



OFFICIAL REPORT
AITHISG OIFIGEIL

Social Justice and Social Security Committee

Thursday 30 November 2023

Session 6



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CONTENTS

| | Col. |
|--|-------------|
| DECISION ON TAKING BUSINESS IN PRIVATE | 1 |
| SCOTTISH EMPLOYMENT INJURIES ADVISORY COUNCIL BILL: STAGE 1 | 2 |
| DELIVERING SCOTTISH SOCIAL SECURITY | 20 |

SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE

31st Meeting 2023, Session 6

CONVENER

Collette Stevenson (East Kilbride) (SNP)

DEPUTY CONVENER

*Bob Doris (Glasgow Maryhill and Springburn) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)

*Katy Clark (West Scotland) (Lab)

*John Mason (Glasgow Shettleston) (SNP)

*Roz McCall (Mid Scotland and Fife) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O’Kane (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

Dr Sally Witcher OBE FRSA (Inclusive New Normal)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament
**Social Justice and Social
Security Committee**

Thursday 30 November 2023

*[The Deputy Convener opened the meeting at
09:00]*

**Decision on Taking Business in
Private**

The Deputy Convener (Bob Doris): Good morning and welcome to the 31st meeting in 2023 of the Social Justice and Social Security Committee. We have apologies from our convener, Collette Stevenson.

Agenda item 1 is a decision on taking business in private. Do members agree to take agenda item 4 in private?

Members indicated agreement.

**Scottish Employment Injuries
Advisory Council Bill: Stage 1**

09:00

The Deputy Convener: Agenda item 2 is an evidence-taking session on the Scottish Employment Injuries Advisory Council Bill. This member's bill, which was introduced by Mark Griffin MSP on 8 June 2023, is currently undergoing stage 1 scrutiny. We have already heard from four panels of witnesses, and next week we will hear from Mark Griffin, the member in charge of the bill.

I welcome to the meeting Shirley-Anne Somerville, Cabinet Secretary for Social Justice, and from the Scottish Government, Kirsten Simonnet-Lefevre, solicitor, and Risga Summers, policy manager. You are all very welcome, and thank you for joining us to aid our scrutiny.

Cabinet secretary, I believe that you have a short opening statement to make before we move to questions.

Shirley-Anne Somerville (Cabinet Secretary for Social Justice): Thank you very much and good morning, convener. I very much welcome the opportunity to contribute to your evidence sessions on Mark Griffin's Scottish Employment Injuries Advisory Council Bill.

As the committee will be aware, the Scottish Government intends to oppose the bill, because we are committed to undertaking a more wide-ranging public consultation on our approach to replacing the United Kingdom-wide industrial injuries scheme with employment injury assistance. The results of that consultation will have a major impact on the Scottish Government's views on whether to replicate the UK Industrial Injuries Advisory Council in Scotland. Only if we decide to replicate that can we look at what that body would look like.

As members will know, the industrial injuries disablement benefit is currently delivered by the Department for Work and Pensions under an agency agreement that runs to March 2026. The committee will also be aware that there are particular complexities associated with replacing the scheme, which was introduced in 1948 and is delivered using an almost entirely paper-based system. More than 100,000 paper files relating to Scottish awards are held in a number of warehouses, contrasting starkly with the largely digital systems associated with the benefits that have been devolved to date.

It is therefore vital that we continue to work closely with the UK Government to address those challenges in a way that protects the interests of

current clients. Although that considerably constrains our ability to make fundamental changes in the short term, I am committed to considering how employment injury assistance can best meet the needs of the people of Scotland, while protecting payments to current clients, which is, as always, our utmost priority.

Mr Griffin's bill would introduce a Scottish advisory council without employment injury assistance being in place. Until Social Security Scotland began to deliver employment injury assistance, we would not be able to make any legislative or operational changes in response to any recommendations made by the proposed council. The only way to make changes now would be to renegotiate the agency agreement, which might put clients' existing payments at risk. It is therefore my view that it is not logical to introduce a statutory advisory council before our policy approach has been settled, because of policy development and in order to make the best use of resources while giving value for money.

That said, I very much recognise the arguments made by Mr Griffin and some stakeholders for establishing a Scottish equivalent to the Industrial Injuries Advisory Council. I am also aware that many people would like to see changes made through the introduction of employment injury assistance, including the modernisation of the scheme. The responses to our 2016 consultation demonstrated a wide range of views on the current scheme, including from those who want some aspects to be maintained.

The committee has heard many of those views from stakeholders in the course of its scrutiny of the bill. However, it is important to clarify that the bill does not make changes to the criteria, nor does it automatically mean that new conditions, such as long Covid, would be considered as industrial diseases. Instead, the bill largely replicates, in Scotland, the functions of the IIAC, of which the committee has heard extensive criticism.

It is also important to note that many areas where stakeholders would like to see reform, such as occupational health and safety and employment law, are reserved to the UK Government. It therefore makes more sense to wait until we have a clearer understanding of the level and form of advice, expertise and scrutiny that will be required, before legislating to introduce an advisory body.

Indeed, that is why we have committed to exploring those issues through a public consultation, and to establishing a stakeholder advisory group to implement the recommendations that emerge from that consultation. I do not want to pre-empt the consultation's outcomes, but the advisory group would be able to consider the kinds

of questions that have been raised in response to Mr Griffin's bill. For example, it could consider questions of long Covid and the gender disparity in the current scheme, and it could also consider the current provision of scrutiny and advice in the context of the existing UK Industrial Injuries Advisory Council and the Scottish Commission on Social Security.

Our position is, therefore, that the question whether to establish a statutory Scottish advisory council is best considered as part of our wider work on industrial injuries, alongside the range of questions that stakeholders and recipients of those benefits expect us to consider. For the reasons that I have set out, the Scottish Government will not support the bill.

I look forward to any questions that the committee has on the issue.

The Deputy Convener: Thank you, cabinet secretary. You have made it very clear that the Government does not support the bill, but is it open to elements in it? Not supporting the bill is one thing, but being open minded about certain aspects of its contents is another. Are those issues being ruled out, or will they be considered as part of the Government's wider consultation?

Shirley-Anne Somerville: As I tried to lay out in my opening remarks, it will be necessary to look at many of the issues that have been raised by stakeholders and by Mr Griffin directly as we carry out our wider consultation on industrial injuries. That is why it is important that we look at those things in the round instead of looking just at one part of them.

I would describe this as being asked by the bill to design a part of a jigsaw when we do not know what the whole jigsaw looks like or even what jigsaw we are trying to build. That is the challenge that we are facing. A number of pertinent issues have been raised, and I do not think that there would be any problem with any of them being raised as part of the consultation. In fact, I would expect them to come up.

The Deputy Convener: It is clear that the Scottish Government will have to think carefully about the kinds of knowledge and expertise that will be necessary to advise ministers on social security with regard to industrial disease and injury. Can you give us a little bit more information about the kind of knowledge and expertise that you think will be vital?

Shirley-Anne Somerville: We will need great knowledge and expertise, which is why we want to hear from a range of people, whether they be scientists, occupational health professionals, trade unions or, importantly, those who are already on the current scheme. That has always been the

defining way in which we have developed our social security system in Scotland.

The expertise and knowledge required for any future advisory council will depend on the shape of employment injury assistance. Perhaps I can give you one example, convener. The current IAC membership reflects the medicalised eligibility criteria for IIDB. You heard in your evidence sessions many criticisms of those criteria and of how the IAC operates; if employment injury assistance were to depart from IIDB at any point in the future, the kind of knowledge and expertise that might be required could be very different.

Again, I go back to the fact that it is difficult to know exactly the type of knowledge that we will want on any future council until its role and remit are decided. That is why the membership should be decided when we know that role and that remit, and that will very much depend on the shape of the benefit.

The Deputy Convener: I will ask about the voice of the worker, of lived experience and of occupational health in a moment, but I take it from your first answers that SCOSS will not be an appropriate vehicle for offering that kind of advice and that fundamental changes would have to be made to the structures of SCOSS to enable it to do so.

Shirley-Anne Somerville: The committee is well versed in SCOSS, having met it in the past, and as you will know, it was set up with a specific remit. If we were to ask it to undertake anything different, that would require a change of remit and a change of expertise.

However, I hasten to add that, until we know what the remit will be, we will not know whether we would suggest a different type of council or a change to SCOSS. I refer the committee to Dr Mark Simpson's suggestion in a previous evidence session that SCOSS could, for example, have a sub-committee on that issue. That is but one area that could be taken forward; there are many others, but it very much depends on the type of benefit. We would then roll on to what the council—and its membership—would be and where it would best sit.

The Deputy Convener: The committee has become aware of a gap that exists—and, indeed, became particularly aware of it a couple of weeks ago, when we heard from Lucy Kenyon of the Association of Occupational Health and Wellbeing Professionals and Professor Ewan Macdonald. They highlighted the need to collect better and more robust data in the workplace on emerging trends and issues regarding industrial injury and illnesses. Trade unions and occupational health are keen to be part of the partnership that plugs that gap and collects that data, and the Health and

Safety Executive—which, unfortunately, is not giving oral evidence to our committee—has a role to play, too.

Cabinet secretary, will you say a bit more about which organisations and bodies have a significant role to play here? Do you accept that there could be a gap? Which bodies, individuals and groups could help to plug that gap in relation to data and emerging trends around such illnesses?

Shirley-Anne Somerville: Stakeholders raised a number of interesting points in the evidence sessions on this issue, and it is important that we look at where there are concerns. One of the complicating factors is that much of what has been talked about, including health and safety at work, is reserved. That creates a number of challenges. For example, the IAC has an observer from the Health and Safety Executive at every meeting; because occupational health and safety is not devolved to the Scottish Government, it would be difficult to replicate that prevention role, which raises a question about how a Scottish body would engage on the important subject of prevention. A discussion definitely needs to be had, but it is complicated by the nature of the devolved/reserved settlement.

I am very keen to explore the issue in depth and will keep coming back to it. It is important that we look at the issue in the round and at the wider challenges that we have with regard to, for example, how to work with the Health and Safety Executive and other reserved agencies on ensuring that the body is fit for purpose. I very much hear what has been said on the matter, and I have heard the concerns of trade unions and others. That is why it is important that we look at the issue through a broader lens than the bill allows.

The Deputy Convener: Just for my own clarity—without getting into any wrangling over whether occupational health or health and safety should be devolved or reserved, and irrespective of where those powers sit—do you believe that there should be clear roles for the Health and Safety Executive, occupational health and our trade union movement?

Shirley-Anne Somerville: If you are talking about what would happen with our employment injury assistance, the Health and Safety Executive is clearly one example that we would need to look at. With respect, I am not going to suggest any solutions in that respect while we have yet to carry out the consultation on the bill.

However, I very much hear what you have said about the suggested gaps and the fact that we will need to work together, despite the fact that the matters are reserved. Regardless of where the powers lie, we will need to work together, as we

have done with the DWP on the devolution of powers.

The Deputy Convener: Thank you, cabinet secretary. We move to questions from Marie McNair.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning to you, cabinet secretary, and to your officials.

Our committee is keen to ensure that, as much as is possible, the bill delivers on the aspirations of all the witnesses. Do you believe that it meets those aspirations with regard to assessment?

Shirley-Anne Somerville: Having read and listened to the witnesses' evidence, I am concerned that many of their concerns will not be answered by the bill. They have, quite rightly, raised specific concerns about the current council and the current benefit. In my mind, they will not be resolved by the setting up of another council alongside the current council, because much of what has been discussed is around the eligibility criteria, which do not change, and how an individual is assessed, which does not change either. Nor does the bill, in its definitions, change the medicalised nature of disability.

My worry is that people will think that the bill will solve certain issues—it will not. They have rightly raised concerns that need to be addressed, but they will not be addressed by the setting up of a council that will not be able to make any changes or by the fact that Scottish ministers would not be able to act on the suggestions that the council, if it were put into being, would make to us.

09:15

Marie McNair: Thank you.

With other transfers, there have been minor adjustments to eligibility criteria. Is it possible that we could include, for example, widely accepted asbestos-related cancers, or is safe and secure transfer where we are going?

Shirley-Anne Somerville: I think that we need to be careful when we talk about specific conditions or disabilities. As I watch this process, I have a concern about specific conditions being brought up, particularly, with the greatest respect, by a politician—not any member of this committee—who talks about getting a council set up to do something important about a particular condition. Politicians should not be determining the conditions that would be part of the scheme. Our role is to set up the eligibility criteria and the process and then leave it to experts and advisers to advise on what the changes should be. Again, I urge caution to those who think that being part of the scheme is the solution to a specific injury or a specific condition.

When it comes to the changes that can be made, the committee will have heard me and my predecessors always talk about safe and secure transition. That is important, because our first responsibility is to those who are already on the benefit. If we are looking to make changes—for example, to eligibility—we run the risk of having a two-tiered system. Indeed, we have had the same discussion on every single benefit that has been devolved. It is inherently unfair; moreover, because one set of people would be referred to by certain rules, while another group of people would be referred to by others, it would be—if I can put it this way—inherently legally problematic.

Therefore, our ability to make changes while case transfer continues very much faces challenges. That is one of the other aspects that we need to look at. It is important always to reflect on our responsibility to those who are on the benefit and our responsibility not to set up a two-tiered system, given the legal challenges that that would present.

Theoretically, some changes could be made. At that point, we would very much be talking about changes at the edges to ensure that those legal problems were not allowed to happen. We would be tinkering at the edges of a scheme that many of your stakeholders have said is inherently and systemically unfair and would not be dealing with many of the challenges and problems that they have raised in their evidence.

Marie McNair: Is the Scottish Government still planning to re-establish a stakeholder advisory group on industrial injuries, as mentioned in your letter to the committee?

Shirley-Anne Somerville: Yes, we are. That is very important. There have been suggestions that part of the role of the council that would be set up through the bill would be to advise on how a new benefit might look in the future. With the greatest respect, we do not need to have primary legislation and a council established in order to do that. For every other benefit that we have had, very successful stakeholder groups have been established to take forward points raised in consultations. I presume that the people who have been suggested for membership of the council are exactly the type of people who would be on that stakeholder group. Importantly, though, others would be involved, too.

We could put in place that stakeholder group as a way for experts and people with experience of the current system to feed into policy development, as we have done previously. It would play that role until the new benefit is in place, at which point we would move on to permanent bodies whose role and scope, as I have said before, would be determined by what the benefit looked like. We do not need a council

to be in place to do that—there are stakeholder groups that can do that for us.

Marie McNair: I have previously asked for assurances that Clydebank Asbestos Group would be included in that advisory group, and I hope that the role that it plays will continue.

Finally, do you envisage the core principles of Mr Griffin's bill being covered in your consultation on employment injury assistance?

Shirley-Anne Somerville: Obviously, people can say anything that they want to during the consultation process. I have met Mr Griffin in the past to discuss the bill, and I thank him for the conversations that we have had. I appreciate that he has found it frustrating that the Government does not support his bill, but I have certainly valued the time that we have spent discussing it.

The bill has, to date, raised many issues, and that will greatly assist the wider consultation when it takes place. Mr Griffin has gathered an exceptional amount of evidence and carried out stakeholder engagement, which we welcome. We will have that in mind as we shape how we move forwards. Although the stakeholders who support Mr Griffin's bill might be disappointed that the Government is not supporting it, we have heard what they have said, and the challenges that they have highlighted will be taken forward in our future wider consultation.

Katy Clark (West Scotland) (Lab): Does the cabinet secretary not accept that setting up a council now to do the work to inform the policy approach will mean that any changes are ready for implementation sooner? She has spoken about a stakeholder advisory group. In the light of what she has just said to Marie McNair, does she see that body as performing the same function?

I think that the cabinet secretary accepts that the current scheme is not fit for purpose—she called it “inherently unfair”. I am told that only 7 per cent of people who currently receive the benefit are women. I am not sure whether that is the exact figure, because it is difficult to get the information, but it is clear that the vast majority of people who receive the benefit are men and that that does not reflect who is being injured.

If the cabinet secretary accepts that the current scheme is not fit for purpose, does she also accept that we need to start the work on framing what a new benefit might look like as soon as possible, if we are to achieve a satisfactory benefit? Yet again, she will be responsible for a benefit that is not fit for purpose, as we have seen with other social security benefits.

Shirley-Anne Somerville: I am not sure whether you are saying that we have benefits that are not fit for purpose at the moment.

Katy Clark: Perhaps it is not helpful to get into the current benefits. To a large extent, you have simply mirrored what is happening down south, which many of us hoped would not be the position. Our hope was that we would be doing something better. However, let us not get into that discussion. Let us focus on whether the employment injuries benefit is fit for purpose.

The Deputy Convener: I am not a referee but, if the cabinet secretary wants to respond to Katy Clark's comment, I ask her to do so briefly as there was a substantive question before that.

Shirley-Anne Somerville: I will be brief, because we have an important issue to discuss. I am afraid that that was an unfortunate dig at our system, given that Social Security Scotland's client surveys provide evidence that people have seen an inherent difference and that they feel that they are treated with dignity, fairness and respect. I would more than welcome the opportunity to rebut that more fully, convener, but perhaps that is for another day.

On the substantive point, I have set out why I think that a stakeholder group can take on the type of role that has been suggested for the council until a benefit goes live. We have not needed a council or group to be set up to advise us in this way for any other benefit. Through the work that we have done on other benefits, we have proven that we can work well with stakeholders and those with lived experience to design a benefit.

It is important that that is done at the right part of the process. We need to do the policy development before considering what the actual system might look like and before we start building it. Our experience has shown how we can devolve benefits, transfer cases and make up new benefits that are only available in Scotland with stakeholder engagement. I would be confident that those who have been involved, for example, in the disability and carers benefits expert advisory group—DACBEAG—have felt that the committees concerned have been exceptionally worth while, and that they have shaped the benefits that they have addressed.

On the aspect around women, it strikes me that the current benefit has inherent flaws in the way that it is set up, as it is very much based on a system that was set up for traditional heavy industries where the employees were mostly male, and the scope of the benefit has not changed. I return to the point that that concern will not change if the proposed council is set up, because the eligibility will stay the same. Eligibility is perhaps the problem that has led to a lack of women coming forward; it is not that we need another council to do more research on other areas.

There are issues around women and around the use of a medicalised rather than a social description of disability. There are systemic issues, which we will need to consider in the context of the benefit. None of those will be solved or changed if the council is put in place.

Katy Clark: Surely the point is that the council would do work to inform decisions on eligibility. Would that not add to the policy process?

Shirley-Anne Somerville: We have had stakeholder working groups for every other benefit. DACBEAG is the most obvious example, but there have been others, and such groups have shaped eligibility and policy development. In going through a process for every other benefit, we have had stakeholders, experts and advisers in place, who have been able to shape eligibility and take part in policy development with us. We have not had to pass primary legislation to set up a benefit, not knowing whether it would actually be of use in its initial format. The process that we have gone through has helped us with shaping eligibility when we have eventually set up the benefit. There are other, simpler ways of doing that, which do not require legislation, and we have done that in the past.

Katy Clark: Surely the lesson that we have learned from previous experience is that, if we do not start the work soon and do it as quickly as possible, we end up taking on the schemes that already exist for extended periods. Surely we now have an opportunity. Whether it is an advisory group or a council—whatever we call it—we should surely try to implement as soon as possible a body that would do the work to inform the policy approach. What is the timeline?

Shirley-Anne Somerville: The timeline for the benefit has changed, as we set out previously, because we moved to include the Scottish child payment in our work. The big change to the timetable was that public announcements were made about the changes to timeframes to allow us to work on the Scottish child payment.

09:30

I am keen to progress the consultation early in the new year to seek views on how we will move forward. What that implies for the timescale depends heavily on what comes from the consultation. If people wish us to move forward with a similar type of benefit to the one that we have now, the timescale for that would be different from what it would be if people wanted an utterly different benefit—for example, one that moves away from medicalised to social definitions of mobility. The timeframe depends on what people want us to do when the consultation responses

come in—whether they want minor or large changes.

Katy Clark: Let us presume that the consultation says that work needs to be done to inform a new benefit. What would the cabinet secretary's timescale be for her stakeholder advisory group? How quickly will that work start?

Shirley-Anne Somerville: We expect the consultation to come out early in the new year and I expect the work on the stakeholder group to begin within that scope. I want to consult people on who would be in that group. I will not do that through the public consultation, but I want to take advice. Obviously, if the committee has views on who should be on the group, I would welcome those, but I see no reason for it to wait until the public consultation is over. Work on that can begin early in the new year, when we move forward with the public consultation.

The Deputy Convener: Thank you for that exchange. It was remiss of me not to say that we will have some other questions on the timescale later, but those have been pre-empted. I should have identified that as convener, but we are where we are.

We move to questions from our colleague Paul O'Kane, who is online.

Paul O'Kane (West Scotland) (Lab): I will continue from where Katy Clark left off.

The committee has heard significant criticisms of IIDB. For example, Ian Tasker told the committee that it is

“no longer fit for purpose”.

Given those criticisms, is it still an option to introduce EIA largely unreformed? Does the cabinet secretary recognise the criticisms of IIDB and does she view it as acceptable to introduce a benefit in that state?

Shirley-Anne Somerville: People will have their views about what the short-term measures and longer-term changes should be and will express them during the consultation. I have already made points about the importance of safe and secure transition for case transfer.

A lot of the points that Ian Tasker, for example, brought up concerned suggestions about changes to eligibility being implemented at the same time as case transfer. I have already pointed to the challenges that that would create, given the potential introduction of a two-tier system during that time.

However, I hear the criticisms of the current system loud and clear. I am sympathetic to the people who would like to see changes through the new benefit when it is fully devolved and administered by Social Security Scotland. We

have to be realistic about the timescale that some of that might require. I always go back to the fact that, if people want us to make large-scale systemic changes to the essence of the benefit, that will take longer than keeping the core of the current benefit and making changes around the edges. Nonetheless, I very much take the point that there are inherent problems with the benefit that will need to be examined.

We might not deliver all the changes overnight but, on the journey to where we might get to, we can make changes, as we have with other benefits. However, as part of the consultation, I am open to hearing what those changes would look like for people and how much time they would want us to take to make very large changes. Making such changes might take longer than some people would like but, if people want to see big changes, it will take longer to develop the policy for those.

Paul O’Kane: It is interesting that the cabinet secretary talks about timescales and the length of time that it will take to do things in this space. The Scottish Government has made repeated commitments to bring forward the consultation, but it has been continually delayed. The committee was told in September that the consultation would happen this year. The last month of the year starts tomorrow. Therefore, where is the Scottish Government in the process of formulating the consultation? Why have there been such repeated delays? What has prevented the Government from providing clear timelines on this?

Shirley-Anne Somerville: As I think that I mentioned already, one aspect around the timeline was that we put the Scottish child payment into the social security programme. I made that announcement in my previous role, I think. Since the reshuffle and coming back into post, I have taken the time to look at this very carefully. There are inherent challenges with regard to this benefit that are completely different from the challenges with any other benefit that we have had devolved to us. That has made me look at the process again to check where we are at with it.

I cannot stress enough the challenges of moving a benefit where the information is kept in a number of warehouses. I do not think that we even know how many warehouses the Scottish cases are in, but they are kept in a paper-based format in a number of warehouses. They are not stored in an easily transferable way and they are absolutely not digitised. There are challenges in dealing with that and there are costs related to the different ways that we might want to deal with that. We might need to think about different ways of dealing with it, because it is a very different system.

We are absolutely committed to taking the process forward, but it involves different

challenges to those of any other benefit that has been devolved to us. Those are expensive challenges, because it is a non-digitised benefit.

Paul O’Kane: The cabinet secretary has made that point a number of times. The issue is that the pledge to carry out a consultation is now three years old. Can the cabinet secretary give the committee any sense of the timescale for the consultation? As I said, the last month of the year starts tomorrow. Clearly, you are not going to deliver a consultation this year, so is there any indication of when it is going to happen?

Shirley-Anne Somerville: I have already said to other members that I would expect the consultation to begin early in the new year. With the greatest respect to Mr O’Kane, I must say that, as well as the announcement on the Scottish child payment, work on social security has been impacted by Covid. I ask him to please bear that in mind when he talks about what has happened in social security in the past three years. During that time, we have continued to see a number of the most complex benefits in relation to disability that we have had devolved to us go live and be successfully implemented.

On this benefit, yes, we need to move forward. However, I have been taking time to look at the benefit since I came into post, because I recognise that there are challenges that we need to look at that will not necessarily be resolved in a simple fashion and that there are inherent problems involved that we will need to look at in great detail.

Paul O’Kane: The Scottish Fiscal Commission has forecast that spending on IIDB will be £84 million this year, falling to £81 million in 2027-28. Does the cabinet secretary recognise that the budget saving there is, in essence, because people are dying? People are not able to make a claim and they are dying. Does she recognise that that is a serious issue?

Shirley-Anne Somerville: The Scottish Fiscal Commission makes its forecasts based on the current eligibility for the current scheme, as it does with any benefit. Obviously, it cannot take into account any potential changes that could be made to eligibility until the Scottish Government has designed the benefit.

The Deputy Convener: I know that Mr Mason wants to explore the finances underpinning some of this but, before we come to that, I want to check something. Cabinet secretary, you keep talking about the fact that, if the eligibility criteria do not change, the outcomes will not change in terms of who qualifies for and receives the existing benefit or the new Scottish benefit. We heard a lot about the judgments being based on expert opinion and the reasonableness test in the eligibility criteria.

We also heard that the IIAC has identified four conditions relating to long Covid that could potentially allow people to receive benefits, and that is caught up in the process. However, there is a difficulty with that, because the recommendations that politicians and processes rely on experts making are not always accepted—in this case, potentially, by the DWP on behalf of the UK Government. The reason I am putting that on the record is to ask you what parts of the eligibility criteria might need to be looked at again and changed. Should the eligibility criteria always be expert led?

Shirley-Anne Somerville: It is important that those aspects are expert led, both in the design of the policy and in the implementation of the policy once it is in place. Previously, you heard evidence—I think that it was from Anna Ritchie Allan, but it might have been from someone else—that the current scheme does not fit with the social security charter. From my reading of that evidence, there was a real desire for us not to copy something that embeds inequality and discrimination. That was an important aspect that was brought up.

Some of the challenging aspects around eligibility that I have already mentioned include the medicalised description of disability, which does not fit with how we do things in the rest of the devolved settlement on social security—that is but one example.

I am aware that the Industrial Injuries Advisory Council has done a great deal of work on long Covid and has made recommendations to the DWP—I understand that the committee has heard evidence on that. However, I recognise that, although those recommendations have been with the DWP for some time, it has not made a decision on them, and I have asked for an update from the DWP on when it expects to be able to make a decision on long Covid.

I hear people's frustrations about the fact that, when the current advisory council makes a report and hands it to the DWP, decisions are not made quickly. Again, I point to the fact that there is nothing in the bill that would change that, so people's frustrations about the timelines and the decision making would not change if the bill was enacted.

John Mason (Glasgow Shettleston) (SNP): I will focus on the financial side of things. We have asked previous witnesses about the financial memorandum. If the council were to be established—I accept that the Government is not keen for that to happen—do you think that the figures in the financial memorandum are realistic?

Shirley-Anne Somerville: I think that it makes a number of assumptions about what the council

would do and how it would operate. Again, as I said, I do not know whether the figures are realistic, because I do not know what the benefit will look like that it will be advising on. I can only look at what the bill suggests that the council would do in a situation in which the DWP is handling the benefit on behalf of the Scottish Government through the agency agreement. In that case, we would have a council that might or might not undertake its own research, or that might commission research, and that would submit its conclusions to the Scottish ministers, but the DWP would not have to act on those conclusions. Again, I would query the value for money that that would provide.

09:45

Concerns have also been raised about duplication and whether any council that was set up would duplicate work that is already done by the IIAC. If there were to be duplication, that would be a concern.

In addition, the committee has heard from a number of stakeholders that the proposed research budget is insufficient to enable a meaningful impact to be made. There is a question about whether the amount of money that the council would get would be enough to enable it to carry out good research. Even if it carried out good research and came to conclusions, the DWP would in no way be obligated to act on those conclusions. There are concerns about that.

John Mason: You raise quite a lot of points, one of which is about research. I understand that, at the UK level, there is only £100,000 for research, which seems incredibly low. The bill proposes a figure of £30,000 for research. Do you get a lot of research for £30,000, as far as you know?

Shirley-Anne Somerville: No, you do not. Part of the challenge with the way in which the current council is set up—again, the committee has heard about this—is that there is an expectation that a lot of the research or work is done in a voluntary capacity. I do not want to pre-empt any consultations that the Government might take forward, but it would not seem a sensible or professional way to proceed to make it an expectation that people would do that work voluntarily.

The IIAC carries out a tremendous amount of research, but you do not get much for the figure that you mentioned. Therefore, I would query whether a sum of £30,000 would be sufficient and would genuinely question—if that sum was given to the proposed new council—what the Government or anybody else would be able to get out of that process.

John Mason: Another cost that has been mentioned is that of the information technology set-up. We all know that IT costs sometimes run out of control. An IT set-up cost of £50,000 has been suggested, with annual maintenance costs of only £7,000. Those figures seem quite low to me.

Shirley-Anne Somerville: I point out that, although it might be the case that IT costs sometimes run out of control in other areas, that has not been the case in Social Security Scotland. I want to put that on the record.

I take your point that there is a concern about public agencies and large IT systems. Again, it is difficult to assess the proposed costs when we do not yet know what the benefit will look like. In fact, I would say that it is impossible to do that, because we do not know what benefit we will be fitting into that system. Therefore, I would not be able to say one way or another whether the proposed costs are relevant, because we are talking about a part of the jigsaw that is yet to be designed.

John Mason: You have made the point that, even if a new council was set up and it recommended an expansion of who could receive benefits, that would not necessarily happen, for a variety of reasons, one of which relates to cost. If the council was set up and it recommended that more people should get benefits—more women, for example, or more people with other injuries or diseases, or perhaps stress—where would the budget come from? The fire service has been looking for support to deal with cancer-related issues, and there are teachers with stress and so on. This is not in the bill, but if the figure of £84 million, or £81 million, that has been mentioned were to double, would that be financially feasible?

Shirley-Anne Somerville: Again, I stress that none of the changes that have been suggested would come from the bill, because the DWP is not obligated to act on any such changes. However, if changes were to be made to include a greater number of women, the cost would go up, which would affect the Scottish Fiscal Commission's forecasts. That would have to come out of the Scottish Government's block grant, because we would be making additional asks of the social security system that would not be covered by the DWP and would therefore have to be found from our relatively fixed budget, as has been the way for every other benefit change that we have made. When you add that all up, it is a large amount of money. It is right to ensure that we are delivering the social security system that we want in Scotland but, as always with such asks, there is a financial cost that must be met from the Scottish block grant.

John Mason: I am also on the Finance and Public Administration Committee. I do not want to

overlap too much, but that committee is concerned about the number of organisations in Scotland. This is a small country, but we are getting more commissioners and more councils, commissions or whatever we want to call them. Am I right in saying that there is an assumption in the Government that we should not set up new bodies, except as a last resort?

Shirley-Anne Somerville: Yes. We look at these things case by case. If something new is being delivered, we ask whether that can be done by changing the remit of a current body. The example was given of changing the remit of SCOSS but making what is being proposed a sub-committee. We would have to change SCOSS because it was set up for an entirely different structure and does not have the expertise to deal with these matters at the moment. That is one example of a place where you could look at using a current body, rather than setting up a different one, because, as you rightly point out, there are inherent costs in setting up new bodies. We must take account of those and, if we can simplify that process or use agencies and bodies that are already in place, we should certainly look to do that in the first instance.

John Mason: Without pre-empting the coming consultation, you are saying that that could be an option and that all the advice, research and other functions could be fitted into an existing body, instead of setting up a new one.

Shirley-Anne Somerville: We would certainly want to ask whether people think a different body is required or whether a current one could be adapted. What that council would look like and where it might sit depends entirely on what we want that council to advise the Government on. We may be looking at a very different benefit.

The Deputy Convener: I have one final financial question. It is not directly related to the bill but is about the financial exposure that is caused by demand-led budgeting within social security, which the new Scottish benefit will be subject to. You said that your officials are in contact with the IIAC and the DWP about long Covid in connection with current benefits. Does that include any modelling of the financial exposure for the Scottish Government over any agency agreements, if the DWP was to accept those? That is the first part of my question.

What horizon-scanning work is the Scottish Government doing? You can set that out in writing if you want to, cabinet secretary. Without pre-judging what any new eligibility might look like, what future financial exposure do you anticipate for the Scottish Government? I am mindful that, if Scotland does the right thing—as we absolutely should do—but the UK does not change anything, that will increase pressure on the Scottish budget.

That is not directly connected to the financial memorandum to this bill, but there is definitely a correlation between the aspirations of this bill and the financial exposure of the Scottish budget and Scottish Government. Is there anything more that you can say about that?

Shirley-Anne Somerville: Demand-led budgeting within social security is a challenge for us. If the DWP were to make a change to its system in respect of long Covid, we would receive a block grant adjustment for that, so I am not concerned about any changes that the DWP might make, because there would be an understanding that, if it changes its eligibility criteria or number of cases, we would expect the same.

In effect, the impact should be reasonably neutral. The difference comes when we make changes up here that are not made down south, which—inevitably—puts major pressures on our budget. I would be happy to provide an update on how much above the block grant allocation we provide to social security because of the changes that we have made to the current devolved benefits and because of the new benefits that we have brought in.

We have not gone into horizon scanning in great depth, because that would very much depend on what the benefit looked like. The number could be quite large; that would depend on what came from the consultation. We will stress the financial implications, as we always do in consultations. When people look at introducing things, that comes with a cost that needs to be met from the block grant.

The Deputy Convener: This is always a dangerous thing for a convener to say, but I do not think that colleagues have any other questions. No one is catching my eye—mind you, I am not looking at anyone.

We will end the evidence session. I thank the cabinet secretary and the two officials who supported her; we appreciate your attendance. We will suspend briefly while we change panels.

09:56

Meeting suspended.

10:01

On resuming—

Delivering Scottish Social Security

The Deputy Convener: Welcome back. Our next item of business is an evidence session with Dr Sally Witcher, the former chair of the Scottish Commission on Social Security, commonly known as SCOSS. The purpose of this session is to gain further insight into what lessons for the Scottish social security system can be learned from what has happened up to now.

I warmly welcome Dr Witcher to the meeting. I thank her for accepting our invitation and I also put on record our thanks for all the work and effort that she has put into designing and supporting Scotland's social security system up to now. Before we move to questions, I invite her to make an opening statement.

Dr Sally Witcher OBE FRSA (Inclusive New Normal): I start by thanking the committee clerks and convener for their action to mitigate the risk for me, as one of many people who remain at high risk from Covid, of being with you today in person, thereby enabling me to do so.

I am delighted to have the opportunity to share with you my reflections on my former role as chair of SCOSS in the context of a career spanning 30 years, in which social security has been a recurrent theme.

My learning concerns the strengths, weaknesses and suchlike arising through the innovative development of Scottish social security, as discussed in my article for the *Journal of Social Security Law*. Key to that are the constraints arising from the many interdependencies between reserved and devolved benefits.

I was truly sorry to resign from my role as SCOSS chair last year. My commitment to the goals for devolved social security and to the important role of SCOSS was undiminished but, while recognising that there has been much valuable innovation, my assessment of what the Scottish Government can realistically achieve has considerably reduced.

I will highlight the following points. The high-level architecture of the new system that was set out in the Social Security (Scotland) Act 2018 was remarkably coherent, anchored by a set of principles spanning all stages of the process, from policy development to delivery to continuous improvement. Those principles were translated into practice by an enforceable charter, and people with lived experience have been integrated throughout the development and implementation of the system in highly innovative and valuable ways. However, there are always going to be significant challenges to maintaining coherence

and simplicity when translating policy into legislation, delivery and impact in a turbulent, short-termist political environment, with rapid churn of key players and changing end-user needs, often attributable to failures in other areas of policy, but also, of course, the Covid-19 pandemic. Much complexity is added by the multiple interdependencies that shackle the Scottish Government to a Westminster Government that is pulling in a very different and, in my view, cruel and destructive ideological direction.

Far from there being complete autonomy over devolved benefits—which was anticipated and is still, I fear, sometimes expected—devolved benefits serve as a passport for reserved benefits and vice versa. The Scottish Government is tied to Westminster in terms of budgets. Where Westminster accepts differently framed devolved benefits as passports for reserved benefits, there is the on-going need for the respective delivery systems to exchange information on eligibility.

Westminster could pull the rug from under the devolved system whenever it chooses, and it is showing clear signs that it might well do so. If Westminster tightens the eligibility for reserved benefits, that can have an impact on access to devolved benefits, and the Scottish Government cannot do anything to increase Westminster expenditure without meeting that cost itself.

That plays out into SCOSS's scrutiny role in ensuring that new devolved regulations fit with the rest of the devolved system and UK benefits, too. It is a unique model as a body with potentially wider application—it is a way of inserting much-needed expertise and continuity. It means that knowledge is directly inserted into the legislative process in what is otherwise a very fluid environment. It will never be independently able to determine its own work plan, but it must remain independent from Government and Parliament via this committee, although closely connected to both. SCOSS is not just another stakeholder for the committee. A strong relationship is helpful to both.

I regret that, due to secretariat challenges, we were not able to give more time to the social security charter, which was co-designed with people with lived experience. It has been a very effective tool in setting Social Security Scotland's standards and culture from the bottom up, but it has been underutilised and perhaps in some ways misunderstood.

It is clear that there have been a lot of developments since I left my role. Obviously, the Social Security (Amendment) (Scotland) Bill is one of them. It is great to see some sensible recommendations that address some of the governance issues that I have highlighted.

There have also been challenges in the roll-out of the adult disability payment, as I suspected there might be. The independent review of ADP is pending, and other devolved areas of responsibility obviously still have to be rolled out. Everything will be impacted by the sorts of challenges and constraints that I have outlined, but there remain significant ways in which the Scottish Government has made, and still can make, a positive difference to the lives of claimants, if not on the scale that some of us perhaps would have wished.

I welcome members' questions with some trepidation, as I am no longer on top of the detail in the way that I was. I am not immersed in the area, and I am thoroughly out of practice in appearing before committees. With that caveat, I hand back to you, deputy convener.

The Deputy Convener: Thank you, Dr Witcher. Those are very helpful opening remarks.

I hope that one of my colleagues will return later in the evidence session to the financial challenges and the relationship between devolved and reserved benefits. I will not take up those cudgels in my opening question—I will be a bit more geekish.

In our predecessor Social Security Committee, which I convened, we used to appreciate reports by SCOSS that made quite significant recommendations to the Government on how it could improve the roll-out and delivery of a whole variety of matters. By and large—I would say this—that seemed to work well. The recommendations were robust, there was clarity and the Government seemed to respond—not always, but by and large—positively and constructively. I am a Government back bencher, and it suits me to say those things, but have I captured things accurately? Is that one of the things that have worked well, or does more need to be done to support SCOSS in that role going forward?

Dr Witcher: SCOSS was always very concerned to ensure that the recommendations that it made were realistic. Sometimes, that led us to some unpalatable conclusions, but it was also important that we were careful about wading too far into the policy terrain of decisions that were—rightly, because they needed to be—matters for political judgment. Most of the recommendations were accepted, and it has most definitely shown its worth as a key cog in the social security environment.

In my time, there were significant challenges, as I itemise in my article, around support, the nature of resources and the very rapid churn of temporary staff in the secretariat, which hampered what we were able to do. That was unfortunate. The issues

did not necessarily arise through a lack of effort on the part of officials. The Scottish Government's civil service has incredibly cumbersome processes—much as the DWP did, from what I remember from when I worked there—and it is very hard to make them work fast when you need them to do so.

Because of the way in which we were set up, I found that I was in a difficult position in that I was chair of a board that had no direct line responsibility for the secretariat. I was not even allowed to be on the selection panel for the post of secretary. In effect, that is like the board of a body not being able to be involved in recruiting its chief executive. Officials did their best to make sure that I was involved where that was possible. For the first recruitment, I was involved, although, probably, I should not have been involved.

That was difficult because, as the board of a separately constituted body, we had responsibilities—for governance and delivery, for example—but no constitutional levers to drive that. That was all within the gift of the Scottish Government, and if, for whatever reason, the Scottish Government was unable to deliver, there was nothing that we could do about that. However, I, as chair, felt responsible. That was not always a comfortable place to be.

I was pleased, therefore, that, when I made—let us say—suggestions that some of those issues might usefully be addressed, those were heeded. A review has been carried out and has come up with largely very sensible recommendations. From what I have seen, the changes in the bill will go a considerable way towards addressing some of the governance issues. Meanwhile, the secretariat has been much expanded, with permanent staff. My feeling is, therefore, that SCOSS is now well equipped to carry its role forward. That is important.

We achieved what we did despite the lack of support and in the face of difficulties, rather than having support to drive us forward.

The Deputy Convener: Dr Witcher, it is not often that a witness comes to the committee, identifies the problems, then, in the same response, gives the solution and says that everything has been delivered, so I thank you. I have one brief further question, although I may come back in later, depending on time.

According to the paper that we read ahead of today's meeting, you are keen that the expertise that is captured in SCOSS is used proactively as well as reactively. Alongside scrutinising regulations and legislation and making recommendations for what should be tweaked, altered, made clearer and so on, I think that you were talking about SCOSS taking a much more

proactive role. A pattern is emerging in the interaction between devolved and reserved social security matters, and there is a suggestion that a piece of research—a bit of proactive work in relation to that—would be helpful. Can SCOSS currently not do that because it is not able to do it or is not resourced to do it? You mentioned it in your paper. Could you say a wee bit about that, before colleagues come in with some other questions?

Dr Witcher: I am not entirely sure that I have understood the question, so please stop me if I have not got the right end of the stick. The problem is the way in which Governments are structured—in the way that they work, the way that the civil service works and the way that politics works. There is very little continuity. People gain expertise, then go. Convener, as the convener of this committee's predecessor committee, you are a rare exception in coming back to the area, but, generally speaking, people gain expertise then go away, and somebody else comes in with different ideas and so on. What is really lacking in a complex area such as this is that kind of consolidation of expertise—that institutional memory, if you like—and strategic oversight that looks backwards, forwards and across at the same time. That is what I think that SCOSS brings to the table.

10:15

There could be scope for SCOSS to do more proactively. The charter potentially opens the door for that with more resourcing—which it now, hopefully, has—because the body will be able to proactively initiate reports on matters contained therein. However, in my view, the commission is not quite as open in what it can do as is the equivalent Social Security Advisory Committee at Westminster, which under its powers can, quite independently of anything, decide that it wants to investigate something and then go off and do that.

The charter very explicitly focuses on the role of the Scottish Government and Social Security Scotland, but, as I have outlined in the paper and just now, what the commission can or cannot do is very much impacted by the DWP and other players. There are some challenges in that respect. For example, how, through the charter, can you look at that bigger picture of underlying factors when the commission has no direct relationships with, say, DWP officials? I also cannot imagine that DWP officials will be terribly keen to have that relationship with us, either.

I do not know whether that answers your question. Was that what you were seeking?

The Deputy Convener: I think that it does answer it. The important thing is that you have laid

out quite clearly not just the limitations but the opportunities going forward, and you have just left that comment about the relationship with DWP officials hanging. That absolutely needs to be developed.

However, I will not explore that further, because we have a ream of colleagues who want to ask questions, and I do not want to dominate the session. I call Jeremy Balfour.

Jeremy Balfour (Lothian) (Con): Good morning, Dr Witcher. I am sorry that I am not with you in person, but thank you for the evidence that you have given so far.

You were around during the passage of the Social Security (Scotland) Bill. One of the questions that we asked at the time was whether the charter should have legal authority behind it. The committee and, indeed, the Government said no to that question. Should we revisit that? Does the charter need a legal basis so that people can challenge it in some way, or is it working as it is at the moment?

Dr Witcher: That is a really interesting question. One of the important things about the charter is that it has more teeth than most charters, which, frankly, are not worth the paper that they are written on—in my humble opinion.

The charter contains enforcement measures not just via the commission but via reporting to the Parliament, and that is one area where it has perhaps been underutilised. It potentially provides a vehicle through which, for example, this committee could be asking questions and holding Social Security Scotland and the Scottish Government to account. That is perhaps something to consider.

At the moment, I have no fixed views on whether legal backing would be essential or would add value. However, the charter needs to be made meaningful. The mechanisms that are in place have not been fully tested yet. If they do not deliver the level of enforcement that was promised—if they do not have the teeth—then yes, legal enforcement is definitely something worthy of consideration.

Jeremy Balfour: Thank you—that was helpful.

I just have a couple of quick questions. The first is about an issue that has already been addressed with the convener. The timescales on which you were asked to respond to consultation documents presented a challenge. Will you outline how the process worked? Did you have enough time to respond to the documents, particularly the ones on regulations, which were very detailed?

Dr Witcher: Yes, the timescales were very often a challenge. The legislative timetable was a challenge and the intervention of the pandemic did

not help matters, because a lot became backlogged. In the year after lockdowns, a huge amount of business came our way.

I am trying to be realistic here. Yes, in an ideal world, SCOSS would certainly have more time, governments would probably have more time and committees would have more time. However, we are not living in that world, and we have to be realistic.

Although the 2018 act says that SCOSS should be given the time that it needed, the reality was that, if there was a legislative timetable imperative for some regulations to be done by a certain point, that would happen whether we reported or not. If we missed the boat, we could still report but doing so at that point did not have the impact that it would have done.

It is certainly the aim that SCOSS should be given as much time as it needs to report. That might be possible with better planning, but I do not know, because officials tried it and there were pressures that made that very hard. The problem was that there would not necessarily be one set of regulations to deal with in an inadequate amount of time; there would be a whole bundle coming together at once, and we had to deal with several, all with their own timelines. That was where it became extremely challenging.

Jeremy Balfour: That is helpful. You have mentioned the Social Security (Amendment) (Scotland) Bill. The committee is scrutinising the bill and we are carrying out a consultation. With your experience, if you could make one change to the bill, what would you add to it that is not in there at the moment?

Dr Witcher: You are assuming that I have actually read—

The Deputy Convener: I apologise to you, Dr Witcher, as I suspect that you would like to see more than one change. I also apologise for cutting across you.

Dr Witcher: You are assuming, Mr Balfour, that I have read the bill in depth, scrutinised it and know to some extent what is in it in order to form a considered judgment. I regret to tell you that that is not the case. I have some thoughts on what I have seen, but I am not in a position to go into that level of detail. Also, I do not want to, because I have, I hope, a reputation for not giving off-the-cuff answers to things that I do not feel equipped to answer. SCOSS has the same reputation. I am happy to go away, look at it and come back with an answer to your question, having given it due consideration, but I would prefer not to attempt to answer it here and now, if that is all right with you.

Jeremy Balfour: That is absolutely fine.

Katy Clark: The paper in which you reflect on your experiences is really helpful. You refer to Westminster's

"less than glorious track record"

on social security benefits. It is fair to say that many of us have quite high expectations of what might be possible in Scotland. Indeed, in your paper, you talk about those

"high expectations bumping up against"

implicit and explicit constraints.

I am somebody who looks at outcomes. One of the surprises to me is, despite what the cabinet secretary said earlier, the frustration and experience of many claimants, who do not feel that the outcomes are much different from before. They still have to wait lengthy periods for benefits and, sometimes, those benefits are not granted.

There are two categories, I suppose. There is the creation of new benefits such as the Scottish child payment, and there is the migration of existing benefits. In relation to the latter, what are the lessons from our experiences so far about how we do that better—we do not want to just mirror what comes from down south—and how do we speed up the process to get to a better outcome? I know that a lot of that is about money, but perhaps we can put money to one side and focus on the aspects that are not about money.

Dr Witcher: There is a lot in that question and I want to make sure that I have understood it. Are you asking about the expectations for delivery and of what is delivered?

Katy Clark: I am asking about what lessons you think have been learned over the past few years, so that we better migrate benefits in future to provide a quicker process to get to what might be a better outcome.

Dr Witcher: The constraints to which I refer in my paper have major roles to play in different respects. However, another constraint relates to the scale of the task of setting up a new delivery system from scratch while establishing a new group of benefits for that system to deliver. Although I do not look that old, I first entered the realm of social security in 1989. I remember the unmitigated shambles that ensued when the disability living allowance was introduced. The then chief executive of what was the Benefits Agency—the set-up was a bit like Social Security Scotland's—was hauled in front of committees and "Newsnight" and had to account for that.

The reality is that setting up a new system takes time. It is important to take the time because safe and secure transition is the priority. In a way, it is impossible to have another priority because of the agency agreement—you have to do that first. If

you also try to change what is being delivered while trying to transfer the benefits, you are attempting to run two processes at once. People may be transferring while also applying for other benefits or a changed benefit, which is immensely challenging to deliver. In a way, I suspect that a bit of that is what has happened with the roll-out of ADP, alongside the challenges with scale.

It is much more straightforward to deliver a high-quality, person-centred process at small scale. Larger systems do not do that so well because it takes more time and resource. You cannot always have your cake and eat it. Some of the very good things that Social Security Scotland is trying to do will take more time and, from a purely bottom-line basis, may cost a bit more. However, ultimately, the outcomes will be better.

Social Security Scotland has experienced some challenges. I understand the frustrations of politicians and benefit recipients, because I feel the same frustrations. However, if I apply my practical brain, I know that trying to go too fast will cause even more problems. That said, I am not into the nuts and bolts of Social Security Scotland's systems, so I cannot say whether there are other ways to do it. I am aware that it has put in place some changes to its systems and that those are starting to deliver some results, but you will have to pick that up with the organisation. I do not know whether that answers your question. Does that help?

Katy Clark: Yes. It has given a perspective, which is helpful.

Marie McNair: You mentioned in your paper that you accepted that doing away with the 20m rule was not possible at that point. Can you share any further dilemmas around that issue? Just now, we are looking at employment injury assistance support, which has remained unchanged since 1948.

Dr Witcher: At the time, the main challenge was making a change to the benefit that was going to be delivered while transferring a load of benefits into the new system. That was going to cause a lot of challenges that could be impossible, or very hard work, to address. It is about the impact of those constraints.

10:30

I listed different types of constraints in my paper. So many things are tied together. In a way, the role of the committee and of SCOSS is to tease out whether there is realistically room for manoeuvre. There often is, but we sometimes have to burrow quite deeply. There have been some positive changes to ADP, for example, but

there are sometimes practical reasons for doing things.

What I passionately want—and, I suspect, what the committee passionately wants—can hit up against the practical realities of what can be done in the real world, and we have to come to terms with that, as was my experience. We quizzed officials and ministers thoroughly to try to find a way forward, and we had to conclude that our proposal could not be implemented at the time. It was a case of our saying, “Maybe in the future, but not now”.

Marie McNair: Thank you. That is me.

The Deputy Convener: That was short and sweet.

John Mason: My question may be partly on the same theme. You wrote in your paper:

“It has been a story of high expectations bumping up against implicit, consequently rendered explicit, constraints”.

How many of the constraints are financial constraints? You have spoken quite a lot about bureaucracy, process and so on, but is one of the major constraints a lack of finance?

Dr Witcher: It is one of them, but another key one is the way in which reserved benefits give rise to eligibility for devolved ones, and vice versa. For example, I was recently looking into the UK Government’s response to the work capability assessment consultation. There is a paragraph in it that makes it very clear that the assessment is an interim measure but that, in due course, the Government’s aim is basically to use the personal independence payment assessment.

My question is: if PIP—for which ADP is the equivalent—is to become a route into, or aligned with eligibility for, a reserved benefit, as in universal credit-type benefits, what does that mean for ADP if it is made more generous, and would the DWP regard that as a passport to the reserved benefit? In effect, there would be an inequitable system. If PIP was less generous and ADP was more generous, and both granted access to the same things under universal credit, that becomes problematic and inequitable. People would have to go through a separate assessment and effectively do a PIP assessment on top of an ADP one. I am talking about examples such as that and whether the DWP accepts a benefit with more generous criteria serving as a passport for reserved benefit. What happens if it does not? That is a key issue.

Officials and SCOSS—certainly officials—always had to have an eye to whether what they were doing would be acceptable to the DWP. That was not at all what people understood when the system was set up. That was not my

understanding, for sure—I was perhaps overoptimistic. Such constraints are very real.

There are other constraints, too. When the Scottish child payment was introduced, it relied on the DWP providing information so that the payment could be extended. If the DWP did not do that, the whole thing got held up. There are a lot of different ways in which such things interconnect, and finance is certainly part of it. If Westminster decides to cut eligibility and budgets, that will feed through to Scotland. As far as I am aware, the Scottish Government does not have a whole lot of money down the back of the sofa to play with, and we have to be realistic about that.

John Mason: In quite a lot of what you have said, you have emphasised the relationship between Holyrood—including the Scottish Government, the Scottish Parliament and everything else—and Westminster. That is obviously not something that we can control. I note that you say:

“I warmly welcomed and reciprocated the keenness of the then Chair of Westminster’s SSAC to liaise regularly with SCoSS”.

That sounds positive, although I do not know whether that is continuing now that you are not there. Is there anything that we in Scotland can do to improve the relationship with the DWP, or is it just going to be one of those things that fluctuates over time?

Dr Witcher: Again, it is very hard to say. I think that you are right: it will fluctuate over time. It may even be contingent on personalities. Officials may work together well, but they are obviously answerable to ministers, who will have different agendas. I think that there is a cultural divergence between the direction of travel for DWP ministers and the UK Government and what the Scottish Government is trying to do with a system that is based on fairness, dignity and respect. That is perhaps just something to be mindful of.

In the early days, SCOSS had very good relations with the chair of SSAC. The new chair seemed less keen to engage with us. There may have been entirely good reasons for that, but I cannot comment on that. I have no idea what that relationship is now, but it is a very important one, in my view. If it works well, it can be immensely valuable to both SSAC’s and our scrutiny.

However, my sense is that the DWP ministers are, to be frank, not very interested in devolved social security. It is not uppermost in their minds—or even, possibly, at the back of their minds. I suspect that the ramifications of what they do for devolved social security are not something that they are frightfully bothered about. I would like to be wrong about that. I look forward to being proven wrong.

John Mason: That is also helpful. Another comment that you make is:

“Despite such constraints on policy changes, Scottish Government has thankfully been able to diverge a long way from Westminster”.

Is that more about how we do things, rather than the actual content?

Dr Witcher: Generally speaking, we have a lot of leeway in how we do things. We should not underestimate the importance of that. The experience that people have in engaging with DWP processes is pretty horrendous, a lot of the time. That should certainly not be the case when they deal with Social Security Scotland, despite its recent difficulties. The charter is a way of trying to drive standards, and accountability is built into that, as we have discussed.

In relation to what is delivered, things are more compromised and constrained. Part of the skill in my role and SCOSS’s role was in ducking and diving, testing out little routes and possibilities, and asking a lot of questions. Could we do it like this? Why do we not do it like that? Why is it done like this? We have to be realistic, but we also have to challenge what realistic means to try to find scope for innovation.

The involvement of people with lived experience has been important in the way that the system has been set up because, as I ask in my article, if it does not work for the people who are at the sharp end, what is the point? What are we all doing? It is surely those people whom the whole thing is supposed to benefit, and they are the ones who know whether it benefits them. That is a very important perspective and a very important feature of the devolved system. It is not present in the Westminster one, and I think that it shows.

Roz McCall (Mid Scotland and Fife) (Con): Hello, and thank you very much indeed for the information. I will be mopping up, because I have some questions that are based on your answers to other questions.

In response to my colleague Mr Mason, you said that some of the hope in the initial stages of the setting up of SCOSS, as regards how things would or could be in the early days, has not quite come to fruition. Given those challenges, do you think that the devolved benefits system is as good as it could be? You have highlighted that it has maybe not quite met the aspirations that you had at first.

Dr Witcher: I think that, in some ways—indeed, many ways—what has been done on devolved social security has probably made very good use of the unexpectedly limited room for manoeuvre that the Scottish Government really has. With SCOSS, I think that, yes, we could certainly have done more, but at that stage, the charter had not

really kicked in; delivery was still small scale and, therefore, the need for challenge and oversight was perhaps not there at that time in the way that it will be—and probably is now, given the scaling up and the increased complexity of the different forms of provision that are being delivered and what is being transferred.

I think that the charter is up for review next year, and it will be incredibly important to hang on to its ethos and the fact that it is driven from the perspective of the people using the system. It will come into its own and become an even more useful tool.

In a sense, then, SCOSS did the essential work that it needed to do—and to a very high standard—and demonstrably added value. It could have done more, but the bits that it did not do are not irrevocable and were perhaps not the most important bits of the role at that time. They will become more important going forward.

Roz McCall: That was helpful—thank you. A lot of the information that you have provided today, including the article that was sent to us, has been very helpful to me, as somebody who is reasonably new to the committee and does not have that systemic memory that you have mentioned.

Another question sprung to mind when you stated earlier in the session—in response to the deputy convener, I think—that SCOSS is now in a position where it could perhaps handle an increase in responsibility in what we are looking at. Earlier, the cabinet secretary was of the mind that that was maybe not the right way to go. Can you expand on why you think this is the right place for the commission to move forward and why it provides the right avenue for taking on that additional responsibility?

Dr Witcher: Are you talking specifically about industrial injuries?

Roz McCall: I am, yes.

Dr Witcher: Part of the challenge is that I do not know what that benefit will be. Until we know what it is, we will not know what expertise we will need to scrutinise it and ensure that it is designed and delivered as effectively as possible. If it is to be along the lines of the IIAB, we will need a whole different set of perspectives, skills and knowledge. We will need clinical and epidemiological—or whatever the word is—knowledge, the views of employers and trades unions and, I would say, lived experience. SCOSS just does not have that. That is not what it is there to do, and it is not what it was designed for.

If you were to extend things in that way, you would, in effect, have to have everything that would be needed for a separate body, but it would

be bundled in with what was already there. I am not even sure that that would be particularly helpful—well, it would not be helpful. It would merge things in such a way that you would still have quite distinct roles without their completely overlapping.

That said, I think that, given that SCOSS has that more strategic oversight, and given that this is one of a number of different kinds of provision, you could have a structure in which whatever new body was created, SCOSS—and perhaps the Scottish Fiscal Commission as, if you like, the third angle on this—could liaise to maintain the overarching oversight, which I think is pretty valuable. That is just a thought—it is not something that I have considered in depth—but I can see a need for that. However, I tell you now that, if something that was basically the Westminster equivalent were to be introduced in Scotland, SCOSS could not do the work. It is not the right body.

Roz McCall: That was very informative—thank you. Thank you for your candour, too. I appreciate it.

10:45

The Deputy Convener: I have a couple of questions—I said at the start that I would come back in if there was time. My question is about the relationship between devolved and reserved benefits. The expectations on the Scottish social security system can sometimes be more complex than we realise. There is an expectation that the system will mitigate the worst aspects of the UK system, so 455,000 households in Scotland get a council tax reduction that they would not get elsewhere in the UK and £83 million has been spent to ensure that households do not suffer the bedroom tax and to mitigate, where possible, the benefits cap. We are spending directly on reserved matters.

We are also proactively progressive. I am thinking about the £450 million—or whatever the figure is—that is spent on the Scottish child payment. Dr Witcher, you said something interesting about policy overspill. I apologise if “generous” is the wrong word but, if we are more generous and have different rules—for example for Scottish disability assistance—and more people qualify for a passported benefit, there are cost implications that could effectively become a bill that is chargeable back to the Scottish Government under the terms of the fiscal framework.

As a committee, and as a nation, we do not always understand the financial underpinnings of that. My concern is that it is difficult to see, in one place, what the Scottish Government spends on

mitigating Westminster policies, what it spends on other areas that are new to Scotland and the cost implications of policy overspill and passporting.

Do you have any reflections on that? I have used a jumble of words that might sound quite complicated. How can we boil that down to a user-friendly and easy-to-understand analysis of the numbers and do that consistently every year so that this committee, SCOSS and others can look at that and make an informed decision about what to do next with the Scottish social security system? We are very ambitious, but we must have the money to pay for that.

Dr Witcher: You are asking about a user-friendly way of doing that. Okay; let me think.

I very much like the way that you have segmented expenditure to soften the worst impacts and expenditure to do things differently or innovatively and add positive value, as opposed to just reducing those worst impacts. That might be an interesting kind of analysis for the Scottish Fiscal Commission to look at: it would not necessarily be a job for SCOSS.

I did not mention the Scottish child payment earlier, but that is an example of the Scottish Government going beyond just trying to make things less awful to doing something positive, different and useful, but it is very constrained, for a number of reasons. If I have understood it correctly—I may not have—the Social Security (Amendment) (Scotland) Bill includes a proposal to change the structure of the Scottish child payment so that it is no longer a top-up benefit but becomes a stand-alone one. That would be a very good idea, although it was done the way that it was done for good reasons.

There is a job of work to be done to communicate and have a grown-up conversation with people out there, and in the Parliament, about what is and is not feasible and why that is the case. It is important to be challenging, and the committee is here to ask awkward questions, as indeed is SCOSS. There will be creative ways forward that ministers and officials may not have thought of.

It will often be a matter of softening the worst impacts, which is not to be underestimated: it is very useful to do that. Every little helps. However, I suspect that that is not necessarily what people envisaged when the Scottish Government received the devolved powers. There were higher expectations. Making overly aspirational claims about what is possible does not serve stakeholders well. It is not useful or helpful, although I understand that there may be political drivers behind it.

The Deputy Convener: That is helpful. Just to put it on the record, the cabinet secretary said in

the previous evidence session that she would write to the committee to let us know what will be additionally spent on mitigating UK benefit changes. There is a gap between block grant adjustments and Barnett consequentials and overall social security spend, so I look forward to receiving that data. We need to ensure that we collect that data in an independent, consistent and user-friendly way every year to allow the committee to identify trends and, as you say, work out what is possible in relation to social security in the real world, but that is wandering on to Finance and Public Administration Committee territory.

As always with these lines of questions, Dr Witcher, there may be something that you wanted to say but have been unable to because we have taken you off on a tangent. I want to give you that opportunity. Unless colleagues have any further questions, I will give you the final word. Over to you, Dr Witcher.

Dr Witcher: I am not sure that I want to listen to the sound of my voice for much longer, even if you are content to do so. I have probably said what I needed to say. If I have further reflections following this, I would like to write to the committee, if I may. If there is anything specific that you would like me to advise on or give a view on, I am open to doing that, bearing in mind that I am not working on a paid basis. I am not earning any money being here; I am doing it out of the goodness of my heart—just so you know.

I talked about accumulated knowledge, and I may have some that could be helpful. I am very open to using that and putting it at the service of the committee and the Scottish Government if that would be helpful so, if you would like to draw on that, I am very willing to assist.

The Deputy Convener: Dr Witcher, that is very kind of you. I should reassure you that we are not looking for unpaid consultancy or expert advisory work.

Dr Witcher: Good!

The Deputy Convener: We have identified on a cross-party basis that you have absolute expertise combined with lived experience and a fiercely independent voice, and it is difficult to find individuals with all three attributes rolled into one. The committee would appreciate keeping some form of relationship with you going. Thank you very much for your time, and we will keep in contact.

That ends the formal part of the meeting, and we move into private session.

10:52

Meeting continued in private until 11:10.

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