

FINANCE COMMITTEE

Tuesday 28 November 2006

Session 2

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FINANCE COMMITTEE

30th Meeting 2006, Session 2

CONVENER

*Ms Wendy Alexander (Paisley North) (Lab)

DEPUTY CONVENER

*Mr John Swinney (North Tayside) (SNP)

COMMITTEE MEMBERS

*Mr Andrew Arbuckle (Mid Scotland and Fife) (LD)

*Mark Ballard (Lothians) (Green)

*Derek Brownlee (South of Scotland) (Con)

*Gordon Jackson (Glasgow Govan) (Lab)

*Jim Mather (Highlands and Islands) (SNP)

*Mr Frank McAveety (Glasgow Shettleston) (Lab)

*Dr Elaine Murray (Dumfries) (Lab)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)

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:

Andy Crawley (Scottish Executive Justice Department)

Gillian Thompson (Accountant in Bankruptcy)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Rosalind Wheeler

ASSISTANT CLERK

Kristin Mitchell

LOCATION

Committee Room 2

Scottish Parliament Finance Committee

Tuesday 28 November 2006

[THE CONVENER *opened the meeting at 10:02*]

Interests

The Convener (Ms Wendy Alexander): I welcome the press and the public to the meeting, and I make the usual plea for all pagers and mobile phones to be switched off. No apologies have been received.

As everyone will be aware, Gordon Jackson has replaced Des McNulty on the committee. I welcome Gordon to his first meeting. The first item on our agenda—it is always the first item when there is a new member on the committee; it is not specific to this member—is to ask him whether he has any relevant interests to declare.

Gordon Jackson (Glasgow Govan) (Lab): I do not have anything that is particular to this committee to declare. I have made a declaration of interests in the public register of members' interests, and I refer you to that. I do not think that I have any other interests to declare.

The Convener: Thank you.

Bankruptcy and Diligence etc (Scotland) Bill: Financial Memorandum

10:03

The Convener: We move to agenda item 2, which is the Bankruptcy and Diligence etc (Scotland) Bill. Our intention is to consider a supplementary financial memorandum to the bill. As members will see from the clerk's note, a supplementary financial memorandum is required if amendments at stage 2 will cause significant additional expenditure. We agreed that, when that memorandum had been produced, the Finance Committee would take evidence from Executive officials and that, if we had any further concerns when we had heard that evidence, one of us would be able to raise them on behalf of the committee during the stage 3 debate, because there is obviously no time to draft and agree a report before stage 3 on Thursday.

We shall therefore hear evidence today from Andy Crawley, the bill team leader, and from Gillian Thompson, the chief executive of the Accountant in Bankruptcy. I invite Andy and Gillian to explain the supplementary memorandum before members ask questions.

Andy Crawley (Scottish Executive Justice Department): The supplementary financial memorandum has been sent to the committee for three reasons. The first is not directly related to any change that we think will cause an increase in the costs of the bill, but is really for clarification—we hope that it will be helpful to Parliament—in relation to concerns that were expressed in meetings of the Finance Committee and the lead committee about the impact of a rising trend in insolvencies. That change is not linked to what we are doing in the bill, but some members thought it relevant in relation to the overall funding of the Accountant in Bankruptcy. Perhaps we have gone a bit further than we would normally go, but we want to be helpful.

The second reason is that one change at stage 2 was the introduction of a new route into sequestration, which is the legal name for bankruptcy. That new route will allow people who meet certain low-income, low-asset criteria to become bankrupt when they are not apparently insolvent under the existing law. That will lead to an increase in the number of people who go bankrupt, so it is appropriate that we take that into account, even though our conclusion is that it will not impact on the costs to the Scottish Administration, but can be managed from within existing budgets.

The third reason is also related to clarification. When it first took evidence from me and my colleagues, the Finance Committee pointed out that the financial memorandum made no reference to the costs that will be associated with the proposed protected trust deed regulations. A protected trust deed is an alternative to bankruptcy—in some ways, it is a soft form of bankruptcy—and we had not fully complied with agreements about how, in the financial memorandum, we would account for the costs of secondary legislation. Again, our view is that the costs can be managed within existing budgets, but we think it appropriate to provide the supplementary memorandum to the committee for that reason, as well as for the other two reasons.

Gillian Thompson (Accountant in Bankruptcy): Andy Crawley has spoken about the policy, but my interest is in the deliverables. I was struck by concerns that were expressed the last time we appeared before the committee, in relation to whether we had sufficient funding to cover what was being asked. There were other concerns about bankruptcy numbers and whether we had done enough by way of estimating the increase in those numbers, particularly in the face of the 54 per cent increase in business that we had in 2005-06.

I am happy to take questions on the figures that are presented in the supplementary financial memorandum. They vary slightly from those in the previous financial memorandum, but that is just a reflection of the fact that working out timescales for what is required to deliver the bill is an organic process. What you see in the new memorandum reflects a slightly different situation.

In my line in the Budget (Scotland) Bill for 2006-07, there is £1.8 million extra, and for next year, subject to spending review 2007, there is an additional £1 million for bill reforms. At the moment, we are displaying slightly less on the one hand and slightly more on the other, and it is a moot point exactly what the costs are likely to be in 2007-08, as I have said before. We review the situation regularly; all I can say to offer members some comfort is that I am confident that we will be able to deliver the bill for the costs that we have cited in the supplementary financial memorandum.

The Convener: Thank you. The supplementary financial memorandum complies fully with the requirement to deal with the three issues on which we asked for clarification. I am grateful to the officials for bringing it to us.

One issue that concerns me is to do with the final point that Gillian Thompson dealt with, on changes in the take-up of insolvency measures that will be affected by the bill and what the long-term trend is likely to be. The data that you have provided for us cover 2006-07 and then 2007-08

and subsequent years. There is nothing about rising provision in the longer term. Is it safe to assume that provision will not have to increase, given the pace of the increase in insolvencies and given what we know about emerging patterns of personal debt? I realise that that question takes us into the next spending review.

Gillian Thompson: By and large, I would go into SR 2007 using the figures in the financial memorandum as a guide to the costs over those years. We were taken by surprise in 2005-06 by the increase of 54 per cent in insolvencies; we were slightly ahead of things as they panned out in England and Wales.

At the moment, it looks as though the 2005-06 level will be sustained into 2006-07 and then go up by perhaps 5 or 6 per cent. There is still a considerable amount of creditor activity, which is running at 60:40—that is, creditors 60 per cent and debtors 40 per cent. An issue that came to light in 2005-06 was that creditors had been very active and that they were public creditors—local authorities, HM Revenue and Customs, etc. That trend seems to have been maintained into this financial year.

In the past, we would normally have anticipated a fairly low amount—around 4 per cent—for uplift year on year. However, it is a bit difficult to do the crystal-ball gazing at the moment because we are not 100 per cent certain. Because of current economic factors, one could anticipate that more people will go into sequestration. However, at the moment I feel that the 2005-06 increase was sufficient to give us quite an uplift. We envisage such a figure coming through every year, but I am not complacent about that.

The other increases that committee members can see in table 1 in paper F1/S2/06/30/2 relate to what I call the artificial increases—variations in people's behaviours and attitudes that will result from changes to the bill. It looks as though the numbers of sequestrations will rise fairly dramatically in 2008-09, but that is a simple reflection of the changes that we are introducing. I hope that the figures will even out a bit.

I do not know whether Andy Crawley has anything to say about the changes.

Andy Crawley: I have nothing to add, except to say that the Executive is also confident, as far as we can be, that we have taken due account of likely increases in insolvencies. In essence, we are crystal-ball gazing; we do not know what is going to happen. The figures may plateau or fall and the rates of growth in England and Scotland may be different. However, we have paid rigorous attention to those matters in the light of comments that were made by the committee, and we believe

that the figures in the table are robust and give reliable projected costs.

Mr John Swinney (North Tayside) (SNP): I have a question for Gillian Thompson. I understand the rationale for the cost increases for the projected increase in insolvencies from 2006-07 to 2007-08. The caseload will be closer to the mid-20,000s than the mid-10,000s, but Mr Crawley hinted that the numbers might be lower than you have anticipated. How will you deal with that? A functioning organisation has to have a certain capacity in place. Will you build up your staff numbers to cope with your highest estimates for 2007-08, or will you be able to ca' canny?

10:15

Gillian Thompson: Of course we will. It is a juggling act. At the moment, I have 130 staff in the building at Kilwinning, about 15 of whom are specifically working on our information technology project and are not permanent members of staff. We have gradually been staffing up as a result of the relocation and we have been getting back to our original staffing position as at December 2002; we are more or less there. We have taken on some additional people to work on bankruptcy reform this financial year because that is where I had start-up costs. Some staff are working on various other projects, so additional staff are backfilling for them. Of course, it also takes a wee while to do the training.

We forecast that we will take on another tranche of staff next year, but that will be a gradual process. Inevitably, people will leave, too—it is swings and roundabouts. The key thing is that we absorbed the increase in sequestrations of 54 per cent without increasing the number of staff. We did that by finding ways to approach methodologies and to handle and administer cases more cheaply and efficiently. We will continue to do that. From a confidence perspective, the committee may be interested to know that we are about to publish our first full-blown business strategy since we became an executive agency. It includes a variety of streams of activity, including shared support services and other things that will make us more efficient and effective. I am fairly comfortable that we will be able to contract more staff if we need to. People leave who do not have to be replaced. We can forecast that level of movement.

I thank Andy Crawley for reminding me that I employ insolvency practitioners. The norm is that 25 per cent of the cases for which I am trustee stay in-house and 75 per cent go out to insolvency practitioners. It is always possible to vary the level of work that goes to insolvency practitioners as needed; in the past couple of years I have leaned on them quite heavily. We could take significantly

more cases in-house, had we the resources. We aspire to that.

Derek Brownlee (South of Scotland) (Con): I want clarification on underlying trends. One of the marked changes that are forecast in table 1 of paper F1/S2/06/30/2 is a significant decrease not only in the absolute number of protected trust deeds but in the relative proportion. In the figures for 2005-06, about two thirds of all insolvency numbers were under a protected trust deed. By my calculation, by the time we get to 2009-10, the proportion will be down to about 15 per cent. In paragraph 21, you indicate that the anticipated reform of protected trust deeds will lead to a rise in sequestration and debt arrangement scheme numbers. I understand why that might be—perhaps by making PTDs less attractive—but, if we consider the increase in the debt arrangement scheme numbers, I assume that the bulk of the movement away from PTDs will be into sequestration. What does that mean in terms of costs, not just to the Scottish Court Service and the profession but to creditors? It strikes me from a creditor's perspective that moving a significant proportion to sequestration might not be a particularly satisfactory arrangement.

Andy Crawley: One of our concerns about trust deeds—to be precise, about some trust deeds—is that the costs of administration greatly outweigh benefits to creditors and, arguably, to debtors because the costs of administration mean that the debtor is not repaying any part of their debt. Our assumption is that trust deeds moving into sequestration will be cheaper to administer because, essentially, civil servants are paid less than insolvency practitioners. There will therefore be no significant increase in the costs associated with that move. I need to pass the question to Gillian Thompson for exact figures, but I think that that answers your question about why, in policy terms, we think that the costs will not be affected in the way Derek Brownlee suggests.

In relation to how many debtors who cannot be assigned trust deeds would go into sequestration and how many would go into DASs, our thinking on that has developed over time. At one time we thought that more would go into DASs; we now think that more will go into sequestration. That is based largely on the number of trust deeds that make very low payments. We are now assuming that those trust deeds will not be suitable for DASs because they will not be able to make sufficient payment to satisfy creditors, who need to agree to a DAS payment. However, that may prove to be incorrect and the figures may change in different ways. We have provided our best estimate of how we think the policy will impact on take-up of the different debt measures.

Jim Mather (Highlands and Islands) (SNP): You say that it is expected that the number of sequestrations that result from low-income, low-asset cases will level out after the backlog has cleared. At what level do you think it will level out?

Andy Crawley: That is a good question. Based on our initial discussions with the debt advice and money advice sectors, we assumed that between 1,000 and 2,000 additional sequestrations a year would result from what was then called no-income, no-asset bankruptcy. In discussions with the AIB, the sector, colleagues and other interests, we think that that was probably a bit of an underestimation and that there might be a higher-based level rise, if I can put it that way. The figures in the table suggest that there will be somewhere in the region of 3,000 to 4,000, which I hope is an overestimation because, obviously, I hope that fewer people than that will need to go bankrupt.

On the robustness of the figures, however, we believe that they will at least give the committee some assurance that we have properly accounted for the costs to the Scottish Administration. The short answer is that the number of additional sequestrations will be between 1,000 and 4,000 a year. The actual amount will almost certainly be towards the middle of that range because that is how such ranges tend to work out.

Jim Mather: Are you detecting any patterns? Might there be a cascade effect in that process, with particular impact on creditors?

Andy Crawley: We are not making such an assumption. I suppose that it could be argued that those kinds of debtors might be more likely to have public debt than credit-card debt, simply because they find it harder to access financial services. However, I would be cautious about saying more than that. That may be an issue, but it has not been identified as such.

Jim Mather: On public debt, could students go through the process?

Andy Crawley: Student debt will not be written off in a trust deed or in a sequestration. That is Executive policy.

The Convener: I thank the officials for their time. The supplementary information that they have provided was helpful in its presentation of the offsetting nature in administrative and cost terms of the various policy changes that were made at stage 2. Given the relatively minor points that have been raised by the committee, there will on this occasion be no need for a member of the Finance Committee to comment at stage 3.

10:24

Meeting continued in private until 12:00.

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