FINANCE COMMITTEE

Tuesday 31 January 2006

Session 2

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FINANCE COMMITTEE
3rd Meeting 2006, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Mr John Swinney (North Tayside) (SNP)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)
*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)
*Mark Ballard (Lothians) (Green)
*Derek Brownlee (South of Scotland) (Con)
*Jim Mather (Highlands and Islands) (SNP)
*Mr Frank McAveety (Glasgow Shettleston) (Lab)
*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Janis Hughes (Glasgow Rutherglen) (Lab)
Alex Neil (Central Scotland) (SNP)
John Scott (Ayr) (Con)
Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Nicola Bennett (Scottish Court Service)
Jimmy Farrelly (T & G Scotland)
Carol A Judge (Unison Scotland)
George Lyon (Deputy Minister for Finance, Public Service Reform and Parliamentary Business)
Alex McLuckie (GMB Scotland)
John Nicholson (Scottish Executive Finance and Central Services Department)
Graeme Perry (Accountant in Bankruptcy)
Marilyn Riddell (Scottish Court Service)
Gillian Thompson (Accountant in Bankruptcy)
John Williams (Scottish Executive Finance and Central Services Department)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Tuesday 31 January 2006

[THE CONVENER *opened the meeting at 10:04*]

Budget (Scotland) (No 3) Bill: Stage 2

The Convener (Des McNulty): Good morning. I welcome the minister, his officials, the press and the public to the third meeting of the Finance Committee in 2006. As usual, I remind people to turn off all mobile phones and pagers. We have received apologies from Wendy Alexander.

The first item on the agenda is consideration of the Budget (Scotland) (No 3) Bill at stage 2. As well as having copies of the bill, members will have a note written by the clerk. I draw members' attention to two points in that paper. First, only members of the Scottish Executive can lodge amendments to the bill. Secondly, as stated in paragraph 5, it is not possible for us to leave out a section or schedule by disagreeing to it. For that to happen, an amendment would have had to be lodged.

Before we start our formal proceedings, the Deputy Minister for Finance, Public Service Reform and Parliamentary Business will make some explanatory remarks about the bill and give members the opportunity to ask questions. We will then move to the formal process of dealing with the bill.

The Deputy Minister for Finance, Public Service Reform and Parliamentary Business (George Lyon): Stage 2 is the main opportunity for members to scrutinise the detailed figures in the bill, looking particularly at any changes that have been made since the draft budget was published in September. I direct the committee's attention to some of the more significant items. As would be expected, the figures are largely unchanged from those in the draft budget although, as the committee knows, they are presented in a rather different form. There are the usual small estimating changes that arise from the resource to cash adjustments for non-departmental public bodies and changes that arise from responsibility for programmes moving between portfolios.

I will detail some of the more significant changes. Members may have noticed that there has been a significant increase to the budget for rail. The additional £364 million has come from the Department for Transport to fund the transfer of responsibility for Network Rail activities in Scotland.

The provision that portfolios have put into or withdrawn from the central unallocated provision for 2006-07 is included in the supporting document but is, of course, excluded from the numbers in the bill. The provision treated in that way is set out in table 1.3 on page 4 of the supporting document. I draw members' attention particularly to the negative amount that is set against the Forestry Commission Scotland. That represents a draw-down in the next financial year of resources that have been put into the CUP and carried forward from this financial year.

Members will see from schedule 1 that we have introduced a new item 13, which covers the Office of the Scottish Charity Regulator. It is also shown separately in the supporting document, starting on page 78. That reflects the Charities and Trustee Investment (Scotland) Act 2005, which provided that the Office of the Scottish Charity Regulator should be given more independence and should become a non-ministerial department. As a result, it is no longer shown as an agency of the Development Department and is shown under a heading of its own in schedule 1.

As Tom McCabe highlighted in last week's debate on stage 1 of the budget bill, there have also been changes to the presentation of Scottish Water's budget this year. Those changes have been necessary to align more closely the budgets and expenditure information that is published in the Executive's accounts. The main changes include the removal of the loan payments that Scottish Water made to the national loans fund and to the Public Works Loan Board, and the inclusion of the cost of capital charge budget for Scottish Water. Although those changes increase the public budget for Scottish Water, they do not alter or increase the amount that it is entitled to spend—it is purely a presentational issue.

Responsibility for drugs misuse has been transferred from the Health Department to the Justice Department. There has also been an increase in the amount for the teachers and national health service pension schemes that is similar to the increase that we discussed when we considered the autumn budget revision earlier this month. Again, that is a result of the actuarial revaluation and changes to the discount rate for the pension schemes.

The committee will be pleased to see that, as the Minister for Finance and Public Service Reform promised in Elgin, the £100 million for the business rates equalisation is now included in the 2006-07 local government figures, which are on page 73 of the supporting document.

I hope that members have found those remarks helpful in explaining some of the main changes since the draft budget was published. I know that the committee is keen to see the budget material presented in a way that encourages proper scrutiny. We are of course willing to listen to any suggestions on how to further improve transparency. My officials and I will do our best to answer any of the committee's questions.

The Convener: The officials accompanying the minister are John Williams and John Nicholson from the Finance and Public Services Department. If I may, I will ask three or four questions for clarification. In schedule 3.2 on page 22 of the supporting document, no budget for 2006-07 is shown for vacant and derelict land or for the urban regeneration companies. Is that because those budgets have been amalgamated into the budgets for the regeneration programmes?

George Lyon: Yes.

The Convener: That is fine. Schedule 3.4 on page 28 shows the tourism, culture and sport budget. Does that include the £20 million uplift that the Minister for Tourism, Culture and Sport announced the week before last?

George Lyon: No—that uplift is for 2007-08.

The Convener: Nevertheless, all those budget figures will experience a significant uplift. What is the percentage increase for that portfolio?

George Lyon: Do you want the increase just from 2005-06 to 2006-07?

The Convener: Yes.

George Lyon: I will come back to you on that.

The Convener: Schedule 3.8 is the water services budget. Only the quality and standards II overhang is taken into account, so nothing for Q and S III is shown. When will you be in a position to indicate the likely budget expenditure under Q and S III in 2006-07?

George Lyon: I understand that we should see the figures quite soon.

John Williams (Scottish Executive Finance and Central Services Department): We should see the figures later this month or in February.

The Convener: Will the numbers contain a balancing figure? If a draw-down for Q and S III is expected from the Scottish Executive's budget, you must have an idea of the likely global figure, even if it is not split up.

George Lyon: As we have said, we should see that figure towards the end of this month—well, we are at the end of the month, so we should see it in the first couple of weeks of February.

The Convener: In its previous analysis, the committee made a point about the apparent growth in the environment and rural development budget, which is on page 9. Unfortunately, we do not have year-by-year figures in the document that allow us to make comparisons. Could you give us a comparator for the 2006-07 figure, such as the 2005-06 or even the 2004-05 figure?

George Lyon: We can certainly provide that detail. Do you want the figures for every financial year back to 2004?

The Convener: It would be useful to have two years of back comparison. Many of the figures allow at least a one-year comparison, but the environment and rural development budget figures are simply for one year, which perhaps does not give us purchase on what is happening.

George Lyon: I recall that the draft budget shows the historical figures. One problem with forecasting is that the draw-down of common agricultural policy support, for example, is affected by exchange rate fluctuations. The calculation of such sums is made on a particular day in the financial year.

The Convener: I have one other question, but I will let other members in.

George Lyon: I add that the rate of growth in the tourism budget is 12 per cent.

Mark Ballard (Lothians) (Green): When the committee discussed the 2005-06 budget revision document three weeks ago, we highlighted some fairly substantial changes, particularly the revision in the rail budget from £260 million in the original budget down to £212 million, the reduction in the strategic waste fund to £81 million and the reduction in the flood and coast protection budget to £7 million. Will you explain why the figures in the supporting document are those from the original budget and do not appear to take account of the budget revisions?

John Nicholson (Scottish Executive Finance and Central Services Department): The money that we discussed when we were considering the autumn budget revision was money that was put into the CUP for future use. That money will not become available until we have gone through the end-year flexibility process by which money is carried forward from one year to the next. We would expect that money to be added back to the budgets in the autumn budget revision.

10:15

Mark Ballard: The first question that I wanted to ask was about the presentation. Why does this document contain the figures from the original budget? Why does it not reflect the fact that the budget has been revised, particularly in the areas that I highlighted? Surely it would be more transparent to show the real expenditure for 2005-

06—£212 million—rather than the figure of £216, which, as those who have read the revision document know, is not accurate.

John Nicholson: I accept that. The document is presented in the way that it is because we agreed with the committee in the past that we would want to be able to compare original budgets for each year; if it were presented otherwise, we could not compare like with like. If we wait until October of next year, we cannot tell what will happen to the budgets for this year. If we moved last year's budgets to a revised state, we would not be able to make the original comparison that might make the document more useful.

Mark Ballard: I accept that. Your point about the CUP is that the next budget revision should reflect the issues to do with track access grants and local authority draw-down.

John Nicholson: Yes.

Mr John Swinney (North Tayside) (SNP): Does the Government intend to lodge any amendments to the Budget (Scotland) (No 3) Bill at stage 3—unless you plan to spring something on us during today's meeting—to revise the local authority settlement?

George Lyon: Some amendments could be lodged at stage 3.

Mr Swinney: Can you share with us what those amendments are likely to be?

George Lyon: They will mostly be textual. Several issues have arisen that we need to amend the bill to reflect, but the changes will be textual rather than substantive. I know what you are driving at, but the Executive has no intention of lodging amendments in relation to local government finance.

Mr Swinney: So there are no proposals for changes at stage 3.

George Lyon: No, there is no such proposal.

Mr Swinney: Given that, what balances does the Government believe that local authorities have at their disposal for use either in meeting the burdens of equal pay or in closing the financial gap that the committee identified in the funding settlement?

George Lyon: In evidence to the committee last week, Rory Mair said that the Convention of Scottish Local Authorities estimated that about 25 per cent of the £1 billion in the balances was general reserve moneys. The Executive has always stated that it believed that some moneys were available in the balances that could be used to meet pressures, but we have never put a figure on it.

Mr Swinney: Do you accept the figure that the local authority representatives gave the committee in evidence, which was that the amount that is available might be close to 25 per cent of £1 billion?

George Lyon: That is COSLA's position. The Executive has always argued that some of the balances should be available to meet local authorities' financial pressures.

Mr Swinney: Is the amount that is available in the balances to relieve local authorities' financial pressures of the order that local authorities think it is?

George Lyon: It is for local authorities to make those decisions. I do not have in-depth knowledge about how every local authority will spend its balances. For instance, I know that my local authority stated that its balances can be used to relieve some of the cost pressures that it is under, and there are figures in the budget to demonstrate that. However, I cannot predict what the figure will be across the piece.

Mr Swinney: Is it acceptable for the management of public finances that ministers can say that local authorities should use balances to fund their shortfalls and commitments yet be unable to tell the Finance Committee what they think those balances are? Does that make for prudent financial management?

George Lyon: As I said, it is for local authorities to decide how to use and accrue their balances. The Parliament is not in any position to make those decisions for them.

Mr Swinney: The point that I am driving at is that the Scottish Executive provides the lion's share of local authority funding and you and Mr McCabe have made it clear that local authorities should use balances to make up the funding shortfall that arises from equal pay claims and the shortfall in local authority funding that the committee has identified. Therefore it is reasonable to expect the Government to have some idea of what sum of money the local authorities are in a position to use, bearing in mind the fact that, on repeated occasions in the Parliament, ministers have leant on the information that £1 billion is available in reserves.

George Lyon: We have stated the facts about what the balances were at April 2005 and the Convention of Scottish Local Authorities confirmed that when it gave evidence to the committee. Our position has always been that local government should be able to use some of those balances, but we are not going to say to local authorities that they should use a certain amount. That is a decision for them. All that we have done is to highlight the fact that there are balances available to them.

Mr Swinney: Last week, a representative of Fife Council told us that, once it removes all the components of its reserves that it cannot transfer to offset the liabilities that we are discussing—for example, amounts that it must retain for insurance purposes and the housing revenue account—the council has an unallocated balance of £15 million, but its estimate of its equal pay obligations is £40 million. I am not arguing that the Government must fill that funding gap; I am arguing that the Government is trying to suggest that local authorities have greater balances at their disposal to fund the short-term delivery of public services than they do, given that they must retain those balances if they are to satisfy their equal pay obligations.

George Lyon: That is not a correct analysis at all. We have highlighted the fact that balances are available. We have been engaged in discussions with COSLA about the financial pressures that local authorities face and we intend to continue to have such discussions. As you know, we have stated that we are willing to consider the funding for 2007-08 in the light of some of the current discussions. We are happy to engage with COSLA and to examine closely the financial pressures that local authorities face. Those discussions are continuing.

Mr Swinney: If those discussions are continuing, what prospect is there of an amendment to the 2006-07 local authority settlement?

George Lyon: As I made clear earlier, there is no such proposal at the moment.

Mr Swinney: Mr McCabe wrote to the president of the Convention of Scottish Local Authorities on 24 January. After making a comment about the level of balances that local authorities have, he said in his letter:

"I also noted that while reserves are not an ongoing funding source there may also be scope to utilise them on a one-off basis for 2006-07 to help maintain downward pressure on council tax increases."

There we have a Government minister saying in one paragraph in one letter that local authorities should use their balances to sort out equal pay, sort out single status and

"maintain downward pressure on council tax increases"

in 2006-07. What sort of honeypot does the Government think that local authorities have in their balances to be able to do all that?

George Lyon: As I said earlier, we have highlighted the facts on balances. Ultimately, it is for local authorities to decide how they use those balances. We are in discussion with COSLA on the financial pressures that local authorities face and will continue to discuss those with COSLA.

Mr Swinney: Let us consider the factual information on local authority balances that we heard last week: Fife Council has £15 million of unallocated reserves; North Lanarkshire Council has £10.8 million; and Glasgow City Council has none because it has used them all to meet equal pay claims. Moreover, because of the funding pressures that it is under, Glasgow City Council is unlikely to be able to deliver a council tax increase below inflation. That strikes me as adequate financial information to suggest that at stage 3 an amendment should be made to the local government settlement. Can I invite the minister to reflect on that before stage 3?

George Lyon: I will reflect on the matter. Although there is no proposal to do what Mr Swinney suggests, we will reflect on the views that he has put forward.

The Convener: A propos of that, the Minister for Finance and Public Service Reform, Mr McCabe, will be before the committee in several weeks' time. By that time, budgetary decisions will be made by councils and we will be further forward on these issues.

Dr Elaine Murray (Dumfries) (Lab): I note that the amount for educational maintenance allowances will be substantially increased. When the scheme began, it was for one cohort and was to be extended to others. Does the increase reflect the roll-out to a wider age group?

George Lyon: I will have to return with an explanation for that figure.

Dr Murray: In schedule 3.1, on schools, the teachers budget has doubled from £54 million in this financial year to £108 million for the following financial year. What is the explanation for the increase?

John Nicholson: There was a similar transfer in the autumn revision. The money is used for teaching assistants and is delivered through a specific grant, which was formerly called the national priorities action fund and is now called the excellence fund for schools. It is simply being transferred from one to the other.

Dr Murray: Will the excellence fund also be increased?

John Nicholson: The increase in the excellence fund is the other side of the reduction in the allocation for teachers. The budget will be moved to the excellence fund.

Dr Murray: However, the budget for teachers is increasing from £54 million in 2005-06 to £108 million in 2006-07.

John Nicholson: I apologise. I was explaining a change between the draft budget and the budget bill.

Dr Murray: I am not complaining about it. Spending double the money on teachers is a good thing.

George Lyon: Some of the increase in the budget reflects our commitment to increasing the number of teachers to 53,000. I am not sure whether that is the whole explanation for this figure. We will clarify that matter for Dr Murray.

Jim Mather (Highlands and Islands) (SNP): In schedule 3.1, on administration, I note that the costs of the investigation into the building of Holyrood are set at zero for 2005-06 and 2006-07. Why is that?

George Lyon: That is because the Fraser inquiry has completed its work. I am not sure why that budget line is still shown.

Jim Mather: That intrigues me. Is there any contingent liability running into 2007-08?

George Lyon: I will have to check that.

Jim Mather: On 4 January, on BBC Radio 4's "Today" programme, the First Minister was asked about the Government's calculation of the excess of Government expenditure over Government revenue vis-à-vis Scotland. What steps are being taken in the budget to address that issue?

George Lyon: The budget in Scotland is still rising as a result of the Barnett formula. Those who benefit from the increases, such as nurses, teachers and schools, will be grateful for that.

Jim Mather: Therefore, is the gap getting wider? The First Minister said that he would bring pressures to bear so as to close that gap. What provisions are contained in the budget to close the gap?

George Lyon: The budget is continuing to rise as a result of the Barnett formula. The figures that are contained in "Government Expenditure and Revenue in Scotland" show that there is a gap between them. However, as the Scottish National Party does not accept GERS, how we can measure the gap?

10:30

Jim Mather: You have properly expressed my caveat. I am referring you to the First Minister's comment.

Mr Swinney: The minister managed the script very well.

Jim Mather: Exactly. The First Minister managed to dig a hole for himself and I am looking to see whether the minister and his finance colleagues are helping to fill it in.

George Lyon: I am sure that you will get the chance to put your question to the First Minister.

Jim Mather: I will in due course. In the absence of a revenue-earning component in the budget, what long-term plans do you have to make the document more informative for us and the general public? I suggest a change that would achieve that. If for pretty much every line item in the budget we had a statement of the planned outcome and the actual outcome, shown on a rolling basis—one key outcome for each item—would that not provide a fairer, more straightforward representation for the Scottish people? Would that not give "a true and fair view", which is what the accountants always look for?

George Lyon: The draft budget document contains a significant number of targets and commitments that the Executive has laid down. They all reflect the partnership for government agreement between the two coalition parties.

Jim Mather: For any specific item, such as pupil support and inclusion, we do not have a firm figure indicating how effective the spending is anticipated to be and how effective it has been over time.

The Convener: To be fair, the document is a summary document that just gives the numbers. At an earlier stage we get a much fuller document that does many of the things that you mention and enables us to scrutinise matters in depth. It is perhaps not fair to suggest that such information should be in a summary document.

George Lyon: I am informed by officials that the committee asked us to cut down the amount of information in the document to make it easier to scrutinise.

Jim Mather: Nevertheless, in the long term there is a need to know that Scotland is not flying blind—when I read the document I get the feeling that it is.

George Lyon: I am sure that the Finance Committee will deliberate on the matter. We have always responded to any requests from the committee to improve the scrutiny of the budget.

Mr Andrew Arbuckle (Mid Scotland and Fife) (LD): A number of the tables in the supporting document indicate an increase this year in the income that has been retained. Is there a reason for that? For example, the table on page 11 indicates that retained income for rural development has gone up by £1 million. Another example is affordable housing on page 21.

John Nicholson: The reason why retained income for affordable housing increased from last year is that last year the Development Department did not establish what its income stream would be until the autumn budget revision and the figure was amended at that stage. This year, the department is in a better position to predict what it thinks its income will be and has therefore got its budget in for that at the start of the year.

Mr Arbuckle: That is a major change. What is the reason for the £1 million change in retained income for rural development? Is it marginal?

George Lyon: It is marginal, but we will get an explanation to you if you so wish.

Mr Arbuckle: Mr Swinney mentioned local government surpluses. I thought that we should see what the Government says its balances are. With the convener's permission, I point out that my local authority, Fife Council, which Mr Swinney mentioned, faces a shortfall. However, one of the lines in last year's budget for Fife Council was unused or surplus assets. Those are not sports grounds, community halls or anything of value to the local authority; they are £30 million-worth of spare plots of land and redundant buildings.

The Convener: I have two further questions. First, on page 41, a figure of £109 million is given for concessionary fares. How does that square with the expected concessionary fares budget that Nicol Stephen announced about 12 months ago, when he was Minister for Transport?

George Lyon: Obviously, that figure reflects the introduction of the new national concessionary fares scheme throughout Scotland.

Des McNulty: So it is a part-year figure.

George Lyon: Do you mean the £109 million?

John Nicholson: This is the first year in which we have had the full funding for the scheme in the budget at the start of the year. That is the reason for the significant increase.

The Convener: But the range that Mr Stephen mentioned was between £158 million and £160-odd million—I cannot remember the exact amount.

George Lyon: I imagine that that was an estimate of the take-up in the first year. However, I will get back to the committee to confirm that. As you probably remember, the then Minister for Transport asked MSPs to encourage as many people as possible to register for the new national scheme. I imagine that there will be a tale about the speed of take-up of the national scheme once it is operational, which may be reflected. We will confirm that for the committee.

The Convener: You will remember that you had a considerable in-year budget adjustment on concessionary fares, which is where my question comes from.

My other question relates to the figure of £22 million for northern isles ferry services. Audit Scotland has produced a report on the matter, which raised concerns about the amount of subsidy that is required to meet the ferry costs, given the contractual arrangements that were put in place. I ask for a note to show how the amounts that have been required for the service have changed in the past five years. The figure in the Audit Scotland report was, I think, £73 million over three years, which does not relate to the figure of £22 million for each year.

George Lyon: As I recall from the draft budget document, the figure when the contract was let was about £13 million, but I would need to confirm that in writing. As a result of the failure of the contract, increases in the subsidy have been required to keep the ferries sailing until the contract is relet. The subsidy has increased significantly, but the final figure for the year will not be known until the ferry tendering process is complete and the new contract allocated.

The Convener: It would be useful for the committee to have a review of the way in which the actual costs have changed in relation to the projected costs in the past three or four years so that we have a clear basis for understanding the budget projections for next year and subsequent years.

George Lyon: We will go back to before the contract was let. As I recall, the subsidy figure reduced when the contract was let but, when the contract failed, the figure increased to reflect the extra subsidy that was required to keep the ferries going. We will give the committee a detailed response on that.

The Convener: If members are happy that the questioning process is finished, we will move to the formal proceedings on the bill. We have no amendments to deal with but, under the standing orders, we are obliged to consider each section and schedule of the bill and the long title and agree to each formally. We will take the sections in order, with the schedules being taken immediately after the section that introduces them. The long title will be taken last. Fortunately, the standing orders allow us to put a single question where groups of sections or schedules fall to be considered consecutively. I propose to do that, unless members disagree.

Section 1 agreed to.

Schedules 1 and 2 agreed to.

Section 2 agreed to.

Schedules 3 and 4 agreed to.

Sections 3 to 5 agreed to.

Schedule 5 agreed to.

Sections 6 to 10 agreed to.

Long title agreed to.

The Convener: That ends stage 2 consideration of the bill. I thank the minister and his officials for coming and for dealing with our questions.

10:39

Meeting suspended.

10:41

On resuming—

Single Status Agreement

The Convener: The second item on our agenda is further evidence taking on the financial implications of the single status agreement. We have with us representatives of trade unions that are involved in the negotiations. I welcome Carol Judge from Unison and Jimmy Farrelly from T & G Scotland. We are expecting Alex McLuckie from the GMB; when he arrives, we will sit him next to you. Given that we expect to hear from a GMB representative, I should declare that I am a GMB member. Other committee members may wish to declare their trade union membership.

Dr Murray: I am a member of T & G Scotland.

Mr Frank McAveety (Glasgow Shettleston) (Lab): I have links with the T & G as a sponsored member.

The Convener: Now that we have sorted out all the formalities, I ask the union representatives to make a short opening statement before we ask questions. We have received your written submissions, so please do not read them out.

Carol A Judge (Unison Scotland): We have presented the committee with a lot of detailed information in our two submissions, so we do not intend to make a grand opening statement. Along with our counterparts, the employers and the Convention of Scottish Local Authorities, we are extremely concerned about the huge cost that local authorities will face in meeting their legal obligations to address equal pay. We welcome the opportunity to discuss the issue with the committee. Rather than go into detail in an opening statement, we would prefer to respond to questions or to elaborate on points in our submissions.

The Convener: Do you have anything to add, Jimmy?

Jimmy Farrelly (T & G Scotland): My position is similar.

The Convener: Okay. Let us move on to questioning.

Derek Brownlee (South of Scotland) (Con): I want to clarify what Unison Scotland says in its submission. On page 4 it states that, in spite of your disagreements with the employers, you agree that

"the scale of equal pay liability could not have been foreseen … in 1999."

The foot of the second paragraph on page 7 says that

"the ability of local government employers and trade unions to accurately project the costs of equal pay"

in 1999 were seriously undermined because the Department of Employment had not implemented equal pay law correctly. I do not understand how you can make both those statements when, at the top of page 7, you say:

"It is UNISON's position that it was manifestly obvious … in 1993 that the arbitrary limits on compensation … were incompatible with community law."

That does not seem to be consistent.

10:45

Carol A Judge: I am not sure that I fully understand your point. Basically, the position is that in 1999 agreement was reached on the need to address equal pay.

Jimmy Farrelly and I are here as negotiators, rather than as legally qualified people. I do not have direct experience of local government, but I do have experience of working with other major employers in Scotland in trying to address issues so that equal pay can be introduced. That is usually done through a job evaluation scheme, which always costs money. I have never been involved in a scheme where that was not the case.

In 1999, we had to identify areas where people—mainly women—were graded lower, and decide how they could be appropriately graded. There was a cost attached to that. There was also the issue of whether those people should be compensated for the years before that, when the low-pay regime was in force. Since then, there have been a number of changes, which nobody could have predicted in 1999. Our paper tries to demonstrate for the committee's benefit where those changes have taken place. In 1999, it was a question of teasing out the matter with employers, so that they could understand what the liability was. Realistically, however, whether there is liability or not—and there was—it is a question of employers having to meet their legal obligations by introducing equal pay.

Derek Brownlee: I appreciate the point about meeting legal obligations. What I was trying to establish was the sort of information that was available in 1999 about the cost implications of those obligations. Some of the arguments that we have heard contend that, because the cost was not ascertained in 1999, it is now difficult for employers to pick up that cost. The Unison submission confused me because, on the one hand, it says

"that it was manifestly obvious to the Department of Employment at the time of the review in 1993"

that the obligations under the European directive had not been transposed into United Kingdom law but, on the other hand, it says that that was not obvious in 1999. You cannot have it both ways: either it was "manifestly obvious" in 1993 that

appropriate legislation had not been fully incorporated into UK law or it was not.

Carol A Judge: I cannot comment on what happened in 1999, because I was not directly involved. Jimmy Farrelly might have some more information, but my experience is that few employers can predict that cost. What was obvious, however, was that employers had a legal responsibility to introduce equal pay, and the 1999 agreement was the method by which that was introduced for local government in Scotland. Employers had to be aware of many issues up until that point, and have had to take account of everything that has happened since. Jimmy Farrelly will be able to expand on that.

Jimmy Farrelly: In 1998, Scottish employers sought to have their own national bargaining structure. That did not come from T & G Scotland; it came from the employers. The agreement was finalised in 1999, but no sooner had that happened than we found ourselves in a major dispute in 2000, and it was the early spring of 2001 before it was resolved. We then ran into difficulties, because our members at local level were seeking information from employers, but that information was not forthcoming. At that stage, we were pressing for the job evaluation scheme that had been agreed nationally—it took a long time to get that national agreement—and there was a whole host of problems with the software that was being used.

In late 2002, we started getting involved in firm debates about how we were going to progress, and at that stage the fact that litigation was a possibility became known to the employers, which led to a lot more discussion. We had advised the employers and were keen to move the job evaluation process forward but, unfortunately, for a whole host of reasons, it did not happen. Now there is a funding crisis, and people are asking who could have predicted it.

It is for other people to sit back, wait until the dust has settled and say who did what and what the exact situation was at any particular time, but we were keen to move the process on. We agreed a national job evaluation scheme, but it must be recognised that the 32 different employers do not have to use the national scheme that we agreed.

We took considerable time to have the scheme equality proofed by the Equal Opportunities Commission. We spent a lot of time with the EOC to try to ensure that the scheme would protect our members by delivering equality in pay, as well as protect employers from litigation.

Unfortunately, the scheme was not addressed as quickly as it should have been, responsibility for which lies with the employers.

Derek Brownlee: It would be useful to have clarification of your position on one point. The Unison submission was good in drawing out some of the arguments. For example, on page 5 it says:

> "equal pay liability is 250% larger than could have been forecast by the most detailed analysis in 1999 and this increase in liability is attributable to the failure of the UK Government to legislate on equal pay in compliance with the provisions of community law."

That relates specifically to the two-year period, which was subsequently removed from the legislation. It strikes me as inconsistent to say that the most detailed analysis in 1999 could not have foreseen that situation, and that it was manifestly obvious back in 1993 that the arbitrary limits of compensation were incompatible with Community law.

Carol A Judge: As a negotiator, I am faced with changes. That means that when we reach the stage of trying to implement equal pay status with an employer—in this case, local authorities in Scotland—we look to introduce arrangements to compensate for past discrimination from up to two years ago. That has changed to five years.

Derek Brownlee: But is not the Unison argument that it was manifestly obvious back in 1993 that the two-year limit was incompatible with Community law? On that basis, should not it have been anticipated that the potential costs of any settlement would have to include more than two years' back pay?

Carol A Judge: I have never been in a position with an employer where we could predict changes to case law and legislation. Had I been involved in negotiations in 1999, I would not have been in a position to say, "What happens if we change?" What we have is a change—

Derek Brownlee: So it was not manifestly obvious in 1993 that the two-year time limit was incompatible with Community law.

Carol A Judge: Realistically, it was, but—

Derek Brownlee: This is what I do not understand: how can you say that part of the problem is the extension of the time limit to five years from two and that you could not have foreseen it, and that back in 1993 it was manifestly obvious that the two-year time limit was incompatible with Community law? I do not see how the two statements can be true simultaneously.

The Convener: Perhaps it would be better to simply ask you some questions about how we reached the current point and then we can make progress. Indulge me a little and give me an indication of how we got to here. As I understand it, you arrived at an agreement with the employers in 1999 that single status would be implemented. Is that correct?

Carol A Judge: Yes.

The Convener: You then sought to negotiate the substance of what single status agreements would mean on a Scotland-wide basis.

Carol A Judge: No, employer by employer. It was left to each local authority to negotiate with its recognised trade unions what single status agreements would be reached and, therefore, to harmonise terms and conditions. We have a model job evaluation scheme. Each local authority is entitled to adopt a different scheme if it so wishes, but we have a recommended model, so there is a lot of guidance and understanding at a national level about how to implement the agreements at local level.

The Convener: Did both the employers and trade unions agree that local agreements, rather than a national agreement, were the best route towards single status?

Jimmy Farrelly: We inherited the agreement that was struck in 1999. The employers took the view that they would prefer local determination to take account of a list of factors. We would have preferred a national deal to apply right across the board, so that there would be no misunderstanding about what people were entitled to. The agreement covered core terms and conditions; other elements could be negotiated locally, including whether the employer took on the job evaluation scheme that was agreed nationally. We believed that it was in employers' interests to do so. The scheme was equality proofed and a lot of time and effort went into agreeing it.

The Convener: I want to clarify that. You are saying that the agreement that was reached in 1999 was flexible in the sense that each authority reached individual agreements. Your instinctive preference was for a national agreement, but it was the employers' wish that the agreement should be flexible and that arrangements should be made authority by authority.

Jimmy Farrelly: Yes.

The Convener: You have covered this to an extent, but I would like a bit more definition. As I understand it, there were to be national negotiations about a core framework for the agreement, around which local negotiations were to take place. Is that right?

Jimmy Farrelly: In essence, yes.

Mr Swinney: Were any parts of the national agreement mandatory for all local agreements?

Jimmy Farrelly: Yes. The parts on pay, hours of work and so on were mandatory.

Mr Swinney: What exactly were those components?

Jimmy Farrelly: Everybody was on a 37-hour week from 2002. Prior to that, manual workers had been on a 39-hour week and administrative, professional, technical and clerical workers were on a 35-hour week. The hours were harmonised. The hourly rate was also negotiated nationally.

Carol A Judge: Deadlines for implementing equal pay were also agreed at a Scottish level. There was an agreement that all local authorities should come into line by certain dates.

The Convener: What were the dates?

Carol A Judge: They have moved. Jimmy Farrelly said at the beginning of his contribution that, with agreement at Scottish level, we have put back the implementation date, which should be March of this year.

The Convener: Can you tell us what the initial dates were, so that we get a sense of what movement has taken place?

Jimmy Farrelly: The initial date for implementation of the job evaluation scheme was April 2002. By agreement, that was extended to April 2004. We had difficulty agreeing that, because many of our delegates and union members were not happy about the delays in the scheme.

Mr Swinney: Implementation was delayed from April 2002 until April 2004. Was that at the request of the employers?

Jimmy Farrelly: Yes.

Mr Swinney: Was it against the will of the trade unions?

Jimmy Farrelly: We reluctantly agreed to extend the deadline, because the employers argued that there was no way in which they could implement the job evaluation scheme by 2002, given the technical work that had to be done. A host of issues were involved, including issues arising from the software.

The Convener: You reached an agreement in 1999, with a target for implementation of April 2002.

Jimmy Farrelly: Yes.

The Convener: How many of the issues that needed to be resolved to implement the scheme in 2002 were resolved in time for 2002? Were any of them solved, or a percentage of them? Where were you by 2002?

11:00

Jimmy Farrelly: By early 2003, we had set up three different working groups to try to break the logjam. At the local level, all sorts of problems were arising. People were saying that the scheme had to be delivered at no cost to the employers. The trade unions were advised of that around the

end of 2002. As negotiators, we know fine well that there will be an additional cost when a job evaluation scheme is introduced. In effect, we were being told, "We will introduce the job evaluation scheme without any cost and, if anybody gains, it will be to somebody else's detriment." Obviously, that created tensions and difficulties at the local level.

The Convener: Was that not envisaged when you reached the single status agreement? In my time in local government, before the agreement was reached, there was recognition on all sides that there would be gainers and losers. In that context, how credible is it to say that employers intimated what you suggest only in 2003? It was obvious to everyone before the agreement was signed.

Carol A Judge: I was not directly involved at that time. Realistically, we acknowledge that there will be people who will lose, as you put it. However, the negotiating challenge is to consider how their salary can be protected in some shape or form while ensuring that the idea of equal pay is still intact in the agreement. When faced with implementing the agreement, it would have been impossible for the package to have no cost. There is no way that any employer who was faced with the legal responsibility of introducing equal pay through a job evaluation scheme could expect to do so at nil cost. The losers are not only those whose jobs are revealed to have been graded higher than they should have been but all of the people who should have gained as a result of a recognition of the need for equal pay but who are told that they are not going to get anything at all. That is a significant departure from what you would expect the position to be several years after an agreement has been negotiated.

The Convener: Obviously, we have moved from a situation in which there was an implication that the agreement could be implemented at a relatively marginal cost, even if it would not be at no cost, to a situation in which local authorities estimate that the cost of dealing with the retrospective elements of the agreement will be more than £500 million. That is a significant road to travel down. We want to find out how we got into that situation.

I welcome Alex McLuckie of the GMB, who has just joined us.

In the period leading up to 1999, there was a long process of reaching an in-principle agreement on single status. That agreement envisaged that there would be local negotiations to implement the process but also that there would be harmonisation across local authorities in key areas that you have identified, such as pay and hours. That was all to be put in place by April 2002. However, you are telling us that there was little progress on that by 2002. Is that correct?

Carol A Judge: Yes.

The Convener: Last week, Pat Watters of the Convention of Scottish Local Authorities told us that a subsequent target date of April 2004 was set. What happened between 2002, when little progress had been made, and April 2004?

Carol A Judge: Again, I was not directly involved in that. My colleagues might be better placed to respond to the question.

Alex McLuckie (GMB Scotland): I apologise for being late. I am sorry if I go over some things that have already been discussed.

The idea of the single status agreement was to do away with the artificial divide between blue and white-collar employees. To do that, it was agreed that we had to examine the two separate pay structures. How could we do away with the divide unless we had a common pay structure for all employees? The means by which the single status agreement sought to achieve that was a job evaluation exercise that would examine all local government jobs and place them in a wage structure according to the skills that they required.

The delay in 2002 occurred because we had not developed a job evaluation scheme that was fit for purpose. We had to agree to extend the date because the job evaluation scheme was not ready. From the trade unions' point of view, the difficulty with the second date was that we were pressing employers to implement the job evaluation scheme, which had been negotiated by the trade unions and the employers, but there seemed to be resistance from them. Despite our best efforts to get them to implement the job evaluation scheme, that did not happen.

The Convener: Was the job evaluation scheme in place between 2002 and 2004? When was it agreed?

Alex McLuckie: I think that it was probably agreed in time for the first implementation date. The difficulty that we had—and the reason why we agreed to the extension—is that, because of the number of jobs that had to be evaluated, there was not enough time to carry out a proper job evaluation exercise. Part of the delay was to allow proper consultation with the trade unions and the proper implementation of the job evaluation scheme. We had probably signed off the job evaluation scheme by the first date, but the difficulty was that the time between signing it off and the implementation date was too short. There was a debate about the fact that we needed a bit more time to do things properly.

The Convener: So, from your point of view, two years was not a sufficient time in which to deal with the negotiations that were required to implement the job evaluation scheme. That is the

basis of the delay and the reason why the April 2004 target was not met.

Alex McLuckie: We did not have two years. We signed off the agreement in 1999 and we then got involved in discussions on the job evaluation scheme. I think that the first date was 2002.

The Convener: Yes.

Alex McLuckie: It might have been 2001 or the start of 2002 when we signed off the job evaluation scheme, but the number of jobs that were to be covered by the new scheme was significant. The employers said, "We're not going to meet that date. The job will be part finished. We need more time to ensure that all the jobs are evaluated and that the pay structure and pay model are sorted out." They needed more time. That is why the trade unions agreed to a later date for the full implementation of the job evaluation scheme.

The Convener: If I understand correctly, the date that you agreed was April 2004.

Alex McLuckie: Yes.

The Convener: What further progress had been made by April 2004?

Alex McLuckie: In terms of negotiations or in terms of implementation?

The Convener: In terms of implementation.

Alex McLuckie: Nothing. One council implemented a job evaluation scheme.

The Convener: Which council was that?

Alex McLuckie: It was South Lanarkshire Council. For whatever reason, the other councils failed to move, despite our best efforts. Every time we met employers, we said to them, "Look, we've got to get this job evaluation scheme in place." One of the biggest pieces of the jigsaw that was missing was the job evaluation scheme, which was crucial in delivering the single status that we were looking for. At every meeting we had with employers, we said, "Look, we need to move this job evaluation agenda on."

As you rightly said, the single status agreement was split in two: there were core terms and conditions of employment that were negotiated at a national level; and then there were other terms and conditions of employment that could be negotiated locally with the recognised trade unions. The job evaluation scheme fell into the second category. There were to be 32 sets of negotiations on it within COSLA—32 implementation plans, as it were.

The Convener: So, for whatever reason, the decision was that it would be better to have 32 separate negotiating agreements than to have a single negotiating agreement.

Alex McLuckie: That was the employers' view; it was not the view of the trade unions.

The Convener: No, I just want to be clear. The agreement was to proceed on the basis of having a single set of core agreements covering all the authorities, with flexibility around that. That in-principle agreement was in place before 2002, but between 2002 and 2004 only one local authority implemented a local agreement that was based on that framework. Is that an accurate summary?

Carol A Judge: Yes.

The Convener: Let us roll forward to now. How many other authorities have negotiated single status agreements with the trade unions?

Carol A Judge: To my knowledge, no other local authority has one, although several are close to completing that work. Last year, all the momentum that was building among authorities that were willing to complete the agreement and job evaluation and to introduce single status agreements was diverted when we put energy into trying to reach a Scottish framework agreement on compensation for past discrimination. The picture that I have—my colleagues can give their own views—is that the authorities were waiting to see the outcome of that. That stalled some of the work at the local level, although it was continuing. Even last year, several local authorities were still deciding which job evaluation scheme to use. That contributed to a significant delay in moving the matter forward.

The situation varies among local authorities in Scotland, some of which are advanced in dealing with job evaluation and single status, although I have in my files only one that is ready to go through our internal vetting process. Another one got close last year, but it has run into some stumbling blocks. I am promised that several authorities are close. However, since about August last year, most councils have put their energy into dealing with the priority issue of compensation for back pay, expecting that a framework would be made available at the Scottish level, which it has not been possible to do. That has culminated in our being with you today. We want to explore with you the huge cost of dealing with that element—which is only one element—of introducing equal pay within local authority employers.

The Convener: I do not doubt that we will want to address the equal pay issue in depth and detail, but let us be clear about the single status aspect of it. The information that we have got up to now—from you and from the employers—is that the agreement was reached in 1999, following a considerable negotiation, and that, seven years on, only one authority has implemented the scheme, although you say that other authorities are close to some kind of agreement.

Bearing in mind what you have said about such schemes rarely being entirely cost neutral, I presume that the costs of single status cannot be anticipated until we are a bit clearer about how other such schemes have been put in place. Is that a fair summary?

11:15

Carol A Judge: Our problem is that we cannot cost it. We do not have the volume of information that would allow us to discuss matters with the committee today. However, your assessment is correct: a specific figure cannot be arrived at until all the job evaluation schemes are completed and we understand what the costs will be, council by council, although we can recognise that there will be costs. Given the changes that have taken place in relation to equal pay and back pay, there will be significantly higher costs than might have been expected when employers started to identify what the potential costs would be. Costs have increased.

I cannot share our council-by-council analysis with members because council-by-council detail is not yet available to enable predictions to be made. However, we can give a ball-park figure and, as members might expect us to say, we feel that employers' expected costs are on the low side and do not anticipate the full costs of not only back pay, but the implementation of equal pay, equal value across the workforce and job evaluation, which, although it is not necessarily a male-female equal pay issue, is to do with jobs that have been underpaid for a number of years.

Mr Swinney: If I picked up correctly what you said to the convener a moment ago, the concept of a national agreement is back on the table again. Is that what you said?

Carol A Judge: In August, we were invited back to explore whether we could introduce a framework discussion, or guidance. We were reluctant to use the word "agreement" because things would not be binding on all councils on the employers' side. The employers wanted an enabling framework that the unions supported so that guidance and direction could be given on how to deal with compensation for past discrimination, as that issue had come on to the radar.

Mr Swinney: So the issue was past discrimination rather than single status. Okay.

Carol A Judge: The only issue was that element, rather than the wider introduction of equal pay.

Mr Swinney: The convener has gone through in detail what happened between 1999 and 2002, 2002 and 2004 and 2004 and 2006, but I am interested in how regular the dialogue was and how active people were. Did you have monthly meetings with the employers, or would six months go by in which there were no discussions? How would you characterise the different periods?

Carol A Judge: I will let others comment on that because I was not directly involved, but we have had numerous meetings since August.

Mr Swinney: I am sure that you have had regular meetings since August, but I am more interested in the tranches before then. Did you have regular, monthly discussions to try to reach a conclusion, or was the matter left for months without there being any dialogue, so that we have suddenly been left with a sprint to reach the finishing line?

Jimmy Farrelly: I mentioned that we set up and tasked groups in early 2003. We got delegates involved with employers to try to break the logjam. Three groups were involved—a modernisation group, a group that considered only bonuses and an equalities group. Those groups were due to report back to the national set-up, but we had exactly the problem that has been described. We did not receive the regular employer responses that we wanted.

I must make our frustrations clear. In February or March last year, we had a meeting in Crieff to which all the employers were invited, but we were lucky if half a dozen to a dozen employers turned up. The root of our frustration is the fact that we do not have a binding national agreement. The fact that local authorities were left to negotiate their own version meant that the credibility of the national process was damaged over a lengthy period. That was very frustrating for the trade unions and we made that point continuously. The difficulty in such a situation is that no matter how many meetings there are, the question is what difference that will make to the outcome. That is where our frustration lay.

Mr Swinney: You said that the number of hours that individuals would work was fixed and mandatory and applied to all local authorities, and that the hourly rate was mandatory and fixed for all local authorities. What are they all fighting about then? If the number of hours and the hourly rate are fixed, what is the big fight about? Why are the local authorities unable to do a deal with you? What are the other issues?

Alex McLuckie: It is not usually our role to respond for COSLA on the employers' side, but we will try. I apologise if I missed the discussion on this earlier, but the single status agreement was born out of councils' desire to do their own thing, to move away from national agreements and to have local flexibility to deal with what they described as a local marketplace. There was a feeling that the Ayrshire councils, for example,

might have a different marketplace from Aberdeen City Council and Aberdeenshire Council. That is the employers' answer.

Mr Swinney: I am not trying to be difficult; I genuinely cannot understand this. If you have sorted out how many hours a week people are going to work and what the hourly rate will be, what is the debate about? Is it about travel costs? Is it about what colour of jacket people wear to work?

Alex McLuckie: I understand your question and perhaps I can answer it now, from the employers' point of view. I should state that the trade unions' position has always been that there should be a national job evaluation scheme, which would apply to all councils. It would make no difference whether someone was a home carer in Glasgow or Edinburgh—they would be paid the same. If someone was a refuse collector in Argyll and Bute or in Dumfries and Galloway, they would be paid the same. That has always been our view. The health service has managed to do it, and we say that local government could have managed it. To get back to your question—

Mr Swinney: I will stop you there before you answer my question. If the national framework says that someone should work 37 hours and there is an hourly rate throughout the country, is not it the case that a dustbin collector—

Alex McLuckie: No. That is the difference. All that we have negotiated nationally is a pay spine, which may have 120 points on it. Spinal column point 1 is £5.53; if we negotiate that to £6, it moves to £6. You will perhaps understand my earlier statement when I give this explanation. The local element of the single status agreement is the job evaluation, which merely rates jobs in terms of value. It is a league table, and within the job evaluation scheme there are top scores and bottom scores.

We have a saying: "Points make prizes." Depending on the number of points that a group of employees has, they will move across to a particular part of the pay spine. The local authority and the local trade unions will negotiate exactly where they should go. The money in the boxes is negotiated nationally, but local decisions can mean that a home carer is at spinal column point 12 in East Ayrshire and spinal column point 10 in North Ayrshire.

Mr Swinney: I totally understand now. Thank you.

Alex McLuckie: I am not sure that we do.

Mr Swinney: I am not sure that we have advanced much since 1999.

The Convener: We asked how many agreements had been reached and you said one, in South Lanarkshire. How many agreements have been reached on local job evaluation schemes?

Carol A Judge: I would give you the same answer—one. We want the single status agreement and job evaluation to come together, and we want some kind of arrangement on compensation for past discrimination. On my desk, I have only one agreement—other than the one that the committee has heard about—that is ready to go through our internal process.

The Convener: Is not it strange that people want to settle deals on equal pay when they have not agreed on the job evaluation scheme?

Carol A Judge: No, because the priorities have shifted since last summer. We would prefer everything to be done at the same time. The way to introduce fair and equal pay and to compensate anybody who has been inappropriately paid for a number of years is to deal with both matters in one package. We are seeking legal advice, guidance and direction on whether it is realistic for us to deal with cases in advance of the completion of job evaluation. However, we are under significant pressure—collectively and individually, from the employers and from our members—to address the issue. I acknowledge that employers would want to speak to us in order to reach an accommodation at local level.

The jobs of home carers are not necessarily the same in different local authorities, so they may be graded differently as a result of job evaluation, or they may be valued differently against other workers. The case for equal pay will vary from place to place.

We have to address equal pay sooner rather than later. That is long overdue, and I am sure that the committee will give us a chance to explore that on behalf of the trade unions. If equal pay is introduced, we will have to consider the costs. Whether equal pay dates from last year, this year or next year, the legal obligations of equal pay will cost local authorities—35 years after the legislation.

The Convener: I understand your view, although on page 3 of your submission you say:

"The Equal Pay Act is based on levelling up, not levelling down."

I do not think that the act points in either direction; it just says that there should be equal pay, without saying what the mechanism is.

Earlier in the same paragraph, you say:

"Once jobs are evaluated, employers and trade unions use that data to negotiate around pay and grading models that offer women and men equal rewards. What tends to happen is that pay freezes or red-circling are used to hold back the pay of one group while those previously undervalued and underpaid catch up."

Is it plausible to suggest that you will reach

agreement on equal pay without having agreed on job evaluation?

Carol A Judge: It is not possible to deal with equal pay without having some measure of the context; decisions have to stand up to examination. We have always been advised to introduce an equality-proofed job-evaluation based way of measuring jobs so that employees can see whether their job has been properly graded according to equal value and whether there are any pay differences.

11:30

As far as the employers are concerned, there is a clearly defined high-risk group of men and women manual workers who have different rates of pay because of bonuses. My colleagues here are better versed in, and have more detail about, that situation. There is nothing to prevent employers from doing what they want to do—which is to address that issue in advance of completing job evaluation—because they have already identified an element of pay difference in that there are low-paid female workers who have not had access to bonus schemes. Those women are graded the same as the male workers, but have a different pay package.

Employers can look back over the previous five years—the current requirement—assess what the female workers should have been paid for that period and offer them compensation for that. We could not reach an accommodation at Scotland level on the wording for dealing with that. Employers want to deal with that at their local level in advance of completing job evaluation schemes. We are seeking further legal advice on whether we can technically go ahead and complete such local arrangements.

Our tracking over the years has clearly identified that area as one that we would have to go back to and fix. We have had on our radar a number of areas that will have to be addressed. Many councils have costed what it will take to cover compensation for high-risk groups. We have identified other workers who should be covered, but we have had difficulty in getting employers to agree to expand the groups to include them.

Our final point in the bargaining agenda concerns people who agree to accept compensation in a full and final settlement, even though it might be less than they would get if they went to an employment tribunal. We want to ensure that they can come back and say that job evaluation and other aspects have identified other areas of pay difference for which they should be compensated. We cannot be tied to an agreement that would sign away a person's ability to make another legitimate and reasonable claim. That will be another future cost for councils. That is the challenge that we have faced in trying to reach agreement on a Scottish framework.

The Convener: That clarification is useful. I will put to you my understanding of the position. As a committee, we have been faced with the employers' range of estimated costs for dealing with the compensation elements, which deal with the retrospective consequences of failing to agree and implement single status agreements and job evaluation schemes across Scotland. Again, if I understand you correctly, we are also faced with the situation that only one authority has implemented a job evaluation scheme. Thirty-one authorities have not implemented schemes, which gives rise to additional compensation costs. In that context, is it more urgent to achieve rapid agreement on single status agreements and job evaluation schemes across all the councils in order to address the problem, rather than to deal only with the consequences of not doing so, which is the thrust of COSLA's view?

Alex McLuckie: The answer is not as straightforward as that, although we sometimes wish that life was that straightforward. When the single status agreement was introduced in 1999, it was not about equal pay, which is an issue irrespective of the single status agreement. The purpose of the single status agreement was to remove the barriers between the blue collar, or manual, workers agreement and the administrative, professional, technical and clerical staff agreement, which were fondly known respectively as "the green book" and "the blue book". The intention was to bring everybody in local government under the same conditions of employment. Part of that was to have a job evaluation scheme.

We were operating in a different world at that time, however, because there was compulsory competitive tendering. Several of the manual functions—construction, the direct labour organisations, refuse collection, grounds maintenance, catering and cleaning—were subject to compulsory competitive tendering. Different things were happening in 1999.

Between 1999 and now, pay inequality has crept into the system. As part of their agreed terms and conditions of employment—the green book—the manual workers had a job evaluation scheme, so they underwent a form of grading of their job titles and functions. Pay inequality has crept into those functions. We already have a measure that says that a woman who is grade 1 is being paid differently to a man on grade 1, so we can currently identify pay inequality. We need to deal with that and we cannot afford to wait until a job evaluation scheme is implemented fully. We must deal now with the clear cases of pay inequality

that we know about. Carol Judge is correct that we ensure, when we deal with such cases, that if a case is signed off through a compromise agreement, that agreement takes us up to a certain date so that we do not remove our members' right to make future pay inequality claims if they so wish. We hope that, by the time the end date of a compromise agreement is reached, the job evaluation scheme will be in place and we will be able to deal with any other matters that arise from such cases. We know that there is pay inequality now and we need to deal with it now.

Mr McAveety: Do the unions bear any responsibility for the financial dilemma that faces local government on equal pay?

Alex McLuckie: No. Pay inequality and compensation for it are the employers' responsibility. I cannot speak for Jim Farrelly and Carol Judge, but it annoys me that councils that have been told constantly that they had to address pay inequality have, for whatever reason, not done so.

Mr McAveety: What possible reasons could there be for not addressing pay inequality over seven years?

Alex McLuckie: I do not know. You need to ask the employers.

Mr McAveety: We have tried to do that, which is why I wonder what you think.

Alex McLuckie: The reason could be cost. The councils told us in negotiations that implementation of a job evaluation scheme would increase the pay bill by a ball-park figure of 6 per cent to 10 per cent. It is not for me to say that that is why they did not address pay inequality, but one of the reasons why there was resistance could have been the cost of the wages bill.

Carol A Judge: The picture that I have built up since I took over the local government negotiations on behalf of Unison is one in which recognition of local authorities' legal responsibilities and the introduction of equal pay in local government will have dramatic effects. Our lay activists and our members are concerned that, to be realistic, the introduction of equal pay will mean massive reorganisation and, potentially, job cuts within local government. When I took over that responsibility, I was briefed that such discussions were taking place locally. Employers had recognised that they had a legal responsibility to introduce equal pay and that that would involve a huge cost, which would be incurred to the detriment of the services that the employers run. If you are looking for a view, I think that that might have contributed to some of the delays that are being faced.

Another factor is the magnitude of the task. Job evaluation and equal pay are not new issues, but the scale of the arrangements that must be introduced, the size of the employers, the experience that is required and the technical costs of introduction are huge. That task could not be undertaken lightly. I am not sure whether, when it embarked on the process, local government appreciated the full costs for which it would have to budget. In addition to the implementation cost, there is the outcome of introducing the arrangements and the continuing costs.

I will respond to the question that Alex McLuckie answered. Regardless of the phase of implementing equal pay that an employer is at, the cost will exist. Local government will have to meet the costs, whether the 31 councils are ready to run today or tomorrow with introducing a single status agreement with job evaluation and, therefore, with a deal that includes a compensation element for back pay. The costs will not go away; they will have to be addressed. The longer we take to implement the agreement, the higher the costs are likely to be. That is why we are keen to raise with the committee the urgent need to assist local government in meeting its legal liabilities.

Jimmy Farrelly: How we have engaged with employers is another issue. We have long criticised the culture of engagement in local government. For example, the Executive has encouraged more working together with the health service and there is a world of difference in how we engage with employers in the health service. The staff governance arrangements that apply in the health service show how engagement between employers and trade unions should be in a modern environment.

Unfortunately, such engagement has never worked its way into local government. In effect, there is a more traditional way of doing things, so the problem is that there has never been proper sharing of information locally, which would give our members and activists the confidence to know that they have had a fair crack at formal engagement. I have no doubt that that has contributed to suspicion among many trade unionists that there is a significant agenda, whenever they have sat down to discuss how to make progress. The lack of real intent or integrity in negotiating from the other party has contributed to that. I argue that we have said consistently that we want to improve that dialogue. We said at a forum that arrangements need to be improved and modernised. Unfortunately, that has not happened, so we are where we are today.

Mr McAveety: Can you name any other employer or group of employers that has taken such a length of time, shown such a lack of clarity and been in such a desperate situation? In your dealings as negotiators, have you encountered an

equivalent situation?

Carol A Judge: I have covered several parts of the public and private sectors on behalf of Unison and I cannot think of an equivalent situation.

Alex McLuckie: To be fair, the health service springs to mind, funnily enough. We have been talking about agenda for change for a couple of years, but it has not been implemented. Equal-pay back payments for health service workers could raise issues. There is much to be said for agenda for change—it is a national scheme and how it is being dealt with hits more of the right spots for us—but an issue will still need to be addressed.

11:45

Mr McAveety: It took only a few meetings on a boat at Yalta to carve up post-war Europe, but the developments that we are discussing are already seven years in. Can you bring any Churchillian, Rooseveltian or even Stalinesque skills to the debate? I ask Alex McLuckie to give us his natural judgment. Who would you prefer? As you are from Ayrshire, I have a good idea.

The papers from the unions raise the concern that, if we are to face the reality of equal pay, there will be potential costs and consequences for the workforce. All the submissions from the unions have had at least a paragraph saying that they are concerned that some local authorities may use equal pay as an opportunity to change people's contracts and to introduce substantial changes to their terms of employment. Do you have any strong grounds for that, other than the observation that there is a major funding gap?

Carol A Judge: The feedback that I get from our full-time officers who deal with employers is that they say that they have to explore that option. That is anecdotal evidence, but it comes from more than one local authority. I cannot give chapter and verse on that, as it would not be appropriate to do so, but that is the scenario that local authorities might have to consider. Our senior lay activists also say that the option is being discussed locally.

Mr McAveety: If a local authority began

"sacking all staff and re-engaging them on lower pay and terms and conditions",

as one of the submissions suggests, what would be the unions' reaction?

Carol A Judge: Untold. We are talking about the future of local government and the need for a workforce that is fit for purpose and that can meet the needs that the Executive seeks in relation to efficiencies, the modernisation programme and other changes. We value our members, as I am sure you value the staff who are employed on your behalf in local government, so we must remunerate them properly. To tell them that one available option is to dismiss and re-engage them on different terms and conditions so that costs can be met would be the type of scenario that is normally seen in the worst elements of the private sector. That is not what we expect in the public sector. As such, I anticipate that the reaction would be untold.

Dr Murray: The Unison submission states that the employers' estimate of a cost of £560 million for equal pay is not realistic. I presume that you think that it will cost more than that because of knock-on effects; for example, if what we might call the lower-risk groups compare themselves through single status and make equal pay claims. How much do you think it could cost?

Carol A Judge: All that we have is a reaction to that figure; we do not yet have sufficient financial intelligence to give a specific figure. The employers have not taken on board the future costs from the introduction of equal pay as a result of job evaluation. Most of the financial information that the committee has from the employers is about the estimated liability from back-pay, but there will be future costs. I am uncomfortable with the figure, because I do not believe that it is realistic. In meetings with the employers, we have said that they have perhaps underestimated the amount. I do not want to be drawn into giving a specific sum, because we do not have sufficient intelligence on the matter.

Dr Murray: How much of the eventual sum should be contributed by the Scottish Executive? Should the Executive foot the entire bill, or should other players foot part of it?

Carol A Judge: It would not be right for me to tell you how much the Executive should put aside. We seek a way forward so that we can close off the issue and make progress on the staff who are employed in local government so that, 35 years after the legislation was introduced, we can say that a huge part of the public sector in Scotland meets its legal obligations on equal pay. That is long overdue. Therefore, there is a responsibility to encourage that to happen and to meet legal obligations. We share the frustration about having to come to you on that basis.

We hope that as much as can be realistically afforded and as much assistance as possible will be given to meet this need. We would like the total payment to be made, even it is a combination of moneys that are vired from various other budgets. At some point, the cost will have to be met. If we cannot achieve equal pay through a bargaining process, our members expect us to take the matter through the legal process of employment tribunals. That is not our preferred option because it is more costly and will not necessarily result in the best outcome for the whole workforce or

authorities.

Dr Murray: A sum of £560 million or more will mean cuts and job losses elsewhere in the Scottish Executive's portfolio. It will be more of a trade-off in that case.

Last week, I met my local authority, which was keen to give me its perspective. It claimed that it wants to settle the matter, but there is considerable pressure on the trade unions because they are concerned that no-win, no-fee solicitors will take them to court. In such a scenario, would the individual regional organisers be personally responsible? Is the fear of being sued a problem for the trade unions in bringing the negotiations to completion?

Carol A Judge: That is not an issue for our full-time officers because they cannot be individually sued. It is the union that could be sued.

Dr Murray: Like the councils, can the unions be held corporately responsible?

Carol A Judge: Technically yes; that is the legal advice that we have been given.

Dr Murray: What would be the consequences of such actions occurring? Would the unions cease to function?

Carol A Judge: No, we would carry on. We simply want to ensure that our members get from us what they are entitled to, which is the best possible advice, direction and representation, as well as our resolving at its root a problem with their employers.

Dr Murray: The employers to whom I have spoken want to settle the matter while the trade unions are dragging their feet. The employers believe that they are doing so because the unions are concerned that they will end up in severe financial positions if a settlement is challenged by a no-win, no-fee solicitor.

Carol A Judge: Without getting too entrenched in what individual authorities have stated, if one puts many caveats on an offer, then it is difficult for us to recommend exceptions to it. Some caveats are hindering the settling of local arrangements. We prefer to address equal pay in its totality—not just one element of it. I accept that it is taking up a large amount of time, resources and energy and that no one will be a winner as a result of the time that has been taken to resolve the matter. I hope that today's meeting addresses the frustration and the anxiety that exists for our members, the employees, those who represent them and the councils.

Dr Murray: To ensure union members can settle their claims, are regional organisers encouraged to agree local settlements with the councils?

Jimmy Farrelly: Dr Murray has suggested that the unions are caught like a rabbit in a headlight and are fearful of being sued over settlements. Although we live in a litigious society, the unions are negotiators, not lawyers. We negotiate with employers and advise our members. Our purpose is to support and to represent the interests of working people. We are not fearful of being sued by no-win, no-fee solicitors: we are determined to negotiate a settlement that will protect people's jobs and employment conditions, deliver equality and recognise that the issue of past discrimination must be dealt with fairly and consistently.

It will up to individuals to determine whether they accept the deals that are offered by employers. The unions cannot collectively accept a deal, because that it is not our function and we are not entitled to do so. We have engaged with employers on settlement of a whole package.

Alex McLuckie: It is fair to say that it is business as usual for the GMB. Jimmy Farrelly is right: we are negotiators who involve ourselves in collective bargaining, and we are trying to resolve this issue through collective bargaining. The fact that there are no-win, no-fee solicitors involved makes life a bit interesting—it certainly changes the dynamics of collective bargaining as we know it. Like Carol Judge, I am unsure about the local authority that you mention, but I suggest that if a local organiser from the GMB has rejected a deal, that is because it falls far short of what our member could expect if we were to litigate through an employment tribunal.

Our role in collective bargaining negotiations is to deal with the existing inequality, but our agenda is a bit wider than that. There is also the issue of job security and any consequences for our members' current terms and conditions of employment. People might say, "Ach, that's just an excuse," but if you ask people who have transferred to the private sector as a result of compulsory competitive tendering what has happened to their contracts and their terms and conditions of employment, they will tell you that they have been reduced and are far worse than before they transferred.

People tend to forget that, in terms of the best value review, voluntary competitive tendering and all the rest of it, we do not have the protection that exists under a public-private partnership scheme, for example. There is a protocol on PPPs between the Scottish Trades Union Congress and the Executive that protects terms and conditions. We do not have that under the Local Government in Scotland Act 2003. We are discussing a similar arrangement, but it is not there yet. The City of Edinburgh Council has amended its proposals to say, "Let's see how many services we can privatise to remove this threat." Equality is a good issue, but continuing terms and conditions of

employment are also important, as is the rate for the job in the future. In talking about doing away with pay inequality, we are getting hung up on the five years of back pay. If we get the job evaluation scheme right and women who suffer inequality are put in the correct pay band, we are talking about their pay for the next 10, 15 or 20-plus years. That is a big issue for us. It is not only about the retrospective element, although that is important and will be dealt with through collective bargaining.

We will be honest with our members. If a proposal is 30 per cent of what they could get through a tribunal but there are good, justified reasons for that, we will sign up for that. If it is 60 per cent of what they could get through a tribunal but there are no justified reasons for that and we think that it is not a good deal, we will reject it, depending on the circumstances. That is how our negotiations work, and that will happen irrespective of any third-party influence on us.

Mr Arbuckle: Where do you see the benefit for the taxpayer in this £0.5 billion-plus? You are asking the taxpayer to foot the bill, whether it is the council tax payer or the income tax payer.

Alex McLuckie: It will benefit the taxpayer if we can settle the matter through local negotiations and if we sign off a compromise agreement. What we would be compromising is what legal claims our members might have. If we have the funds to conduct local negotiations and to produce local proposals that are acceptable to the vast majority of members, that will be a far cheaper option than our not having the money and councils saying that they cannot afford local agreements. If that were to happen, we would go to an employment tribunal and the cost to the taxpayer would be far higher, believe me.

12:00

Carol A Judge: As a taxpayer, the benefit for me would be that there would still be a local government workforce that was fit for purpose and properly recognised. The home carer who comes to visit my mum three times a day would be recognised as a quality worker and would be paid a proper salary to continue their essential work. As a taxpayer, I would rather that someone was paid properly to do that important job.

Mr Arbuckle: When the single status agreement was first proposed, it was supposed to be cost neutral, but its cost has drifted to more than £0.5 billion. Is that a sign of the unions' success or of the employers' failure?

Carol A Judge: As we have said, to begin the process believing that it could be cost neutral was not the right starting point. That could not possibly have been the case. It should have been recognised that costs would be involved. As we have explained in our submission, those costs would have been different at the outset because of the changes that there have been in how much back pay people expect to be able to get. Any significant change in a workforce's terms and conditions will have cost implications that it will be challenging to meet. The implications of the single status agreement are narrowing because there is an urgent need to address the issue. The longer it takes to implement equal pay, the bigger the problem will grow.

The Convener: I have two final questions. First, should the current arrangements that allow no-win, no-fee solicitors to intervene in such cases be given some legislative attention?

Carol A Judge: We will take that question away and consider it. Over the past six or seven months, those arrangements have hindered our ability to progress and have derailed the successful efforts that we and the employers had been making to complete the single status and job evaluation process. We have had to be taken off that to concentrate on other work. The effect on the workforce and on industrial relations generally at local level has been extremely debilitating.

Although we have been hindered by the intervention of no-win, no-fee solicitors, workers have the right to get representation in whatever way they wish. I would not want them to be denied that right, but I would like us to review how the current arrangements have hindered us.

The Convener: Secondly, I presume that the fee arrangement allows people who act as representatives to make significant amounts of money out of compensatory payments. Is such an arrangement reasonable?

Jimmy Farrelly: There is a general issue. Members come to us on a range of issues and there is a tendency for people to seek the advice of a solicitor. They want to get a lawyer involved automatically. We are negotiators—our primary function is to negotiate the best deal that we can with employers. We cannot interfere with the law. People can set up as solicitors and take advantage of situations such as the one that has arisen. The involvement of such people has not helped us to negotiate. If we have to litigate on behalf of our members, we have no choice. We have to give people the proper legal advice and we do that as a matter of course. There is a perception that, if people go to a no-win, no-fee solicitor, they will get better advice and come out with a better result, but no-win, no-fee solicitors have an obvious agenda. They are out to make money from the process.

The Convener: Perhaps it is unfair to ask for an instant response, but the committee would welcome a written response on the issues that

arise from how no-win, no-fee firms operate. Do you think that the arrangements for representation by such firms at tribunals are positive or negative, reasonable or unreasonable? It would be useful if you could provide a second written submission on that.

My final question is for Carol Judge. Unison Scotland's submission states:

"the current equal pay liability is 250% larger than could have been forecast by the most detailed analysis in 1999 and this increase in liability is attributable to the failure of the UK Government to legislate on equal pay in compliance with the provisions of community law prior to July 2003."

I put it to you that, if the unions and the employers had reached an agreement by the original target of April 2002, the liability would have been significantly less. The blame is to be spread around. I do not think that the unions' failure to reach agreement with the employers can be ignored.

Carol A Judge: It is realistic to recognise that the costs would have been lower if the single status agreement had been implemented earlier because it would have been implemented before the change in the duration of back pay from two years to five years. Case law changes constantly, but perhaps—

The Convener: If you had reached agreement in 2002, as was originally projected, compensation would have been claimed for two years as opposed to five years.

Carol A Judge: That is correct.

The Convener: Thank you for coming along and for your evidence. We will hear evidence from the minister on 21 February.

Bankruptcy and Diligence etc (Scotland) Bill: Financial Memorandum

12:09

The Convener: The third item on our agenda is consideration of the financial memorandum to the Bankruptcy and Diligence etc (Scotland) Bill. We decided to adopt level 3 scrutiny of the bill, which means that we will take written and oral evidence from bodies on which costs will fall and oral evidence from Executive officials.

With us are Gillian Thompson, who is chief executive of the Accountant in Bankruptcy; Graeme Perry, who is head of the operational policy unit at the Accountant in Bankruptcy; Nicola Bennett, who is director of finance and information technology at the Scottish Court Service; and Marilyn Riddell, who is the court organisation branch at the Scottish Court Service. I thank you all for coming along and I apologise for keeping you waiting a bit longer than we intended.

Our normal practice is to give witnesses the opportunity to make short opening statements before we move on to questions. I invite each of you to make a brief opening statement.

Gillian Thompson (Accountant in Bankruptcy): Good afternoon and thank you for inviting us. I will boil things down to say that as the Accountant in Bankruptcy, I am appointed by Scottish ministers under section 1 of the Bankruptcy (Scotland) Act 1985, as amended. My role is to supervise in Scotland the process of sequestration, or bankruptcy as it is more commonly known, and to act as trustee in bankruptcy for creditors when appointed by the court. I am required to administer the policies of the Scottish Executive in respect of bankruptcy; maintain the register of insolvencies, which contains details of bankruptcy and corporate insolvencies; and provide general information about the process. To do all that I am entitled to employ individuals to work on my behalf. The agency currently has 92 posts in temporary accommodation in Irvine and 35 remaining in Edinburgh. The committee knows something about our relocation arrangements.

The Convener: You are the only one who went.

Gillian Thompson: Actually, no. To digress briefly, I had one permanent member of staff who chose to up sticks and move from east to west. There was a second, but that did not work out so he left. I am boxing and coxing at the moment. However, that was one person from a staff of 92 that we started with in 2003. Anyway, I will not start on that—I will try to be calm about it.

I also employ private sector insolvency practitioners to work on my behalf. Annually, I am appointed trustee in around 90 per cent of cases. Of those, we normally deal in house with around 25 per cent. This year, that figure is running at 27 per cent of that 90 per cent. The balance of the cases go out to insolvency practitioners.

As I said, we are in temporary accommodation in Irvine, although we are due to move to our final resting pace in Kilwinning in mid-February. I have it on good authority from my project manager that we will make that deadline. Come Valentine's day, our building at the station crossroads in Kilwinning will be open to the public.

We also administer the debt arrangement scheme, and I am the debt arrangement scheme administrator. We approve debt payment programmes, money advisers and payment distributors, and we maintain the debt arrangement scheme register. We aim to do all that efficiently and effectively. We operate independently and impartially and we always try to take account of the rights of everyone who is involved in the process.

Nicola Bennett (Scottish Court Service): The Scottish Court Service runs all the sheriff and supreme courts in Scotland, and our headquarters are in Edinburgh. The information that we will give today represents a small part of the operation of the courts. We deal with criminal and civil business, and bankruptcy is a part of civil business. I do not know how much information you want us to give; it is probably not as relevant as that which the Accountant in Bankruptcy gave. Is that okay for you?

The Convener: That is fine; thank you. The committee agreed that individual members would ask questions. The committee is fortunate in having two accountants as members, so we have some specialist expertise on this issue.

Jim Mather: My first question is for the Accountant in Bankruptcy. Given the bill's lack of detail, which the Institute of Chartered Accountants of Scotland's submission highlighted, will you outline the assumptions that have been made in estimating the cost to the Accountant in Bankruptcy?

Gillian Thompson: Graeme Perry has been very much involved in the detail and in the number crunching, so he will speak in a minute.

The Accountant in Bankruptcy had in-depth discussions with the bill team to try to understand fully what will be required, but we are, I suggest, nowhere near to having the drilled-down detail that would allow us to talk about exactly what the posts that we have identified will actually do. We will not get to that point for some months. Graeme Perry will tell the committee about the considerable assumptions that we have had to work on.

12:15

Graeme Perry (Accountant in Bankruptcy): Basically, we have been in consultation with the bill team and have had copies of the bill. We have had to go through it bit by bit to see what new work will come to the Accountant in Bankruptcy. We have also looked at any parts of the bill that will impact directly on how we administer bankruptcies.

Three areas of work will be new to the Accountant in Bankruptcy. We will be taking debtor petitions away from the courts to administer and award them directly ourselves. A bankruptcy restriction order or undertaking will be introduced. Our understanding is that it will be administered in a similar manner to the scheme in England and will be a new focus of work for the Accountant in Bankruptcy. We will also be responsible for income payment orders through the courts to enforce instalment payments of debts.

Jim Mather: Have you discussed this with your opposite numbers in England and Wales to understand the impact that such work has had on them?

Graeme Perry: Yes, we visited those responsible for policy and implementation and we had preliminary visits to get an overview of staffing. The problem with bankruptcy restriction orders is that it is reckoned that it will take six to seven months after implementation before the orders start to take effect. The orders will affect offences that were committed only after implementation. When we visited, our counterparts in England and Wales did not have many bankruptcy restriction orders in force. However, we have gauged roughly how many staff we think that we might need to meet Scotland's demand.

Jim Mather: The financial memorandum states that the AIB will need 34 extra staff at a cost of £457,000. That works out at less than £13,500 per annum per employee. If we allow for national insurance payments, that suggests average wage rates of as little as £10,000 per annum. How does that stack up?

Gillian Thompson: I need to correct that figure. You will appreciate that our work has had a number of iterations in the process of introducing the bill, so there has been a certain time lag. Unfortunately, the figure that appears in the financial memorandum is not correct. From the iteration that we did before the introduction of the bill it looks as if there might be 25.5 staff for a cost of £457,000. I apologise for that. That means that your calculation is a bit out.

In general, we, much the same as any other casework executive agency, run our business predominantly on relatively junior members of staff who are not at the more expensive end of the range.

Jim Mather: I understand that. Reading the submissions, I was struck by the marked difference between the attitude of public bodies to the financial memorandum and that of private sector entities, primarily the Institute of Chartered Accountants of Scotland. The institute has treated the financial memorandum almost with quiet disdain. Essentially, it says that the document is silent on four crucial topics:

"• The criteria for 'Apparent Insolvency' which is the test by which debtors can become bankrupt

• The future role of the Trust Deed

• The Debt Arrangement Scheme which was introduced 12 months ago and has not been widely used to date

• Any new 'no income, no asset' procedure."

Is the institute right to be concerned at the silence on those key topics?

Gillian Thompson: The figures that we have provided for the financial memorandum do not take account of those issues because the Executive has not yet brought forward policies on them, apart from what is set out in the recently published draft regulations on protected trustee changes. Obviously, we will produce additional funding requirement figures as the policy is determined.

I do not know that I am in a position to comment on external bodies' views on the silence in the financial memorandum.

Jim Mather: However, you are saying that this financial memorandum is a preliminary one that is liable to change quite dramatically.

Gillian Thompson: Certainly for the AIB, the financial memorandum relates to the provisions in the bill as introduced. Anything over and above those provisions could have an additional cost and we obviously have an interest in pointing that out. Currently, we are in discussion with the Executive on the issue of protected trust deeds, for example. It would be fair to say that, like external organisations, we await the Executive's final formal view in relation to how it intends to proceed. However, the financial memorandum relates only to the provisions in the bill.

Jim Mather: Nevertheless, the potential impact of the protected trust deeds and further clarity that might be forthcoming would produce a moving feast vis-à-vis the financial memorandum.

Gillian Thompson: I can speak only for my organisation. It would be fair to say that, in the circumstances that you describe, the likelihood would be that our volume of work would increase.

Jim Mather: Therefore, the financial memorandum is, at best, work in progress or a snapshot and is nowhere near what the final costs are liable to be.

Gillian Thompson: That would be the case, assuming that the Executive produces policies such as those that you describe. I am not trying to be difficult, but I will leave my bill team colleagues to explain this to you when they come to see you next Tuesday. As far as I am concerned—wearing my practical hat because we are concerned with the delivery of the Executive's policy—I can say only that the financial memorandum and the work that we have done relate specifically to what you see in the bill.

Jim Mather: In the context of the financial memorandum being a snapshot, to what extent have you compared notes with your opposite numbers down south in terms of a like-for-like comparison and a long-term comparison of the total costs that are manifesting themselves in England and Wales?

Gillian Thompson: The situation south of the border is vastly different in terms of how we provide a service. The main area in relation to which we have talked to our opposite numbers is that of bankruptcy restriction orders, as Graeme Perry explained. We have no experience of the investigative role that exists in that regard. Beyond that, in terms of debtor petitions, for example, we had initial conversations with one of the courts to see what work it was doing.

We have a considerable amount of work yet to do in order to get a visual image of exactly what the new functions will require us to do. Obviously, we will talk to whoever we think has the right information for us. In general terms, when we deal with sequestrations at the moment, we come to informal agreements with debtors about income payments. One might imagine, therefore, that when we get down to delivering income payment undertakings and orders, they will be done on very much the same sort of basis as they are at the moment. We have talked to the Official Receivers Office in Newcastle, which is the closest to us. The office has some experience of dealing with these cases. However, it would be difficult to draw parallels on costs, because our costs are fairly well pared down.

Jim Mather: Is there merit in having a fuller model in the financial memorandum? It could give us a clearer indication of the assumptions made and of the long-term ramifications of what will happen when the issues on which the bill is currently silent are addressed.

Gillian Thompson: It will be for the Executive to consider whether that is appropriate. This committee and the Enterprise and Culture Committee might decide that they want more information. From our perspective, all I can say is that we will be ready to provide such figures if they are required.

Jim Mather: In the long term, have you plans to meet the Institute of Chartered Accountants of Scotland, the Credit Services Association and the Society of Messengers-at-Arms and Sheriff Officers, in order to get a complete view of the implications for you and for them?

Gillian Thompson: We meet ICAS regularly. I employ 60-odd insolvency practitioners in this unusual position that has arisen, so I am very interested in our relationship with ICAS, which is good. Inevitably, external bodies—if I may describe them as such—are bound to have a slightly different view from mine. I hope that my colleagues would regard us as being in the tent as opposed to outside it, if you see what I mean. When it is required, we will meet ICAS to talk about these issues.

Jim Mather: What about the Credit Services Association and the Society of Messengers-at-Arms and Sheriff Officers?

Gillian Thompson: That is for the bill team. The bill relates to messengers-at-arms in terms of the changes to diligence. I do not have a specific interest in that, although I am interested more broadly in the commission that is to be set up. The focus of my attention must remain on sequestration and the changes to our business that we will have to put in place. However, we will talk to anyone who wants to talk to us.

Jim Mather: I turn now to the witnesses from the Scottish Court Service. What does it cost to regulate officers of court through the Society of Messengers-at-Arms and Sheriff Officers?

Marilyn Riddell (Scottish Court Service): There is minimal cost to the Scottish Court Service. There is a slight involvement from the sheriffs principal, requiring a minimal administrative input. We are talking about a few thousand pounds at the very most.

Jim Mather: We are talking about a new non-departmental public body costing £632,000 a year. What benefits will flow from that, especially for your own organisation?

Marilyn Riddell: We may be straying into policy issues. We are an executive agency and I do not know—

Jim Mather: Let me rephrase the question. What financial benefits will accrue from having the new NDPB?

Marilyn Riddell: Nothing directly to us, I do not—

Jim Mather: So it is just going to be a cost.

Derek Brownlee: I want to return briefly to the witnesses from the Accountant in Bankruptcy. I understand what you say about the uncertainty over what you may be asked to do. If you step back and think of your upheaval with relocation, how can you be confident that you will be able to manage any additional role when it is not clear how big any additional role will be? On a simple level, could you physically accommodate a significant number of additional staff in your new building?

12:30

Gillian Thompson: I do not mean to be facetious, but I have had to do a considerable amount of crystal-ball gazing since I took up my post in September 2002. It is not often that one is able to do a bit of patting on the back, but when we were moving towards relocation, particularly in 2003, we went through a series of processes, as you will understand, so that by the time we came to look for a building we had already done some thinking and calculations about what size we might be by 2006-07 or 2007-08. The figure that we calculated was 140—that is the figure that George Lyon gave you—so we looked for a building that would certainly accommodate 140, and the building in Kilwinning would allow us to accommodate 150 Accountant in Bankruptcy staff comfortably.

As we have already done that crystal-ball gazing, I am pretty confident that there is no question of our building being too small. In any case, one must inevitably think about different ways of working in future. For example, we must ask whether we would always want to have everyone in the building or whether some people could work from home or work part time. There are multifarious ways of dealing with that.

There is no doubt that trying to plan for the delivery of something that has not yet gone through the parliamentary process is a challenge, but is it as much of a challenge as relocating 100 per cent from one side of the country to the other? At the moment, I think that we have a good understanding of what will be required of us and we know roughly how to figure the numbers of staff, but we will have to do a considerable amount of further work. In fact, the global figure of £1.4 million that we have identified for 2006-07 in the financial memorandum may well change as we go through the process.

The Scottish Executive may choose to consider other matters; it may make other proposals and invite the Parliament to consider them. However, the length of time that it takes for the process to wend its way through Parliament must also be considered. When I was bidding for the money for start-up costs for 2006-07 and for costs rolling on beyond that, I did so under the 2004 spending review. That involved quite a bit of crystal ball gazing, except that the ball was a different shape, if you see what I mean. We have constantly to re-

examine where we are and to ensure that channels of communication with the bill team are open. We also need to be mindful of how long it takes us to recruit and train staff. At the moment, it feels like a bit of a challenge.

To complete the circle, the IT costs as reported in the financial memorandum are based on £800,000 for further development of our case management system, but the cost might be less than that or it might be more. My sense at the moment is that the changes that will have to be made to the system might not turn out to be quite as complicated as we imagined, but I have not yet started the process of looking around to see who would do that development for me. It is only really when I get into that business that I will be able to say more concretely how much that will cost.

Derek Brownlee: I sympathise with the difficulties that you are operating under. We have a similar difficulty, which I do not think is your fault, in scrutinising the financial memorandum to a bill for which major elements of policy have not yet been determined.

Let us suppose that policy decisions were taken such that there was no expansion in the number of staff that you use. Would that mean that you would have surplus space in your new building that you were paying a premium for, or would you be able to subdivide or sublet the building?

Gillian Thompson: The way that the building was built is interesting. It was not purpose built for me; if it had been, it would not look exactly as it does. It was built in four sections and on two floors. In theory, if we were streamlining to the extent that we did not need to occupy the whole building, it would not be difficult to sublet, should the Executive choose to do that.

Derek Brownlee: That was just an aside. I want to ask about the new information disclosure scheme. I understand that it is a new departure and that, inevitably, any estimate of the costs and fees must involve an element of assumption. However, can you talk us through in a bit more detail how you see the costs and revenues from the scheme operating?

The Convener: The range of the costs is extraordinary. The costs of the scheme are estimated at between £193,500 and £1,935,000—potentially a 100 per cent variation.

Marilyn Riddell: Yes. The difficulty is that, not having any previous experience, it is difficult to estimate the volume of cases, and it is not easy to look to other jurisdictions for assistance because our system is different from those that exist elsewhere. All that we were able to do was provide the bill team with estimated costs at different levels of business.

We have set the critical point at about 50,000 applications per annum. We envisage being able to assimilate the work up to that point within the existing sheriff courts but expect that, beyond that point, we will need more staff than we can accommodate in the existing courts. We will then look for a centralised function, which triggers set-up costs, all the IT development costs and so on.

Derek Brownlee: I appreciate that it is difficult for you to answer this question, but what process have you gone through in terms of the charges that you would levy for accessing information? Do you have a method for estimating the charges? How will you go about setting fees?

Marilyn Riddell: It would not be for the Scottish Court Service to set the fees. The fees, along with the associated policies, would be set by the Justice Department.

Derek Brownlee: On that basis, you would not be able to estimate the extent to which any of the costs could be offset by fees.

Marilyn Riddell: They could be fully offset, but we cannot say at this moment whether they will be, as that depends on whether we go for a centralised system. That would also be a matter for the Justice Department.

Derek Brownlee: A policy decision.

Marilyn Riddell: Yes.

Nicola Bennett: The policy is meant to be full cost recovery on the civil business. That is what we try to work towards. Although we are not in a position to develop that policy, that is what we aim to deliver towards.

Derek Brownlee: Does that mean that, regardless of whether the costs are £193,500 or £1.9 million, they will, potentially, be offset?

Nicola Bennett: I understand that, in this particular part of the proposals, no policy decision has been made on what fee might be charged. I was trying to give you the general—

Derek Brownlee: The normal policy.

Nicola Bennett: Yes.

The Convener: Jim Mather has a supplementary question on that point.

Jim Mather: The Credit Services Association states that it anticipates increased costs for its members as a result of bankruptcy becoming an easier option. Do you expect an explosion in volume and, if so, has that been factored into your submission?

Marilyn Riddell: Are you talking about an increase in the volume of bankruptcies?

Jim Mather: Yes. The Credit Services Association is concerned about the cost to its members if bankruptcy becomes an easier option.

Gillian Thompson: Perhaps I could answer that question. I guess that the Credit Services Association assumes that the changes in the bill are likely to lead to an increase in the number of bankruptcies. My sense is that, if there is an increase, it will certainly not be of the order that has been suggested. As we speak, at the end of January, we have already had an increase in bankruptcies of about 52 per cent this year—that is without the changes in the bill. Information from the Insolvency Service is that the increase south of the border is running at about 30 per cent, which is with the legislative changes there. This is not a comment on policy, but the Insolvency Service's view is that the increase is not a result of the one-year discharge provision, but is economy driven. My perspective is that that might well be true, given that the change that has already taken place in Scotland feels like an economy-driven one.

We factored into our calculations a 25 per cent across-the-board increase in the number of bankruptcies. That was in the summer, before the bill's financial memorandum was produced. However, that figure was based on an assumption that this year's situation may be a blip. That was our initial thought, but we are now simply not sure about that. However, prior to this year, we normally factored in a 5 to 7 per cent year-on-year increase. We are not as yet entirely clear about what we are seeing this year.

Jim Mather: That is why I asked earlier about the modelling. Clearly, the feedback from down south is that, when similar changes were introduced there, there was an explosion of bankruptcies, which is the message that we have had from the Credit Services Association. The issue is about trying to identify what element of the increase kicked in following the new legislation and what element was hard wired into the model as a result of economic causes and effects. Has any effort been made to separate out the two factors and their relative impacts?

The Convener: That question probably demands a detailed response, so rather than ask the witnesses to respond to it now, I ask them to provide a written response, which would be helpful.

Gillian Thompson: I am happy to do that. However, I must say that the situation south of the border is the Insolvency Service's territory. As I said, its view is that the legislative changes there have not brought forth the 30 per cent increase. However, we will investigate with Insolvency Service colleagues and get back to the committee.

Jim Mather: I would appreciate that.

The Convener: We have not asked one or two questions that we were going to ask, but we will deal with them in writing. I thank the witnesses for their evidence.

Subordinate Legislation

Public Contracts (Scotland) Regulations 2006 (SSI 2006/1)

Utilities Contracts (Scotland) Regulations 2006 (SSI 2006/2)

12:44

The Convener: Agenda item 4 is to consider two sets of regulations under the negative procedure. Last week, we took evidence on the regulations from the Scottish Trades Union Congress and Executive officials. We have an extract from the Subordinate Legislation Committee's report, which contains technical comments on both sets of regulations. Unlike with the affirmative procedure, under the negative procedure we cannot vote on the regulations unless a member has lodged a motion to annul, which is a motion proposing that nothing further be done under the regulations. No such motion has been lodged.

A couple of points were raised last week.

Mark Ballard: In response to questions that the convener and I asked, the Scottish Executive representative said that the Executive would be willing to give certain undertakings about future consultation. Specifically, those were to be about meetings with trade union representatives on any guidance that is issued; about a review of the guidance after 12 months; about putting an onus on public bodies in relation to article 27 of the public sector procurement directive; and about monitoring cross-cutting objectives. Would it be appropriate for you, convener, to write to the minister on behalf of the committee seeking a statement that clarifies those assurances?

The Convener: I am happy to do that. Another issue that was raised was the possibility, in the light of experience, of introducing into regulations some of the measures that are in the guidance. If members agree, I am happy to write to the minister to highlight the issues that were raised.

On that basis, do members agree that the committee does not wish to make any recommendation in respect of the regulations?

Members *indicated agreement*.

Item in Private

12:46

The Convener: The fifth item on our agenda is to agree whether to take the Executive's response to our stage 2 budget report in private at next week's meeting. The discussion is intended to be on areas of questioning for the minister when he comes before the committee. Do members agree to take that item in private?

Members *indicated agreement*.

The Convener: We now go into private to consider the final agenda item.

12:47

Meeting continued in private until 12:57.

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