COMMUNITIES COMMITTEE

Wednesday 24 September 2003
(*Morning*)

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The Stationery Office Ltd.

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Wednesday 24 September 2003

COMMUNITIES COMMITTEE
4th 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)
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)
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)
John Scott (Ayr) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Margaret Burgess (East Ayrshire Citizens Advice Bureau)
Yvonne Gallacher (Money Advice Scotland)
Susan McPhee (Citizens Advice Scotland)
Gerald Murphy (Institute of Credit Management)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Gerald McInally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Communities Committee

Wednesday 24 September 2003

(*Morning*)

[THE CONVENER *opened the meeting at 10:00*]

Debt Arrangement Scheme

The Convener (Johann Lamont): I welcome everyone to the meeting. We have received apologies from Campbell Martin and Stewart Stevenson, and the Presiding Officer has received a letter from Maureen Macmillan that says that she has resigned from the committee with immediate effect. Her replacement will be appointed in due course.

For agenda item 1, I welcome Gerald Murphy, an Institute of Credit Management branch secretary; Yvonne Gallacher, Money Advice Scotland's chief executive; Susan McPhee, the head of social policy and public affairs at Citizens Advice Scotland; and Margaret Burgess, the manager of East Ayrshire citizens advice bureau.

Members should note that the Convention of Scottish Local Authorities and the Scottish Consumer Council declined the invitation to give evidence. Written material from the witnesses' organisations and other organisations has been circulated to the committee. Members will take that into account in their later deliberations.

We will go straight to questions to the witnesses. Members have read the information that they have supplied. I will kick off by asking about the accessibility of the debt arrangement scheme.

Concern has been expressed that, depending on the details of the debt arrangement scheme, many debtors might be excluded from the scheme because they will be unable to repay their debts in the time scales envisaged.

The cover note that was issued with the draft regulations says:

> "It is intended that a pilot will be undertaken, as soon as possible once the Scheme is operational, in relation to extension of payment distribution for applicants with very low surplus income."

The Executive has said that the debt arrangement scheme will assist debtors who cannot settle their debts as they fall due but who have some surplus income with which to pay instalments. Will the scheme that the draft regulations propose be accessible to most people with multiple debt problems?

I put that question to the whole panel; witnesses may respond in turn.

Susan McPhee (Citizens Advice Scotland): The view of Citizens Advice Scotland is that the scheme poses problems for clients who are on a low income. If a client has no surplus, they will be unable to access the scheme. Even if a client has a very small surplus, problems with the payment distributors mean that they will not have enough money to pay all their creditors.

Our two main concerns relate to the lack of provision for freezing interest and for the composition of debts. As those facilities are not included in the scheme, clients will be unable to pay off their debts. In theory, a client could enter a repayment programme and have to make payments for a long time—30 years or so. We have big concerns about that.

Yvonne Gallacher (Money Advice Scotland): In previous evidence, we said that only about 30 per cent of people would be able to access the scheme. We agree with Susan McPhee's comment that some people will be taken out of the system because they lack income to distribute to their creditors. However, some people will be able to access the system. The scheme is another tool in the toolkit—a weapon in the armoury—for advisers and their clients, because it will provide another solution.

As we have said in previous evidence, many people are entering into voluntary arrangements, and the scheme provides a way of formalising that. It is hoped that it will provide protection.

I endorse everything that Susan McPhee said about interest not being composited. It will be difficult for people who have small amounts to distribute to access the scheme, but it will provide a solution for some people.

I hope that the scheme will keep people out of the bankruptcy system. I am thinking particularly about protected trust deeds and formal sequestration. The scheme will provide another solution. However, where people are unable to sustain a debt payment programme, we would like that to be allowed to constitute apparent insolvency, which would allow them into the bankruptcy system if that were appropriate.

Gerald Murphy (Institute of Credit Management): The Institute of Credit Management is concerned about the workability of the DAS. We do not think that the period of time will necessarily benefit debtors. We are also concerned about who will administer the system. Provisions are already in place that can cater sufficiently for debtors.

The Convener: Yvonne Gallacher said that some people might be so poor that they cannot

access the scheme. What do you imagine will happen to people in such circumstances? Would they end up with an exceptional attachment order?

Yvonne Gallacher: We are concerned about that possibility, and I am sure that our concern is shared by colleagues from Citizens Advice Scotland and East Ayrshire citizens advice bureau. If people are not able to subscribe to the scheme or to keep payments going through the scheme or a variation of it, a creditor might use an exceptional attachment order. However, given the emphasis that has been placed on giving advice and information, someone who definitely cannot pay and who does not have non-essential assets should never get to that point. If all the safeguards are in place that the working group that produced the report "Striking the Balance: a new approach to debt management" proposed, people who do not have any assets worth realising should avoid that situation.

To clarify that, there might always be an exception to the rule, because people cannot access advice quickly enough. Funding has been put into money advice, but demand is still not being met.

The Convener: The Executive has proposed a pilot study to address how the scheme can be extended to applicants on low incomes. How could the regulations be changed to address their situation? What results would you be looking for from such a pilot scheme?

Margaret Burgess (East Ayrshire Citizens Advice Bureau): We appreciate that there is a pilot scheme, but we are concerned that it is only a pilot. The scheme is starting and, judging by my experience of working with people on the ground, it does not protect people from the threat of an exceptional attachment order. An exceptional attachment order might never be made, but the threat is there.

People are coming into our office with letters from sheriff officers saying that they will be arriving at their homes to carry out an exceptional attachment assessment. In my view, that is similar to a poinding, because the sheriff officers come into people's homes to examine their goods. People do not realise that they can refuse the sheriff officers access.

The Convener: Is that because people are not being informed of their rights?

Margaret Burgess: No. The sheriff officers will have given them the booklet produced by the Executive. However, that simply explains people's rights to money advice. People are still receiving correspondence from sheriff officers stating that they will call to carry out an exceptional attachment assessment so that they can decide whether to make an application to the sheriff. It is unlikely that an application will be made, but people still have to face the threat and fear caused by sheriff officers coming into their homes. That has to be addressed and, as it stands, the scheme does not address it.

The scheme also does not address the fact that people on a low income could enter the scheme and, if there is no cut-off point or freezing of interest, end up owing more at the end of it. Unless the scheme is changed continually to recalculate interest charges, many people will be paying less than the monthly interest.

The Convener: Would you clarify the point about sheriff officers? Are you saying that sheriff officers are deliberately not letting people know what their rights are and that the letters that the sheriff officers send saying that they are going to do assessments do not indicate that people are entitled to refuse entry?

Margaret Burgess: Yes. One firm of sheriff officers has agreed to look at the letter again, but we have not yet seen a final draft. Letters have been sent and people are frightened that they will lose their household goods.

The Convener: So part of the problem could be dealt with if sheriff officers were honest about their powers.

Margaret Burgess: Addressing that matter might prevent the fear of exceptional attachment orders in some cases. Very few such orders should be raised against people who have no assets, but the process is not working and the scheme does not address that matter.

Susan McPhee: I want to re-emphasise what Margaret Burgess said about freezing interest. At the end of the scheme, a client can be given a certificate of completion, showing that they have completed the scheme, but the debts are not discharged. If interest has been accumulating throughout the scheme, the person could have complied completely and made their payments and then have interest allocated at the end. Once they have finished the scheme—even if that is after 15 years—they could have more debt than they did when they started, as interest and charges will have accumulated.

Elaine Smith (Coatbridge and Chryston) (Lab): I want to ask about general issues, but in particular, I want to pick up on the issue around fees. The Executive's cover note on the secondary consultation on the draft regulations states:

"It is thought appropriate to levy a small application fee, payable by the debtor, which could make a contribution towards the administrative costs of the Scheme."

The draft instrument states:

"The DAS administrator may waive payment of an application fee by a debtor, where the debtor has a [very low surplus income]."

What do you understand by a "very low surplus income"?

Secondly, the Consumer Credit Association paper that we received states that debtors might go into a voluntary repayment plan, which

"does not carry the stigma (and creditworthiness impact) of registration."

Why would people choose to go into the DAS? They might have to pay a fee to sign up to it, which I presume would add to their debt. If they are willing to tackle their debts and can do so voluntarily, what is the advantage of going into the DAS?

Susan McPhee: The DAS is a diligence stopper—it stops bank arrestments or earnings arrestments being carried out, which is a major advantage.

Elaine Smith: Does not a voluntary scheme do that, too? Would not creditors in a voluntary scheme be inclined to proceed in the same way?

Margaret Burgess: In a voluntary scheme, creditors will often not pursue diligence, but it would take only one creditor out of a client's 11 creditors not to agree to do that and the whole voluntary scheme could be scuppered.

Susan McPhee: It is fair to say that sheriff officers who collect council tax do the most diligence and more bank and earnings arrestments than anybody else.

Yvonne Gallacher: It must also be remembered that creditors have the right to change their minds—that happens from time to time. What Susan McPhee said about interest still being physically there at the end of a programme is a powerful argument. The DAS will work only if the interest is composited, otherwise there will be a strange situation whereby all the diligence will be stopped, but not the interest. I am thinking of credit cards—there has been a lot of recent publicity about those and the Treasury Select Committee has heard evidence about them. They are a particular worry. Interest rates are bound to increase when there is an economic slump and there will be even more of a problem. If we do not deal with the matter now, the problem will be bigger in the future. For some people, voluntary programmes work and, where there has been money advice, they have worked well. However, the DAS should help to protect people from creditors who want to take further action, which might be unnecessary.

10:15

Elaine Smith: What about the administration fee?

Susan McPhee: We are opposed to debtors having to pay any fees, just as we were opposed to fees for petitioning for bankruptcy. If someone is already in debt, it is daft for them to have to pay fees.

The DAS could be useful in negotiating voluntary repayment programmes with creditors. Money advisers can tell people that if they will not enter voluntary schemes, there is the option of pursuing a debt arrangement scheme. The key point about the DAS is that it acts as a diligence stopper. That is far more important than its role as a debt management programme.

Gerald Murphy: I am a little confused. The debtor is already afforded protection, either under a trust deed or by a time-to-pay direction. I do not see what advantage the DAS has over those mechanisms, other than the fact that it encompasses a large number of debts.

Yvonne Gallacher: Gerald Murphy's point applies only if a person has had a time-to-pay direction granted. Often when people apply for a time-to-pay direction, it is refused on the basis that the creditors are not being offered enough. Time-to-pay orders are diligence stoppers, but they protect only one creditor. The debt arrangement scheme brings together all creditors and gives them the same rights; one creditor is not given preference over the others. That is why we want any conjoined arrestment order or existing arrestment on wages to be included in the DAS. If that does not happen, we will be running two horses in the same field that do not have an equal chance of winning.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I want to return to the point that Margaret Burgess made about the lack of information contained in sheriff officers' letters. Is that problem unique to Ayrshire or have you encountered it throughout Scotland?

Margaret Burgess: I have not conducted a survey of other citizens advice bureaux, but I do not think that the problem is unique to Ayrshire. The sheriff officer company to which I referred is not confined to Ayrshire.

Yvonne Gallacher: I endorse Margaret Burgess's comments. There is a problem across the board. Different sheriff officers have operated in different ways. We have brought the matter to their attention, because we are concerned to maintain the separation between the role of sheriff officers and that of money advisers. Some sheriff officers have adopted what could be construed as money adviser roles. They have looked forward and seen that their business might not be what it was before the new legislation was introduced. We are concerned about that.

Mary Scanlon (Highlands and Islands) (Con): I want to pursue the point that Susan McPhee made about the accumulation of interest. Draft

regulation 22 allows for the composition of debts and the waiver of interest due on debt, provided that debtors and creditors agree. What impact will those provisions have? You have mentioned one or two of the provisions' likely effects already. Do you think that they represent a fair balance between the interests of debtors and the interests of creditors, or would you prefer them to be changed?

Susan McPhee: Are you referring to the fact that the regulation provides for a voluntary agreement?

Mary Scanlon: Yes.

Susan McPhee: I think that the balance is unfair. Debtors are not in a position to negotiate. It is difficult to see what incentive a creditor would have for agreeing to freeze interest or allowing composition of debts, because by entering the scheme the creditor would receive money over a longer period.

Mary Scanlon: So you think that the regulations are weighted in favour of creditors.

Susan McPhee: I think that regulation 22 does not represent a fair balance between the interests of creditors and those of debtors, because it is unlikely that voluntary agreements for the composition of debt and waiver of interest will be reached. It depends on the debt, the client and the creditor, but debt conditions are often prejudiced against debtors from the outset. Debtors may be paying very high interest rates. Because they have limited access to credit, they may have accepted an unfair or extortionate agreement.

Mary Scanlon: What should the committee do to redress the unfair balance that you perceive in the regulations?

Susan McPhee: In England, judges are allowed to impose a composition of debts through administration orders. There are many problems with administration orders—and they relate to much smaller amounts than we are discussing—but they enable judges to freeze interest and to allow for composition of debts. We would like the same facility to be available in Scotland. Debtors would be able to enter a repayment programme that would pay off all their debts within a reasonable period, even if that were 10 years. Because the interest would be frozen, the client would know that they would come out clean after they had finished paying.

Mary Scanlon: I will come to Gerald Murphy in a moment to hear the other side of the argument, but you mentioned the accumulation of interest. You said that a debtor could make repayments for 15 years but, at the end of that time, could find a huge debt because of interest. Is that why you feel the measures are unfairly weighted against the debtor?

Susan McPhee: Yes.

Mary Scanlon: I put the same questions to Gerald Murphy.

Gerald Murphy: It must be me, but I am getting a little confused. I cannot see the advantage in a debtor paying a debt over 10 years when—although I know that it is rather draconian—a sequestration is over only three years. Under the debt arrangement scheme, debtors will still have their credit rating blighted, so their ability to borrow will be severely limited. I would have thought that one of the aims of the regulations would be to help people on low incomes. The debt arrangement scheme seems not only to blight people's ability to borrow but to make people provide security should they wish to borrow. They will have less security than would people on a higher income. Therefore, I think that many of the proposals will be counterproductive. If we are trying to help debtors, we must offer them advice to get them out of debt as quickly as possible. We should not let things drag on for 10 or 15 years.

Mary Scanlon: Please excuse this question—I was not on the committee when the bill was considered. If a debtor wanted to take out more debts when they were halfway through a repayment scheme, would you be willing to lend even though the debtor was tied up in repayments? Is it still possible to lend in such circumstances, and, if so, would you be willing to lend?

Gerald Murphy: The answer to the last question would be no. As I understand the proposed regulations, we would not be able to enforce in the case of default.

Yvonne Gallacher: I want to respond to the question of why debtors would opt for a DAS and not for sequestration or protected trust deeds, even though the latter are for a shorter time. Some people want to pay off their debts but, in their mind, sequestration is simply not an option. Some people are still of that view, and some definitely cannot consider sequestration or protected trust deeds because of their employment situation. In some people's view, sequestration is not lawful discharge of debt. Indeed, under some laws, it is not lawful discharge of debt—I am thinking in particular of police officers or people in the armed forces. The regulations would perhaps stop such people going down the sequestration route. I hope that the DAS would provide them with a means by which they could lawfully discharge their debt.

Everything hinges on what we said earlier about interest being frozen. Under present voluntary arrangements, some creditors will say that they will freeze the interest but then, come the end of the programme, say that what they meant was that they would suspend the interest. They will then

say, “You’ve paid off the capital, we’re now going to ask you to pay off the interest.” That does not help people. The system must be transparent: people must know from the very beginning what the system will mean for them.

As I said, the scheme is a tool in the toolkit. It is not for everyone, but it will be a solution for some people. It will stop the diligence and let people pay their debts in a manageable way. That is what most people try to do. The regulations will enable those who can do that to have access to the scheme.

Mary Scanlon: The point about whether interest is frozen or still accumulates is a fair one to make.

Susan McPhee: I want to add a point that I think Margaret Burgess will back up. A problem that we have with clients who would like to be sequestrated is that they cannot be. They might not have sufficient debt, not having achieved £1,500, or, even if they have achieved that amount of debt, creditors might not take the action that would allow them—even though they have low incomes—to be apparently insolvent, which would then allow them to access sequestration. In such situations, where clients simply have no money, all we can advise them to do is to sit back and let the debt keep accumulating until the creditor does something. The problem with that is that the client is then continually harassed, with creditors phoning them at work and at home, sending them letters and so on.

Margaret Burgess: I agree with that. For people on low incomes, we want to see an end to things. That could be by sequestration if they have no assets and no money whatever, or it could be through a debt arrangement scheme that runs for a reasonable length of time after which the debt is finished and clients can move on with their lives and not have the debt for ever. The fear of interest being added at the end of repayments could prevent people from participating in a debt arrangement scheme. That is the issue. We want to allow an opportunity for everyone to move on with their lives and pay their debts. If people do not have money to pay their debts, it should be possible to access the sequestration route and give clients options. Currently, the scheme might not be suitable for people on low incomes.

Patrick Harvie (Glasgow) (Green): I was not involved in scrutiny of the legislation in the previous session, so forgive me if I am going over well-trodden ground.

As I understand it, the freezing of interest that we discussed cannot be imposed—it has to be done with the consent of the creditors. You seem to be on the verge of saying that it should be possible for it to be imposed, but are holding back from doing so.

Susan McPhee: No. We would like freezing of interest to be imposed, but we understand that legislatively the Scottish Executive cannot do that.

Patrick Harvie: I see.

Mary Scanlon: I want to clarify the issue of creditor consent, which you have mentioned. Draft regulations 20 and 24 deal with creditor consent in relation to any debt payment programme, including provision for approval of a programme without the consent of one or more creditors. Do the provisions on gaining the approval of creditors in relation to any debt payment programme, including the possibility of such approval’s being dispensed with in relation to some creditors, represent a workable approach that balances the interests of debtors and creditors?

Margaret Burgess: I do not see that creditor consent will cause a great problem for us or for debtors. Sufficient provision is made for both sides; that aspect is probably workable.

Susan McPhee: One of the points that we raised during discussion of the Debt Arrangement and Attachment (Scotland) Bill was the necessity that creditor consent be implicit because so many of our voluntary arrangement schemes work on that basis. We set out a programme, we ask creditors to agree the programme, then nothing happens. We would set up a programme and there would be no objections. We are happy to see that that point is included in the regulations.

Mary Scanlon: You are happy with things as they stand on creditor consent.

Susan McPhee: Yes.

Gerald Murphy: I am not all that happy. All creditors should be able to object. Regulation 21 limits the ability to object to either stating that the debtor

“(a) should be sequestrated; or

(b) is in possession of heritable property”

with equity in it.

A creditor might wish to object for other reasons. All creditors should, irrespective of the size of the debt, at least have the right to put their objections and to have them heard.

Mary Scanlon: What sort of positive action would a creditor propose in order to help a debtor to repay the debt? If the creditor objects, what could be done in a positive manner to get the debt back?

Gerald Murphy: Creditors are fairly realistic: they will object only if there are good grounds to object; for example, if the creditor feels that the debtor has other income, other assets or whatever the case may be. We all know that we cannot get blood out of a stone, so if creditors feel that a debt

payment programme is the best option, they will take it.

Mary Scanlon: If the debtor had other income, would not that be known to the money advisers as part of the debt arrangement scheme?

Gerald Murphy: I would certainly hope so. I am producing off the top of my head possible reasons why a creditor might want to object.

Mary Scanlon: Do you feel that there is a better method of getting the debt repaid than through the proposed regulations?

Gerald Murphy: That is generally my feeling. The Institute of Credit Management has already made a written submission this morning. We feel that there is a better way of dealing with the matter. We feel that the time-to-pay directions could be extended to encompass a number of the factors that the debt arrangement scheme addresses, which could give the debtor far more flexibility. Under the debt arrangement scheme a debtor must list all his creditors; we suggest that the debtor should list the creditors that he wishes to be involved under the time-to-pay direction. For example, if the debtor has a family debt, he might not wish to have that encompassed under a time-to-pay direction. That is a far fairer system than the all-or-nothing approach that is proposed under the DAS.

The Convener: I make the point that we are considering regulations that carry out the will of the legislation that has been passed—the Debt Arrangement and Attachment (Scotland) Act 2002. We are trying to ensure that what the regulations say matches the intent of that legislation, and to consider whether the regulations throw up different matters as opposed to rehearsing arguments that we had on the primary legislation.

10:30

Gerald Murphy: I accept that, but it is the intention of the Scottish Executive to empower individuals to deal with their debt payment problems with dignity. What appears to be proposed by the Executive, however, is a bill payment system that does everything for the debtor—I do not feel that that supports or helps debtors at all.

Yvonne Gallacher: On interest, we are not asking for something that has not been done before. The Consumer Credit Act 1974, which applies throughout the UK, provides a precedent for waiving or setting aside interest. Under the time orders provisions of that act, court judges have set aside interest after opening up what they call a credit bargain. That has happened a lot in England, but not much in Scotland, which is partially because we did not have a form in Scotland that would allow debtors to apply for that arrangement. We would like that to be part of the scheme, because it would make it more workable.

Cathie Craigie: During the passage of the bill, members who heard various groups give evidence agreed that it was necessary that advice be given to people early and that that advice should be easily accessible. I know that the Executive has committed additional funding to that purpose but will there be enough money advice throughout Scotland when the regulations commence?

Yvonne Gallacher: We do not know, but we imagine that there will be greater demand for it because of the publicity. As we said in our written submission, our concern relates to the commitment beyond 2005. If the posts that have been created are not funded again at that point, there will be a huge gap.

The evidence that we have so far suggests that quite a lot of organisations will not participate in the debt arrangement schemes because of the responsibilities that are being given to money advisers—I am sure that my colleagues from Citizens Advice Scotland will want to talk about that. People throughout the sector are concerned that the system will work on a basis of individual accreditation. Perhaps organisations should be accredited and it should be their responsibility to approve individuals who work for them, whether paid or voluntary.

There are concerns about the number of money advisers who would be able to respond to requests. The problem will not be that the advisers are not competent to give advice; rather, it will be to do with the roles and responsibilities that the legislation gives them. Quite a lot of time will be spent training people in order to bring them up to speed with the legislation, but the addition of the extra roles and responsibilities will be a step too far for some people.

Obviously, we would like the funding to continue but it is also important that the distribution channels for the funding are improved.

Cathie Craigie: I know that the submission from Money Advice Scotland talks about training generally, but I would like to know how the sector is tackling that. The Executive made money available for training, but I think that it was £500,000 over three years, which does not seem to be enough to train the numbers of advisers that will be required. How are you using that money?

Yvonne Gallacher: That funding is for the partnership between Citizens Advice Scotland and Money Advice Scotland; it is known as money advice training resource information consultancy services—MATRICS. It includes training through a technical handbook that is under development at that moment, and consultancy—in fact, one of the

consultants is in the public gallery. We hope to train money advisers about the DAS because everybody, whether they become a certificated money adviser or not, will need to know what the arrangements mean so that they will be able properly to advise their clients.

We will train the managers first so that they know what the DAS means for their organisations and staff. We will then look at training the money advisers who are likely to be certificated. Work has already been done on mapping those people in the sector; the early signs are that most of them will come from local authorities. They will not come exclusively from local authorities, but local authorities have said that they would be willing to participate in the scheme. At least, that is my understanding.

We will be looking at training the managers and advisers, and then at continuing professional development for the existing money advisers, who will come later on in the tranche of training. The technical handbook, which we hope to launch by June 2004, should also upskill people and will be available as a reference. We have quite a lot to do in a short time.

We are also considering a common statistical platform, so that we can gather statistics that will help to inform issues in the field better. We have a lot to get through. We will evaluate the training so that we know about its effectiveness. We have people who are well trained as tutors and we will bring in only people who we know can train the people out there well to give the best advice.

Susan McPhee: I would like to return to the number of money advisers. I have some notes about what happened to the £3 million that was distributed by the Scottish Executive last year. We received just under £825,000, which went to 46 different CABx in 20 local authority areas. Some local authorities passed over all the money to citizens advice services so that they could employ money advisers, but the response was mixed in other areas. Some bureaux got a small allocation of money—say £10,000—which was not enough to employ anybody. All they could do was boost their infrastructures. Other bureaux got a lump sum; for instance, three bureaux were passed £20,000, which allowed them to recruit one person between them. The response was mixed. At the moment, we do not have sufficient money advisers.

Cathie Craigie: How many more money advisers do you need? Yvonne Gallacher said that we do not know. If you do not have enough now, before the scheme comes into being, what is your estimate or guesstimate?

Susan McPhee: Consumer debt is the single biggest issue in the CAB service and it grows year on year. Last year, we dealt with about 60,000 new debt issues and we know that we are hugely under-recording the amount of debt. The last figure showed that we were dealing with about £90 million of debt, but that does not include clients who have single debts; it includes only multiple debts. That has been consistent over the past five or six years.

Yvonne Gallacher: The matter is not just about putting money advisers on the ground; it is about building infrastructure. There needs to be more hardware and software out in the field. That is a big issue because, as I mentioned in the written evidence, some local authorities allow access only to an intranet, but not to the internet, which will have an impact if the DAS is web-based. There are infrastructural problems. We know that there are people out there who do not have the basic kit and we know that we do not always compare like with like. For example, not all agencies have the benefit of access to the information system to which CABx have access.

It is not just about the foot soldiers—it is also about building up sufficient numbers of people to support them in their daily work. People who know about money advice are needed to examine cases. Reviews of cases and where the time will come from to do them came up at the consultation day. There are problems; we do not have sufficient information to map the whole sector. We have some information, but we need to know what unmet demand is across the sector. We know that there are queues at CABx and that people wait for three or four weeks for local authority appointments, but we do not have an overview of potential demand. We need much more management information in order to be able to say whether we need 50 money advisers or 500.

Donald Gorrie (Central Scotland) (LD): I will extend that point, if I may. To make the system work, we need payment distributors as well as money advisors. Several submissions deal with that subject, especially that of the Institute of Credit Management. To put the point crudely, the institute seems to be concerned that the whole system will not work because there are no payment distributors.

Gerald Murphy: That is my understanding of the situation. The Scottish Executive's objective is that individuals deal with their debt problems. That is part of what we are considering. It is fine and important for CAB and other organisations to help and to give money advice, but it is equally important that debtors take responsibility and ensure that payments are made. I am concerned about the extra burden of having somebody else involved in the process.

Donald Gorrie: Who would be the payment distributors? Do they exist? Will the system work?

Gerald Murphy: Our view is that the debtors should be the payment distributors.

Yvonne Gallacher: We disagree entirely with that. I agree that debtors have responsibility; however, people must be enabled. At present, amounts are disbursed to creditors through sequestration and protected trust deeds. Am I allowed to name existing payment distributors, convener?

The Convener: Yes.

Yvonne Gallacher: The Consumer Credit Counselling Service and Payplan Ltd—through the Paylink Trust Ltd—act as payment distributors. Those programmes are far more successful than the existing voluntary arrangements because critical success factors are in place. When people make payments through such distributors, they keep to the programme where possible because they receive on-going support. Such support is integral to the system, but the payment distribution service must be free. Credit unions also have a role. The Financial Services and Markets Act 2000 made it possible for credit unions to act as payment distributors and to charge a small fee from the people on whose behalf they act.

The system will not work without credible payment distributors. Firewalls must be in place, especially if those bodies also offer a money advice service—the two functions must be entirely separate.

Elaine Smith: Will sufficient money advice be available under the scheme? Last week, in answer to that question, Laura Dolan—who is a representative of the Scottish Executive—said of ministers' intentions:

"They made it clear that they wanted free money advice services to be available and they think that the provision will be sufficient."—[*Official Report*, *Communities Committee*, 17 September 2003; c 33.]

Part of my concern in asking the question was that the draft regulations allow for the possibility that money advisors might charge debtors a fee for advice, which would add to the overall debt. If free money advice is not sufficiently available, might people have to turn to those who charge fees for advice? Will the scheme open up a market for money advisors who charge fees?

Yvonne Gallacher: Fee chargers already exist. One can see that from today's edition of *Metro*, which contains many adverts for fee-charging debt management companies. They have already responded to the gap in the market.

The Debt Arrangement and Attachment (Scotland) Act 2002 precludes certain people from being approved as money advisors. If we do not have sufficient certificated money advisors, the Executive must consider a different strategy. That might mean creating a pool of certificated money advisors who are not from within the present mainstream money advice field. That should be the fallback position if there are not sufficient certificated money advisors.

We must also consider issues of rurality. How will people who live in island communities access certificated money advisors?

Elaine Smith: To be fair to the Executive's representative, she said that the situation will be monitored. What kind of monitoring would be sufficient to ensure that the system works the way the Executive intended?

10:45

Susan McPhee: We are currently undertaking some research to find out who our debt clients are, and the impact on them of exceptional attachment orders. Next year, we intend to undertake research into the impact of debt arrangement schemes to find out, for example, how many of our clients cannot access them.

On the number of money advisers, I know that Laura Dolan said last week that there are 120. That is partly why I tried to find out how many CABx have money advisers. However, the money has been distributed in such a way that it is hard to know how many extra people we have. We have—and will continue to have—a great number of volunteer advisers, and we will continue to provide money advice outwith the scheme. After all, many people who will not be able to access the schemes will still need money advice.

Elaine Smith: Laura Dolan told us that 120 new money advisers have been put in place. I presume that if the Executive can provide such a figure it can also tell us where they are to be found.

Yvonne Gallacher: Of course, the problem is that we do not know how many of those money advisers are new, because some of them were already involved in money advice and have been recycled and assumed new responsibilities. Moreover, we do not know how many of the new money advisers will be certificated. As a result, we need a multidisciplinary approach to find out how many money advisers on the register are certificated. Indeed, we will need to examine the whole field to discover how many of the advisers are providing advice either full time or voluntarily.

The Convener: Surely the issue is not about whether new money has been made available—it is clear that that has happened. Is not it fair to say that the problem is that in some cases the money is not being turned into bodies, even though it is probably being used to enhance local services?

Yvonne Gallacher: Yes, but some of the new advisers are the same people.

Susan McPhee: Some of our money advisers were funded by Coalfields Regeneration Trust projects. However, when that money ended, some of the advisers were kept on with Scottish Executive money.

The Convener: Margaret, I believe that you wanted to make a point earlier.

Margaret Burgess: I think that someone else has made it.

Cathie Craigie: I want to return to the availability of money advisers throughout the country. Yvonne Gallacher mentioned people in rural communities or on the islands. We were at pains to find a way of ensuring that advice would reach such people. Have the debt lines kicked in? Will people in our rural communities have access to money advisers?

Yvonne Gallacher: The Fife pilot has ended. However, although the national debt line is run from Birmingham, it offers a Scottish service, and people can phone that number for advice. We have asked whether telephone advisers can become certificated money advisers, especially if they are remote and do not carry any Scottish case loads.

Obviously, if people have to travel to receive advice, they should perhaps seek advice over the telephone first and meet an adviser later. People on island communities will face real problems in that respect. However, those problems will be no different from those that island communities face at the moment, save for the fact that we do not know how many certificated money advisers there will be or where they will be placed. As the committee knows, they have not yet kicked in. We will have to think very carefully about the matter and ensure that we have the pool of people that I mentioned earlier. If we do not have a geographical spread of people or enough advisers, we might have to consider introducing peripatetic certificated money advisers to ensure that everyone has access to a certificated adviser.

Cathie Craigie: We have skirted around the role of money advisers. Are you happy with the draft regulations? If not, how would you change them?

Margaret Burgess: A lot will hinge on the guidance that will be produced for money advisers. However, there are concerns about how the regulations have been drafted. For example, the money adviser seems almost like a stand-alone person instead of being part of an agency. It also seems that overall responsibility for the client will be placed on the adviser as an individual rather than as someone who is employed by an agency. That responsibility should lie with the agency, within which the certificated money adviser has a role to play.

For example, it is not clear what happens if a money adviser leaves the agency and goes to another. Certainly, within the citizens advice service, the clients remain clients of the CAB, not of the adviser. It is not clear whether it is expected that the client will move with the adviser, because the regulations refer throughout to individual advisers, not to money advice agencies. The fee-charging money advisers are asked to provide the names of the nearest free money advisers. We would prefer it if they had to provide the names of the nearest accredited money advice agency that has approved advisers. Advisers are concerned that the responsibility lies entirely with them as individuals.

Susan McPhee: Citizens Advice Scotland has other concerns about the regulations. The Executive has assured us that money advisers will have no monitoring role. The guidance is crucial on that point. We would be extremely unhappy with a monitoring or policing role, which would contravene our principles of membership. The Executive has told us that that is not its intention, but we need to see that in the guidance, which needs to clarify the position.

My second point builds on Margaret Burgess's comments on accountability. Is the money adviser accountable to the DAS administrator? For instance, when completing the application form, how far does the money adviser have to verify assets? That is a huge concern for money advisers.

Another issue is the huge administration burden on money advisers. The regulations stipulate certain points at which the advisers have to notify all the parties—all the creditors and the DAS administrator or the payment distributor. There seems to be a great deal of administration costs. Money advisers also have to request the creditors' consent and keep track of whether they have responded within 14 days.

Cathie Craigie: Will Citizens Advice Scotland make a formal written response to the regulations?

Susan McPhee: We will. We will send a copy to the committee. We did not have time to do that in advance of the meeting, I am afraid.

Patrick Harvie: I have a couple of questions about the availability of further credit to those who are already making repayments through a debt payment programme. Are the restrictions in draft regulation 32 on debtors obtaining further credit adequate? Are they too restrictive? Would you like any other measures to be taken on the availability of credit?

Susan McPhee: Citizens Advice Scotland would like the savings element, which will be part of a pilot, to be included automatically as part of a standard condition. It is unlikely that someone will

not need credit at some point over a 10-year period. They could need it for repairs in their house, for example. At some point, they will have to instruct a tradesperson to come and do something. It is not reasonable to expect that tradesperson to check a DAS register and not extend credit to the debtor. We would therefore like the savings element to be integral to the core scheme, so that debtors can have something put aside for when they need it.

Yvonne Gallacher: Money Advice Scotland would endorse that. There needs to be some flexibility—what we refer to as cushions—within any kind of repayment programme. It is unrealistic not to have them. Things happen in households. Already, even in sequestration, an amount is allowed to debtors. The same should apply with a DAS.

Gerald Murphy: If credit is to be granted, the creditor should surely, in the case of default, be able to take recovery measures, which the regulations seem to prohibit.

Susan McPhee: That would depend on the credit. We are talking about the debtor being permitted as part of the scheme to put money aside so that they can draw down on it. There is an issue with giving debtors access to further credit, as that would get them into further debt, which would defeat the purpose of managing the programme.

Gerald Murphy: If the debtor instructs the plumber and does not pay the plumber because the plumber gives him credit, surely the plumber should be able to recover the sums due and not be inhibited by a DAS that was put in place some time ago.

Susan McPhee: That is a difficult matter, which the regulations do not address.

Donald Gorrie: To oversimplify, we might say that there are good or reasonable debts that somebody who is already in debt incurs, such as for mending their house, but that people can be seduced by lenders' propaganda into taking out another stupid debt. Is there any way of discriminating so that people can mend their roof but not buy unnecessary things out of a catalogue?

Susan McPhee: The creditor should discriminate by not lending. The regulations try to provide for that by allowing creditors access to the register to check whether the person has a DAS or intends to have one. If the person has a scheme, the creditor should not lend. We would like to see more emphasis on responsible lending.

Elaine Smith: From what has been said, I understand that some kind of contingency fund would be built into the DAS. Would there be a role for credit unions in that? If people were to save within a DAS, might that money go to the credit union?

Susan McPhee: Under the proposal for a DAS that the Citizens Advice Scotland working party submitted to the Scottish Executive, credit unions would have a role, because the savings element could be invested in a credit union.

Yvonne Gallacher: We have worked with credit unions for a number of years and I would endorse that philosophy. However, there are issues about the extent to which credit unions are available to everybody. If we had more credit unions, people would find it much easier to access them.

Mary Scanlon: I seek more clarification on the debt arrangement scheme register. Part 4 of the regulations provides for the setting up, maintenance and access to a register of participation in the debt arrangement scheme. Are there any issues about what information will or will not be held on the register and who will or will not have access to it? Do you have concerns about the practical arrangements for creditors or potential creditors who wish to obtain information from the register and the potential use or misuse of information that is held on the register?

Margaret Burgess: My main concern is with the possible misuse or abuse of access to the register by creditors. If sheriff officers who hold summary warrants can access the register and see that someone has made an application, they would have two days in which they could enforce the summary warrant by arresting wages or the bank account. That would give rise to preferential treatment. My concern is with such misuse of the register. Money advisers have an issue about whether they should record someone's intention to apply for a DAS because, if that information was recorded, creditors who had obtained a summary warrant or a decree could expedite diligence to give themselves preferential treatment. That is my concern.

Susan McPhee: We believe that people should have to apply for permission to access the register. The register should not be freely available to just anybody to look up. That would have an impact on the tradesman situation that was mentioned earlier.

Mary Scanlon: Will you clarify who will have access to the register once it is up and running?

Susan McPhee: The regulations state that money advisers will have access to the register for their clients. That is appropriate, as money advisers should not have access to the register for anybody else's clients. Access will also be available for creditors and for any other suitable person. It is suggested that that is for social research purposes, which seems fair enough.

Mary Scanlon: Which creditors would have access to the register?

Susan McPhee: Creditors who are part of the scheme would need to have access. Potential creditors would also need to have access to be able to decide not to lend.

Mary Scanlon: That is what I thought. We are all possible creditors.

Susan McPhee: That is why I think that there should be an application process. People would then be authorised to have access to the register because they were registered lenders of some sort.

Yvonne Gallacher: Debtors should also be able to access the register. Under the regulations as drafted, everybody except the debtor can access the information.

Money advisers should also be able to access the register when they are taking on a client. It sometimes happens that a client will try different agencies. If one agency does not say what the client wants to hear, the client might go to another. It would be useful for money advisers to know, before they decided to act on behalf of a client, whether that client had been through the system.

11:00

Mary Scanlon: I ask for clarification. If I wanted to lend money to Elaine Smith, I could access the register and find out about all her debts. I do not think that anyone would want such information about them to be known, especially if they were in the public eye. Is there not an issue of confidentiality? Where does data protection come in?

Susan McPhee: That depends on how much information is on the register. We have supported the idea of the register from the beginning, as it is the only way in which we can ensure that clients are not being lent further money. We use the parallel of the register of inhibitions and adjudications, which exists for use if someone has a decree against them and a creditor has lodged an inhibition that prevents the voluntary sale of their property. Anybody can access that register for the payment of a fee. We see the DAS register running in a similar way. It is designed to let people—especially creditors—know that a person is in a debt arrangement scheme and should not be lent to.

Mary Scanlon: So, on payment of a fee, I could access the register and find out about someone's personal debt repayment plans.

Susan McPhee: The key is how much information is on the register. It may simply be the name of a person. That is how the register of inhibitions and adjudications works; it does not state the full debt.

Mary Scanlon: The point is that someone has to have multiple debts before they are even eligible to be part of a scheme. We are talking about someone with a serious debt problem.

Susan McPhee: Or a manageable debt problem.

Mary Scanlon: I am concerned about naming and shaming, which I think might deter some debtors from joining the scheme. Do you share that concern?

Susan McPhee: The scheme can work only if we have such a register.

The Convener: We discussed the issue during stage 2 of the Debt Arrangement and Attachment (Scotland) Bill. The idea was not that the register would be the electronic equivalent of a poster on a wall; it was meant to be very controlled. The register is a record of people who are on a debt arrangement scheme. I do not understand the point that you are making about sheriff officers using information to pre-empt the action of a debt arrangement scheme. I presume that someone who is in a debt arrangement scheme will have protection and that the register will reflect that protection. How could the sheriff officers use the register as a way of subverting the idea of not allowing any creditor to get preference over another?

Margaret Burgess: The regulations will allow people to give notice of their intention to apply for a debt arrangement scheme. That information will be held on the register. However, as a money adviser, I would probably not advise someone to record that intention on the register. There is no obligation for anyone to do that. Even after it has been registered that someone has made an application, there is a two-day window—am I right in saying that?

Susan McPhee: Not at that stage. The money adviser may register the notice of intention to apply, but that is a voluntary matter. The notice is designed to enable any creditors who are not included to be aware of what is happening and to become included. However, we do not think that we would use that mechanism. As you say, it is a trigger.

The Convener: It would be way beyond the spirit of the regulations for the creditor to use a provision as a way of jumping in front of other people to get access to some return on their debt. There must be some way in which the system could deal with that pretty malevolent approach.

Susan McPhee: At the moment, an application does not have to be registered. When the debt arrangement scheme has been granted, there is a

two-day window before it comes into force. That is designed to suggest to creditors who are about to take action that they should not do so. However, we envisage that sheriff officers, in the course of summary warrant procedure, could jump in and carry out bank arrestments in that two-day window.

Elaine Smith: I want to explore a bit further the issue of the two-day window and bank arrestments. Draft regulation 32(1)(a) states that

"the approval shall have the effect of a recall of an arrestment, other than an earnings arrestment".

At stage 2 of the Debt Arrangement and Attachment (Scotland) Bill, the question was asked whether the execution of diligence referred to

"continuing diligence, such as an arrestment or a bank freeze."

The then Deputy Minister for Justice was asked to spell out whether that meant

"that all diligence against someone who enters the scheme will freeze".

The minister answered:

"it is our understanding that the word 'execute' will apply to continuing diligence. We are clear on that point also, and I have placed that on the record."—[*Official Report*, *Social Justice Committee*, 2 October 2002; c 3113.]

What was said then and what is in the regulations seem to represent two different positions. What the minister seemed to be saying would cover the two-day window that you are talking about. Do you think that the scheme has to change to reflect the previous position?

Margaret Burgess: Yes. The scheme should reflect the previous position in relation to earnings and bank account arrestment. That is not just because of possible abuse of the register. Many people would not be able to access the scheme if a wages arrestment was in force. They would have insufficient disposable income to join the scheme, because all their disposable income would be going to the creditor through the wages arrestment. The scheme should stop all diligence, including wages or earnings arrestment and bank account arrestment.

Elaine Smith: Was it your understanding at stage 2 of the bill that that would be the case?

Margaret Burgess: Yes.

Elaine Smith: But you do not think that it is the case with the regulations.

Margaret Burgess: No. It is not the case with the regulations.

Susan McPhee: The bank arrestment situation is open to consultation, but it is not clear. The notes accompanying the regulations suggest that if a bank arrestment has been started, the money would be paid to the creditor. We oppose that. It would mean that the client fell into debt automatically, because they would not have access to their money; the scheme would fall, because the client simply would not have the money to start it.

Donald Gorrie: I have a general question about the allowance for the person to pay rent, rates, council tax or fuel bills. Do you think that that aspect of the regulations is okay?

Susan McPhee: We support that. The only concern is whether the programme will fall if the client misses one of the essential payments. There is provision for payments to be made through the payment distributor, but the problem is the suggestion that the creditor would pay a fee. I cannot speak for local authorities, but I imagine that it is unlikely that they would want to pay a fee to have council tax paid through the payment distributor. As Yvonne Gallacher said, payment through the payment distributor is the key to making the scheme work.

Donald Gorrie: So the method of payment could be a problem.

Susan McPhee: Yes.

Donald Gorrie: Fuel bills have been drawn to our attention. People who got into debt in the past often had a meter imposed on them and, in effect, they paid more for their electricity or gas than the ordinary citizen did. Is there any way of getting over that and involving fuel bills in the composition?

Susan McPhee: We would obviously prefer that. I noted that Laura Dolan said last week that that is a reserved matter and the Scottish Executive cannot legislate on it, but the Executive is working with fuel companies to get guidance, which we would support.

A parallel issue is that in some cases creditors collect their payments through television meters, so that clients have to pay to watch the TV in order to pay for a carpet. We will say in our response that we would like that to be covered as well.

Donald Gorrie: In the paper from the Institute of Credit Management, a whole page is devoted to the time-to-pay application, which I know very little about. The paper suggests it as an alternative to the regulations, but that is not possible for the reason that the convener set out. Could the time-to-pay-application system be developed as an alternative method in the scheme?

Gerald Murphy: We like to think so, because we think that that system is fair to the creditor and the debtor. It gives the debtor more freedom and removes some of the burdens and administrative hassles that come with the DAS. It has been

proved to work so far and it addresses a number of the concerns that the other witnesses have mentioned. It stops diligence and allows the debtor the freedom to do what he can and to bring into the time-to-pay direction only the creditors that he wants to bring into it.

Donald Gorrie: So that system might be worth pursuing as an additional tool in the toolbag, to use a cliché.

Gerald Murphy: I would like to think so.

Yvonne Gallacher: With respect, I cannot envisage that system working for the people with whom CABx and local authorities deal who are in multiple debt, as it would set up preferential creditors. Money Advice Scotland takes an holistic approach that considers all the creditors. We would consider whether someone was a preferential creditor—one with a security on a house, for example. We would always ensure that such a creditor was paid first to keep the roof over the debtor's head. We would do the same for a fuel creditor. Therefore, I cannot envisage a time-to-pay system happening. The DAS is the preferred option and, as I said earlier, it is another tool.

Elaine Smith: I want to deal with a slightly different subject. We spoke earlier about why the Debt Arrangement and Attachment (Scotland) Bill went through the Parliament in the first place. It seemed to me that the Parliament clearly wanted to end the system of poindings and warrant sales. One of the witnesses said earlier that an attachment was just a poinding by another name. I am not sure what the context of that remark was. The bill was also partly about ensuring that those who could pay, would pay. That was my understanding of the intention behind the bill.

An exempted asset, under part 2 of the Debt Arrangement and Attachment (Scotland) Act 2002, is any asset that is exempt from attachment under section 11 of the 2002 act, which I presume is a list. I do not have the act in front of me, although I should do. An exempted asset is also one that is excluded from the list of non-essential assets under schedule 2 to the 2002 act. Non-essential assets under schedule 2 could be realisable. Is the schedule 2 definition of a non-essential asset rather subjective? Could some things—for example, a spare bed—be deemed non-essential assets? Is there a better way of defining non-essential assets?

Susan McPhee: Is that in terms of the debt arrangement scheme?

Elaine Smith: I am referring to when an attachment is going to be made. That perhaps strays slightly from the debt arrangement scheme.

The Convener: Can I make again a point that I made earlier? We are working to existing primary legislation. All the matters to which Elaine Smith referred are in the 2002 act. Rather than rehearse the motive behind the original bill, we are considering whether the regulations are in the spirit of the bill that went through the Parliament. The key arguments at the time were whether an exceptional attachment order could be applied to people who were very poor, and whether attachment orders were similar to poindings. The Parliament took a view on those arguments. What we have to consider is whether the debt arrangement regulations match the aspirations that were expressed at the time of the bill's passage.

Elaine Smith: So it was under section 27(1)—

The Convener: There is a list of what are deemed non-essential items, which the Parliament agreed.

Susan McPhee: In terms of the debt arrangement scheme, we are concerned about the possibility of assets being sold. The consultation paper that led up to the DAS suggested that dwelling-houses would not be included. We would like absolute guarantees that dwelling-houses will not be included. On top of that, we are opposed to assets being sold at all. Apart from anything else, if an asset that was valued at X pounds at the start of the scheme changed value throughout the scheme, we would be concerned about a creditor applying for a variation to sell an asset that had become worth much more. That has implications for the advice that a money adviser gives at the beginning about whether to go into a scheme at all. A money adviser would have to project potential values of assets, which is way beyond what we do now. We are opposed to the principle of selling assets.

As regards dwelling-houses, we envisage that there might be clients of the scheme who do not want to go into protected trust deed because there is equity in their house. If dwelling-houses are included, that would undermine the principle of the scheme. They would better off with a protected trust deed because it is shorter.

Elaine Smith: Do you think that that a decision about whether something is a non-essential asset is subjective? That is important because it is mentioned in the draft regulations and when we are considering the DAS, we have to take into account the intentions behind the bill. I am curious about the subjectivity of judging whether assets are non-essential.

11:15

Susan McPhee: In our response to the consultation paper we suggested that the definition of an asset might include endowment policies and pension plans. That could hit at a

dwelling-house, even if the house itself is excluded. The definition of non-essential assets is open to wide interpretation and we would rather that it was deleted altogether.

Cathie Craigie: I am disappointed that Citizens Advice Scotland has said that it is opposed to the principle of selling assets. I am opposed to selling poor people's assets, but I have practical experience of a council rent arrears case where a person was using the rent payers in the local authority where I live as a free bank. That person had assets, but was not paying a penny in rent, whereas the pensioners and people on low incomes were paying their rent.

Susan McPhee: I was a member of the working group that produced the report "Striking the Balance: a new approach to debt management", and the group came up with the exceptional attachment orders. When we discussed the issue, the idea was that debtors could sell goods voluntarily. In voluntary repayment programmes, sometimes an agreement can be reached where, if a client pays a certain amount towards their debt, the rest of the payments will be reduced. In that way, if a client has an asset, they can sell it voluntarily. We are concerned about compulsion and the lack of definition of an asset.

The Convener: Is it not the case that the fundamental principle of the legislation was that those who could pay should pay and should not hide behind those who could not pay?

Susan McPhee: I accept that.

The Convener: So expecting a voluntary sale of assets does not address the problem. We do not want to put inappropriate pressure on people who are in a perilous situation, but someone who has significant assets and who chooses not to pay their debt is taking advantage of the legislation. That is why all the advice on taking people out of the system early was so important.

Susan McPhee: Most of our clients do not have assets to sell. We are concerned about the definition of a non-essential asset.

The Convener: I understand that, but there are people who have debts and assets.

Cathie Craigie: There are people who do not come near Citizens Advice Scotland.

Gerald Murphy: Creditors would obviously be opposed to the voluntary disposal of assets. It would open the DAS to abuse and allow people to avoid paying their debts. Under what has been suggested, I could go and buy a car today, enter into a DAS tomorrow and get to keep the car. It makes a mockery of the scheme. The debtor already has protection under section 11 of the Debt Arrangement and Attachment (Scotland) Act 2002: certain assets are protected. Anything beyond those assets should be sold and applied to the creditors. That is only being responsible after all.

The Convener: Members will ask any final questions that they have and then the witnesses may have an opportunity to make any final comments on the regulations.

Mary Scanlon: I would like to hear Yvonne Gallacher and Gerald Murphy's views on the debt arrangement register. Do they believe that the register record of a DAS will make a lender more or less willing to lend?

Yvonne Gallacher: I am grateful for the opportunity to return to that point. We should not over-egg the pudding. Credit reference agencies already allow creditors to examine people's credit records. Hopefully the DAS register will provide white information. We have talked about the responsibilities of debtors and creditors. If we use the word rehabilitation, it is in the context of people coming out of the tunnel and going on to get credit again at a later date. The register is a positive step forward, but we have concerns about the information that will be held. The regulations suggest that not all the nuts and bolts of a debtor's position will be included; rather, the fact that they are on a debt programme will be included.

We are concerned about the privacy of individuals and about the inclusion of information such as dates of birth and national insurance numbers, mainly because of money laundering concerns. We have heard in the past couple of days about the introduction of identification cards in future. If the wrong kind of people had access to such information, they could assume someone else's identity. We want to protect people from that.

Mary Scanlon: You are concerned about an individual's personal information, but am I right in saying that you want more information about the debts?

Yvonne Gallacher: No. If my interpretation of the regulations is right, it does not seem that a lot of information will be included.

Mary Scanlon: What information about multiple debts would you like?

Yvonne Gallacher: The privacy of the individual must be balanced with allowing creditors to make value judgments.

Mary Scanlon: I am sorry to pursue the point, but it is important. How much information would a creditor need on the register to make a value judgment?

Yvonne Gallacher: The creditor would probably need to know the value of each outstanding debt.

Mary Scanlon: Would a creditor need to know who all the other creditors were?

Yvonne Gallacher: Yes, but that would depend on whether creditors wanted to have that divulged. However, that information is on credit reference files.

An important point is that the regulations allow access to anyone who can show reasonable cause. That provision needs to be tightened so that it is more specific about who might have access to the information—it is woolly at the moment. I fully agree that creditors ought to be able to make decisions on potential debtors and to know whether they are making a good judgment. We talk about creditors' responsibility, and creditors could use that information, but the rights of the creditor and the individual's right to privacy must be balanced.

Mary Scanlon: Might knowing that all their debts, their date of birth and other information were in the register for the world to see inhibit people from participating in the scheme?

Yvonne Gallacher: It might. At present, notification of protected trust deeds is published in *The Edinburgh Gazette* or *The London Gazette*, which will say that someone has made an application. That goes back to Susan McPhee's point about the intention to make an application. The situation depends on where we draw the line for inclusion and on whether only straightforward information, such as a person's name and address, should be included.

Mary Scanlon: When I was a volunteer for a citizens advice bureau, policemen from different authorities came to ask for debt management. That experience was excellent, but I know that someone who is in the police has problems if their debt is known. In future, you would not be able to help someone—even a professional person such as a teacher or a doctor—who did not want their details to be available. The matter is sensitive and concerns me, although I understand the issues.

The Convener: The general public will not be able to access the register, so that provides protection. That issue was raised at stage 2 of the Debt Arrangement and Attachment (Scotland) Bill.

Mary Scanlon: However, every member of the public is a creditor. If I wanted to—

The Convener: I do not think that theoretically being a creditor, and only of the person to whom you might lend money, would grant access. You could not say, "I am going to lend someone money, so I will look at the debts that someone else has accumulated." A creditor could access only specific information on the register.

Mary Scanlon: Does Yvonne Gallacher think that a confidentiality problem is raised?

Yvonne Gallacher: As you said, the subject is sensitive. The provisions in the regulations need to be well thought through, so that people are not debarred from accessing the system because they fear that information will be divulged to all and sundry. The issue comes down to who will have access. Creditors might think that they are owed £X while the debtor thinks that they owe something different.

Mary Scanlon: To use an earlier example, a journalist could ask the local plumber for the names of all the local people who are on the debt register. Is it not as easy as that?

The Convener: Would the plumber not be in trouble if they divulged that information?

Yvonne Gallacher: I think so.

The Convener: There was a great deal of discussion about protecting the rights of debtors and creditors. It was not in the spirit of the legislation to have the equivalent of an electronic billboard on which people could be named and shamed, as you described earlier.

Cathie Craigie: We spent some time ensuring that details would not be advertised in *The Edinburgh Gazette* or *The London Gazette*. I understood that they would be available to advisers and to registered credit companies that can access that sort of information at the moment. We do not need to go much further than that.

Gerald Murphy: In my view, the register should be public as far as basic identification is concerned. If further information is required, protection should be afforded to the debtor. It is important that the register should be fairly open to enable responsible lending, to which the other witnesses referred. It should be open to creditors, creditors' agents and even sheriff officers, so that they can avoid taking enforcement action. We have talked about sheriff officers' abusing the register, but they could also use it positively. If they received instructions to carry out an attachment, checked the register and saw that a DAS was in operation, they would know not to proceed. That would avoid embarrassment to the debtor concerned.

Donald Gorrie: I want to pursue a point that Citizens Advice Scotland made about the administrative costs of being a money adviser. Is there an adequate funding stream to cover those costs or are they likely to be a big problem? For example, if Kilmarnock CAB has to spend £5,000 on postage, that may put them in debt and they may not want to take part in the scheme.

Margaret Burgess: I speak only for East Ayrshire citizens advice bureau. Because of differences in the way in which CABx throughout Scotland are resourced and in the money

available to them, administrative costs will be a bigger problem for some CABx than for others. At the moment some CABx have no admin workers. Administration will be an issue for them because of the time scales to which they are required to adhere under the DAS.

The Convener: Do you want to highlight any aspects of the regulations that we have not covered?

Susan McPhee: We would like to make a point about secured debts and hire-purchase debts. The regulations have retained the right of repossession for secured debts. We have some concerns about that, because we see a number of loans that have been consolidated and secured. In some cases, clients are not even aware that their loans are secured. We are concerned that a client may enter the scheme and consider that they are making all their repayments, but that a creditor may still repossess their house.

A similar principle applies to hire-purchase—creditors still have the right to repossess goods. That could cause problems. If a car were essential for a client's employment, but a hire-purchase creditor could recover it, the scheme would collapse.

Yvonne Gallacher: I return to the point about the "fit and proper person" test. We welcome provision for people's past history and previous convictions to be examined, but we are concerned that a definition of fitness should include training and competence. We are moving towards much more robust regulation of financial services in this country. In our view, money advice is not very different. If people are given wrong advice, that can have a damaging effect on their future. We would like clarification that the "fit and proper person" test will include the training and competence of individuals. At the moment some work is being done on that in the background. We see training and competence as part of the overall test, which should not relate solely to previous convictions.

Gerald Murphy: We are concerned about the minimum repayment level, which will be offset against the cost to creditors of administering the DAS.

The Convener: Thank you all for coming along. It has been a productive session and has given us plenty to think about. The clerks will now write a draft response for consideration at the next meeting on 1 October. Any member who would like specific issues to be included in the draft should contact the clerks by e-mail before 4 o'clock tomorrow. If there are points that have been raised during the discussion that you want to clarify or highlight, we will be happy to hear from you, but we are working to that deadline as we will be considering the draft at our next meeting.

11:30

Meeting suspended.

11:33

On resuming—

Subordinate Legislation

Form of Repair Notice (Scotland) Regulations 2003 (SSI 2003/335)

Form of Improvement Order (Scotland) Regulations 2003 (SSI 2003/336)

Housing Grants (Form of Cessation or Partial Cessation of Conditions Notice) (Scotland) Regulations 2003 (SSI 2003/337)

Housing Grants (Form of Notice of Payment) (Scotland) Regulations 2003 (SSI 2003/338)

Environmental Impact Assessment (Water Management) (Scotland) Regulations 2003 (SSI 2003/341)

The Convener: Agenda item 2 is consideration of subordinate legislation. Members will note that the five statutory instruments are subject to annulment under rule 10.4 of the standing orders. No motions to annul any of the instruments have been lodged with the chamber desk.

The committee has been sent copies of the regulations and accompanying documentation. Are there any comments from committee members on the regulations? If there are none, is the committee content with the statutory instruments?

Members *indicated agreement*.

The Convener: Are members therefore agreed that the committee does not wish to make any recommendation in its report to the Parliament?

Members *indicated agreement*.

The Convener: Before I close the meeting, I remind members that the first of our fact-finding visits on the antisocial behaviour inquiry will take place next Tuesday, 30 September. I urge members to ensure that they can attend. If there are any problems, they should let the clerks know as soon as possible. If they are unable to attend, they should nominate their party's committee substitute in their place. We must ensure that, when we meet folk, we are there in sufficient numbers to indicate the seriousness with which we are undertaking the inquiry.

Meeting closed at 11:36.

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ISBN 0 338 000003 ISSN 1467-0178