tell the debtor what is going to happen, but then they sit back and the money rolls in. That is what happens. They get someone to sign a bit of paper, they contact the creditor, they sit there while the money rolls in and occasionally they send out an invoice or send the creditor some money to keep them sweet. When the people who operate trust deeds come to speak to the committee, I will ask them what they really do to justify charging such exorbitant fees. Can you tell me what they really do?

Richard Dennis: I am tempted to say that I will leave that one to the individuals concerned.

Richard Lyle: I thought that you would say that.

Richard Dennis: I am sure that you understand why.

One question is: if folk are really charging exorbitant fees—if they are super-profiteering—why are other firms not coming into the market and undercutting them by a couple of per cent?

Richard Lyle: I think that you will find that, as Colin Beattie said, many firms want to come into the market, but they are maybe hiding.

I will ask the question that I was supposed to ask. A big concern for the money advice sector is the consequences of failed protected trust deeds, in relation to which it appears that insolvency practitioners do not take a consistent approach. Some end PTDs because the debtor can no longer afford the repayments, whereas others only end them when there has been non-co-operation. Do you have a view on the correct approach?

Richard Dennis: Yes. We are clear that when an individual can no longer maintain their payments because of a change of circumstances, that should not result in the failure of a protected trust deed. Our guidance makes that plain. I know that the evidence given to the committee suggests that that is a major concern, but individuals do not raise it with us. We have powers that we could use to address individual situations if individuals were to raise the matter with us.

Richard Lyle: I understand your comments. Can you or any of your staff point to a better way to help people—as I always try to do—who are in debt to try to get out of debt? Is there a better way?

Richard Dennis: We have consulted on several proposals that we would not have consulted on if we had not thought that they were the right thing to do. You will know that ministers have committed to a generic review of the whole area. ICAS raised an interesting question about whether there is room for another product in the stable to address consumer debt. It might be a protected-trust-deedlite, which would not necessarily need an insolvency practitioner and would therefore be much cheaper.

Richard Lyle: Thank you.

The Convener: I presume that such a product would be operated by someone who was not necessarily regulated as a professional, as an insolvency practitioner would be.

Richard Dennis: They would still be regulated by the FCA and potentially by us, depending on the design of the product.

The Convener: All right.

11:15

Andy Wightman (Lothian) (Green): In your opening remarks, Mr Dennis, you talked about people in bankruptcy and protected trust deeds both now contributing for four years, leading to a change. What change was that?

Richard Dennis: In the years immediately preceding the change, the number of bankruptcies was growing relative to the number of trust deeds. Immediately afterwards, the number of trust deeds started to accelerate and the number of bankruptcies started to decline.

Andy Wightman: Are you confident that that is related to the change?

Richard Dennis: No. I just raise it as a potential issue. If it is the case that that one year of additional contributions was driving debtor choice, that raises the question of the extent to which the choice between the products should be left to the individual.

Andy Wightman: You also said that, if a debtor is awarded bankruptcy, the creditor will save no more money than they would if the debtor were in a protected trust deed. Could you explain that?

Richard Dennis: It is statistically true that bankruptcies generate lower dividends, on average, than trust deeds.

Andy Wightman: You have also made repeated reference—correctly, in my view—to the fact that protected trust deeds are voluntary arrangements. Of course, that argument can go only so far, because we have put in place a statutory framework, which is why the public has taken an interest. You are probably not arguing this, but it is not legitimate to say that we would leave people to make voluntary agreements; we have decided that we want some statutory underpinning to that.

Richard Dennis: Yes, that is right. We compel non-assenting creditors to accept the terms of a trust deed, unless they vote against it in sufficient numbers.

Andy Wightman: I draw your attention to the evidence that was given by the working party of the University of Aberdeen's centre for Scots law. The working party included Donna McKenzie Skene, whose book on the topic you refer to in annex A of your submission, where you summarise some of the history of the law around the issue.

The working party has drawn our attention to recent litigation, which it publishes a draft analysis of in its submission. It points out:

> "if a party grants a trust deed, it becomes effective even if it is not clear that it will ultimately become a PTD and it will remain effective even if it does not become a PTD which may be problematic for the debtor, not least because the debtor may then be unable to seek alternative solutions. It is also unclear whether a clause would be valid and effective if it provided that the trust deed was revocable if it did not become a PTD".

Do you have any views on that potential problem?

Richard Dennis: Our understanding is that that is only a potential problem; it is not necessarily a real-world problem.

Andy Wightman: That is useful.

Following on from what has been said about failure—I understand the issues that have been raised about what we mean by failure—Citizens Advice Scotland has pointed out the severe consequences of failure, with individuals ending up back at square 1 and people losing all the money that was paid into the protected trust deed. In that situation, they are no further forward with their debt, they are abandoned by the trustees, who have taken their fees, and they have to enter another debt solution, which extends the period in which they are under financial stress. With regard to the design of debt solutions, that is out of step with the other two debt solutions, in terms of the risk that the debtor is taking that they might find themselves back at square 1.

Surely that fundamentally offends the notion of what debt relief is about. Obviously, at the beginning, the creditor is taking a risk lending money. There are questions about that and the levels of consumer debt in society, but once that relationship has been established and the debtor genuinely gets into difficulties, surely the point of debt solutions is not only to get some money back for creditors but to give debtors a clear route out of their debt. The risk that the whole thing might fail and leave debtors back at square 1 does not seem consistent with what I understand to be the principles that underpin debt relief in the first place. What are your views on that?

Richard Dennis: I will ask Kelly Donohoe to talk about what happens when a debt arrangement scheme fails.

Kelly Donohoe: It is much the same as what happens when a trust deed fails. A DAS is another voluntary arrangement between a debtor and their creditors, underpinned by statute, which involves there being no insolvency. However, dividends to creditors are higher in a DAS, because more money is paid back—78p in the pound now goes back to the creditors.

Depending on the length of time client has been paying a DAS for, if the DAS falls or is revoked during the period of the debt payment programme, the overall amount that is due to creditors will invariably be less than it would be if a trust deed failed, because the fees are significantly less in a DAS DPP. If a DAS is revoked, interest and charges can be applied by the creditors, but, generally speaking, if a DAS is revoked, the amount due to creditors would be much less for the client than it would be if a trust deed were to fail.

Andy Wightman: I am not sure that I entirely understand your point. With a DAS, the client would not be back at square 1—they would have paid back some of their debt.

Kelly Donohoe: That is correct. The client would have paid back some of their debt, but they would still have some debt and they would need to seek advice on how to pay that off.

Andy Wightman: I understand that, but to me the idea that a person who enters into a protected trust deed could end up back at square 1, owing all that money, offends the idea of debt relief. As I understand it, the principle is that once a person enters into such an arrangement, they should pay down their debts month by month. If they pay down their debt, even if the arrangement fails, they will be in a relatively better position than they were in when they started because they will have paid some of their debt.

It seems wrong that a debt relief solution should be designed in such a way that if it fails a person would be back at stage 1, with no account taken of all the money that they have already paid—plus the side offence, or the moral offence, that most of that money has gone to a trustee.

Richard Dennis: There are two issues at stake. The first is that a debtor reaches an agreement with their creditors that says that the creditors will write off their debt if the debtor pays them 15p in the pound or whatever, and then the debtor does not pay that.

The second issue is that the insolvency practitioner is administering that process for the debtor, so if their first payments go toward reducing their debt rather than covering the IP fees, why would the IP run the product?

Andy Wightman: That is an important point, and I am glad that you raised it, because it has come out in evidence. Life is relatively straightforward for the IPs who are taking on these agreements, because they get their fee before the creditor gets any money.

Concern has been expressed—we have heard some concern today about marketing and so on—about IPs taking on protected trust deeds. Although they are a useful way of earning perfectly legitimate fees, the fact is that no money goes to the creditor before the IP gets its fee, which seems to reduce the due diligence that IP will undertake in considering whether a debtor is able to enter into that agreement.

If a proportion—you mentioned £3,000 with a debt of £5,000, or £5,000 with a debt of £10,000—were to be given to the trustee, and a proportion were to be given to the creditor, would that not focus the insolvency practitioner's mind a little more on whether a protected trust deed was the right solution for the debtor? That would mean that the IP would be taking on some risk because it might not get its fee.

Richard Dennis: Potentially. The risk is that, in order to cover the cases for which they did not receive their fees, IPs' overall costs across their case loads would have to go up.

A minimum dividend could be specified, or it could be specified that a fixed percentage of every payment had to go to the creditor, as happens under the debt arrangement scheme. That would be an option.

Andy Wightman: Citizens Advice Scotland has provided a useful range of case studies in appendix 1 to its submission. That evidence appears to suggest that debtors are not really receiving impartial advice or entering the schemes with a clear and open mind.

One case study says:

"a client initially turned to a PTD because of action being threatened for her student loan. She was not told that it could not be included."

I am sure that you will have read that evidence, but you will not be aware of all the details. You have already responded to a case that Colin Beattie gave you some information on, and obviously you were not aware of all the detail in that case.

Are studies carried out on cases that come to Money Advice Scotland, insolvency practitioners or Consumer Advice Scotland to try and detect the real problems and to find out whether the problems are systemic?

Richard Dennis: If the problems were raised with us or an RPB, we would look into the circumstances—

Andy Wightman: You said that earlier in relation to responding to people who complain. My point is that when someone is in debt and facing financial difficulties, complaining about a scheme not delivering is probably the very last thing on their mind. It is not reasonable to rely on people coming to you or making complaints as a measure of debtors' satisfaction with schemes. People such as the Accountant in Bankruptcy and the regulated professional bodies need to be more proactive about going out to look at the real-world experiences of people who are in debt.

I am not suggesting that you said that you totally rely on people complaining as a measure of satisfaction—you are just giving us the facts. However, I do not think that whether people complain is an adequate measure of whether schemes are being satisfactorily implemented.

Richard Dennis: Our role is largely reactive. As I hope that I have set out to the committee, the regulated professional bodies go in on a quarterly basis and monitor a random sample of cases. They listen to conversations between the client and the company to check that the client is being taken through the correct advice process.

Andy Wightman: Are you telling me that, given the statutory basis under which you operate, you have no powers voluntarily to initiate some level of investigation into, for example, issues of the kind that are raised in appendix 1 to Citizen Advice Scotland's evidence?

Richard Dennis: No. We could do that. Stacey Dunn is drawing to my attention the statistics on the number of reviews that we have undertaken as part of our supervisory function.

Stacey Dunn: We can do a review, which is a softer version of the audit process that I explained earlier. What we do—and this is proactive on our part, not reactive—is pull in 10 per cent of a trustee's cases, depending on their case load, for a file review. That sometimes flags up the issues that Andy Wightman is talking about, because at that stage we see the full case file, from the pre-advice stage to the protected trust deed and anything that has gone on in between. In such cases, we can flag up issues.

As Richard Dennis said, in the context of bigger issues, our approach is primarily reactive in relation to complaints, requests for orders and so on.

Andy Wightman: So there is a bit of proactive work with cases in which protected trust deeds are entered into. However, Citizens Advice Scotland talks about the cases that often never get to a protected trust deed—cases that should not do so, but which are at risk of doing so. You could be proactive on that, too, in the general course of your work.

Stacey Dunn: Not necessarily, as we do not have legislative powers until the arrangement is protected.

Andy Wightman: Okay. Thank you for clarifying that.

Richard Dennis: We have a stakeholder group, the protected trust deed standing committee, on which bodies such as Citizens Advice Scotland and the firms are represented. We sit down and discuss emerging trends and concerns.

Andy Wightman: Thank you.

In your opening remarks, I think that you said that, as we look at the whole area, we should focus on the interests of the debtor—or words to that effect. Is that an accurate reflection of what you said?

Richard Dennis: Yes.

Andy Wightman: Okay. I agree with that, because at the bottom of all this are people who have money lending to people who do not have money. There is a fundamental power imbalance there. There are laws and processes to protect the interests of people who obtain credit, and there are laws and processes to protect the interests of debtors who get into difficulties. At all stages, public policy and legislation should give more consideration to the interests of debtors than is given to the interests of creditors, given the power imbalance.

The committee has been considering the Consumer Scotland Bill, which will set up a new body, consumer Scotland. There seems to me to be the potential for consumer harm in what we are talking about today. You said that many debtors and creditors enter into debt relief arrangements voluntarily, without going through a statutory scheme at all. In all those cases, the vulnerable party is always the debtor. What consumer protection do such debtors have, as consumers of a product? You might not have an answer to my question, but do you have a perspective?

11:30

Richard Dennis: In terms of the original loan, or in terms of the debt product?

Andy Wightman: In terms of the debt product and having put aside the original loan.

Richard Dennis: I think that the answer would be to do with the various powers of the different regulators to pursue and deliver redress for the debtor if something goes wrong. It would also be to do with the RPB's ability to fine and, in the final resort, revoke the practitioner's licence.

Andy Wightman: Okay. Maybe we will explore that issue a little bit later.

I will pick up on Richard Lyle's question about consensus. You pointed this out when recounting the history in your very helpful written evidence—I always find such an approach useful, as problems that have been around for a century will obviously not be as easy to fix as others. We have heard that there is no consensus. I suggest that, at the end of the day, these are matters for which we as a Parliament and ministers in Government should take responsibility. Just because there is no consensus in what one might describe as stakeholder groups—I do not like the word "stakeholder"—that is not a licence for Government and Parliament to take the view that that is fine.

There are good reasons why there is no consensus. As we have explored in relation to the common financial tool and elsewhere, debtors and creditors have very divergent interests. If problems are emerging, surely we as a Parliament and the Government should, in the absence of consensus, take responsibility for forging a way ahead. In other words, the lack of consensus should not be an excuse for inaction.

Richard Dennis: I completely agree, and I echo the minister's welcome for the committee's willingness to grasp this particular nettle.

Andy Wightman: You mentioned the evidence from ICAS on a potential further debt relief solution. Has any work been done over the past five or 10 years on whether we need another solution, or is ICAS just throwing that idea up in the air?

Richard Dennis: I cannot remember the timeframe, so maybe my colleagues will help me out. We worked along those lines on what we call PTD-lite—I think that that was before the 2013 consultation. There was an intense period of reform across the entire suite of debt relief and debt management options that culminated in the 2013 PTD regulations and the Bankruptcy and Debt Advice (Scotland) Act 2014, which, at the time, was designed to get the system fit for the 21st century. Unfortunately, the world is changing at an ever-faster rate.

As I have said, we need something like four, five or six years before we can genuinely tell the impact of one set of changes. The committee has cautioned us strongly against our making changes to individual debt products without taking the chance to assess the whole piece. We continue to work and strive, and we look forward to hearing the committee's recommendations.

The Convener: I bring this agenda item to a close. I thank our witnesses for coming in today.

European Union (Withdrawal) Act 2018

Public Procurement etc (Scotland) (Amendment) (EU Exit) Amendment (No 2) Regulations 2019 (SSI 2019/414)

11:33

The Convener: Agenda item 3 is on the Public Procurement etc (Scotland) (Amendment) (EU Exit) Amendment (No 2) Regulations 2019, which are made under the powers conferred on devolved authorities in the European Union (Withdrawal) Act 2018.

Under the protocol between the Scottish Parliament and the Scottish Government, the committee is required to consider whether the procedure attached to the instrument is appropriate or should be changed. The Scottish ministers have suggested that the instrument, which is subject to the negative procedure, should be categorised as of low significance, as the amendments that it makes are technical and do not amount to a policy change. Is the committee content that instrument be subject to the negative procedure?

Members *indicated agreement.*

Subordinate Legislation

Public Procurement etc (Scotland) (Amendment) (EU Exit) Amendment (No 2) Regulations 2019 (SSI 2019/414)

11:34

The Convener: Agenda item 4 is subordinate legislation and the item under consideration is again the Public Procurement etc (Scotland) (Amendment) (EU Exit) Amendment (No 2) Regulations 2019. The regulations address retained EU law, enabling it to operate effectively; they also address other deficiencies arising from the United Kingdom's withdrawal from the European Union. As no member has any substantive issues to raise, is the committee content that the instrument should come into force?

Members *indicated agreement.*

11:35

Meeting continued in private until 12:50.

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