COMMUNITIES COMMITTEE

Wednesday 17 September 2003
(*Morning*)

Session 2

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CONTENTS

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COMMUNITIES COMMITTEE
3rd Meeting 2003, Session 2

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Donald Gorrie (Central Scotland) (LD)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Patrick Harvie (Glasgow) (Green)
Maureen Macmillan (Highlands and Islands) (Lab)
Campbell Martin (West of Scotland) (SNP)
*Mary Scanlon (Highlands and Islands) (Con)
*Elaine Smith (Coatbridge and Chryston) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE SUBSTITUTES

Shiona Baird (North East Scotland) (Green)
Christine May (Central Fife) (Lab)
Shona Robison (Dundee East) (SNP)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Andrew Crawley (Scottish Executive Legal and Parliamentary Services Department)
Laura Dolan (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Gerald McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Hub

Scottish Parliament

Communities Committee

Wednesday 17 September 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:01*]

Debt Arrangement Scheme

The Convener (Johann Lamont): Welcome to this meeting of the Communities Committee. In particular, I welcome Laura Dolan, who is from the Scottish Executive access to justice division's diligence team, and Andrew Crawley, who is from the office of the solicitor to the Scottish Executive.

The first item on our agenda is consideration of the debt arrangement scheme, on which the Scottish Executive officials will make a statement. We will have some questions following that. I ask Laura Dolan to lead off.

Laura Dolan (Scottish Executive Justice Department): The Executive is grateful to the committee for considering the draft regulations during the secondary consultation, which is taking place before the regulations are laid for formal scrutiny by the Scottish Parliament. Today, I hope to demonstrate how the concerns that the Social Justice Committee raised in its stage 1 report on the bill that became the Debt Arrangement and Attachment (Scotland) Act 2002 have now been addressed in the draft regulations. It will be extremely helpful to ministers to have the Communities Committee's further thoughts on the draft text. In preparing the draft regulations, the Executive has had the benefit of the views that were expressed during the parliamentary debates, those that were submitted in response to the primary consultation and those voiced in the subsequent discussions with stakeholders and interest groups on practical aspects.

The scheme has a number of main aims: to give people a tool to manage their debt problems with practical support and dignity; to give individuals who could pay their debts if given time the opportunity to do so by instalment over a manageable period; and to create a regime in which multiple creditors each get a share of the money available without having to compete in a race to get a court order or be the first to take formal enforcement action. In other words, the scheme will put debt management before debt enforcement, so that more debt will cumulatively be paid to more creditors. It will replace the current first-past-the-post system, which involves the rest of the debt being left unmet or written off.

The scheme aims to build on practices that have developed voluntarily to meet an unmet need in this area. It will include supportive money advice services that will be available throughout Scotland to allow advice to be given about how income maximisation might be achieved by claiming unclaimed benefits, rebates or other allowances. The scheme will enable programmes to be set up that will be both realistic and sustainable.

Those are the general aims, but I know that the committee will have specific questions about the draft regulations, which I am happy to answer if I can.

The Convener: Does Andrew Crawley want to add anything?

Andrew Crawley (Scottish Executive Legal and Parliamentary Services Department): No, not at this stage.

The Convener: I remind members that we have Scottish Executive officials before us, not ministers. If it would be inappropriate for them to answer particular questions, I ask them to indicate that, and we will ensure that those questions are pursued elsewhere.

I start with some general questions. How will the debt arrangement scheme, or DAS, as provided for under part 1 of the Debt Arrangement and Attachment (Scotland) Act 2002, work in conjunction with the other parts of the act?

Laura Dolan: The idea is that, in addition to changing the regime of enforcement, a tool will be given to people in multiple debt. Rather than creditors competing against one another to get what might be the small pool of money available, that money will instead be dispersed among everybody who is pursuing the debtor. The debt arrangement scheme will interact with the enforcement system so as to prevent enforcement from taking place: there will be no need for it if each creditor gets a part payment.

The Convener: Are any categories of debtor prevented from using the debt arrangement scheme?

Laura Dolan: Debtors who have no surplus income will not be able to use the scheme, because it is available only to people who, once the adviser has examined their circumstances, are able to say that they have surplus income that they can use towards payment of their debts. Somebody who has no money above a subsistence level would not be able to participate in the scheme.

The Convener: What steps have been taken to ensure that large numbers of debtors will not be excluded from the benefits of the scheme because they can afford to make only very small repayments?

Laura Dolan: That issue was discussed during the debates on the bill, and I know that it is of particular concern to the committee and to various debtor organisations. The Executive intends to address that through a pilot study. However, it is more appropriate at this stage to get the main scheme up and running, then we can look towards a pilot study. One of the main hurdles is the availability of a payment distribution mechanism. We need to explore how that could be set up in order to allow people with very low surplus incomes to participate, and it is our intention to do that.

The Convener: Does that mean that people who pay back debt on a very small income could be subject to the full force of an exceptional attachment order? If they do not get into the scheme, could they be pursued in a more ferocious way?

Laura Dolan: If they had income or assets that were capable of being attached by one form of diligence or another, that would still be possible. However, they would probably have to be in employment, so that their earnings could be arrested. That mechanism provides for a subsistence-level amount to be retained. If someone is on a very low working income, they might not have other assets or income that could be attached anyway.

The Convener: If someone were in a low-paid job and did not have enough to be able to participate in the scheme, they could end up having their wages arrested, whereas someone with slightly higher earnings and who could participate in the scheme might not get their wages arrested.

Laura Dolan: There are threshold levels, where the income is low, at which an earnings arrestment will not operate. If the person's wages were above a certain level, it is possible that their earnings would be arrested.

Stewart Stevenson (Banff and Buchan) (SNP): If people have income that it is not possible to arrest—that would apply to various categories of income—but which would otherwise be sufficient to qualify them for the scheme, would the absence of arrestable income exclude them from the scheme? That might apply to payments from a former partner—I know that this sounds fanciful—investment income, income from abroad or other income that is paid in such a way that it cannot be directly arrested.

Laura Dolan: The arrestment provisions will not include or exclude people. The money adviser will sit down with the individual involved to assess their outgoings on essentials and to decide what surplus might be available. If there is a surplus, a programme will be drawn up and the person will be able to enter the scheme.

Stewart Stevenson: So the key point is if, after an assessment of income and expenditure, there is found to be a surplus, the person will be able to enter the scheme. The nature of the income is not germane to the scheme at all.

Laura Dolan: That is correct.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I want to take a step back to the issue of who can or cannot be involved in a debt arrangement scheme. When the Social Justice Committee took evidence during the progress of the Debt Arrangement and Attachment (Scotland) Bill, we were told that, if a person were too poor to be involved in a debt arrangement scheme, they would be too poor to have an attachment order made against them. However, from your answers to the convener's questions, I am not sure whether that is still the case.

Laura Dolan: In essence, that is what I am saying. If a person has sufficient surplus income for their wages to be arrested, it is likely that they will enter the scheme. However, if a person does not have surplus income, without knowing the individual circumstances, it is difficult to know exactly what they would be left with. The money adviser would have to determine that with them. In general, that is how the system should operate.

The Convener: Will you outline where the various costs of running the debt arrangement scheme will fall? Who will have to pay and how much will they have to pay?

Laura Dolan: Some of those issues are still open to consultation. In the consultation, the Executive asked for views about the financial aspects of the draft regulations. For example, the question has been floated whether debtors should make a contribution towards the cost of the scheme by paying a small application fee.

A register search fee will be payable by some people who look at the register of those who are participating in the scheme. The DAS administrator and money advisers will have automatic access to case records, but other people who search the register, such as those who want to check whether they are free to undertake diligence, will pay a fee. The consultation asks what would be a suitable corporate fee rate.

Creditors who receive payments under the scheme will have to pay an administration charge for the payment distribution facility. Again, the consultation asks what would be the appropriate level of fee for that. At present, creditors make such payments under the voluntary debt repayment programmes that have come into being. We propose to continue on that basis because of the benefits that creditors will receive from the automated system.

The Executive will bear the costs of the additional front-line money advice services, which we discussed earlier, and of central service support for money advisers such as training programmes and on-going support services. The Executive will also bear the DAS administrator's central administration costs, including set-up and running costs, and will meet the costs of sheriff court business for complex cases.

10:15

Elaine Smith (Coatbridge and Chryston) (Lab): I am not clear about your answer to Cathie Craigie—I apologise if that is just me. You said that someone who had no surplus income could not enter into a debt arrangement scheme. What would happen to such people? Would they apply for sequestration? As with the old scheme, would any of their belongings be removed for sale?

Laura Dolan: The scheme is intended only to distribute someone's surplus in an automated way among creditors. A prerequisite of using the scheme is that a person has a surplus.

It is extremely unlikely that people who have no surplus income would have other attachable assets or income. I have tried to think of a scenario in which such a person might have a valuable asset that could be attached, but I cannot think of one.

The changes that were made after the 2002 act was passed mean that it is almost impossible to attach anything in domestic premises. The attachment arrangements are more suited to commercial situations. That is not only because of the list of exemptions, but because of the procedures that the 2002 act introduced.

It is extremely unlikely that somebody in the category that you described would be the subject of enforcement. Their debts would remain until their circumstances improved and they could pay something towards their debts, or it would be open to such an individual or one of their creditors to pursue sequestration, if that was what they thought best.

Elaine Smith: Was that what you meant when you said in your opening presentation that the system was fairer because it would spread payments around creditors rather than giving the first creditor everything and requiring the other debts to be written off? I was not sure what you meant by the phrase "written off".

Laura Dolan: I used that phrase in connection with sequestration. At the moment, on sequestration, little in the pound is paid to each creditor. Under the new system, creditors will have more debt paid, albeit over a longer period. Creditors will have the prospect of recovering something.

Elaine Smith: Concern has been expressed that a money adviser's independence could be compromised if they had a dual role of advising a debtor and monitoring that debtor's compliance with the terms of a debt payment programme. Does regulation 8(1) of the draft regulations, which sets out a money adviser's functions and duties, mean that an adviser will perform elements of both those tasks?

Laura Dolan: The Executive does not think that a dual role is suggested and does not intend to create one. A money adviser's sole purpose is to support the debtor not only at the initial stage of producing the programme and the application but throughout the programme's duration until its completion. The Social Justice Committee also discussed that issue.

There was an unfortunate use of language with the terminology of monitoring and compliance that the Executive has done its best to move away from. It is intended that there will be continual support and aftercare. The money adviser will not just set up the programme and then sit back and think "That's okay." The money adviser will be available to the debtor and the debtor will know that they have a money adviser they can contact if they need or want to. If there is a change in their circumstances, they will have someone to get in touch with straight away. It is thought that that will help to secure the success of individual programmes.

Elaine Smith: A relationship of trust will build up between the debtor and the money adviser, with the money adviser being a sort of advocate for the debtor. When an adviser reviews a debt payment programme, what information might that adviser be required to give to the DAS administrator. Could that compromise the relationship in any way?

Laura Dolan: I do not think so. The provision you are talking about is in regulation 8(1)(g), which says that the money adviser will

"provide, as required by the DAS administrator, information about participation of a debtor in a debt payment programme."

If that is the regulation you were thinking about, it is not intended to operate in the way you suggest, as it provides a means of exchanging information should that become necessary. For example, let us say that a creditor has been in touch with the DAS administrator to say that the debtor concerned is breaching the approved terms of the programme. It would be better for the DAS administrator to contact the money adviser so that they can talk about the circumstances and ascertain whether that is true than for the DAS administrator to go direct to the individual, as that would break the link in support provided by the money adviser.

Elaine Smith: The regulations allow for the possibility of money advisers charging debtors a fee for their advice, but it also requires such advisers to highlight the fact that free money advice is available. It seems a bit strange to me that money advisers would charge a fee because that might put the debtor into more debt. Is there evidence to show that sufficient free money advice already exists, or will sufficient free money advice be available in time for the commencement of the scheme? Has the Executive identified any extra resources that might help existing money advice schemes to cope with the possible extra work load?

Laura Dolan: That provision was put in place in anticipation of the money advice role under the scheme and the money advice role that came into being in connection with exceptional attachment orders under the 2002 act. The Executive has given more than £3 million per annum to increase the provision of front-line services. I understand that that enabled 120 new money advisers to be put in place throughout Scotland. I cannot recall the exact figures, but some of those advisers were in local authority welfare rights and trading standards offices while others were in voluntary organisations such as citizen's advice bureaux.

Elaine Smith: Is the Executive confident that sufficient money advice will be available? Are there any plans to review the status of free money advice, given that people might feel obliged to pay for money advice from someone who charged for it if sufficient free advice was not available?

Laura Dolan: That is certainly not ministers' intention. They made it clear that they wanted free money advice services to be available and they think that the provision will be sufficient. The position will need to be monitored, as will all aspects of the scheme. A central support facility for money advisers is being put in place to raise quality standards and ensure that there are consistent training strategies and programmes. The Executive has invested £500,000 per annum in that support facility, which will have a role in training advisers for the scheme and in assisting with the preparation of guidance materials for money advisers.

Elaine Smith: Will that include equal opportunities training as well as training for giving money advice?

Laura Dolan: I am not involved in drawing up the training programmes, but I imagine that they will include equal opportunities training.

Donald Gorrie (Central Scotland) (LD): Can you give examples of people who might be fee-earning money advisers?

Laura Dolan: When we were considering giving people an element of choice, we had in mind people who already had a trusted adviser in place, such as an accountant or solicitor who deals with their financial affairs. They might have an on-going relationship with that adviser, who might have dealt with their financial matters around a divorce for example. We thought that it would be unreasonable to expect somebody to cut off such a relationship if they wanted it to continue and to continue paying for it.

Donald Gorrie: They would still pay their adviser individually.

Laura Dolan: Yes, but under the regulations, the adviser would have a duty to tell the person that they could get free money advice elsewhere.

Donald Gorrie: The adviser would not be given public funds.

Laura Dolan: No.

Stewart Stevenson: I shall now move on to the DAS register. Most commercial lending requires the debtor to agree that the details of the debt be entered on commercial registers for other potential creditors to see. For the DAS register, how has the Executive sought to reconcile the interests of creditors and prospective creditors in getting enough information with the privacy of the individual? Will information about individuals be available to commercial registers of debt?

Laura Dolan: A question has been added to the consultation exercise about the extent to which it is necessary to have information about someone to whom a lender intends to offer credit in order to determine whether they owe a debt. Creditors will need sufficient information to identify people, but there is no need for them to access information beyond the minimum necessary for them to do that. For instance, the information that the DAS administrator keeps about individuals in their programmes would not be accessible to anyone other than the DAS administrator and the money adviser. Creditors would know what payment they were receiving under the programme and what had been agreed, but they would not be able to delve into the full details of the application.

10:30

Stewart Stevenson: Does that imply that someone who is on the DAS register, about whom there is therefore considerably less information about the nature, timing, quantity and repayment programme associated with the debt, will be denied access to further credit, because commercial credit companies would not feel comfortable about lending to someone when they could not get the kind of information about that person that they would get about commercial loans, through credit reference agencies?

Laura Dolan: Those people would still be at liberty to go to their usual source through a credit reference agency. That is, I suppose, another piece of information. It has often been said that participation in the scheme would act as a piece of what I think is called "white" information—as opposed to black information—because it demonstrates that somebody is making a good effort to take control of their financial situation, and wants to pay their debts. It is equally, therefore, something that would put a tick against that person's name.

Stewart Stevenson: Does that imply that you have spoken to commercial lenders and established that they intend to update their credit score sheets and so on to treat that information as white rather than black?

Laura Dolan: I cannot say that. I do not know whether that is—

Andrew Crawley: The regulations provide for restrictions on further credit during the period for which a debt payment programme is approved; that is in draft regulation 32. But perhaps your question is directed more at the long-term effect of participation in a DAS programme, and it is harder to assess what that will be.

Stewart Stevenson: I am obliged to you for that reference, but to come back to the point of substance, what is the view of the commercial providers of credit about people who have been on the DAS register?

Laura Dolan: I would not like to speak for those people. I could not say what steps they would take. The committee would have to take a view from them.

The Convener: The Institute of Credit Management representatives are coming in next week, so perhaps we can pursue that subject then.

Stewart Stevenson: Thank you.

Cathie Craigie: We now move on to part 5, on the approval of debt payment programmes. Draft regulation 19(1) provides that a debt payment programme must relate to two or more debts. Will you clarify whether the debts can be owed to the same creditor? I am thinking along the lines of debts for the supply of fuel. For example, if someone gets gas and electricity from one fuel company, the bills are issued separately for each type of fuel. Would that be considered as one creditor or two?

Andrew Crawley: Yes, it is certainly the intention that if one creditor were due more than one debt, the debtor would be able to apply.

Cathie Craigie: There must be two or more debts, and you are saying that if someone had debts for electricity and gas from the same creditor, that would be enough to allow them into the scheme.

Andrew Crawley: That is the intention.

Cathie Craigie: Thank you for that clarification. Staying on the subject of who may apply, can you outline the reasoning behind the restrictions contained in draft regulation 19(2)? Some people would feel that they were too restrictive.

Andrew Crawley: Regulations 19(2)(a) and 19(2)(b) are, in essence, duplication. Any debtor involved with a conjoined arrestment order, or a protected trust deed, is, in effect, already in a debt payment programme. It was felt appropriate to allow such programmes to continue, rather than to require a further application for a DAS programme. Regulation 19(2)(c) applies to people who are bankrupt. It was not felt appropriate for a person who is already bankrupt to be taking part in a debt payment programme under the DAS regulations.

Cathie Craigie: In connection with regulations 19(2)(a) and 19(2)(b), would a view be taken on whether the existing schemes that people were involved in were actually the most beneficial for them? If a debtor's existing scheme were reviewed, it might be felt that another debt arrangement scheme would be more beneficial for them. Could that happen?

Laura Dolan: Yes. If a person is in a successful programme, there would be a presumption that the programme should continue. However, if for some reason the programme is not operating particularly well, it might be appropriate for the debt arrangement scheme to be used in its place. For example, the conjoined arrestment process is for people who have gone down the DPP—debt payment programme—route and have got a court order enforced, at which point they can conjoin together. However, if a debt has not been legally constituted in that way, but the debtor and the creditor have agreed about the amount that is due, the creditor would not be able to conjoin but would have to raise a court action, get a DPP—debt payment programme—and so on. That might be unduly cumbersome, and would involve people, as well as the court system, in expense. In those circumstances, it might be appropriate for the DAS to be used instead of a conjoined arrestment order.

Cathie Craigie: I want to move on to the part of the regulations about the consent of every creditor being required. As I read them, the regulations give the administrator quite a lot of scope in deciding what is fair and reasonable, and he or she will have the final say before a matter goes to court. How will administrators deal with such questions? What guidance will they have, apart from what is in the draft regulations?

Laura Dolan: It was thought that the list of factors that the DAS administrator has to take into account was quite comprehensive, but there may be other things that it would be appropriate to include. The Executive will happily receive any other suggestions. Regulation 24(2) says:

"In determining whether a debt payment programme is fair and reasonable, the DAS administrator shall have regard to—"

and there follows a list of various factors. It was thought that it would not be appropriate to be too restrictive, because that might prevent individual circumstances from being taken into account, because it would be difficult to anticipate all the possible permutations of somebody's situation.

Cathie Craigie: At what point will the sheriff become involved in determining whether a debt payment programme is fair and reasonable?

Laura Dolan: The DAS administrator can decide at the outset that the case is particularly complex and should go straight to the sheriff. That is a decision for the administrator to take in the specific circumstances of the case. For example, the creditors may object because they think that sequestration is a more appropriate course, and they might have reasons for thinking that. It was thought that when it is being considered whether sequestration—which would have to be granted by the sheriff anyway—would be more appropriate, the case should be considered by the sheriff in the first instance.

Cathie Craigie: Regulation 26(2)(c) lists the specified conditions with which a debtor shall comply. It states that the debtor shall,

"except for a continuing liability, make no additional payment to a creditor taking part in a programme".

When someone is in debt the fuel companies have the power to put in a pre-payment meter. As we all know, it then costs the consumer more to use the fuel, and the fuel companies can set the meter to recover debt in that way. That will add to the debt that the debtor already owes. Is there an opportunity for the sheriff to decide that the debt should be pegged at the level that obtained when the debtor entered into the debt arrangement scheme? Can the courts say to the fuel companies that they cannot put in a pre-payment meter to recover any part of the debt?

Laura Dolan: The answer to that question is in two halves. My colleague will speak about the legalities, and I will then tell the committee about what the Executive has been doing in connection with the utility companies.

Andrew Crawley: The difficulty that the Executive has is that fuel supply—both for gas and for electricity—is a reserved matter.

The committee will see that this matter is not one of the specific exceptions that are set out in head D of schedule 5 to the Scotland Act 1998. That means that the regulations cannot deal with the variation of arrangements for pre-payment meters or for any other supply matter. All that we have been able to do in the draft regulations is to spell out in regulation 32, as far as we can, the position in relation to pre-payment meters. We are continuing to consider the matter, but—sadly, perhaps—it is very unlikely that there will be any scope for moving in the direction in which Cathie Craigie would like us to move.

Laura Dolan: We have had a number of discussions at official level with representatives both of the utility companies and of the regulatory body, the Office of Gas and Electricity Markets, and energywatch. We have spoken about those issues and will continue to discuss them.

An industry standard already exists, which Ofgem states should be set in the utility companies codes of practice. The standard incorporates the principle that the utility companies will accept pro rata payments among creditors. The companies will take part in a programme in that sense.

The companies have already recognised voluntary debt repayment programmes that are taking place. On that basis, the debt arrangement scheme should not lead them to act in any other way. The companies should continue to act in accordance with their code of practice.

Where there is no pre-existing pre-payment meter, it would be inappropriate, in the Executive's opinion, for that to be installed after someone came into the scheme, because they would then have demonstrated a willingness to resolve their debt problems. The difficulty for utility companies arises when a meter is already in place. I acknowledge the concern about fuel then being charged for at a higher rate. Because of those issues, the Deputy Minister for Justice is writing to the utility companies that operate in Scotland in the hope of reaching agreement with them on appropriate protocols. That effort will continue in the near future. We should be able to give you more information on how that progresses in due course.

10:45

Cathie Craigie: I am pleased that that dialogue between the minister and the companies has been going on.

Do you know anything about the voluntary programmes that the companies have been involved in? In those schemes, do the companies push for a pre-payment meter to be installed, or are they happy to work to find an arrangement that will ensure that the debt is repaid?

Laura Dolan: I do not have that information.

Cathie Craigie: It would be helpful if you could find that out.

Mary Scanlon (Highlands and Islands) (Con): I have a paper from the Consumer Credit Association and I would like to seek some clarification of some of the points that it raises.

One of the CCA's main concerns is

"the potential at the moment for a debtor to arbitrarily choose to exclude certain debts from the DAS."

The paper states:

"Creditors who are outside the DAS may end up with no right to object to the DAS or to their exclusion from it, yet be unable to recover their debt whilst the DAS is in force."

The CCA asks for an assurance that the debt arrangement scheme will not allow people simply to write off debt or give some creditors priority over others. The CCA would like the regulations to state explicitly that all debts must be paid in full, that the consent of all creditors will be a prerequisite for all debt arrangement schemes and that all creditors must be included in the scheme. How would you respond to that?

I realise that that is quite a long question, but I thought that it would be better to present all the information at the same time.

Laura Dolan: I have made a list.

It is not the intention of the regulations—and I do not think that it will be their effect—that debts would be excluded. There are provisions for variation, partly in recognition of the fact that it is not envisaged that a debtor would deliberately attempt to exclude any creditor from the programme. The money adviser would work hard with them to ensure that that did not happen, but it is possible that a creditor might be left out inadvertently. For example, if a creditor had stopped pursuing a debt and had not been visible to the debtor for a while, the debtor might have lost track of that debt. Sometimes, debtors are in other difficulties as well—there might be emotional problems and so on—and those might contribute to their not keeping track of every debt. The provisions for variation recognise that a debt that has been omitted in such a circumstance could be included.

Mary Scanlon: I would like to be clear on that point. If a creditor discovered that they were not included in a debt repayment programme, could they get into the system after the programme had started and everything was set up?

Laura Dolan: Yes, they could do that through the variation mechanism. Part of the purpose of the register and part of the intention of the notice of intention to apply is to alert people to the fact that a certain individual is planning to draw up a programme. Those features are intended to aid that process.

You asked about debtors being able to write off debt. The whole purpose of the debt arrangement scheme is to ensure that debts are paid. If somebody felt that, in their circumstances, it was better to go down the write-off route, they might want to think about sequestration. However, creditors would be most likely to get more money through the debt arrangement scheme.

Mary Scanlon: Would the creditor be fully informed of and participate in any decision to write off a debt? Would they be consulted fully on that process?

Laura Dolan: Once somebody was in the scheme, it would not be open to the debtor unilaterally to write off the debt. The organisation has in mind the facility that has been made available for debtors and creditors to agree that either a proportion of the debt or all of it would be waived. It is connected to a debate that took place previously about the freezing of interest and the composition of debts. I understand that after somebody has been participating in a voluntary programme for a while, creditors will sometimes agree—when a proposition is put to them by the money adviser—to waive the interest charges or accept a certain amount of money in full settlement of the debt and call it a day at that. Apparently, that takes place, but creditors will usually be willing to do that only when it has been demonstrated that the debtor is willing to pay an agreed proportion of the debt. That option would not be available on a unilateral basis, but would have to be agreed by all parties, for reasons of legislative competence.

Mary Scanlon: So the consent of all creditors would be a prerequisite for any schemes and all creditors would be included.

Laura Dolan: If you are talking about an individual creditor writing off a proportion of a debt that is owed to them, either before or during participation in the scheme, only that creditor would have to agree with the individual.

Access to the scheme as a whole is granted, and the debtor's application to participate and their programme are approved, on the basis of all creditors agreeing, which is a slightly different matter. However, there are derivations from that. The DAS administrator can deem a creditor to have consented if they do not respond to the request, and the DAS administrator can waive creditor consent in certain circumstances when the creditor does not hold the largest proportion of the total debt. In that way, a single creditor is not able to scupper the scheme.

Mary Scanlon: Are you saying that a creditor who does not hold the largest proportion of the

debt will always be given the opportunity for his consent to be given in the event of a debt being written off?

Laura Dolan: There are two different issues. The first issue is whether consent must be given to participate in the scheme as a whole. The second is whether a creditor could at any stage decide to agree that the debt be either reduced or written off.

Mary Scanlon: That is my point. Would the creditor be given the option to agree to that?

Laura Dolan: It would not happen unless he was agreeable.

Mary Scanlon: That was my main point. I realise that I have given quite a lot of information, but I was not part of the committee when the bill went through, so the issue is quite new to me.

There is also a concern that some creditors will be given priority over others. You mentioned that priority might be given to a creditor who did not have the largest portion of the debt. Will the system allow the money advisers to prioritise repayments so that certain debts are given priority?

Laura Dolan: In general, debts will not receive priority; they will all receive a pro rata payment and be given equal treatment. However, an element of priority comes in not so much with historical debt as with on-going liabilities. For instance, for someone who pays rent on an on-going basis, that essential outgoing will need to be met before the calculation of surplus income is made. That is to ensure that on-going payments, such as rent or council tax, do not turn into debt. Local authorities have faced the difficulty of having a continual churn of debt, year in, year out. If the scheme can stop that by ensuring that on-going liabilities are met first, the only thing that will need to be dealt with will be the historical debt, which will be gradually paid off through the scheme.

It is essential that the current in-year liabilities are met. In that sense, those are given priority as essential outgoings rather than as debt as such.

Mary Scanlon: Regulation 27 would allow a debt payment programme to include a requirement for the debtor to sell and distribute among creditors the value of certain non-essential assets. I would be happy if you could define what a non-essential asset is. Will you explain how the selection, valuation and sale of such assets would work in practice?

Laura Dolan: That issue was first raised long ago, when the working group met to make the proposals for debt arrangement and attachment legislation. The working group considered whether people who have assets of worth should voluntarily sell them in order to settle their debts. The question is which assets are genuinely of worth such that, in the normal course of events, responsible debtor behaviour would require that they be sold, and which assets are essential things that people use every day, such that they are not so much assets as goods. Essential things should never be attached or sold or taken; the idea is that such action should be taken only for valuable items.

There has been some debate on whether regulation 27 should be included, and the matter is still open for debate. However, for completeness, it would be unfair if somebody had valuable assets but was sitting on them to the detriment of their creditors. This may not be a common example, but a person may have a large estate but not a lot of income with which to run the estate, although they have valuable assets as part of it. The question is whether a large estate should be kept by that person to the detriment of their creditors, whose businesses may well be jeopardised because they cannot get the debt repaid.

11:00

Mary Scanlon: I understand that in relation to a large estate or a painting worth £30 million that is hanging on someone's wall. Those fall into the category of non-essential assets, in my opinion. However, what about a television, fridge or car? In the Highlands, a car is an essential asset. Can you give us a more realistic example—something that we can identify with—of what you regard as a non-essential item?

Laura Dolan: There is a comprehensive list of essential items in the 2002 act. The items that you just mentioned would not constitute assets to be sold under the provision. Because the list is comprehensive, it is quite difficult to think of examples. However, it is thought appropriate to have the provision as a possibility in the few cases in which attachment might be necessary, albeit that those cases would be the exceptions.

Cathie Craigie: I remember our discussions, in considering the 2002 act, on what was essential and should be added to that list. A touring caravan that is sitting in someone's drive would not be considered an essential item, unless the owner was a travelling person with ethnic roots in that community, I suppose.

Andrew Crawley: I would say that a touring caravan would not be regarded as an essential item but would be subject to attachment, which is the test in the regulations. If someone was living in it as their home, that would be different.

The Convener: There is provision to alert somebody who is living in the caravan but who is not the debtor.

Andrew Crawley: Yes.

The Convener: There is a lot of detail on such matters in the legislation.

Mary Scanlon: What would happen if a debtor could not obtain a reasonable price for his specified asset?

Laura Dolan: It would not be appropriate to address that in the regulations. Perhaps the DAS administrator could think about that. To be honest, I am not 100 per cent sure what would happen in that circumstance. It would be a case of adopting an appropriate procedure of which people could be informed in advance through guidance.

Andrew Crawley: In that situation, there could be a right of appeal, as regulation 27 can be appealed. Conceivably, if there was an issue about how readily something could be realised, that could be taken further by an aggrieved debtor. That might be the remedy for dealing with a situation in which the value of an asset cannot be achieved on realisation. That is a speculative suggestion, however, as that would be a matter for the courts rather than the regulations.

Donald Gorrie: You have dealt with the issue of rent and council tax, which are the existing commitments for the year, coming first. Would the same apply to water charges and to a reasonable estimate of fuel charges? Cathie Craigie has already pursued the issue of fuel charges. Those are the essentials of life, and it would be a bad thing if someone got even further into debt because of them or could not afford the necessary fuel and water.

Laura Dolan: Yes, that is correct. There is a practice adopted by money advisers now that, essentially, works from a list drawn up jointly by the British Bankers Association and the Money Advice Trust. It gives money advisers guidance on the type of things that should be included in their calculations and things that should be regarded as essentials. The items that you have mentioned are regarded as essentials. It will be a necessary part of the guidance for money advisers that such considerations will be set out clearly for the purpose of the debt arrangement scheme, and that will be covered in their training programme.

Donald Gorrie: I also wish to ask about people taking on new debts. We would all want them not to do so, and I know that there are regulations that cover that. However, there might be instances where the person concerned needs a little freedom to manoeuvre. How could your regulations work in such cases? Is there any way of putting pressure on the lenders not to tout money around people in those circumstances? CABx complain about such situations constantly arising. Someone with multiple debts might be consulting a CAB and might have a good scheme, but the person might come into the CAB with another leaflet from the bank inviting them to accept another credit card. Those invitations are wicked on the part of the banks, in my view. Is there any way of trying to stop that while, at the same time, giving the small number of people who might need a loan of a little more to keep them going some opportunity to take one out?

Laura Dolan: There are two ways for an individual to get that leeway. Under the current arrangements, through voluntary programmes—and it is intended that this will continue under the debt arrangement scheme—the money adviser will, in drawing up the debt payment programme, introduce a small amount of leeway for things that are not anticipated. For example, the person might require to have a repair carried out on their cooker.

That is the first way of providing such leeway. The other way involves the individual applying for a variation. They could say what circumstance has arisen and explain that it is necessary to take on an additional commitment and that they wish that to be included under their programme. If somebody was persuaded to take out an additional commitment without its being included in the programme, the creditor would not be able to have that included, nor would they be able to take action to enforce it.

Andrew Crawley: That is a live point. I draw members' attention to the way in which the regulation is drafted, and to the fact that it is subject to consultation. Regulations 32(2) and 32(3) appear in square brackets in the draft regulations. I think that one of the consultation questions is on the extent to which creditors should be restricted from advancing further credit that is not approved. It may be that the committee will take a view on that to feed into the consultation.

Donald Gorrie: Good. Thank you.

Mary Scanlon: What are the various circumstances under which a person can appeal a decision to the sheriff court? What steps have been taken to ensure that such matters can be resolved speedily?

Andrew Crawley: The regulations provide that an appeal will be taken only to the sheriff or sheriff principal, not further. That should cover that objective.

The Convener: There are no further questions. I thank the witnesses very much for their attendance. For those of us who dealt with the Debt Arrangement and Attachment (Scotland) Bill, that evidence brought it all back in all its gruesome detail. Thank you for your attendance.

Laura Dolan: You are very welcome.

Budget Process 2004-05

11:09

The Convener: Item 2 is on the committee's approach to the 2004-05 budget process—which I know brings joy to all our hearts. Members have before them an approach paper, which has been drawn up by the clerk. You will note that we have identified two panels of witnesses who might wish to comment on the budget, particularly in relation to the commitments that fall under the communities remit. I invite discussion on whether members feel that the approach as set out in the paper is satisfactory. Then, we can deal with any more detailed comments. I invite members' initial comments on the proposed approach.

Donald Gorrie: As we agreed at a previous meeting, I think that it is good to concentrate on housing, because the financial aspects of housing have been strongly drawn to our attention. I note that the paper mentions Dr Robert Rogerson in relation to issues to do with regeneration and the voluntary sector, which are very important. If he raises issues that we wish to pursue further, could we do so on some other occasion?

The Convener: I would think that those topics could link in quite nicely with preparatory work for our inquiry into the social economy. I am sure that there are grounds to pursue such subjects there. I would not want to inhibit any subsequent discussion. If something is raised in the course of our discussions that is not strictly to do with the budget, we would want to find some space to explore it later.

Donald Gorrie: We could presumably ask the Convention of Scottish Local Authorities, from which we are hearing after Dr Rogerson.

The Convener: Yes. We will also be hearing from the Minister for Communities later, and we could pursue things with her.

Donald Gorrie: That is a good proposal.

Cathie Craigie: Will it be possible to add to the list of those from whom we might hear evidence practitioners in the voluntary sector, such as CVS Scotland?

The Convener: We could also add the Scottish Council for Voluntary Organisations. We will ask the clerks to see whether that is possible. Those organisations might offer a useful perspective.

Is that approach agreed?

Members *indicated agreement.*

The Convener: I thank members for their attendance.

Meeting closed at 11:10.

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