

FINANCE COMMITTEE

Tuesday 17 November 2009

Session 3

£5.00

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Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by
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CONTENTS

Tuesday 17 November 2009

Col.

SCOTTISH PARLIAMENTARY CORPORATE BODY (BUDGET 2010-11)	1669
HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) BILL: FINANCIAL MEMORANDUM	1678
DECISION ON TAKING BUSINESS IN PRIVATE	1695

FINANCE COMMITTEE

26th Meeting 2009, Session 3

CONVENER

*Andrew Welsh (Angus) (SNP)

DEPUTY CONVENER

*Tom McCabe (Hamilton South) (Lab)

COMMITTEE MEMBERS

*Derek Brownlee (South of Scotland) (Con)
Malcolm Chisholm (Edinburgh North and Leith) (Lab)
*Linda Fabiani (Central Scotland) (SNP)
*Joe FitzPatrick (Dundee West) (SNP)
*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)
*David Whitton (Strathkelvin and Bearsden) (Lab)

COMMITTEE SUBSTITUTES

Gavin Brown (Lothians) (Con)
*Lewis Macdonald (Aberdeen Central) (Lab)
Stewart Maxwell (West of Scotland) (SNP)
Liam McArthur (Orkney) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Sharon Bell (Accountant in Bankruptcy)
Paul Grice (Scottish Parliament Clerk and Chief Executive)
David Ferguson (Scottish Government Constitution, Law and Courts Directorate)
Tom McCabe MSP (Scottish Parliamentary Corporate Body)
Stephen Sandham (Scottish Government Housing and Regeneration Directorate)

CLERK TO THE COMMITTEE

James Johnston

SENIOR ASSISTANT CLERK

Mark Brough

ASSISTANT CLERK

Allan Campbell

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Tuesday 17 November 2009

[THE CONVENER *opened the meeting at 14:07*]

Scottish Parliamentary Corporate Body (Budget 2010-11)

The Convener (Andrew Welsh): Good afternoon and welcome to the 26th meeting of the Finance Committee in 2009, in the third session of the Scottish Parliament.

I have received apologies from Malcolm Chisholm. Lewis Macdonald will attend as the Labour Party substitute. I ask all members of the committee and of the public to turn off any mobile phones or pagers, which interfere with the broadcasting system.

Agenda item 1 is evidence taking on the Scottish Parliamentary Corporate Body's budget proposal for the financial year 2010-11. I welcome to the committee Tom McCabe MSP, who is a member of the SPCB, Paul Grice, who is clerk and chief executive of the Parliament, and Derek Croll, who is head of financial resources. I invite Tom McCabe to make an opening statement.

Tom McCabe MSP (Scottish Parliamentary Corporate Body): Thank you very much, convener, and good afternoon, everyone. Thank you for the opportunity to present details of the SPCB's budget, on this occasion for 2010-11.

With the convener's indulgence, I will take a few brief moments to explain the principles that have underpinned the approach that we have taken to the budgets for this and previous years. The SPCB is very aware, especially in these difficult financial times, that every pound that we spend must be justified and must be put to the best possible use. As people in the room know, that is often easier to say than it is to do, but that is what we strive for.

We are determined that the Parliament should continuously examine what it spends its money on and how it does so. We are aware that every pound that we take from the Scottish consolidated fund means that less money will be left for other much-needed projects. The main principle that underlies our approach is that we should minimise our call on the consolidated fund. I hope the fact that, in 2008-09, we returned £1.5 million to that fund demonstrates through actions rather than just words that we are trying to put that principle into practice.

Our total budget submission for 2010-11, including capital charges, is set out in the letter that the committee received from the Presiding Officer, which shows a reduction of 1.4 per cent compared to the current year. Excluding capital charges, our budget submission for revenue and capital expenditure shows a 0.5 per cent increase in cash terms compared to the current year. As members will be aware, that represents a reduction in real terms. The consumer prices index for October was announced to be 1.5 per cent. The committee will be aware that current forecasts are that the rate of inflation will increase during 2010. That said, as members know only too well, economic forecasting is hardly an exact science.

Our proposed capital expenditure is £3 million, which is £0.4 million higher than last year. As members will again be aware, capital expenditure can vary significantly from year to year. The bulk of the expenditure that is planned for 2010-11 relates to the replacement of information technology equipment and systems. In particular, the 2010-11 budget includes provision for the completion of a major technology refresh programme for desktop personal computers and software at the Holyrood complex and in members' local offices. Such an exercise was last undertaken in 2003, so we have passed the usual industry standard of replacing IT every three to four years. If the technology refresh were discounted from the capital budget, the underlying increase in capital expenditure would reduce significantly, to around 5.6 per cent.

Excluding capital expenditure, the year-on-year trend for revenue expenditure shows a reduction of £50,000 in cash terms against our current-year budget. We have allowed a contingency of £1.2 million, which previous experience tells us is a reasonable amount.

Members are well aware that the SPCB is charged with oversight of the commissioners and the Scottish Public Services Ombudsman. Those bodies' budget submissions amount to £7.9 million, which is just over 10 per cent of the overall SPCB budget. The SPCB is acutely aware of the fine balance that it needs to strike between robust scrutiny of those bodies and the operational independence that they were given when Parliament first established them. We are extremely grateful for the strong support that the Finance Committee has given us in recent years for the adoption of a robust approach to our scrutiny of the budget bids. I am pleased to be able to report that there has been an overall decrease of 0.5 per cent in cash terms in the proposed budget for the commissioners and the ombudsman, which I believe is a result of the clear signals that have been sent to office-holders in the budget rounds for previous years.

The compilation of the SPCB's budget is a complex affair that goes on for most of the year. It involves finance officials in the Parliament and officials in the chief executive's office, and a great deal of interaction takes place with members of the SPCB. I put on record our appreciation of members' involvement and of the amount of effort that has gone into producing a budget that I think suits the present financial times and those of the very near future.

I hope that I have managed to convey a sense of the approach that we have taken and the principles that lie behind it. We are extremely conscious of the need for robust scrutiny and continuous improvement. If I or my two colleagues can answer the committee's questions, we will do our best to do so.

The Convener: Thank you very much. I now invite questions.

Derek Brownlee (South of Scotland) (Con): I want to pick up on the point that Tom McCabe made about the commissioners and the ombudsman. It is a fair point that there is a significant element of the SPCB's budget over which the SPCB has no direct control. That is an issue that the SPCB has to wrestle with. Obviously, there are sensitivities around the extent to which budgetary restraint can be imposed on commissioners and an ombudsman who have a degree of independence from Government and, to some extent, from the Parliament.

14:15

However, if we look at the corporate body budget proposal, we see that the parliamentary staff pay bill is frozen in the current year. Although there is a headline decrease in the cost of the commissioners and ombudsman, if we look underneath that, the Scottish Public Sector Ombudsman, which is probably the largest and most complex of the commissioner and ombudsman offices, is able to reduce slightly its staff pay bill, and the Scottish Information Commissioner, whose work is also significantly demand led, has a fractional increase in its staff pay bill. However, there is an increase in the pay bill for Scotland's Commissioner for Children and Young People and the Scottish Human Rights Commission of more than 10 per cent. How does that square with the straitened financial times that we are in and the messages that the corporate body is passing to the ombudsman and commissioners?

Tom McCabe: That is a good point. The main thing to bear in mind is that there has been considerable change in nearly all those offices in the recent past. New individuals are in post who are looking at their operational capacity, and they

have taken some decisions—as they are entitled to do—about how they can strengthen the capacity and performance of their respective offices. Our view is that we have to respect those decisions.

In the past few years, we have pursued a strategy that presses down on the overall cost of those bodies, but we need to respect the views of new commissioners who, in some instances, are taking over organisations that in the past perhaps did not—I am trying to choose my words carefully—always command the greatest confidence. Our view is that there is a new broom. People have made a judgment about what will give them the opportunity to produce better outcomes, and although we are watching that, they must be given the opportunity to prove themselves.

You were right to mention independence—but not just “a degree of” independence, as the bodies have independence. That is a pretty difficult line to walk, as you know. It would be easy to tread over it, which would raise all sorts of issues. We bear in mind the operational independence that those bodies have. The assurance that we can give is that we will continue to look at the performance of each and every office and assess whether we are achieving the improved outcomes that the new individuals expect following the changes that you rightly pointed out.

Derek Brownlee: Part of my concern, as you will well understand, is that it is much more difficult to take cost reductions out of pay bills in future years once people are in post; it is much easier simply not to incur the expenditure in the first place. We all know the direction of public spending in future years and are well aware that the corporate body's budget is top-sliced—it is taken away from public services in Scotland before we even get to front-line services.

If the SPSO's office is able to make a contribution and turn around expenditure, why cannot the others? The Scottish Human Rights Commission, for example, is increasing expenditure on property costs. The committee has raised the point in previous years about the need to reduce expenditure on property costs and bring organisations together. It seems that they are not getting the message, and the extent to which such organisations are independent has been exploited for what one might regard as empire building. How can we have confidence that the corporate body will be able to manage those costs down in future years?

Tom McCabe: Your point is well made, and the area is one that the SPCB must continue to monitor.

The Scottish Human Rights Commission is pretty new and in many respects is still establishing itself.

Derek Brownlee: But is now not a key time to intervene to ensure that costs do not spiral out of control before final decisions are taken?

Tom McCabe: To be fair, that has been done. We learned lessons from the legislation that established other organisations and applied them to the way in which the legislation on the SHRC was framed in the Parliament. A lot of core savings were achieved because the legislation stipulated considerations such as where the body would be located, its say over that and its obligation to share support services. We were already mindful of some of those costs; Parliament itself was mindful of them, given the way in which it framed the legislation.

I return to the point that, when we are talking about relatively new organisations and new individuals, we perhaps have to allow them to take their view—to a degree—of what the organisation needs. It is not for me to second-guess commissioners, but our impression is that there is something of a root-and-branch review going on in at least three of those organisations. Although the pay bill might increase at the moment, it may well be that, over time, other judgments are made about the overall needs of those organisations, which might be reflected more positively than they are this year in the pay bill.

Joe FitzPatrick (Dundee West) (SNP): The submission that you have provided is transparent, which makes it easy for us to pick things out, so thank you for that. However, that also makes it easy for us to look at some of the big figures and think, “Gosh, that’s a huge amount.” In schedule 3 to the paper, the “Other Projects” line has gone up by 39.4 per cent, on the face of it. The detail shows that the increase is accounted for almost exclusively by the decision to redesign the website. I am not questioning the figure; I just wonder about the decision-making process. How did you reach the decision that it was time now to redesign the website and to spend that money?

Tom McCabe: I ask the chief executive to answer that question. However, I preface his answer by saying that the website is a very important access point for people not only in Scotland but around the world. We are 10 years on from when the Parliament was established, and that focused the thinking. The chief executive will provide a bit more detail.

Paul Grice (Scottish Parliament Clerk and Chief Executive): Mr FitzPatrick is right to identify that key investment. We are going about that project in the same way as we would go about any major project. First, we picked up clear evidence

from users, such as members of the Parliament, about, for example, the relatively inadequate search facility—that has been drawn to my attention by a number of members over time. Secondly, in areas such as the web, where technology moves on, we observe what other organisations, especially other Parliaments, are doing. We brought those two points together and took the view that it was time to have a look to see what the issue was. We normally put together a multiskilled team. We do not carry permanently with us web design expertise, because that would not be good value for money, so we brought in external expertise. On the basis of that advice and our knowledge of our customers, we took the view that now was the right time to invest. It is quite a number of years since the current website was put up.

To pick up Mr McCabe’s important point, the website is quite obviously our major access point. We have had millions of visitors and hundreds of millions of hits over the piece, so the website is a hugely important part of our engagement and access strategy, and it needed to be overhauled.

A point that is sometimes lost is that the migration of data from the current set-up to the new set-up is one of the reasons why this will be a major project. I am absolutely determined that we do that properly. It would be cheap and easy just to load all the current data on to the new website, but by doing that we would not reap the benefits, however good the new search facility is. My aim is that every department of the Parliament will take a long, hard look at the current data that it holds and will migrate only what it needs to migrate. There is no escaping the fact that that is a difficult process, but, at the far end, you do not just get a more powerful search facility and a better design but, just as when you move house, you leave behind a lot of stuff that you do not need.

The time is right. I am conscious that it is a major investment, but I am absolutely certain that it will result in a lot of improvements for the people who use the Parliament and for members and their staff who rely on the website’s search facility. We will improve our intranet facility at the same time, so we will get a major benefit there, too. I hope that, subject to agreement, we will be able to make good progress and complete the project next year.

David Whitton (Strathkelvin and Bearsden) (Lab): Can you give us a bit more information on the actual staff cost for the Parliament? You are budgeting for a standstill in that area. What is the number of staff now, and what is it projected to be? I note that the SPCB has just entered into a two-year staff pay agreement, which took effect in August this year. What was the level of that agreement? Does it apply to senior staff as well as to other staff?

Paul Grice: In 2008-09, the staff complement was 547; in 2009-10 it is 531; and next year it will be 528—it is on a slowly and steadily declining curve. The two-year deal that Mr Brownlee referred to in passing focuses on freezing the total pay budget for two years, beginning in August this year and taking us to the summer of 2011. It absolutely applies to every single person—the pay deal is the same for me as it is for everyone else in the organisation, which I think is very important.

David Whitton: So do I.

Paul Grice: Well, it would not be credible to do something for oneself but to expect others to accept something different—that is an important principle. The deal that we did with the unions was for a 1.5 per cent basic uplift in staff pay, regardless of what inflation will be in those two years. The challenge for me and my team, working with the corporate body, is to live within the commitment to keep the pay bill frozen. There will be a significant decline in real terms over the two years. That is the basic shape of the pay deal, as we negotiated it with the unions. I put it on record that the unions were very constructive and responsible in their negotiations with us.

The other commitment is that, before the end of the two-year deal, we will take a long, hard look at how we structure pay deals in future. I have followed the committee's deliberations, and no one expects us to be out of the current difficulties in two years. This is just a start, but I think that it is a positive start. Before the end of the period, I hope that we will be able to reconsider how we will contain pay costs in the foreseeable future. As Mr Brownlee pointed out, those are a major part of any organisation's costs—including ours.

David Whitton: I will pick up on Mr Brownlee's point. You have been able to do that with your staff; why can you not impose the same financial discipline on commissioners' staff?

Tom McCabe: I attempted to answer that a few moments ago. To be fair, if you spoke to previous commissioners, you would find that they feel strongly that we applied stringent financial discipline to them over time. As we have said, thankfully there is an overall reduction in commissioners' budgets this year, although there will always be differences within that. I hope that the explanation that I gave a few moments ago gives you some reassurance that we are watching the situation with interest and will continue to do so. We will not throw out the work that we have done over the past two years easily. We will keep that robust scrutiny alive, and we will continue to apply downward pressure on those budgets.

David Whitton: Mr Brownlee mentioned the Scottish Human Rights Commission, whose staff costs have gone up by almost £70,000. Either the

number of staff at the commission has increased by an awful lot or somebody has had a hell of a big pay rise. The SHRC's budget was established as £1 million, and it is still £1 million, yet you said that you were going to review that. What has happened to the review of the SHRC's budget?

Tom McCabe: You should bear it in mind that the SHRC is in its very early stages, and that it is still recruiting its complement of staff. We definitely do not expect that to be a year-on-year trend. The commission is the newest of the bodies, and it is still establishing the complement of people who are felt to be required for it to do its job.

David Whitton: So its budget could go up still further, once it has recruited more staff.

14:30

Tom McCabe: There is no current indication that the Scottish Human Rights Commission foresees a substantial increase in staff numbers. However, if any such submissions were made, we would be as robust in our examination of them as you rightly are with us.

David Whitton: We know from evidence on the Public Services Reform (Scotland) Bill that the Scottish Public Services Ombudsman's office expects an increase in its workload, yet the ombudsman has managed to bring down his pay bill. If he is expecting an increase in his workload and he is bringing down his pay bill, I fail to see how we can allow the Scottish Human Rights Commission to continue merrily on its way increasing staff numbers—I would not say empire building—without any recourse to you as to whether it has the right complement.

Tom McCabe: Because the ombudsman's office has been established for several years, he has a degree of empirical evidence on outputs from individuals in the past. Obviously, the ombudsman has judged that the same or more outputs can be achieved with a different staff complement. The Scottish Human Rights Commission is not yet in that position so, to be fair, you are not necessarily comparing apples with apples.

The Convener: As members have no further questions, do you have any final comments?

Tom McCabe: I again express our thanks to the committee. You have been extremely helpful in the past few years, particularly in relation to the work that we have done with the commissioners. We will take a strong note of the questions and concerns that have been raised and do our best to act on them in the coming year.

The Convener: I know from my time on the corporate body that you have a balancing act between the need for tight financial control and the need to support public institutions and individual

organisations on which the public depend. We wish you well in that. I thank you all for attending and for your evidence.

I suspend the meeting for a few moments to allow our next panel of witnesses to take their places.

14:32

Meeting suspended.

14:36

On resuming—

Home Owner and Debtor Protection (Scotland) Bill: Financial Memorandum

The Convener: Item 2 is to take evidence on the financial memorandum to the Home Owner and Debtor Protection (Scotland) Bill. The committee agreed to adopt level 2 scrutiny, which means that we seek written evidence from financially affected organisations and take evidence from Scottish Government officials. The written evidence that we have received has been circulated.

I welcome Sharon Bell, the head of the policy development team at the Accountant in Bankruptcy; David Ferguson, the bill manager; Chris Graham, team leader of the access to justice team; Jane MacDonald from the Scottish Court Service's policy and legislation branch; and Stephen Sandham, team leader with the housing support advice and standards branch. I invite one of you to make an opening statement.

David Ferguson (Scottish Government Constitution, Law and Courts Directorate): On behalf of the bill team, I thank the committee for giving us the chance to give evidence on the financial memorandum to the bill. We recognise that the committee is working to a tight timescale within which to get its report to the lead committee, which explains why we are here in relatively large numbers. We hope that, between us, we can answer all the issues that arise, so that there is no need for us to follow up on any issue in writing. The more that we follow issues up in writing, the more we will slow down your consideration.

As you outlined, convener, I am the bill manager. Stephen Sandham is the lead official on part 1 of the bill, and Sharon Bell is in the lead on part 2 issues. Chris Graham is here to cover any legal aid issues that arise, and Jane MacDonald can pick up issues that arise for the Scottish Court Service. We will divvy up the questions between us as we see fit, if that is okay with you.

We have worked through the written submissions and it is clear that a couple of themes arise. Consultation is one of the major issues. Members might be aware that Alex Neil and Fergus Ewing dealt with the issue when they gave evidence to the Local Government and Communities Committee last week. I will not repeat their evidence, but it is important to reinforce the basic point that the bill is the product of a collaborative process and is the culmination of several months of discussion in the repossession

group and the debt action forum earlier this year. Substantive discussions on the bill continue.

The *Edinburgh Gazette* submission raises significant issues. Again, that was covered in evidence by ministers last week, but it is worth reminding the committee that ministers are clear that it is important to seek to save public money by avoiding duplication in the publication of information on bankruptcies. Sharon Bell and her colleagues have been in touch with the *Edinburgh Gazette*, so she might say more about that if the opportunity arises. Ministers will meet representatives of Her Majesty's Stationery Office very soon to discuss the impact on the *Gazette* and the bill team will go to England tomorrow to meet credit rating agencies to discuss how the register of insolvencies can meet their needs.

Finally, we suggest that some of the written submissions contain a number of questionable assumptions. For example, the Insolvency Practitioners Association's comments about the costs to AIB or the impact on legal aid costs reflect some misunderstanding about the bill's impact. I hope that we will have the opportunity to explore those issues in detail.

I am grateful for the chance to make these remarks. My colleagues and I welcome members' questions.

The Convener: The committee is very averse to questionable assumptions and looks forward to your explanations.

I remind the committee that Linda Fabiani and Derek Brownlee are leading on this bill and that other members should notify me if they wish to intervene.

Linda Fabiani (Central Scotland) (SNP): Members will be aware that over the Parliament's 10 years there have been many initiatives to alleviate the burden of repossession on home owners. I wonder whether Stephen Sandham can take a minute or two to tell us the difference that the bill is likely to make both when we are in and when we come out the other end of recession.

Stephen Sandham (Scottish Government Housing and Regeneration Directorate): As you say, the Government has taken a number of important steps to support home owners at risk of repossession. First, its campaign to raise awareness of the support available through the national debtline doubled the number of calls. We have provided £1 million to boost capacity in citizens advice bureaux and allocated £3 million to the Scottish Legal Aid Board to boost the capacity of our own part V solicitors and advice agencies. Moreover, to help the people most at risk of repossession, the Government has increased funding for its home owners support fund—the ultimate safety net—to £35 million over two years.

As a result, it has taken considerable steps, particularly in supporting various UK initiatives through the home owners mortgage support fund.

Linda Fabiani: What difference will the bill make?

Stephen Sandham: The bill goes further than that. First, it will make it much easier for people to lodge a defence in court. At the moment, individuals mount their own defence to buy time to sort themselves out in only 5 per cent of repossession cases, and part of the problem seems to be that the protection afforded by the Mortgage Rights (Scotland) Act 2001 is not being accessed. The bill will allow all cases to go to court, ensure rigorous court scrutiny of the steps that lenders should be taking to avoid repossessions and allow lay representation, which we think will make the court process easier for people who find it intimidating. The package represents a significant step change from existing support. However, we are unable to quantify the number of repossessions that will be saved, partly because we do not have any data on the number of repossessions in Scotland.

Linda Fabiani: I have a couple of questions about costs in the financial memorandum outside the costs to Government. The Council of Mortgage Lenders disputes the contention that there will be no on-costs to borrowers in setting up the system. How do you respond to its view that lenders might have to start renegotiating service-level agreements with legal firms, the costs of which will be passed on to borrowers?

Stephen Sandham: As the financial memorandum indicates, we think that in the first instance the cost for borrowers and lenders will be broadly neutral. The memorandum also makes it clear that additional costs will fall on both as a result of all cases having to go to court, but of course the flipside or converse is that, for those who wish to enter a defence, the process will be cheaper.

It has to be said that the advice sector as a whole believes that the bill's provisions are worth any additional costs that would flow to the borrower. The repossessions group was clear on that. Shelter and others said that they know that there might be additional costs for some borrowers as a result of all cases having to call in court but that that was a price worth paying for the option of easier defence and giving more people the ability to lodge a defence.

14:45

Linda Fabiani: What about the potential for generally higher costs for all borrowers as the industry tries to cover any potential losses it might face because of the legislation?

Stephen Sandham: That is not at all likely. To some degree, the bill will implement some mechanisms that are already in place in England through the pre-action protocol. We are effectively just toughening that up in Scotland by making it a legislative requirement, but the Council of Mortgage Lenders assures us that it already goes through that process in England using the protocol, so I find it hard to imagine that there should be any additional cost. Indeed, some of the discussion in the evidence that was given to the Local Government and Communities Committee confirmed that that was the view of other stakeholders as well.

Linda Fabiani: The financial memorandum states that there should be no costs for local authorities. We have two submissions—one from Dundee City Council and one from Glasgow City Council. The Dundee City Council submission agrees with the financial memorandum that there should not be any financial implications for the council, but Glasgow thinks a bit differently. It says:

"If debtor protection of the family home is extended, this may mean that local authorities have to wait for longer for assets to be realized and therefore for the outstanding debt to be paid".

Therefore, there is a cost. What is your response to that?

Stephen Sandham: I will answer and then hand over to Sharon Bell, because that is more an issue for part 2 of the bill than for part 1.

It is important to emphasise that the Convention of Scottish Local Authorities was represented on the debt action forum and the repossession group and that it has been strongly supportive. The person who led that was Anne Feeney, and she has welcomed the proposals in public settings. Even if any costs for local authorities flow from the bill, it is important to remember that the aim of the bill is to reduce the number of repossessions and to reduce homelessness, which should save local authorities money. If anything, the bill is trying to save local authorities money by reducing homelessness.

Sharon Bell (Accountant in Bankruptcy): We agree that, if a debtor uses the certificate route into bankruptcy and if there is a delay, that could impact on the local authority. However, the net impact would be the same for the local authority. There should no direct impact on the local authority overall, apart perhaps from a slight timing issue.

Linda Fabiani: I cannot find the reference that I was looking for, but I think that I read somewhere in my papers that it was also felt that there should be no additional cost to money advice centres. I am thinking of local authorities again, and also

citizens advice bureaux. I know that citizens advice bureaux are really stretched despite the additional resources that they have been given, and that the problem is not always just about money but about staffing and time resources. What assistance has been given for the dissemination of information to money advice centres, wherever they might lie, to alleviate some of that additional pressure?

Stephen Sandham: The financial memorandum indicates that there will be additional costs to the advice sector, primarily in relation to the envisaged lay representation role. We estimate costs to be around £72,000 as a result of 25 per cent of cases requiring lay representation.

Set against that, however, the financial memorandum makes it clear that not only has there been a £1 million capacity boost for citizens advice in general but £3 million is being made available through the Scottish Legal Aid Board. That will boost the capacity of SLAB's own solicitors, which will indirectly take pressure off the advice sector, and it will also make £2 million of funding available for 16 wide-ranging projects, which involve Shelter Scotland, citizens advice bureaux and others. A lot of additional support and funding is already being provided.

We are also making £250,000 available to help all those types of organisations to get accredited under the national information and advice standards, which will be one of the benchmarks of quality for the lay representation role. That represents a significant increase in the amount of funding that is already available.

The advice group, which is a sub-group that worked with both the debt action forum and the repossessions group, has been reconvened, and it is being led, again, by the Scottish Legal Aid Board. We sit on that group, alongside Money Advice Scotland, Shelter Scotland and all the advice agencies, and we will work with those organisations to consider what more needs to be done to disseminate information and whether additional help is needed to deal with the capacity issues.

We know that Money Advice Scotland and Citizens Advice Scotland have been doing some work to scope out the costs of those issues, so we will work with them to ensure that they are properly funded. It is critical that the capacity is there, and we are already taking significant steps to ensure that that is the case.

Linda Fabiani: In the interests of on-going prudence, how does the bill interface with practices such as the mortgage to rent scheme?

Stephen Sandham: The mortgage to rent scheme is one of the two schemes that are funded under the home owners support fund. Money

Advice Scotland and its debt advisers interface closely with us, because the organisation is partly involved in assessing applications and eligibility for the home owners support fund. That work is dealt with in my team, and we are aware of those links and the need to ensure that that interface takes place. A review of the scheme is under way at present.

Linda Fabiani: Thank you.

Derek Brownlee: I draw members' attention to my entry in the register of members' interests, which will make clear that I am not, have never been and have no intention of ever being an insolvency practitioner.

Having got that out of the way, I will touch on the consultation process, which was mentioned in the opening remarks today and has been discussed elsewhere. I will ask specifically—because the issue is raised in a number of the written submissions—about the consultation process around the financial memorandum. What process was undertaken with regard to that?

Sharon Bell: In respect of part 2 of the bill?

Derek Brownlee: In respect of the financial memorandum as a whole.

Sharon Bell: I can talk only about how we discussed the costs in respect of part 2 of the bill—the bankruptcy, sequestration and trust deed elements. The costs were examined as part of the debt action forum. Although the numbers and finances were not discussed in great detail at the debt action forum, we intimated to the forum's members that there would be a bill, and it would have a cost implication.

At the beginning of this year, before the debt action forum commenced, I had a number of meetings with the *Edinburgh Gazette* to discuss the Government's thoughts about removing the requirement for notices of bankruptcy to be published in it. I asked the *Edinburgh Gazette* for specific cost implications, but it was not able to provide anything at the time, so I used the best estimates that were available to me, which were based on the actual costs from the Accountant in Bankruptcy.

Derek Brownlee: Just for clarification, what process was undertaken with regard to part 1 of the bill?

Stephen Sandham: I dealt with that. We undertook a process of engaging with stakeholders during the summer, as the repossession group report was not published until June. We tried to push matters forward to ensure that the bill was ready as quickly as possible. During the summer, especially throughout July and August, there was discussion with stakeholders, whom we asked to scope out

the costs for all parties, including lenders, borrowers and the advice sector. There were concerns that summer is never the ideal time to consult people, but we were trying to push forward the preparation of the bill as quickly as possible. We think that we got the best information that we could get from stakeholders.

Derek Brownlee: Let us put to one side for a moment the concerns that have been expressed about the process in relation to parts 1 and 2 of the bill. Are you comfortable that the financial memorandum that is before us captures accurately the likely costs of the bill, in so far as you are now aware of them?

Sharon Bell: Yes.

Stephen Sandham: We are very, very confident of that for part 1. We worked closely with the Scottish Court Service, for example, to ensure that the impact on the Scottish courts is manageable. I know that the committee has received evidence from the Council of Mortgage Lenders, which is concerned about that aspect of the bill. From working with the Scottish Court Service, we are clear that we have bottomed out the costs and that the impact is manageable. We departed slightly from the detail of one of the repossession group's recommendations—although not its spirit—by moving from ordinary cause process to summary application process, as a way of minimising the impact on the courts. Jane MacDonald can comment on that point if necessary. We consulted the repossession group on whether the proposal made sense. It agreed, so we are confident about what we have done.

We worked with the Scottish Legal Aid Board to bottom out the costs on the legal aid side. We said that we had gone in at the upper level and are confident that that is the case, especially given the fact that, in its revised forecasts, the Council of Mortgage Lenders has reduced its estimate of the likely rise in repossessions.

Derek Brownlee: My next question relates to a piece of written evidence that was touched on in the opening remarks. The Insolvency Practitioners Association has provided a series of assumptions that challenge the assumptions in the financial memorandum, albeit it only in relation to the costs in part 2, table 1. I invite you to go through the eight items in the table and to explain why you disagree with the IPA's views.

Sharon Bell: Do you want me to clarify where my costs have come from or where the IPA's costs have come from?

Derek Brownlee: I would like you to clarify why you think that your cost estimates are robust and disagree with the IPA's suggestions.

Sharon Bell: The IPA and others have questioned our assumption of 500 cases for the certificate for sequestration. I refer the committee to the financial memorandum to the Bankruptcy and Diligence etc (Scotland) Bill, in which we stated clearly that the number of low-income, low-asset route sequestrations in 2008-09 would be 7,500—not 2,000, as the IPA says in its evidence. In fact, there were 9,417 LILAs in that period. We slightly underestimated the figure, but we said that it would be considerably more than the IPA suggests.

Derek Brownlee: The underestimate was not slight—was it not by about 25.5 per cent?

15:00

Sharon Bell: Yes.

The figure of 500 cases comes from the number of debtor applications that the accountant refused an award of bankruptcy last year. The AIB's annual report for 2008-09 says that, in 383 cases, debtors were desperate for debt relief through bankruptcy but could not satisfy the current criteria and had no alternative way of applying to make themselves bankrupt.

Derek Brownlee: Given the economic situation, do you not expect the number to increase? I appreciate that you have historical figures and I understand how you can use them but, all other things being equal, do you not assume that if people were in trouble with debt in years gone past, that position will be compounded by the economic situation in the years ahead?

Sharon Bell: We believe that the low-income, low-asset route has assisted most of the people in Scotland who have met the criteria. We truly believe that only very few people still cannot access bankruptcy. We know that some people cannot access debt relief but do not wish to go down the most severe route of bankruptcy.

Our figure of 500 is based on the number of refusals of bankruptcy to people who applied but could not access bankruptcy. The figure was uprated by 26 and a bit per cent because of the difference between our projected 7,500 LILAs in 2008-09 and the 9,000 LILAs that came through. The assumption is as close as we can make it; it is based on the only evidence that we have to support the figure. I disagree totally with the view of IPA, R3 and Irene Harbottle that the figure should be multiplied by four. Such numbers of people might use the certificate, but they would previously have used an alternative route. We believe that only about 500 people are in the debt trap.

Derek Brownlee: I accept that the *Edinburgh Gazette* change—whatever the rights and

wrongs—will achieve a cost saving, but is it appropriate to regard fee income from certificates for sequestration or income from protected trust deed notices as savings? They are really fees and charges that are levied, rather than savings. I admit that they will reduce the net cost to the public purse, but they are not savings.

Sharon Bell: The Accountant in Bankruptcy pays £396,000 a year out of the public purse to advertise in the *Edinburgh Gazette*—

Derek Brownlee: What about the fee income from certificates for sequestration and income from protected trust deed notices? You suggest that they are savings—are they really?

Sharon Bell: What is listed is income, which—in effect—reduces the agency's outgoings.

Derek Brownlee: Who will be responsible for paying the fees and charges?

Sharon Bell: The debtor will pay the application fee and the insolvency practitioner—in effect, the debtor—will pay the fee to register the trust deed.

Derek Brownlee: I presume that that money is unavailable for creditors to use for the underlying debt.

Sharon Bell: Yes.

Derek Brownlee: We have covered the first three items in table 1 for part 2. Is the figure for the register of insolvencies—£72,000—a straight-line projection that is based on previous fee income?

Sharon Bell: Yes.

Derek Brownlee: Some of the written evidence queries not the staff costings, but how you reached the requirement for four and a half additional staff, which drives the costing. How did you come up with a requirement for four and a half full-time equivalent members of staff?

Sharon Bell: The number of staff is based on the additional work that the Accountant in Bankruptcy will be required to undertake. One and a half members of staff will be required to deal with the increased number of applications through the certificate route. Because those cases will not necessarily stay in-house, there will be no requirement for the AIB to have any more than 1.5 additional members of staff. Two staff members will be required for registering trust deeds and one additional staff member will be required to enter the information into the register of insolvencies. In effect, the total is based on the number of applications and the time that it takes to complete tasks.

The Accountant in Bankruptcy has invested in a modelling tool that times processes for the purposes of management, so we can measure the time involved in every task that we do based on

the grade of the member of staff and on the task. We can project numbers to work out our costs, which is how we work out what our budget from the Scottish Government needs to be. By using that tool, we can project how many cases we would take in-house and how many we would put out under our agency contract if our fees were to increase or if the number of applications were to go down. In that way, we can ensure that our costings are as accurate as possible to ensure that our drain on the public purse—our requirement for public funds—is at a minimum.

Derek Brownlee: If I recall correctly—I do not have the document in front of me, so I might have this wrong—the AIB's budget, or at least the amount that the AIB takes from the Scottish Government, has reduced by £0.1 million for financial year 2010-11 from financial year 2009-10. In that context, why cannot the AIB absorb the new costs within its existing staff complement, which I think is reasonably substantial?

Sharon Bell: We have a staff complement to deal with the duties that are required of us by the Government. As members will know, our budget is provided from the SG budget. In the past two years, we have made substantial savings and we have returned moneys to the Scottish Government through those savings. The agency continues to make investments in its information technology and processes to ensure that we continue to make savings. Ministers are keen for us to become self-sufficient in the long term, so we are looking to minimise our requirement to increase staff numbers. We seek to improve our processes by functionalising our working process to make it much leaner so that it involves less downtime and achieves economies of scale.

Derek Brownlee: As others have, R3 has pointed out in its written submission that a potential consequence of removing the family home from protected trust deeds—I find it difficult to say that for some reason, so let me call them PTDs—is an inadvertent increase in sequestrations because more objections will be made to going down the PTD route. What is the assumption around the likelihood of that happening? If that were to happen—regardless of whether it is thought to be likely—what would that do to the likely costs within the AIB?

Sharon Bell: The Accountant in Bankruptcy has the capacity under its contract to put work out to insolvency practitioners. Six firms throughout Scotland provide us with insolvency experience. Invariably, technical and complicated insolvency cases are put out under contract to those insolvency practitioners. In the event of a sudden rise in the number of cases, that allows the Accountant in Bankruptcy some flexibility in deciding whether to administer a case in-house or

to put it out under contract. That approach reduces the requirement for the staff complement to fluctuate according to the volume of cases, but it also allows the insolvency practitioners' expertise to be used in specific cases.

Derek Brownlee: Am I correct to assume that, if a case goes down the sequestration route rather than the PTD route, the total cost will be greater?

Sharon Bell: I would probably disagree with you. Trust deeds are administered only by insolvency practitioners, who have high charge-out rates. They are professionals, as we all acknowledge. However, insolvency does not have to be administered by an insolvency practitioner. Some cases are administered in-house by the Accountant in Bankruptcy. A low-income, low-asset case will cost the public purse about £125. Other cases cost many thousands of pounds, depending on their complexity.

In a trust deed case, the trust deed does not have to make the debtor bankrupt. The trustee can propose an alternative trust deed or can sequester the debtor themselves, if they believe that that will benefit the creditors. The trustee could be nominated as the insolvency practitioner who is dealing with the case, in which case there will be no cost at all to the public purse.

Generally speaking, we try to minimise the cost to the public purse by realising assets or getting contributions. We would not look to take on such cases otherwise.

Derek Brownlee: You have not said it explicitly, but can I take it from the tone of what you have said that you would not necessarily accept the presumption that there would be an increase in sequestrations?

Sharon Bell: Yes.

Derek Brownlee: Linda Fabiani alluded to the question whether local authorities will face financial costs under the bill, through their being creditors. I assume that no specific financial assistance is envisaged for local authorities, if that is the case.

Sharon Bell: No. We do not believe that there will be a cost to local authorities; we believe that the bill will be cost neutral to them. The procedural rules for the new certificate route, for example, will require the authorised persons to confirm that the debtor has no access to alternative, or less drastic, debt relief. The debtor who is unable to pay the debts will, without access to bankruptcy, remain in limbo.

In addition, there will be consequential savings. There could be marginal savings, because the local authority will not have to pursue the debtor through debt-recovery processes if they will not

get their costs back. There are, therefore, balancing savings in the process.

Derek Brownlee: Would the financial memorandum not have been better if there had been broader consultation of industry groups, some of which have been quite critical of the bill? Would you have been in a stronger position if you had had discussions with R3 and the IPA in respect of telling the committee why you agreed or disagreed on likely scenarios, and why you were confident of your case? Would not that have put you in a stronger position than you are in, in today's scenario, in which we have received pretty confrontational written statements from a group of bodies that clearly feel aggrieved and which believe that they were closed out of the consultation process?

Sharon Bell: I disagree that those people were not party to any of the discussions.

Derek Brownlee: They were not part of the debt action forum, were they?

Sharon Bell: The IPA and R3 were not party to that, but the insolvency sector was represented by the Institute of Chartered Accountants of Scotland, which is the recognised regulatory body and is a normal contact for the Accountant in Bankruptcy and ministers in dealing with such issues.

Derek Brownlee: I do not have the ICAS submission in front of me, which is remiss of me. As a member of ICAS, I will be in its black books. However—if I recall correctly—did not it suggest in its most recent submission that it had somehow been constrained from engaging with that element of its membership that is involved in insolvency practice?

Sharon Bell: It did give that impression in its evidence.

15:15

Derek Brownlee: Was that inaccurate?

Sharon Bell: I would disagree with ICAS. Mr Ewing's evidence to the Local Government and Communities Committee last week also disputed it. It is clear that the ICAS representative went to ICAS's members and asked for specific evidence relating to the value of cars, which we also look at in the subordinate legislation. It has no financial impact on the bill. There is evidence that ICAS went to its members. At one point, when discussing matters in the forum, the minister requested that forum members keep the discussions in a closed shop for a period in order to allow open discussion and to avoid sending rumours running. It is clear in the terms of reference of the debt action forum that representatives on the forum were encouraged to

seek further evidence from their members, so I dispute ICAS's claim.

David Whitton: I will pick up on the points that Mr Brownlee made. You have seen the submissions from W D Robb and Co and from the IPA. First, why was there not a normal 12-week consultation period? Why was it only four weeks?

Sharon Bell: The four-week consultation period was specifically for the housing sector—

Stephen Sandham: The four-week consultation was on additional measures that might be taken into the bill, in relation to protection for unauthorised tenancies.

On your question about why there was not a 12-week consultation, the view was very much—Mr Ewing and Mr Neil gave evidence to the Local Government and Communities Committee on this point—that there was a very intensive and comprehensive period of discussion. Effectively, both the debt action forum and the repossession group met between February and May and had three-hour meetings every three weeks, so there was a huge and in many ways much more meaningful period of consultation and discussion about the right way forward than one would get from a normal 12-week consultation, in which one just asks questions and analyses evidence. Part 1 of the bill includes everything on which there was consensus in the repossession group.

David Whitton: You have seen the submissions from W D Robb and Co and the IPA. Paragraph 4 of the W D Robb and Co submission states:

"The Bill does have financial implications to my organisation ... The Financial Memorandum states in paragraph 138 that the Bill expects to be cost neutral for Insolvency Practitioners when in fact this statement is completely wrong."

How do you answer W D Robb and Co on that?

Sharon Bell: I will respond to that point, because it relates to part 2 of the bill.

I cannot answer specifically for where, on her organisation, Irene Harbottle believes there will be an impact. We do not believe that there will be any cost implications for insolvency practitioners. None of the proposals in the bill will remove work from insolvency practitioners. In fact, the proposal to allow debtors to propose a trust deed, which can become protected and exclude the family home, may encourage people to seek debt advice from insolvency practitioners. We do not believe, either, that the bill will impact on insolvency practitioners' staffing numbers.

David Whitton: I will pick up on another point that Mr Brownlee made. If you had consulted insolvency practitioners such as W D Robb and Co in the first instance, you could have got rid of an awful lot of the unhappiness—let us put it that

way—and misinformation that seems to have been flying about.

Sharon Bell: Mr Ewing met Irene Harbottle and a number of other insolvency practitioners on 3 June and on 23 September to discuss these matters. At no time did they say at the meetings with Mr Ewing that the proposals in the bill or any of the debt action forum's proposals would have an implication for staffing or the staffing costs of their organisations.

David Whitton: The Insolvency Practitioners Association's submission states that the Accountant in Bankruptcy estimated that there would be 2,500 LILAs but that, in fact, there were over 9,000. Is that correct? Was there an underestimate?

Sharon Bell: It is correct that the figure was over 9,000 for 2008-09. In fact, 9,417 cases were awarded bankruptcy through the low-income, low-asset route. However, when we did our projections for the Bankruptcy and Diligence etc (Scotland) Bill in 2006, we anticipated over 5,625 LILAs in the first six months of the eventual act's being in place, and 7,500 in the following year—not 2,000, as IPA stated in its evidence. I totally dispute that we ever said that there would be only 2,000—that is a mistake.

David Whitton: So, if I have got it right, you said that there would be 7,000 LILAs.

Sharon Bell: I said 7,500 in—

David Whitton: And it was 9,000.

Sharon Bell: Yes.

David Whitton: So there was a slight miscalculation.

Sharon Bell: It was the best guesstimate at the time.

David Whitton: The IPA made its own calculations, and its estimate of the likely costs of implementing the bill appears at the end of its written submission. I assume that you will dispute those costs, so I hope that you will be able to tell me what the costs will be.

Sharon Bell: I believe that there will be a saving of £304,000, which is exactly what is in the financial memorandum.

David Whitton: I am glad that you are so positive.

Sharon Bell: Thank you.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Given the bill's impact on the private sector, was a regulatory impact assessment carried out?

David Ferguson: There was no formal RIA. We took advice from our Government colleagues who have responsibility for RIAs. It was felt that, because of the inclusive process by which the proposals that the bill now represents were developed, the way to assess the impact on organisations was to work with them in the manner that the Government did through the debt action forum and the repossession group. I do not think that an RIA would have added a great deal to the picture that we have, and there was not time to do a formal RIA adequately. We would have wished to carry out one over the standard 12-week period, but you may recall that the Government was under considerable pressure to act quickly. For that reason, we therefore did not enter a formal RIA. However, we feel that, through the stakeholder groups and the work that we have done and which continues to be done, we have a good handle on the bill's impact.

Jeremy Purvis: Simply saying that it was not considered sufficiently important to carry out an RIA will not assuage the concerns of people who may lose their jobs because of the bill. They did not have an opportunity to look at the bill's financial implications.

David Ferguson: I did not say the RIA was not important; it is important for measuring the bill's impact. However, we felt that the way to do that was through the two stakeholder groups that, with the Government, drew up the proposals that are now contained in the bill. We felt that a more inclusive and interactive way of developing the policy and the bill and assessing the bill's impact was to talk directly to those who were going to be affected by the bill.

The Convener: Mr Sandham, do you want to add to that?

Stephen Sandham: One of the key bits of part 1 of the bill is around the pre-action requirements on lenders. The important point, of course, is that lenders should undertake those anyway. In a sense, all that the bill is doing is requiring court scrutiny of what lenders should do anyway under the Financial Services Authority regulations. The Council of Mortgage Lenders tells us that it complies with all that stuff anyway. In a sense, no additional regulatory burden should therefore be imposed on lenders.

Jeremy Purvis: Do officials consider it to be part of their role to advise ministers whether or not to consider the code of public consultation for proposed legislation, or are the meetings with certain groups, which it is believed were closed, sufficient?

David Ferguson: I do not think that the groups were closed. If it helps the committee, we can send the committee the terms of reference of the

debt action forum and the repossessions group. Sharon Bell alluded to the relevant statement in the terms of reference. I do not have the reference with me, but it says that it was understood that members of the group would—*[Interruption.]* In fact, I do have it here. It says:

“The formulation of ideas may require members of the DAF to take issues outside of the meetings to enable further wider interaction with outside parties and stakeholders.”

That comes from the “DAF Terms of Reference” document, which we will—

Jeremy Purvis: I think that I heard Ms Bell say that finances were not discussed. Mr Brownlee asked a question about consultation and part 2 of the bill. I understood that discussions had taken place at the debt action forum, but that finances were not discussed.

Sharon Bell: That is correct.

Jeremy Purvis: We could end up going round in circles on this. If finances were not discussed and there is no public consultation, I do not know what opportunity members of the public or other interested bodies have to look at the financial memorandum before it is published. Is that consistent with the consultation code, which I presume bill teams operate under when they propose legislation?

David Ferguson: We mentioned earlier that there was a process of consultation on the financial memorandum. I do not know whether Stephen Sandham or Sharon Bell wish to say any more about how the issues in each part of the bill were put to the test over the summer. If you wish us to respond to the committee formally, with an assessment of how the way in which we have operated is consistent with the code on consultation, we would be happy to do that.

The Convener: That would be helpful—we will take you up on that.

Tom McCabe (Hamilton South) (Lab): You are aware of the tone of the questions and the concerns that have been raised. Is there a danger of creating a perception that you are rewriting the rulebook to suit your own ends? You have constrained a consultation, there has not been a regulatory impact assessment and there is a group of professionals who substantially disagree with your conclusions and who are extremely angry.

The Convener: Who would like to answer that one?

David Ferguson: Thanks, colleagues.

I know where you are coming from, Mr McCabe, but I do not see that as being the case. As we have tried to explain today, and as ministers said in their evidence to the Local Government and

Communities Committee, the proposals were developed through an inclusive group, which met over a number of months. It did not just have questions put to it; it played an active role in shaping the proposals and in helping us to understand their impact. That was done in the context of a deteriorating economic situation, with considerable pressure on the Government to take urgent action. That did not just mean any action; it had to be the right sort of action—action that would have an impact and whose effect people would understand. That is what we have before us in the bill. It was an unusual set of circumstances—unique in my experience—but the process that we have been through has been robust and reasonable.

The Convener: There are no further questions. Do you have any final comments to make?

Stephen Sandham: Returning to part 1 of the bill, I remind the committee that the overarching assumptions that we made about cost were based around a projected 60 per cent increase in repossessions—and, therefore, in actions in court. That was taken from a forecast by the Council of Mortgage Lenders. The council has revised that figure down substantially; its forecast for next year is effectively a 33 per cent increase from the 2008 figure that we used as a base. There is a huge amount of reassurance in that: regarding part 1, we have very much gone to the absolute upper limit of what the costs will be, so if anything they will be substantially less. I draw that to the committee's attention.

The Convener: I thank the witnesses for their evidence, expertise and attendance here today.

Decision on Taking Business in Private

15:29

The Convener: Item 3 is to consider whether to consider our draft report on the financial memorandum to the Home Owner and Debtor Protection (Scotland) Bill in private at future meetings. I propose that we do so. Is the committee agreed?

Members *indicated agreement.*

The Convener: As we decided previously, we now move into private session to consider our stage 1 report on the Public Services Reform (Scotland) Bill.

15:30

Meeting continued in private until 17:10.

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