LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 11 March 2009

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
7th Meeting 2009, Session 3

CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

DEPUTY CONVENER

*Alasdair Allan (Western Isles) (SNP)

COMMITTEE MEMBERS

*Bob Doris (Glasgow) (SNP)
*Patricia Ferguson (Glasgow Maryhill) (Lab)
*David McLetchie (Edinburgh Pentlands) (Con)
*Mary Mulligan (Linlithgow) (Lab)
*Jim Tolson (Dunfermline West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Paul Martin (Glasgow Springburn) (Lab)
Alison McInnes (North East Scotland) (LD)
Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Bruce Crawford (Minister for Parliamentary Buiness)
Glyn Hawker (Unison)
Mark Irvine (Action 4 Equality Scotland)
Alex McLuckie (GMB Scotland)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 6

Scottish Parliament

Local Government and Communities Committee

Wednesday 11 March 2009

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

Equal Pay

The Convener (Duncan McNeil): I welcome everyone to the seventh meeting in 2009 of the Local Government and Communities Committee. As usual, I ask members and the public to turn off all mobile phones and BlackBerrys.

Under item 1, we will take evidence on equal pay in local government from Action 4 Equality Scotland and then from Unison and GMB Scotland.

I welcome our first witness, Mark Irvine, from Action 4 Equality Scotland, and ask him whether he wishes to make any introductory remarks before we move on to questions.

Mark Irvine (Action 4 Equality Scotland): Thank you, convener. I will make some brief remarks. First, I have to say that, because of a prior engagement, I will be leaving straight after giving evidence to go back to Glasgow for a meeting of the Scottish Local Authorities Remuneration Committee. I would have liked to stay for the whole session, but I hope that you will understand that I have other business. However, I thought that it was important to accept the invitation to speak to you today.

Secondly, through you, convener, I thank the committee clerk for all her help with the arrangements for today. With her assistance, I managed to get our written submission in last week. I will assume, although it might be a dangerous assumption, that you have all read it.

The final thing that I want to say by way of introduction is that the key date in the business of equal pay and single status is 1997. That is when the United Kingdom agreement on single status and equal pay was struck. I am one of the few people to be involved in the negotiations at both the UK and Scottish levels. In Scotland, we agreed that an extra two years would be allowed to get things right. The intention was to prepare, to plan, to think ahead, to pull the resources together, to get the job done, and to do what had been agreed.

The 1997 agreement took years to negotiate. The fact that we are still talking about the matter 12 years on is a sign of how poorly and badly it has been handled. At long last, things are beginning to come together, but it says a great deal that, 12 years on, so many authorities are still struggling to get the matter resolved.

The Convener: Thank you for those opening remarks. We appreciate your written evidence, which is helpful, and your attendance this morning. We understand that you have to be elsewhere and will not be able to stay with us.

I am well aware of the issues but, like many other members, I was shocked to read in the submission from the Tribunals Service that we have 35,213 equal pay claims against local authorities here in Scotland, compared with 48,049 in England and Wales. Why is there such a disproportionate number of cases in Scotland?

Mark Irvine: I think that you will find that the spark for tribunal cases has been the presence of Stefan Cross Solicitors and Action 4 Equality Scotland, whose involvement has tended to increase the number of cases that are brought. In Scotland, there were almost no tribunal cases and there was no progress on the single status agreement until claims started to be made. The claims have been the trigger for the authorities—after years of delay—to get their act together and implement an agreement that they said in 1999 they would implement within three years. The big difference in the number of tribunal claims reflects exactly what is happening in different parts of the UK.

The Convener: In relation to those 35,000 or so tribunal cases, what figure would you put on councils' liability, which has been described as a financial time bomb?

Mark Irvine: I am not sure what the liability is against those claims, but a few years back the Convention of Scottish Local Authorities put the ballpark figure for implementing single status at £500 million. I do not know whether that is a time bomb; if it is, it is very slow ticking and has been waiting for years to go off. The clock started ticking in 1997. Two years on, the local authorities had had time to factor in how single status would affect their budgets in years to come. Budgets almost doubled in the period that followed, just as the Parliament's budget doubled. However, no one seems to have had a strategy for implementing the most significant industrial relations agreement in years.

The Convener: Is the strategy to delay implementation, because councils do not have the money to pay the bill?

Mark Irvine: No, that is not the case; authorities had the money back in 1997. They could have planned ahead to implement equal pay, but they chose to do different things. They created the problem themselves, by not deciding how to

implement an agreement to which they had committed themselves.

We are talking about people who had the best information from the most senior figures in personnel in Scotland. They were all involved in meetings and knew fine well the implications of the agreement that they were entering into. We are not talking about a bunch of novices who stumbled on a novel idea and naively said, "Wouldn't it be a good idea to pay women according to their skills and responsibilities and tackle the discrimination that is a feature of councils throughout Scotland?" Councils knew what they were getting into. Now they have a problem in dealing with the situation, but there are ways of addressing the problem, which are up to councils, the Parliament and the UK Government.

The Convener: Do councils have the money now?

Mark Irvine: Three years ago, councils had £1.4 billion of reserves in their budgets, according to press reports at the time. That money was certainly available then. There are ways in which the issue could be addressed now. That is a matter for councils, but the Parliament will certainly have a view.

Some £500 million of cuts are being imposed on the Scottish Parliament's budget and will flow through to local authorities; if those cuts were revisited, given the economic climate and the need to stimulate the economy, spending the money on people who are low paid might do a great deal of good. I do not know whether the Parliament would take the view that the proper thing to do would be to hand the money over to councils that have known that they must implement equal pay since 1999 and could have factored that into their future budgets.

The UK Government has scattered money around like confetti, and equal pay merits a great deal of serious thought and discussion about how to implement the agreement.

Mary Mulligan (Linlithgow) (Lab): Good morning, Mr Irvine. I am interested in how we arrived at this situation. You mentioned in your opening comments that you were involved back in 1997. What preparation took place between 1997 and 1999? What was your role in that?

Mark Irvine: At the time, I was Unison's chief negotiator in Scotland, which meant that, because Unison was the largest union, I was also de facto the chief negotiator for the joint trade unions. I was the spokesperson for the joint trade union side in Scotland, and I was also involved through the UK negotiating bodies that dealt with the UK national agreement. That involved a lot of discussions in Scotland and in London, through the UK bodies, about how to achieve single status.

The UK agreement came in in 1997. The employers in Scotland wanted to come away from the UK negotiating machinery because at the time they viewed themselves as being outvoted by what was in effect the block vote of the Local Government Association in England. I think that I am correct in saying that the COSLA delegation had four votes, but at UK meetings there was a block of 12 votes from the LGA, which drew its representation from all the councils in England and Wales. The view of the employers was, "We can't reach agreements that suit Scotland's needs and purposes if we stay in the UK negotiating machinery. We want to come out of it."

That had fears and risks for the trade union side, but the quid pro quo was that we were arguably going to get a better single status equal pay agreement. Factored into the Scottish agreement were two major things—there were a number of other things—one of which was a reduction in the working week, which affected blue-collar workers. Their working week came down in two agreed steps as a consequence of the 1999 version of the UK 1997 agreement.

The other thing was that it was agreed that the job evaluation scheme, which had to sort things out and assess people's jobs in a totally non-discriminatory way, was going to be developed and recommended by COSLA and the trade unions to all Scottish councils. The trade unions jointly felt that, ultimately, coming out of the UK machinery was a price worth paying for that. In the establishment of the single bargaining table in Scotland in 1999, that is effectively what happened. No one went to London any longer—except perhaps as an observer—and there was no direct involvement in UK agreements. Up until that point, there was direct involvement, and those agreements then came back to Scotland and were sometimes adapted to suit particular interests.

If you were being generous about it, you would say that those agreements did not always suit the ways of working in Scotland. If you were being unkind, you would say that the UK agreements had a kilt put on them in Scotland. That is true to a greater or lesser extent, depending on which issues you look at.

That is the history of it, and that is why the trade unions felt that it was justified. The single status agreement was regarded as a landmark agreement and the most significant agreement in a generation. It was regarded as a price worth paying to get the reduction in the working week for manual workers—male and female—who had long been discriminated against, and to get what was regarded at the time as a cast-iron commitment to a timetable on job evaluation.

Mary Mulligan: I understand how that was arrived at. At what stage did you begin to feel that

the job evaluation scheme in particular was not making the kind of progress that would result in action being taken?

10:15

Mark Irvine: I can comment on that only from the outside because I left Unison's employment in 1999 and did not have any direct involvement after the agreement was reached. It was implemented only after a ballot of all the union members and after being endorsed by the member councils of COSLA.

The agreement seemed to run into trouble straight away. A development group was put together to work up a job evaluation scheme that had been used at UK level, called Gauge. The local authorities invested in that scheme in a major way by spending £250,000 of public money, on a per capita basis with the larger councils paying more, to develop the scheme, which modified the UK scheme slightly. If you were to look at the two schemes side by side, you would see that they were quite similar—they both had 13 factors and they both had weightings—but there were slight differences to reflect the situation in Scotland. A development group was brought in from a consultancy called, I think, Eglinton. Three people worked with the member councils and drew in expertise—people were seconded, although probably not permanently—from around Scotland to advise the development group.

The group endorsed a Scottish version of the UK job evaluation scheme, but there was no sign of planning for what the scheme would mean. I could sit here and give you an approximation of a job evaluation scheme in a relatively short time. There was no sign of the councils planning for how the scheme would be carried out—how people would do the same job locally, how many people would be affected, what the timetable would be for interviewing them all, how to get job descriptions, what the cost would be and when the scheme would be implemented.

It was never the case that people were meant to do nothing until 2002. They were not meant to spend all that public money, then sit back and wait until 2002 before saying, "Well, what have we done?" They were meant to be planning, getting themselves organised at local level and saying, "How do we address this so that we can implement it at the end of the three-year period?" In fact, all that happened when they got to 2002 was that they said, "We want another two years," and there was no sign of anything happening in those next two years or thereafter. It was only at the point when hundreds, and now thousands, of employment tribunal claims flooded in that the councils moved their position.

Mary Mulligan: Why did the agreement stall between 1999 and 2002? Was it because of the principles of the job evaluation scheme, or was it purely because people started to recognise the financial and other costs?

Mark Irvine: I do not see how it could have been about cost because, in broad terms, although people did not know the exact cost, the models for assessing such things existed. Employers had a ballpark figure of what it would cost to implement single status. There were arguments about whether it would be at least part-funded in changes in the composition of the workforce due to there being fewer workers or whatever else. However, council budgets went through a period of enormous growth, so the cost factor alone does not explain why things stalled.

To be frank with you, I think that the real reason why the agreement stalled is that achieving a major agreement of this nature is back-breakingly hard work and employers and trade unions have to take on vested interests in their own organisations. Although the organisations had bought into equal pay and single status publicly, many people had problems delivering them because it was the culture of their constituents not to believe in them. Bit by bit, the agreement began to unravel and people lost their commitment to it.

The last time that there was a major move to evaluate one group of workers was in 1988 when there was a job evaluation for manual workers only, as I mentioned in my submission. For the first time, women carers, for example, went on to the same grade as school janitors were on and a higher grade than refuse collectors were on. That caused difficulties at union meetings. At the time, I was working in London. When I went to meetings, we had to persuade—that is the nice way of putting it—male workers whose noses were out of joint that they had gained, although they had not gained as much as women workers.

We cannot have equal pay without breaking eggs, and we cannot have equal pay without some people gaining more than others. We cannot achieve single status if women workers, whose jobs were historically undervalued, do not gain significantly more than male workers do. When organisations were swayed by the reality of all that, there were huge problems, because the union branch secretaries and most vocal reps tended to be male—that was my experience in London. There was a real issue about getting support on the ground for what everyone had agreed in principle. The same problems occurred between 1997 and 1999. The absolute commitment that there was to implementing the agreement on the ground appears to have fizzled out.

Jim Tolson (Dunfermline West) (LD): I was interested in your opening remarks about the long and continuing delay in reaching settlements. You seemed to lay the blame for the delay mostly, if not entirely, at the door of local authorities. I suggest a different explanation. Action 4 Equality Scotland and Stefan Cross Solicitors are dealing with more than 11,000 tribunal claims, out of a total of more than 35,000. However, there seems to have been no attempt by unions and local authorities at collective bargaining. Is that partly because the bringing of so many thousands of individual claims against local authorities—and indeed unions—has made authorities reticent, to say the least, about entering into collective bargaining to try to reach a fair and amicable solution for all employees?

Mark Irvine: No, I do not agree. There was an uninterrupted period of more than six years when no one was bringing claims. The proposition that the field was open for collective bargaining to work its magic but the magic never happened seems not to stand up to scrutiny. The collective bargaining machinery failed. Between 1997 and 1999 and afterwards, promises were made that failed again and again to be kept.

The agreement in 1997 was struck not because the employers and unions were all back-slapping friends who said, "We're great guys and gals who all believe in equal pay, and motherhood and apple pie and ice cream." It was struck because the trade unions had a strategy for what to do if the employers kept fandangoing around, which is what employers had been doing until 1997. That strategy was to start bringing claims in employment tribunals and to enforce people's rights through the courts. That is what brought the employers to a collective agreement. That plan B was always a factor in discussions between trade unions and employers in Scotland. There was a twin track. People said, "Let's negotiate if we can, but if employers can't do what they promised to do, through bad faith or because they don't have the wherewithal or whatever, we can make it happen through the courts." We should remember that what we are talking about is not an airy-fairy commitment but a legally binding aspect of people's contracts.

Quite a number of the 35,000 employment tribunal cases are doubled up. Cases have been resubmitted, to protect people's interests, so the figure does not reflect the number of individuals who have made a claim. That is a technical point on which I can give the committee more information if need be. Those claims are not all from different individuals—quite a number involve the same person resubmitting their claim because of an argument about comparators or when something happened, for example. As is right, the Tribunals Service records those claims individually, so the number is inflated.

Jim Tolson: I accept that the 35,000 claims do not involve 35,000 people, but they lead to what is, rightly, a key concern of the continuing negotiations. When people reach a settlement but feel, rightly or wrongly, that someone else has reached a better settlement, they resubmit their claim. That could mean that no end is in sight and that the situation could continue ad infinitum. In the future, 12 years might seem to be nothing, although I hope not.

I accept your first point that, in the initial years, local authorities and unions were not entirely blameless. However, not all authorities had available to them the money that you suggest they had. Some have had more reserves than others, and many have not had the reserves to meet the claims. Some local authorities in which I am well versed have been able to meet claims, but that has not been the case for many others. That means that no clear settlement was achieved. When claims started to be made and when unions were pushed by the fact that they might be litigated against, which they did not have the money to cover, that stalled the whole process. We seem to be in a situation of perpetual claim and counter-claim.

Mark Irvine: That is not the case. We have settled many claims through negotiation—trade unions would call that collective bargaining. We are keen to resolve claims now and we could do so, but we need to resolve them in a way that represents a fair outcome.

I have with me the Scottish joint council national framework agreement from COSLA, which was issued in late 2005. It proposes compensation levels for various groups, but it does not identify them all and does not explain how those levels were calculated or what they are based on. COSLA issued that document in Scottish joint council circular 22 to all authorities. The framework agreement was never the subject of a trade union members' ballot and was not consulted on; it was just issued from on high as an edict to suggest a way forward. In contrast, the original agreement was the subject of a members' ballot—certainly in Unison, about 90 per cent of whose membership overwhelmingly endorsed it. Goodness only knows what the framework agreement was issued in the guise of—members might or might not have it.

When I asked COSLA for a copy of the framework agreement, it refused to supply one, because it said that it was not covered by the Freedom of Information (Scotland) Act 2002. I said, "That's rich from a publicly funded organisation. What's your problem with releasing the document to me?", but the answer was still no.

As it happened, I received a copy from a friendly council official, without the need for an FOI request. However, that shows how defensive and bureaucratic people are at times.

I do not think that what you say has much validity, but I respect your points about money and about different councils being affected in different ways. I am sure that, if there had been a will to resolve the situation, that could have been done long ago, with the assistance of COSLA and the Scottish Parliament.

Jim Tolson: That is fine. Mr Irvine and I will just have to agree to disagree on that point.

The Convener: Do you expect the figure of 35,213 to be static, to reduce or to grow?

Mark Irvine: The figure will probably grow, but that depends on what happens in councils throughout the country. From where we stand, some councils are digging themselves into a deeper hole in implementing single status. For example, the new job evaluation-backed pay and grading structure in Glasgow provides that only full-time workers receive extra points, which mean prizes in the form of extra money. Under that scheme, a full-time worker receives seven points, which translate into about £800. I cannot for the life of me see how that is not discriminatory, given that the vast majority of part-time workers, who do not qualify, are women. As most people realise, many women work part time.

If councils have problems with their job evaluation schemes and pay and grading structures, that situation will continue. I do not think that it will continue at the same rate. I do not believe that there will be another 35,000 cases or that we will all be sitting here in 12 years' time with grey beards or whatever. However, councils will have to address the issues—if they are shown to be on the side that we are advancing, at least.

10:30

Alasdair Allan (Western Isles) (SNP): One of the most concerning things in your submission is your statement that the 2002 deadline came and went and many councils were unprepared. Did you or other organisations flag up the problem to Government before that deadline passed?

Mark Irvine: We certainly did not. I have been a self-employed consultant since I left Unison, so I had no role in the matter. As I said, there was a completely open field for the collective bargaining process to work its magic and deliver what everyone had promised to deliver. I do not know who said what to whom. I have a general understanding, because I meet people and I have friends in the trade unions who tell me things anecdotally, but I did not have a professional interest in the matter at that time.

The Scottish joint council met throughout that period. There were various mechanisms through which an agreement could have been reached, including arbitration clauses and dispute clauses. If there were real problems, the trade unions should have said to the employers, "What's going on here? This is unravelling at a great rate. We're not seeing evidence on the ground of the planning that's needed to implement the agreement." I cannot tell you exactly what happened, but it does not look clever. From the outside looking in, it looks as though people sat on their hands and did not have the political will to deliver what they signed up to.

Alasdair Allan: So you do not believe that the trade unions warned employers about the situation.

Mark Irvine: I do not know whether they did that. All I am saying is that if there was a problem with an individual council, things could have been resolved readily and easily at a local level in a variety of ways. If the City of Edinburgh Council was dragging its feet, the unions could have said to it, locally, "Wait a minute. You're part of COSLA and you signed up to the agreement. What the hell's happening here? Nothing. Okay. We're going to take you to the Scottish joint council and have an argument. We're going to invite the joint secretaries from the trade union side and the employers to try to bang heads together and encourage a more sensible outcome."

Alternatively, there could have been a dispute or arbitration. There was a range of possible outcomes. There could have been a strike. God knows, there have been strikes in the past 10 years over zero-point-something per cent, yet there has been not a cheep out of the trade unions about raising the profile of equal pay and single status to that of pay. For the women workers, it is not a question of zero-point-something per cent, because many of them were being paid 50 per cent less. Many of them were working for £6 an hour while male workers on a lower grade were getting £9 an hour. They were losing a 50 per cent increase, not 0.3 per cent or whatever.

Alasdair Allan: I appreciate that you are to some extent constrained in relation to councils' response to the situation, but I note that your submission does not give a glowing description of council compromise agreements. What is your concern about those? You mention Glasgow City Council, but I think your concern applies to other councils as well.

Mark Irvine: We have challenged the agreements in Glasgow, but our concern applies to other councils, too. In late 2005, having denied

that there were any equal pay problems, Glasgow City Council was the first council to move quickly to make settlement offers to people. Again, the offers were based on the COSLA national framework agreement, but there was no explanation of how the figures were arrived at. In our estimation, a lot of the offers were worth less than 50 per cent of the real value of people's claims. The council encouraged people to sign away their claim by compromising and accepting the figure that was on offer. In Glasgow, the maximum figure that was on offer was £9,000. It is interesting that the COSLA national framework agreement proposed a figure of more than £13,000.

About 85 per cent of the workforce accepted the offer. The council and the local politicians—not all of them, but the leading ones—told them that the council was going to go bankrupt and that there would be big redundancies and goodness knows what else. Most people signed up, perhaps against their better judgment. We believe that those agreements might not be valid, because the law firms that claimed to be giving independent advice to the employees accepted that their advice to their clients would be restricted on terms laid down by the council. They could not go into the value of individual claims or any such thing, and yet they countersigned the claims. You cannot have a compromise agreement that is not signed off by either a trade union official or a lawyer who is accredited for that purpose.

Thousands of people signed up to something that gave them a very bad deal. We do not think that that is necessarily the end of the story. If those people did not receive proper advice and if the advice that law firms gave was restricted by a business agreement with Glasgow City Council, as the employer, the whole issue might have to be reopened.

David McLetchie (Edinburgh Pentlands) (Con): Good morning, Mr Irvine. I seek clarification on numbers. On the employment tribunals, we heard you say that there were 35,213 claims, but individuals might have more than one claim, so that was not necessarily the number of individual claimants. In your submission, you say that the number that you represent is 11,706. Is that a claimant count or a claims count? Your submission refers to "local authority claimants". Does that mean that 11,706 is a head count of people whom you represent, as opposed to the number of claims by a different number of people?

Mark Irvine: It is the number of claims. There might be slighter fewer claimants, because some claimants have two or more jobs. If you add on the union figures, it does not come to 35,000.

An issue has been raised in the employment tribunals about the comparators that are used at the beginning of the process. We have reissued some of the claims, in the name of the same people, to protect their interests. There is a degree of double-counting in the 35,000 figure. The 11,706 is a claims figure, but the number of claimants is not much less, because not that many people have two or more claims.

David McLetchie: What proportion of individual claimants is your group—Action 4 Equality and Stefan Cross Solicitors—representing, in the context of live cases?

Mark Irvine: I do not know off the top of my head. I think that it is well in excess of 10,000. There are not that many multiple claims. If Mark Irvine did two different jobs for the City of Edinburgh Council, he would have two claims. Most people have a single claim and that is it. They might issue another claim in their own name to protect their interests, given the comparator argument, which inflates the figure to 35,000, but in such cases there is not another claimant—there is not another Mark Irvine.

David McLetchie: So, on the basis of the 35,000 figure—albeit with elements of double-counting—and your 11,700-odd figure, with the caveats that you have mentioned, would it be fair to draw the conclusion that you represent approximately a third of individual claimants?

Mark Irvine: In local government? No, we represent more than that. We represent more than half.

David McLetchie: Do you mean more than half of the actual claimants?

Mark Irvine: Yes. For example, in Glasgow, I think that we represent more than 4,000 people. I might be doing a disservice to my colleagues in trade unions when I say that I do not think that their total figure is more than 1,000.

David McLetchie: East Ayrshire Council said in its submission:

> "cases which were settled … have now had supplementary claims submitted by employees. Thus in the last 10 days we have received from GMB a further 510 supplementary claims."

That relates to just one union in one council area. Special circumstances might apply to East Ayrshire Council and the nature of those claims, but, if that is the experience of one council, do you agree that the 35,000 figure has the potential to increase substantially?

Mark Irvine: It could do. It depends on what is happening on the ground from area to area. At the start of the process there were many fewer trade union-backed claims; now there are more, because people know much more about equal pay. When we began to explain the size of the pay gap, most council employees were completely

shocked. Most women workers had no idea about the extent of the pay gap. As we highlighted the situation, the word spread, which put pressure on trade unions to take action. If the collective bargaining machinery is not delivering, why should people not use their rights under the law to secure equal pay?

The numbers will go up, but by how much will depend on what individual councils do. Maybe councils need external help and scrutiny in relation to what they have put in place. It does not take a genius to work out whether there are flaws in pay and grading structures. In Glasgow, for example, some issues are pretty clear. The ball has been in the employers' court on that score.

David McLetchie: I am interested in the disparity between the number of claims that are outstanding or being processed in Scotland and the disproportionately small number of claims in England and Wales. The figure is 35,000 in Scotland and it is 48,000 in England and Wales. You attributed the disparity to the more dynamic activity on behalf of claimants that was stimulated by your work, which unions have subsequently taken up. However, I cannot believe that equally enterprising solicitors and trade unions, who are as alert as you are to the potential value of the claims of hundreds of thousands of workers, do not operate south of the border. Does the fact that only 48,000 claims appear to be outstanding in local authorities south of the border reflect the fact that the councils and trade unions that represent workers there have sorted out the issue, by and large, in contrast to Scotland? If the figures were proportionate, we would expect 300,000 claims in England. Either a lot of people are asleep on the job or the job has been done and there is a relatively low level of dissatisfaction.

10:45

Mark Irvine: I believe that people are asleep on the job. Until Action 4 Equality Scotland came along, there were virtually no equal pay claims in employment tribunals, because neither employers nor trade unions were highlighting the extent of the pay gap to women workers. It came as a real shock to a great many women workers that they were so hugely underpaid compared with their male colleagues.

I can speak only about what happened in Scotland. When I started working for Action 4 Equality and Stefan Cross, there were no claims in Scotland; now there are almost 12,000. There has been no such catalyst in many other parts of the UK. Where there has been a catalyst, for example in the north-east of England, where Stefan Cross is based, a great many more claims have been registered with employment tribunals. Stefan Cross has expanded his operation to a degree, but there is no UK-wide operation that has people on the ground to highlight and campaign on the issues, get the issues into the press and meet people. Part of my work during the past three or four years has been to meet lots of people around the country, often through local trade union reps, to explain issues that their own organisations had not explained. Often, those individuals have recruited people to take up claims through Action 4 Equality and Stefan Cross. Where there is a catalyst, there is a big increase in claims.

It would be interesting to get a regional breakdown of the 48,000 claims, because it would show you whether the number is virtually nil in Devon and Cornwall, for example, because there is no presence there to gee things up and get the job done. The same might be said for Wales or the east midlands. I suspect that a regional breakdown would tell the story.

David McLetchie: It sounds as though there are plenty of opportunities in London for employment lawyers. That is one way to combat the recession.

Mark Irvine: I think that you are safe here, too.

David McLetchie: Some 35,000 claims are current. How many claims has your organisation settled during the past four years?

Mark Irvine: Roughly 2,500, but those are interim settlements, because in some areas, for example in Glasgow and Edinburgh, the employer has not dealt with the protection period, so cases have stayed in the system. There has been an interim settlement and the whole amount of the claim has not been met, because employers have said, "We think we have a defence about the protection period." We think that that is not the case.

For goodness' sake, after 12 years, the City of Edinburgh Council has not even implemented a new pay and grading structure. If Edinburgh implements something this year, after all those years of failing to get its act together, and then protects the higher rate of pay of the men for a further three years, we think that women will be entitled to the same treatment.

In Midlothian Council there is talk of buying out male bonuses with an up-front cash sum, in an attempt to avoid the arguments about protection and comparators. However, women workers are entitled to equal treatment under the law, so if male workers are given a cash advance to buy out their bonuses, we think that, in general, female workers ought to be entitled to the same treatment.

David McLetchie: What was the average settlement in the 2,500 claims that you settled? I accept that they are interim settlements.

Mark Irvine: It is impossible to say, because settlements are based on an individual's hours and length of service and so on. In Glasgow, we doubled or trebled the offer that many people had accepted in compromise agreements.

David McLetchie: Did that mean that people got an extra £4,000 or £5,000?

Mark Irvine: No, they got more than that. They got double the original offer.

David McLetchie: Did you say that the original offer from Glasgow City Council was a maximum of £9,000?

Mark Irvine: Yes, so that was at least doubled. For example, the council's compromise agreement did not take account of overtime, but many low-paid workers do lots of overtime. The amount of overtime that is done by carers to make ends meet is legendary. The compromise offer took no account of that, but account was taken of overtime in settlements that we subsequently reached. I cannot give you a precise figure, but the vast majority of people at least doubled the offer that had been made to them and many trebled it or more.

David McLetchie: COSLA estimated that implementing single status would cost councils £500 million. I presume that there are different elements to that. On-going revenue costs are associated with single status and the establishment of a common pay and grading structure, in so far as the pay of certain workers is brought up to an appropriate level. There is also the back-pay element—the claims for compensation and so on. Was the figure of £500 million simply the figure for compensation—for the back pay—or was it a mixture of the compensatory element plus the annual on-going revenue element?

Mark Irvine: It was largely the compensatory element.

David McLetchie: Do you have any idea how much of that £500 million, which was estimated in 2005, has still to be paid?

Mark Irvine: The bulk of it, I would say.

David McLetchie: So there might be £400 million still to be paid from council budgets.

Mark Irvine: Possibly. The figure of £450 million to £500 million was given by COSLA to the BBC.

The Convener: We will have opportunities to pursue the matter with COSLA next week.

David McLetchie: I am just trying to get a handle on where we are.

You said that there was a nationally agreed job evaluation scheme, but your written submission seems to suggest that certain councils in Scotland opted out of it and devised schemes of their own.

Mark Irvine: You would need to ask them why they did that. They spent good money on developing a scheme that everyone thought was up to the task and that had the support of the trade unions, yet certain councils broke away for no reasons of which I am aware and did their own thing, which is remarkable. An auditor might want to cast his eye over how that happened and why councils spent so much money only to go off and do their own thing locally.

I do not know where some of the schemes have come from. I do not know the provenance of the Glasgow scheme, for example, as it has no one's name on it and there is no explanation of how it was developed. Similarly, we do not know where the scheme in South Lanarkshire came from—a scheme that we think has major problems.

David McLetchie: I want to ensure that I understand this. The national job evaluation scheme was agreed by COSLA, representing the councils, and the relevant local authority trade unions. It was the subject of a national agreement.

Mark Irvine: It was not a binding agreement, so the employers did not have to use it. They agreed to recommend it, which is what trade unions often do—they recommend things to their members and then fight hard to deliver them. You would not expect the councils to walk away from something that they had agreed to recommend, and you would expect them to have some genuine reasons if they failed to deliver on their recommendations. The employers cannot be forced to pick up such a scheme, but fireworks could be expected if an individual employer bailed out after having put all that time and effort into developing something to suit the needs of Scotland's councils.

David McLetchie: Did those councils that walked away from the national scheme do so with the approval or consent of the unions that represented their employees?

Mark Irvine: I do not know. In South Lanarkshire, the council says that the union agreed, and the union's position is not clear.

David McLetchie: Okay. We will ask COSLA about that at our next meeting. Thank you very much.

The Convener: I would like some clarification of the difference between the situation in Scotland and the situation in England. Could that difference be explained by the privatisation—the outsourcing—that took place down south?

Mark Irvine: Yes, possibly. That is a good point. There could be fewer people to compare with in some areas. Let us take a charming London borough—Westminster or somewhere like that—

that has privatised its refuse collection and its gardeners. The women will not be able to compare themselves with the male workers there because those workers are employed not by the council but by some private company. That is a good point, but I do not know what the regional breakdown would be.

The Convener: If councils in Scotland break up their services and compartmentalise women, will that deal with some of the problems in the future?

Mark Irvine: Only if they become separate employers. Glasgow City Council is rapidly pushing all its services into arm's-length companies, but the council still runs them.

The Convener: It is still the employer.

Mark Irvine: No. The council says that the employer is a different body, but is the council an associated employer under the legislation? That is to be tested.

The Convener: That is interesting.

John Wilson (Central Scotland) (SNP): My colleagues have asked a number of the questions that I had noted down, but a couple of outstanding questions still need to be asked.

Your submission raises the issue of the impact on retired employees. I would like your view on the people who were not made aware of the equal pay claims that were going through local authorities and the negotiations that were taking place. They have effectively lost out on equal pay payments.

The other issue is the potential impact of the settlements. We talk about the cost to local government being £500 million or £900 million, but there seems to be no indication of the impact on local authority pension schemes. The backdated payments will surely have an impact on the pensions that will be payable to low-paid workers when they retire. Do you know how that is being factored in by local authorities in relation to the settlements?

Mark Irvine: No, I do not know the details in every case.

On your first point, I estimate that about 5,000 people retire every year out of the group of former manual workers, in which the bulk of the claims are based, which adds up to about 25,000 to 30,000 people having retired. Their positions could have been protected by submitting what is called a protective claim. You do not decide on the claim and you do not adjudicate it, you simply say, "If this is not resolved next year, the year after or the year after that, my position is being protected by a claim that has been registered." You then revisit the issue at a later date.

All the women who have retired since 1999 have been left high and dry. I have had discussions with many of them. They may have worked with the council for 30 years and retired because their partner was ill or because of other family situations, and they retired on a pension that was based on 50 per cent less than an equivalent or lower-graded male worker. When you count them all up, a huge number of people are involved. The figure that I suggest is a ball-park figure based on my experience of the number of people who retire every year. About 5 per cent of those in the former manual workers group—which represents 100,000 or 120,000 workers across Scotland—retire every year.

On your other point about pensions, the individual payments are often cash offers; they do not deal with people's pay, so the pension situation is not factored in. When pay is addressed and a new pay and grading structure is implemented, there is an impact on people's pay, which flows through to their pension. However, all the offers in Glasgow and elsewhere—which were compromises—were cash offers that did not take account of people's pension situations.

John Wilson: I raise the issue because there was a report on Monday that the Strathclyde pension fund is likely to announce a £5 billion to £6 billion shortfall. The agreements and settlements that are reached on equal pay will have an effect on the shortfall in that pension pot. I am raising the wider issue that although the figures of £500 million and £900 million are bandied around in respect of equal pay settlements, there is little indication of the impact that settlements may have on future pension pay-outs, particularly in relation to the Strathclyde pension fund, which is one of the largest not only in Scotland but in Europe.

Mark Irvine: I agree.

11:00

John Wilson: I want to tease out the issue that David McLetchie raised about the number of claims in England and Wales compared to the number in Scotland. Your paper mentions that Action 4 Equality works in certain areas. As David McLetchie said, in parts of England and Wales it seems that nothing is happening. In those areas, have the local authorities and unions settled on a fair rate for equal pay payments for women workers?

Mark Irvine: No, I do not think so. If agreements have been reached, they would not bear much scrutiny. The real explanation for the situation is that nothing else is happening on the ground to change the dynamic between the employers and the trade unions. I am absolutely clear in my mind that, without the intervention of Action 4 Equality and Stefan Cross Solicitors, single status and

equal pay would still be stuck in the doldrums. It was our intervention in 2005 that changed that dynamic and moved things along. Without that, people would still have been staring at one another across a table saying, "What are we going to do now?" I accept that there are many problems to do with issues such as funding and costs, but had it not been for the action that we took, things would still be stuck in the mud, as they were four years ago.

John Wilson: Although the original equal pay claims involved comparing women's pay with men's, one issue that is emerging is that, particularly in relation to single status, claims might be made by male workers using female workers as comparators. How much of a problem will that be in the future?

Mark Irvine: I doubt that it will be a huge problem, numbers-wise. There might be cases here and there, but I expect that those will be resolved locally, with a bit of common sense. If there is a reverse claim of the kind that you mention, it ought to make sense. Employers do crazy things. In Edinburgh, the employer is not paying male workers who are in predominantly female jobs. Male home carers or cooks—of which there are a few—have not been made any offers by the council, which is completely bonkers because, just along the M8 in Glasgow, the council has dealt with such people on a fair basis, depending on what we describe as fair. The compromise agreements for those categories involved offers and, in the claims that we dealt with, settlement offers were made. Employers do strange things and they will need to answer for them. Largely, they are the ones that have allowed the issue to drag on and on.

The Convener: I appreciate that you have been involved in the situation and that any progress, however slow, will seem like progress. You say that we cannot go on being stuck in the mud but, from the evidence that we have received, we seem to be stuck in the mud quite a bit. I am not convinced by your argument that progress has been made by litigation. We have received evidence that

"after three years, the litigation in Scotland has yet to progress beyond preliminary, procedural and jurisdictional arguments",

and that

"There has yet to be a concluded local authority case and no orders for compensation have been issued."

The negotiations, which were difficult, failed to get us to a certain point. Your contention that litigation has brought us to that point is not borne out by a consideration of the number of people who are stuck in the tribunal system. The situation is frozen.

Mark Irvine: It has taken much longer than it should have done to get to the present situation, but things are now coming to a head. There is a major hearing involving Glasgow City Council next week. That is a genuine material factor—GMF—hearing, with which the convener will be familiar. It is a defence hearing at which the council has to explain, if it can, the big differences in pay. Another GMF hearing is scheduled for North Ayrshire Council. That is what everyone has been pushing for. So although the preliminary points and problems with freedom of information have taken a long time to resolve—there are still problems in some areas—they are now being resolved.

There is no perfect answer, but the people who have pursued an employment tribunal claim have protected their rights. When someone submits such a claim, it jumps back five years and then starts to count going forward. So, although it may have taken someone three years to get to this point, they will have protected their interests going back five years from the time of their original claim—if they had five years' service—and going forward three years, or, if it takes another six months, three and a half years. They have not been penalised as individuals, which they would have been. The earliest registered claims go back to about September 2005, which takes those cases back to September 2000. Some people have lost the whole period from 1999 onwards, but at least those who have pursued an employment tribunal claim have personally protected their positions.

With a bit of common sense from the employers, these matters could be settled. We have settled them, in general terms, in Glasgow and Edinburgh, and we have reached a partial settlement in North Lanarkshire. We have achieved a settlement in Stirling and in Renfrewshire, and other discussions are under way. It is high time that the employers grasped the nettle and decided to resolve these matters, which can be resolved.

The Convener: Do you believe that local government should be set a timetable for addressing the issues and implementing single status?

Mark Irvine: I would certainly welcome that, although I do not know how it could be enforced.

Patricia Ferguson (Glasgow Maryhill) (Lab): Good morning, Mr Irvine. You mentioned in your written submission and in your explanation to us this morning the work that has been done by Action 4 Equality and Stefan Cross Solicitors. You also mentioned the fact that you are a consultant. Is it the case that you take up individual claims and, when they need to go to law, Stefan Cross

Solicitors happens to be the firm that picks them up? Is that how it works?

Mark Irvine: That is right, yes. I have a business relationship with Stefan Cross Solicitors, which provides legal advice and legal representation to people who want to pursue a claim through that legal firm.

Patricia Ferguson: That is helpful to know. You also mentioned the fact that some 2,500 of the people with whom you are working have reached a settlement.

Mark Irvine: An interim settlement.

Patricia Ferguson: You added the caveat that there are other, peripheral issues that still need to be taken into account.

When a settlement is reached for a woman in a particular job, does that set a precedent for other women who do the same job in that local authority?

Mark Irvine: No. The settlement would be negotiated rather than adjudicated, so it would not automatically apply to anyone else's case. It would not set a precedent. However, the fact that the employer has had to come to a settlement means that it recognises that there is a problem that it must deal with. Faced with litigation, it was obvious to the employers that they had to do something about the pay of home carers. They recognised that it was a complete nonsense that women workers were being paid less than many unskilled male workers and that that could not be sustained.

You will find that, in the new pay and grading structures, the position has improved, relatively speaking. It has perhaps not improved enough and there may still be issues, but the position of women workers in general has improved because of the move to implement the agreement, which should have been implemented from 1999 onwards.

Patricia Ferguson: I must admit that I have some sympathy with the comments made by Mr McLetchie and the convener about where this is all going to go and how the situation can be resolved. The problem seems to be intractable. How would you suggest that it should be resolved? Is there a route that can be followed to resolve the situation throughout Scotland once and for all, so that people can get what they are entitled to?

Mark Irvine: Yes. I would fast-track some of the claims that are currently in the tribunal system to a GMF hearing. If those issues are tested and resolved, the way ahead will be clear one way or another. It does not take a genius to work out that that could be done, but the employers do not want that; they are the ones who are playing for time. If some of those cases were fast-tracked, it would be clear how it would fall for the others to be dealt with. Common sense would determine that a solution should then be negotiated rather than adjudicated, but we are willing to resolve matters through negotiation, and I am sure that the trade unions are, too. No one is saying that we should not resolve matters collectively, through negotiation, but the negotiation process must not discriminate against one group, which has been the problem up until now. I am not against collective bargaining—I was deeply involved in it for many years, but it has failed to deliver the intended outcome. I take the point that litigation is not necessarily a magic bullet, but it has effected a number of big improvements, individually and collectively, for the members of a workforce that is largely female. Issues remain, but the reason why we are in the situation that we are in is that people did not do what they said that they would do and did not deliver what they said that they would deliver.

Patricia Ferguson: You mentioned that you thought that councils were dragging their feet and were reluctant to settle. Why do you think that is?

Mark Irvine: I think that I said that it is because, in my view, it is extremely hard work to implement a high-sounding agreement on the ground. Trade unions run into the vested interests of their members; others run into issues with their line manager and goodness knows what.

People all say that they agree with equal pay. Some of our claimants in West Lothian went to lobby their local councillor, who will remain nameless, for obvious reasons. They told me that he dismissed them all and said, "What's all this business about equal pay? You lot just wipe arses all day long for a living." I was astonished and absolutely appalled that a councillor could make such a comment. Those are the kind of real-life issues that people face in getting the agreement implemented. Although the council or the trade union might sign up to it, putting it in place is a hard graft. To my mind, the necessary resources have not been made available for that from 1999 onwards.

Patricia Ferguson: Given that the issue will have to be resolved somewhere down the line, would it not be in everyone's best interests to do that sooner rather than later? I accept that the anecdote that you related describes the attitude of one person in a local authority—or perhaps more people than that—but such people are unlikely to be involved in the negotiations, so I am not quite sure how that would have an effect.

Mark Irvine: They influence the negotiations and the climate in which people consider whether they can afford equal pay, whether they can implement it, or whether they have a good reason to kick it into the long grass. Derailing the process

does not require some well-thought-out plan; it is a question of continuing to play for time, knocking the issue into the long grass for another little while and seeing whether it goes away. That way, people's will and morale to do what they said that they would do is gradually sapped.

In 1997 and again in 1999 it was announced, with a great fanfare, that equal pay was being signed up to. People said, "At long last our women workers will get the deal that they deserve. The Equal Pay Act was passed in 1970, for God's sake, and we are still talking about it in 1999." However, it is a case of déjà vu, because we are still talking about equal pay in 2009.

I think that there is a willingness to resolve the situation. People need to get together and reach an outcome through negotiation or litigation. It is in no one's interests to keep going round and round in circles. I hope that that message will get back to councils, which we talk to all the time, and to COSLA, which we do not talk to all the time, but there are people who do.

Patricia Ferguson: I am slightly intrigued because you implied that people in local authorities and perhaps in other organisations were reluctant to make progress on equal pay, but then you said that you thought that there was a willingness to sort things out.

Mark Irvine: There is some evidence of a willingness to resolve matters. An interim settlement has been reached in Glasgow and Edinburgh. There are people in councils and elsewhere who want to achieve a sensible resolution. In some cases, their voice wins out; in others, it does not. I do not know why a settlement has been reached in Glasgow and Edinburgh but not elsewhere. If someone has to be dragged all the way through the employment tribunal process, so be it. It is not clear to me why there is a willingness to resolve the issue in some places but not in others. The issue of protection is holding up a resolution of many on-going claims in Edinburgh and Glasgow, but it is as plain and obvious to the employers as it is to me that, given the case law and precedent that is mentioned in the written evidence, we cannot protect the position of male workers—that is a no-brainer. Perhaps in some areas too many people with no brains are still pursuing the issue.

11:15

Bob Doris (Glasgow) (SNP): I have listened with interest to many of your comments. In your opening remarks, you referred to financial self-interest and institutional sexism. Your answers to Patricia Ferguson's questions reinforced those points. Is the first main stumbling block the financial self-interest of local authorities, which do not wish to pay out? The second issue may be tougher to address. I have met many good people in trade unions, but is there institutional sexism at grass-roots level in parts of the trade union movement?

Mark Irvine: My answer to both questions is yes. There is clearly an issue of financial self-interest. Councils would like, on reflection, to do their own thing and choose their own priorities. Trade unions have a problem getting people in particular areas to go along with the agenda that the union as a whole has agreed. There are many good people in the trade unions to whom I still talk; many of the people whom we represent are in trade unions. However, the trade unions are angry with us, as well as with the employers, because we have changed the rules of the game.

In their written evidence, the unions mention the case of a client from Edinburgh, who has supposedly been placed in a terrible situation by Stefan Cross Solicitors. In reality, the individual concerned approached Stefan Cross Solicitors for advice. She was in a job category for which the council had made no offer of settlement, and her trade union had not advised her of any right to equal pay. Stefan Cross Solicitors agreed to take up her case, registered its claim, protected her interests in the way in which I have explained and took her case to a major 10-day hearing last year, with leading counsel present. The individual then chose to end the agreement, and Stefan Cross Solicitors gave her a bill for £500 plus VAT for its services. That is the sort of issue on which the trade unions want to focus, rather than the bigger picture. It is a storm in a teacup—the real issue is the thousands of people who have not been advised properly, who could get no advice and who knew nothing of the pay gap, because of the silence of employers and trade unions throughout that time.

Bob Doris: My intention in asking the question was not to be drawn into discussing individual cases. However, I thought that it was fair to put it on the record that, if there is sexism in society, the trade unions, as an extension of society, are bound to include institutional interests that are sexist.

Mark Irvine: Parts of all of the trade unions find it difficult to accept that, by definition, the female workforce must gain more than men out of a single status equal pay agreement. How can we deliver equal pay if women do not catch up? To get them into that position, there must be a disproportionate impact for one, two or three years, which puts people's noses out of joint big time. That does not mean that everyone in the trade unions is bad—of course they are not. The unions include some highly principled, good people who do a good job day in, day out; I talk to them regularly. However,

they have a real problem getting equal pay through their organisations because of resistance—it does not matter whether you call that institutional sexism or people's noses being put out of joint. It takes me back to the experience of implementing the manual workers job evaluation scheme in 1988, which met with the same problems. Those problems were overcome by an absolutely determined strategy in all the unions.

Bob Doris: My understanding of the Glasgow situation is that, quite close to Christmas 2005, a lump-sum offer to settle was made to a lot of female workers. Many people consider that settlement to have been undervalued. We need to build up trust with workers across the country. How appropriate do you think it is to offer people undervalued settlements just before Christmas?

Mark Irvine: I said at the time that that was a disgrace and I have not changed my view. People felt that a carrot was being dangled in front of them. They did not absolutely understand the issues and, within a short space of time, they were encouraged to take the money and run. To be honest, it is not that surprising that they did so. If, in the weeks leading up to Christmas, you dangle a sum of between £5,000 and £9,000 before a low-paid worker, you would not be surprised if they accepted it. However, if you had told them that they were entitled to £18,000 or £19,000, they might have thought more carefully about the deal.

I thought that that was a terrible way to treat people, and I still do.

Bob Doris: Let us imagine a situation involving a local authority area in which the average settlement per worker is £8,000. You might say that the real settlement should be £25,000 or £30,000, but the local authority might say, in response, that that is money that it does not have. Is there any reason why the settlement could not be fed in over a number of years? Would workers who are owed £30,000 have the patience to say to the local authority, "Give me £15,000 now, along with a commitment to make up the balance at a later date"? If local authorities are cash strapped, we need to take forward a plan together to ensure that workers who have faced discrimination and inequality over a number of years get the money that they are due, and that services do not get cut. Would local authorities and workers accept that?

Mark Irvine: It would be possible, depending on how the arrangement was structured. No one is trying to be unreasonable. I do not know any kamikaze litigant who is intent on crashing into the aircraft carrier no matter what. Some sort of negotiated settlement that took account of time factors would be sensible, because single status was never intended to be a big bang—it was never meant to be resolved on day 1 in 1999; that is why there was a timeframe.

I think that you could put such a proposition to people and talk it through and hear their ideas. However, at the heart of the matter, there must be a willingness to settle the issue on fair terms. You cannot settle something on fair terms if you do what COSLA did and issue a national framework agreement without explaining how the figures were arrived at. When I was at school, my teacher always said, "You will not get a mark for that sum if you don't show the workings." I would say that to the employers. It is completely wrong for COSLA to try to resolve the situation without explaining how the calculations were made. It will not win people's trust and confidence that way.

The Convener: I thank you for your attendance. If you could leave us a copy of the COSLA circular, that might also be helpful.

Mark Irvine: It is my only one. You have no idea of the hoops that I had to jump through to get it, but I will trust you with it.

The Convener: A man who trusts a politician.

11:23

Meeting suspended.

11:26

On resuming—

The Convener: I welcome the second panel of witnesses. Although I understand that membership of a trade union is not a declarable interest, for the avoidance of any misunderstandings, I point out that I am a member of the GMB and a former employee of that union. That should be on the record. Do other members want to declare an interest?

John Wilson: I declare my interest as a member of Unite T&G.

Patricia Ferguson: I am a member of the GMB.

Bob Doris: I am a member of the Educational Institute of Scotland.

The Convener: The witnesses for the second panel are Glyn Hawker, Scottish organiser for bargaining and equal pay with Unison; and Alex McLuckie, senior organiser with GMB Scotland. Our previous witness helpfully kept his introductory remarks short, which gave us longer for questions. However, I offer the witnesses the opportunity to make short introductory remarks if they wish to do so.

Glyn Hawker (Unison): I would like to do so. I will seek to be brief, although I cannot guarantee that I will be as brief as Mark Irvine was. As

members will know, the Unison submission is lengthy, so I will summarise the key issues that we raise. I hope that that will be helpful for the committee in its questioning.

The first issue that Unison identifies is about the size of the problem—the scope and the scale of the issues to do with equal pay—and its unpredictable nature. From the evidence that the committee heard from the previous witness, it is clear that there are several issues that date back over a long period and that probably will not be concluded for a period. Many descriptions have been given of equal pay and of the difficulties that all those who are involved in it face. I have heard equal pay described as a runaway train, a many-headed hydra and an octopus.

There is an absolute need to get to grips with the equal pay situation. Unison's first request to the committee is that you use all your ability and influence to assist in managing the situation and bringing the issue to a speedy conclusion. Fundamentally, equal pay is a big and long-standing issue. We must get to grips with many matters that we have not got to grips with so far. There are all sorts of opportunities for mixed metaphors and bad similes—I am sure that more will come up during the meeting—but, fundamentally, we must remember that the issue is about fairness and introducing equality for women. The issue has been outstanding for more than 40 years and we need to make progress on it.

Our submission contains a considerable amount of information on continuing liability, which is the second issue that we want to bring to the committee's attention. The Bainbridge decision, which was made last summer, blows out of the water the myth that the single status agreement will solve all the ills that are associated with equal pay in local government. Given that, under the Bainbridge decision, the councils' approach on pay protection was wrong, we are concerned about what else is wrong and remains outstanding.

In the negotiations and collective bargaining on single status, Unison has rejected 20 proposals for new pay and grading models that local authorities have made. We have rejected them for good reasons, some of which are linked to Bainbridge issues and others of which are not. In several areas, there have been poor outcomes in the job evaluation for women. In a small but nonetheless significant number of councils, there has been a widening of the pay gap rather than a narrowing.

11:30

Highland Council has recently imposed a new pay and grading scheme on its employees despite receiving an equality impact assessment that shows that the pay gap has been widened. Other issues are likely to come up to do with continuing liability. In its submission, East Ayrshire Council refers to the fact that it has a new pay and grading model, but it has not addressed pay and conditions. At the moment, its terms and conditions have differing rates of pay for weekend enhancements, so there is continuing discrimination against women employees, all of which needs to be tackled and is likely to bring into play issues to do with continuing liability.

The third issue is the social and economic costs. Obviously, your committee is focusing on that issue and there is a considerable amount of interest in it. A figure of £500 million has been quoted as the cost of addressing the historical inequality. We do not know what the cost of current and future liabilities will be. However, from Unison's negotiating experience—we have a lot of that—we are aware that a medium-sized local authority would project at least £30 million to meet the costs of Bainbridge. If we scale that up across all of the local authorities in Scotland, we are talking about several hundred million pounds—possibly even £1 billion. The last thing that any of us wants to do is to scaremonger about figures, but that is the kind of information that we need to have.

Fundamentally, as I said, this issue is to do with equal pay for women and taking women who work for local government out of poverty. Every single pound of that £1 billion is a pound that is not in the pockets of women in local government. Increasingly, the majority of women who are in poverty are also in paid work. In Unison's view, it is a scandal that many of those women are employed in local government in Scotland.

The fourth issue is regulation and auditing. The Scottish Executive scrapped compulsory competitive tendering and brought in best value, which goes way beyond cash values—it is not about what is the cheapest way of getting the job done. Detailed advice was issued on best value, which was designed to bring about efficient, effective and fair public services. The responsibility for ensuring that councils adhere to the provisions of the best-value scheme rests with Audit Scotland, with which you spoke last week. However, it is clear that Audit Scotland does not know the cost of equal pay in local government and has no effective ways of calculating it. Further, it has not come anywhere close to beginning to address that broader system of fairness and value around the equalities issues.

Those of us who were around during the discussions that brought about the creation of devolved government in Scotland will remember that equality was key to the establishment of the

processes that we wanted to put in place. There was a clear view that equalities would be mainstreamed. However, we do not have effective mechanisms for measuring our progress in that regard. That is a matter of major concern to us.

The bottom line is that this is about fairness for women who work in local government and deliver local government services. Those services are delivered best by people who feel that they are properly valued and rewarded. However, they have not been properly valued or rewarded for a long time, and I repeat my request that, when you consider our evidence, you have in mind what you will be able to do to progress the matter at the end of your discussions.

Alex McLuckie (GMB Scotland): My opening statement will be quite short, as Glyn Hawker has covered a lot of the issues.

We welcome the opportunity to be here today, as the issue that we are discussing is important and needs to be tackled. Unfortunately for local government, there is no get-out-of-jail-free card on equal pay. We have mentioned the great size of the problem, but it grows to even larger proportions because of historical issues to do with equal pay, the implications of the Bainbridge judgment, which Glyn Hawker referred to and which involves the ways in which inequality continues within pay protection arrangements, and problems arising from the delay in introducing equality-proofed pay schemes in local government, which meant that the inequality continued for two or three years longer than it would otherwise have done.

We have to consider the historical equal pay issue that is still to be resolved, the 35,000 cases that were mentioned earlier, the gap between the compromise agreements being settled and a new pay structure coming in, and the implications of the Bainbridge decision for pay protection in the new scheme. The local authorities have to deal with a massive problem. We would like councils to be given the tools that they need to deal with that. In order to do that, you will have to examine the local government finance arrangements to determine whether the Scottish Government is putting in enough money to ensure that the issue is dealt with.

We need to consider whether we can relax the financial regimes that councils operate under so that they can raise cash to deal with the issue of equal pay.

The problem is massive. It has to be tackled. The bill will stay with the employers or transfer to anyone else who starts to deliver the service. Hopefully, through our discussion today, we can find a way of tackling the problem.

The Convener: As we have heard, we face a significant problem. It has been confirmed today that the problem is growing and that the liability is likely to increase to astronomical figures. Further, the lawyers have got involved, which usually means that we are in a desperate situation in which the normal relationships have broken down. There has been some discussion about whether the legal process will resolve the issue, but that has not happened yet. Of course, the normal negotiation arrangements and relationships have failed. Would you accept that assertion?

Glyn Hawker: There is a question of scale. Employment law has always been the backdrop to our world of negotiating with employers. We have often had recourse to law and lawyers. That is not our first port of call, however. Trade unions like to negotiate and bargain, and are good at that, for the most part. However, we are dealing with an issue that is on a large scale—the figure of 35,000 cases in Scotland is much higher than anything that we have dealt with before. That raises issues of cost, and the cost of involving lawyers in the matter simply increases the costs that we are likely to accrue.

The Convener: No one would doubt that there is an inability to deliver on the agreements that were agreed to in principle. The Scottish local authorities assert that single status has been implemented in 26 local authorities. Some of the biggest trade unions in the UK—not just in Scotland—have seen those agreements implemented over their heads, while saying no. That is unprecedented in a situation where unions have the right to negotiate. We are dealing with public sector employers that, in the main, recognise trade unions and whose normal practice is to negotiate. If you cannot work out the problem with them, why should the Scottish Government get your coals out of the fire? Why is it the responsibility of the Government alone to resolve the situation? What responsibility do you and the employers have to play a part in that process?

Alex McLuckie: Under equal pay legislation, risk lies with the employer. We try to negotiate, but if we have concerns about a scheme and believe that it may still give rise to claims of inequality, we will not agree to its implementation. We are available for further negotiations and discussions with employers about ways in which those issues can be resolved. You need to put the question to councils, which have been given legal advice on the matter. Their legal people have told them that if they continue to negotiate and do not implement new schemes, there is a risk that the liability will continue. When such schemes are imposed, we are left with the problem of having to negotiate out the inequality that remains. We will try to do that but, unfortunately, we must take the legal route in some instances.

The negotiations on this issue have been different from others. Glyn Hawker mentioned equality impact assessments. Such assessments may show a reduction in the pay gap, but it may not be done away with completely. The movement may be minimal, and we may not be comfortable with that. We say that we cannot sign up to schemes until the remaining equalities issues have been addressed; employers then decide to impose the schemes. That does not mean that we have stopped negotiating. We will continue to negotiate to try to iron out the difficulties, even after schemes have been imposed.

You need to put the question to employers, because they are acting on legal advice that they have received. They have been advised to impose a new pay system, because the liability will continue if they retain the current system and do not move. Their theory is that the clock stops running at that point. Ours is different—we think that the clock is still ticking. That is what has led to the situation that you describe.

The Convener: We are asking you these questions because the employers will give evidence to us next week and it is important for us to test the issues with you. Just as an aside, I note that at least one local authority—South Lanarkshire Council—has indicated to us that it has received no external legal advice on the tribunal cases in which it is involved. Does that surprise you?

Alex McLuckie: I do not know. It is entirely for councils to decide whether they take their legal advice from internal or external sources. You are welcome to open up a debate on how much money has been spent on solicitors to resolve these matters. The Scottish Trades Union Congress has issued a press release on the amount of money that has been spent so far on legal fees for equal pay litigation. To be honest, our view is that that money has been spent on trying to delay the process rather than resolve the situation.

11:45

Alasdair Allan: We want to talk about how councils have responded to the situation. It is difficult to do that without talking about council compromise agreements, and it is difficult to talk about them without talking about the English case of Allen v GMB. Would you like to respond to the description of that case in Mark Irvine's written submission? He says:

"The Employment Tribunal decided unanimously that their employer (Middlesborough Council) should have eradicated unequal pay years earlier. The tribunal found that the GMB then collaborated with the employer by manipulating members, who had back pay claims, into unwittingly sacrificing their rights—to the benefit of the employer. In doing so, the tribunal agreed that the union had unjustifiably discriminated against their low-paid women members."

Alex McLuckie: The case involved a specific situation. The council that it concerned was one of the first to try to tackle single status and equal pay. The case against the GMB was a test case for all the trade unions that were active in that council.

The Court of Appeal said in its judgment that the negotiations were particularly complex. It must be borne in mind that the only result of the Allen case was a finding of indirect discrimination. The claims of direct discrimination and victimisation of members fell, so the only claim that was left was that of indirect discrimination.

The Court of Appeal said that when trade unions weighed up the different interests in the negotiations—the right of women to back pay for past inequality and the setting of future rates—the balance was wrong. Getting that balance wrong implied discrimination against women members in the negotiations.

The case was unique. I am confident that such a situation will not reappear in the negotiations in Scotland, because the method that is being used in Scotland is different and is the opposite of what was criticised in that case.

Alasdair Allan: More generally, it is clear that the trade union movement has in many respects worked hard to address the problems. However, Mark Irvine suggested that it must overcome many problems in order to equalise pay, because some of its members have vested interests. I do not say that to impugn the trade union movement, but will you talk about the difficulties and challenges that have been presented?

Alex McLuckie: Well, the first thing—

The Convener: You should not feel required to answer every question, Mr McLuckie—share the load.

Alex McLuckie: It is just that everybody is looking at me.

The Convener: We are looking at both witnesses.

Glyn Hawker: I am happy to answer the question. As one member said in response to the first witness, trade unions represent a cross-section of society, so all society's interests, vested interests, views, prejudices and biases appear in trade unions, as they do in political organisations and in government. It is for those organisations to manage processes, which we do, have done and will continue to do.

As I said, equal pay is a big and emotive issue, because it involves a lot of money and interest. We have faced and will face difficulties. I do not

intend to be the slightest bit disrespectful, but so what? That is a fact of life, which we deal with. On a number of issues, in a number of areas, some people will not agree with others about the right direction and the right policy. The trade unions are a big collective of organisations, and we expect to have to deal with differences of opinion.

Alex McLuckie: It may not come as a surprise that I disagree with the statement to which Alasdair Allan referred. The trade unions' bargaining agenda has changed as its membership has changed. Twenty years ago, the GMB's membership was predominantly male manual workers in craft-type jobs. Our membership is now 50 per cent part-time women workers. Our bargaining agenda has changed to reflect the change in trade union membership. That was a broad-brush statement. If you got under the surface and looked at the reality and what we are doing on behalf of women workers, you would see that it does not stand up.

David McLetchie: Without unduly getting into the history of the single status agreement, I was intrigued by the submission that Unison helpfully gave us on the background. On page 2, you say:

"The Single Status Agreement was signed in 1999 and it is a framework agreement for local government in Scotland."

You describe its intention and purpose, before going on to say:

"The employers missed the extended implementation date of April 2004".

What came out strongly in the earlier evidence from Mr Irvine was that that missing five years is part of the problem. It appears—I would welcome your observations on this—that not a lot happened until April 2004, and that, as your submission says,

"the level of litigation has been rising steadily since that time."

Had the trade unions, in 1999, resorted more to equal pay claims and tribunals, and brought in their own lawyers to fight test cases on behalf of their members, would that not have established, at an early stage, the basis for a series of equal pay decisions by the tribunals that could have fed into the single status agreements and compensation claims and got them sorted out? What seems to have led to the previous situation was that that guidance did not exist, and that there was an attempt to sort it all out through a collective bargaining process, which dragged on for years—although I am not saying that that is entirely your fault—with no benchmark decisions to inform it. In other words, we should have let the lawyers in earlier to get the decisions, after which we could have established the framework. Is that a fair comment?

Glyn Hawker: No. I disagree significantly. First, it is not the case that nothing happened between 1999 and 2004. I had thought that, if anything, the Unison submission was too long; perhaps we should have made it longer still.

The agreement was signed in 1999. As the previous witness explained, there was an agreement that there would be a Scottish version of the national joint council scheme—a Scottish joint council scheme. Having agreed that there would be a Scottish scheme, that scheme had to be put together; it had to be designed, built, negotiated and amended. It was 2002 before the scheme was finally agreed. As the previous witness said, there is a difference between agreeing a piece of paper—or several pieces of paper—that says, "This is what we're going to do", and the next stage, which is implementation.

In 2002, following quite a lot of discussion and consultation, the trade unions agreed with the employers that there would be a deferral for two years, until 2004, to enable local authorities to make progress on implementation. A two-year deadline was established. It did not happen—the deadline was missed. With hindsight, two years was too brief. It is completely inaccurate to suggest that, having signed a piece of paper, everybody went away and did nothing for the next five years.

On the point about bringing in the lawyers early, no trade unionist anywhere will say, "Bring in the lawyers first." That is not what we are about. It is not what we do and it is not what our members expect us to do. We bargain and negotiate and represent people's interests directly with employers.

I am sure that we will come on to the number of claims and how much time is outstanding on them, but the experience with equal pay claims that have gone before—when there were nothing like the numbers of claims that we have now—is that they take at least eight years to settle. That puts in perspective the time taken to conclude negotiations on single status. It takes a long time to bring cases to court, and we are talking about individual cases. If we had taken the approach that David McLetchie suggests in advance of the single status agreement, we would not have had anything to measure against. We wanted an equality-proofed job evaluation scheme that would clear the decks of most of the issues. That is what we were working towards. That did not happen anything like as quickly as we wanted it to happen, or perhaps as quickly as it should have happened, but that is with hindsight. Therefore, I completely disagree with David McLetchie's summation.

Alex McLuckie: It would be wrong to say that the trade unions were not pursuing equal pay claims in 1999. If members came to us and there

was an issue of inequality, we would pursue claims for them. Glyn Hawker is right that we started by seeking a UK basis for an agreement that would do away with the difference between manual workers and administration, professional, technical and clerical workers. Two of the pillars on which that agreement was built were equality and flexibility. We then had a unilateral declaration of independence from COSLA, which meant that we had to get involved in a different set of negotiations to introduce single status in Scotland.

It is not fair to say that the trade unions sat on their hands while that was happening. We had to develop the job evaluation scheme that has been referred to. The scheme came through COSLA, but a lot of work went into it to ensure that it met the requirements of equality in the local government family. Because the councils were running late, the deadline was extended to 2004. When the councils did not meet that deadline, again the unions did not stand still. We wrote to the employers to tell them that they were required to introduce equality-proofed pay structures and that, if they did not do so, we would be left with no alternative but to litigate. That was done in about August 2005, if memory serves me right. Therefore, we were not sitting doing nothing.

It is hard to fall out with old comrades who, in 1995, were not working for Action 4 Equality but were leading in the negotiations on single status, but our version of history is a bit different. It was the trade unions, not Action 4 Equality, that lodged all the grievances with local government in the first instance. The difference was that the trade unions tried to negotiate settlements, rather than wait the 28 days and fire in with employment tribunals. Throughout that timeframe, we were continually trying to resolve the issues. We went down the litigation route only when we had no alternative. Therefore, we were not sitting on our hands during that period.

David McLetchie: I am not suggesting that you were sitting on your hands; I am suggesting that a twin-track strategy, using appropriate test cases in the tribunal system, might have been more effective. The rights of employees under the Equal Pay Act 1970 have nothing to do with single status agreements; they are rights that are owed to each individual employee. You do not decline to take action on equal pay simply because you are negotiating a single status agreement.

Alex McLuckie: That is why I made the point that, even in 1999, we were taking equal pay claims.

David McLetchie: I suggest that if a more forensic analysis of what was going on had been carried out and you had taken a twin-track approach by pursuing key cases in several authorities involving different grades of staff, you might have established a basis for a single status agreement to resolve the issues.

You and I will obviously disagree on the history, but that is not the issue in which I am really interested. I am interested in the consequences, which are far and away the most important issue. I am greatly concerned about the alarming figures that have been given for the cost of finally resolving the equal pay issues, which at the end of the day are to do with employees' legal entitlements. If the decisions go against the councils, the spend will not be discretionary. The judgments will be legally binding, so councils will have to stump up.

What interests me particularly in that context is that, as I understand the historic concordat, all matters relating to equal pay and single status are indeed historical and therefore are not treated, either by the Scottish Government or COSLA, as giving rise to new funding pressures that would disrupt or cause there to be a change in the financial settlement that COSLA and the Scottish Government negotiated at the time of the concordat. Is that your understanding of where equal pay fits in that arrangement?

12:00

Glyn Hawker: It is certainly my understanding of what most of the employers are saying, but it is not the truth. As I said in my opening points, there is an historical element to the complexity of the situation. It is clear that there are large elements of historical back pay that have been acknowledged by councils and continue to be acknowledged in the form of compensation payments. Mark Irvine referred to two councils—Glasgow and Edinburgh—that have settled compensation, but what he meant was that they had settled compensation with Stefan Cross Solicitors.

All the councils in Scotland have been making payments to their employees by way of back pay. In fact, the City of Edinburgh Council will tomorrow make another request for further funding for a third settlement round by way of back pay compensation because it is one of the councils that has yet to implement single status and the new pay and grading model.

The councils are saying that there will be no continuing liability once they have introduced single status because they are defending their schemes as being equality proofed. It is the trade unions' view—it is certainly Unison's view, as we say in our submission—that the schemes are not equality proofed in several areas. Following the decision in the case of Redcar and Cleveland Borough Council v Bainbridge, areas where there are current and on-going liabilities have already been identified, and there might well be other

liabilities following the implementation of single status, depending on how it is done in different areas. Until such cases reach court, we will not know the extent of those liabilities. However, Unison is absolutely confident that, sadly, there are indeed continuing liabilities, which will be significant. It is inevitable that when you have 32 councils with 32 variations of a scheme, they will not all be perfect.

Alex McLuckie: I concur with Glyn Hawker. On the issues faced by local government, the only historical part of equal pay is back pay. Many councils have reached compromise agreements with the vast majority of the workers who were classed as being in high-risk groups, which are the three Cs: catering, cleaning and care. The 35,000 claimants are probably those who did not accept a compromise agreement.

There are continuing equal pay liabilities in the other two areas that have been mentioned today: where councils have a gap before they introduce the new pay structure; and where they still have to introduce the new pay structure. On top of that is the liability that comes from the Bainbridge decision on how protection works. COSLA is saying that the protection arrangements are a contractual right so they have to be dealt with. Those liabilities are currently live and relevant to local government finance.

David McLetchie: Does Glyn Hawker think that the circumstances that we are facing—she highlighted among other matters Bainbridge, which is a new decision that post-dates the historic concordat—represent an additional and new funding pressure on councils as, opposed to a pressure that existed historically and of which account is already taken?

Glyn Hawker: We have always known that there would be on-going liabilities. The Bainbridge decision was made last July, and in December it was confirmed that there would be no leave to appeal, so it is now definite. The specifics probably all go back to the end of last year, but we have known from the start about the issues around continuing discrimination in new pay and grading schemes. What cannot be quantified—and there has been no attempt to do so—is exactly what that is worth, because its value will vary from authority to authority, depending on the nature of the scheme, and will need to be tested in court.

David McLetchie: I accept that, but my question is, how can you accept a financial settlement that contains a substantial on-going liability that has not been quantified?

Glyn Hawker: But the only settlement that has been accepted involved back pay.

David McLetchie: I am not talking about trade union settlements; I am talking about the agreement between COSLA and the Scottish Government that involves a three-year funding deal that everyone signs up to unless a new factor arises. However, in the historic agreement, we have huge, unfunded, unquantified liabilities that none of the witnesses so far, yourselves included, has been able to put a global figure on. We simply do not know what that figure might be, because there are so many imponderables.

Glyn Hawker: Next week, you will be talking to COSLA, and that question would be rightly directed to it. We have raised, and will continue to raise, the issue that not only is it impossible to quantify that figure down to the last penny, but there is no mechanism that would enable us to come close to such a figure. There is a view that it is not important to do so, but, in our opinion, it is.

David McLetchie: Never mind the last penny—in your opening remarks, you talked about a figure of anywhere from £200 million or £300 million to £1 billion. That is an awful lot of pennies.

Alex McLuckie: Earlier, you asked how much of the £500 million that COSLA quoted was still up for grabs. I think that, if each of those 35,000 cases goes to tribunal and is won, we could be talking about an average settlement of £10,000, which comes to £350 million.

On Bainbridge, you have to consider the fact that it involves a three-year period. If you look at other occupational groups, the same pay gap is involved, so the cost increases. I do not know whether it is still politically correct to do a calculation on the back of a cigarette packet, but you can see that the money quickly mounts up.

When I talk about the historic concordat, people tell me that that is different from the financial settlement. I am not sure whether that is right, but I bow to those with greater experience in that realm than me.

We would like to be involved in the discussions that will take place because the issue impacts on our terms and conditions negotiations and our wage negotiations every year. However, I am not sure what is discussed and what costs are considered in those negotiations. I watched with interest COSLA's performance at a recent meeting of the Equal Opportunities Committee. Michael Cook said that COSLA did not bring up equal pay as an issue when it was reaching a settlement with the Government. Believe it or not, although the problem is massive, I think that, through negotiations, we can work our way through it. However, if the evidence that COSLA gave to the Equal Opportunities Committee is true, COSLA is not raising the issue with the Government when it discusses finance. That is crazy. COSLA is dealing with a time bomb and it is not even

considering ways of dealing with it. That is a bad mistake.

David McLetchie: I fully agree.

The Convener: I should point out that we will meet members of individual local authorities next week, although we are to receive some written evidence from COSLA. The committee will decide how we proceed from there.

Jim Tolson: I want to pick up on a couple of the points that Mr Irvine made earlier.

When I was a councillor, the issue of the legal challenges that are being faced by unions—including yours, I am sure—was often put to me. Do you feel that those legal challenges have stopped the unions representing their members fully, or that they have stopped a settlement being reached through processes of negotiation such as collective bargaining?

Mr Irvine made the point strongly that he felt that the delay was mostly down to the employers. Is that a fair view? I suggest again that the delays benefit not the employers but Mr Irvine and Stefan Cross, because they receive a larger return from their individual clients for whatever percentage their fee is. I am interested in hearing your evidence on those points.

Glyn Hawker: I will certainly not disagree with your last point, which you made well. That is probably all that needs to be said about the matter.

All the unions face potential legal challenges from Stefan Cross's company, which seeks to sue us on several grounds. We will defend those cases and we are confident of our defence. Have such challenges influenced how we do our job? I do not believe so. Trade unions always have worked and always will work with other organisations that are established to bring about justice, fairness and equality for women who seek those. It is obvious that working with an organisation that seeks to sue us is difficult, so the relationships are not good. However, we are not operating differently or contributing to delays as a defensive effort against such challenges.

Alex McLuckie: As I said in my reply to Mr Allan, although claims have been made against trade unions in Scotland, I do not think that they will be found to be well founded, if they ever reach an employment tribunal. I know for a fact that Action 4 Equality has dropped all its claims against trade unions in Yorkshire in the past month. We are fairly confident that a similar situation will occur in Scotland. I say that because we are not subject to a yoke that is stopping us negotiating with employers. We are talking about adopting an agreement that is based on the two pillars of equality and flexibility. The difficulty is that, if one of those pillars crumbles, we will not sign up to the agreement. Such rejection is part of the normal cut and thrust of collective bargaining.

I said that the trade unions are by their nature negotiators. Historically, offers were made to our members on what we in GMB Scotland call the first-wave claims. We took a view on those offers and wrote to tell our members what the offers were worth in comparison with awards if they succeeded at an employment tribunal and to advise them on whether they should accept the offers. Even then, quite a lot of our members accepted offers. I do not see that as debarring us from reaching a collective agreement with the employers. However, if inequality continues, that will stop a collective agreement. We will not sign up to an agreement that still contains inequality.

The difference between us and the previous witness is that he has a vested interest in keeping the situation going, because of the percentage arrangement. That arrangement means that if someone settles at 60 per cent, that is not the same as settling at 75 per cent, and settling at 75 per cent is not the same as settling at 100 per cent. Mr Irvine's organisation has a vested interest in not agreeing through negotiations.

Mr Irvine mentioned Renfrewshire Council and Stirling Council. Funnily enough, the offer that his clients accepted in those areas was the same as the negotiated offer that the majority of trade union members accepted from those two councils. His firm is now taking the same approach to East Dunbartonshire Council—it is recommending that its clients accept the same deal from that council as that which the unions negotiated.

We have a different view of the negotiations—they are not just about back pay. Equal pay is about setting the future rate. Believe it or not, that could be more advantageous to female workers than the back money. If someone has 20 or 30 years to work, they will benefit from the higher rate for 20 or 30 years.

Jim Tolson: That point is accepted and is well made. Another point was well made in Unison's written submission about the potential for additional multiple claims to continue to be made, about which I and—I think—many other members are concerned. Will Unison and the GMB make clear the concerns and how they are affecting progress in reaching a settlement?

12:15

Glyn Hawker: I am sorry, but I am not clear about what you are asking.

Jim Tolson: You mention additional multiple claims in your submission. I suggested earlier, and you said that you have heard evidence, that such

claims are making it more difficult to reach a settlement. There never seems to be an end in sight with that prospectus. Do you agree?

Glyn Hawker: Six councils in Scotland have yet to implement single status. The continuing back-pay compensation payments apply only to them, which is obviously a difficulty in the areas that they cover. I refer to the situation in Edinburgh, where a third round of those payments is being looked for. There is a continuing problem in that things must be funded. On whether additional multiple claims get in the way of the negotiations to reach a settlement, one would think that they would speed things up, because it is not in anybody's interests to continue to have to find that funding.

Alex McLuckie: There is a difficulty with signing compromise agreements. The nature of employment in local government now is such that women can have two or three part-time jobs. A woman can be a cleaner, school-crossing patroller and a catering assistant, have three separate contracts and think that there is a pay issue in each of those occupations. When a council offers a compromise agreement, it may give a settlement for a cleaning job, but the agreement will state that all equal pay claims will be compromised. Therefore, if the person signs the agreement, they will give up the catering assistant claim—that is probably a bad example, because catering is one of the three Cs, but members will understand that I am saying that the person will give up claims in their other occupations. As a result, the advice can only be, "Don't sign."

If an offer is made to a person with multiple occupations in one area but not in another in which there is an equal pay issue, that will make it more difficult to get a settlement, which would delay the process. For example, Glasgow City Council did not pay compensation to sessional workers—I am referring to people with a permanent contract in one area and a sessional job in another area. To be honest, a sessional job is an open-ended temporary job that breaches the temporary workers directive; however, that is how things operate. Councils offer compensatory payments for permanent jobs but nothing for sessional jobs. Some women have been in sessional jobs for 45 years, so they say, "No, thank you." Their only option then is an employment tribunal.

Jim Tolson: Finally, you both said that your unions did a great deal of work between 1999 and 2004—no doubt a great deal of work was also done then by other unions and the employers. Would you say that the coming of Action 4 Equality Scotland, Stefan Cross Solicitors and so on in the following period represents, in general, progress or a barrier to a solution?

Glyn Hawker: I would not say that the emergence of no-win, no-fee lawyers has been a barrier, but it has been an irritant. It is irritating to hear anybody inaccurately claiming virtues for themselves on behalf of any organisation. The statements that there is a higher number of claims in Scotland because of the activity of Stefan Cross Solicitors and that single status has begun to be implemented because that firm of solicitors raised issues are not true. From a personal and organisational point of view, it is irritating to hear such things being said, and the opportunity to rebut them is welcome.

There are clear reasons why there is a higher number of claims in Scotland than in other parts of the United Kingdom. Those reasons relate to where we are with progress in implementing single status. Twenty councils in Scotland have imposed new pay and grading arrangements on their staff. The clock starts ticking on identifying potential equal pay claims on the day on which imposition has taken place, which focuses the mind. Given that in 26 out of 32 councils we have either imposition or implementation, the clock has started ticking—in fact, it has stopped ticking for many people, in relation to lodging claims.

The implementation rate in Scotland is about 55 per cent, whereas the rate in England is much lower. Authorities are much less advanced there and there is much less imposition, which has largely been a Scottish tactic, although it is beginning to be prevalent in London.

By and large, until fairly recently, only councils in Scotland have chosen to implement. Therefore, the high number of claims relates to the progress that has been made. A question was asked earlier about the impact of privatisation on the number of cases in England. There is far less privatisation in Scotland. I cannot give exact information on the impact, but certainly, south of the border, the identification of comparators is slightly more complicated than it is here.

The number of cases here will grow. The 7,000 cases to which Unison refers in our written submission refers to actual people, some of whom might have multiple claims. We had a further 2,000 inquiries in the first two months of this year and we do not expect the figure to drop. Some of those claims will be settled, but some will not. I expect that there will be a higher number here, but Unison and all the trade unions are absolutely clear that the reason for the growth in numbers is not that a supposedly no-win, no-fee lawyer has come on the scene and raised the issue. The no-win, no-fee lawyer makes a considerable income from the process and takes money away from low-paid women in local government. That firm has not of itself done anything positive to resolve the

issues around single status in Scotland, particularly in relation to equal pay.

The Convener: In West Dunbartonshire and Stirling, where settlements have been reached for Action 4 Equality people, were the offers above the norm of 40 or 50 per cent? What are the differences among local authorities in the offers that have been made in compromise agreements?

Glyn Hawker: The figures vary considerably among local councils. To be honest, I cannot give you that information, although the authorities should be able to do so. The figure is usually a percentage of the perceived amount that would be achieved at tribunal—the question is whether five bob in the hand is worth a potential pound if the person goes to tribunal. The agreements are usually worth less than a settlement at tribunal, so people speculate.

For clarification, I point out that the COSLA framework agreement, to which Mr Irvine referred several times, was a proposal for a Scotland-wide compensation scheme. The proposal was rejected because the levels that were on offer were nothing like acceptable to the trade unions, which had consulted their members on it. That is why we moved to negotiations with individual councils. The figures vary between councils and staff groups. The matrix is fairly complicated: the patterns were discussed and agreed locally at the time.

The Convener: That is not an unusual practice—a matrix was laid out in relation to deafness claims, for example—but Mark Irvine suggested that the irony is that the agreement that was offered would have provided much more than what has subsequently been achieved.

Glyn Hawker: That is a suggestion, and I cannot refute it: it might have been the case in one area. However, we come down to what is definite and what is possible. Many of the difficulties arise from the fact that, for the most part, the trade unions recommended to their members not to accept the offers because they were not at the level that we expected to achieve. That was an expectation of what we would achieve if someone decided to go to court rather than take a cheque and have the money to spend for Christmas or whatever. Many people accepted those offers but, in general, COSLA's proposed Scottish agreement was at a lower level than has been agreed by different councils. If you need more specific information, the councils will have to provide that.

Alex McLuckie: The range of offers, rather than settlements, was from about 48 per cent to about 95 per cent of what could reasonably be expected to be won at a tribunal. That is quite a difference.

We rejected the framework agreement because it did not come up to the 50 per cent mark, as I recall. If a council offered a settlement figure that was based on that document, the recommendation from the trade union locally was to reject the offer. To complicate matters further, the level of bonus earnings also has a bearing because, for example, one council could offer 48 per cent, which would equate to £15,000 for a full-time woman worker going back five years, but another council could offer 80 per cent, which is worth only £4,000 because of the different level of bonus earnings. It is therefore hard to draw up a like-for-like table because different elements in each settlement impact on the financial figures. [*Interruption.*] That is definitely not me.

The Convener: Someone with a drill is working on a leak somewhere.

We will move quickly to Mary Mulligan because we need to make progress. Given Unison's written submission, I am anxious to have brief, helpful questions about conclusions and recommendations on the way forward. It is important to get some of that on the record.

Mary Mulligan: Before I ask my question, I want to follow up the previous discussion. We seem to refer to COSLA and local authorities interchangeably, but the employer is, in fact, the local authority. How does that affect the progress of the unions' negotiations? Do you negotiate with COSLA or separately with each local authority as an employer? Where does COSLA come into the equation?

Glyn Hawker: We do both. We negotiate with COSLA on issues that apply to Scotland as a whole, such as the framework agreement proposal. The agreement for the job evaluation scheme was negotiated with COSLA on the basis of a framework for the whole of Scotland and then locally with each council on the basis that the scheme was a framework for local negotiation. That is why there are 32 variations of it. We might want to spend some time in a pub thinking about why on earth anybody would want 32 variations of one Scottish scheme, but that is a red herring in this discussion because we are where we are.

Negotiations take place on both levels. If we had come to a framework agreement about compensation, it would have been an agreement with COSLA, which the councils would or would not have signed up to. However, we did not get to that point, hence the 32 separate negotiations.

Alex McLuckie: The red book is the name that we give to the national agreement. It has 4 parts, parts 2 and 3 of which are relevant to the negotiations. Part 2 is a set of terms and conditions that must be negotiated nationally, so there is a role for COSLA in that. Part 3 consists of other terms and conditions that can be negotiated locally. The idea is to provide equality and flexibility for local authorities to deal with what

happens in their area. However, the job evaluation agreement worked out in such a way that we got involved in 32 sets of negotiations, and the equal pay legislation says that equal pay is linked to the employer, which means that we have 32 problems in equal pay as well.

Mary Mulligan: That feeds into the committee's concern that the solution to the problem of equal pay seems a long way away. I read Unison's detailed submission, but I still wonder how we can arrive at a situation whereby each local authority can achieve a resolution rather than impose a settlement, as some local authorities have done. How can we resolve the issue and move on? I do not feel that we are making any progress.

12:30

Glyn Hawker: I would be the first to say that things are moving slowly and that there are all manner of difficulties, but we are making progress. We now have 26 new pay and grading models that did not exist 10 years ago. Negotiations and discussions are taking place at various levels with the remaining six councils, and we expect that they, too, will have new pay and grading models by the end of the year. That is a significant step forward. As I will continue to say, that progress does not solve the problems, but it is a big step along the route.

We do not have a collective understanding of the problems. Issues relating to back pay are still outstanding because we do not have agreements in all councils, and we do not have a common agreement about current and continuing liabilities. For reasons that are probably understandable, the councils are justifying what they have done and saying that they are equality proofed, but the trade unions are saying, "Oh no they're not." It has been suggested that we should have tested the matter in the courts before now, but we could not have done that.

At some point, there needs to be a mechanism for getting together and saying, "Okay, we may agree or disagree on some of the detail, but the Bainbridge decision gives us clarity about one particular liability." It should not be beyond the bounds of possibility to say that we have a common problem. We can spend a lot of time blaming each other or other people and saying that, if we had done things differently in the past, the problems might not have happened, but we are where we are. Unison's point is that we need to acknowledge where we are, identify the various strands of problems and the many tools that we have, and bring together our experience and expertise to say, "Right, what do we need to do?"

There might be a big bullet to be bitten that will give a number of us indigestion, so we need courage and imagination to solve the problems, but I am confident that that exists. I know from my experience of dealing with the matter in my organisation that it is possible to take it forward. As I said earlier, I ask the committee to identify what you can do. What influence can you bring to bear on other people to ensure that all the strands come together and we get an acceptance of the problems and reach a conclusion?

We accept that it will not be easy to solve the problems, but we have the tools at our disposal to make that possible so that, perhaps not by the time I retire but by the time some of my younger colleagues get to that point, we can say that we have resolved the issues of equal pay in local government in Scotland.

Alex McLuckie: Glyn Hawker is right. When we kicked off in 2005, our legal department said that I would be retired by the time the process was finished, and we are close to that prediction becoming true.

When the compromise agreements were reached, the money for the settlements was paid out from the reserves that local authorities had at that time. They went into the biscuit tin and used their money to resolve the situation. You would need to ask them about this, but GMB's take is that councils do not have the money to resolve the situation. As I said earlier, there is no get-out-of-jail-free card.

I sometimes wonder whether the delays in employment tribunals are deliberate. Are the councils deliberately delaying things with legal challenge after legal challenge while they save up enough money to resolve the situation? Is that their game plan? I am not sure, but that concern is worthy of an airing at today's meeting because we are considering what can be done to resolve the issue and move things forward.

We must consider the competing demands that local government faces from other areas and the debate between local authorities and the Government on the finance settlement. One of the best ways forward would be for the Government to make money available to help councils move the issue forward.

Mary Mulligan: I appreciate that there has been some progress but, given your collective negotiating experience, I find depressing the acceptance that this situation might well go on for as long as you go on working. Is there any way of bringing it to a head and securing a result sooner rather than later? People have been waiting for some time now—and, it seems, will continue to wait.

Alex McLuckie: I must return to the finance argument. I apologise if we have come across as flippant—we do not mean to be. As far as the

negotiations are concerned, either our members have settled for the compromise agreement or they have not; if they have not and have wanted to take the matter to an employment tribunal, we have taken them there. At that point, however, the matter is out of our hands and in the hands of the solicitors who act for the trade unions.

With regard to the gap that I mentioned between the signing of the compromise agreement and the introduction of the new pay system, we have already submitted grievances to councils and stated that we want a second compensatory payment to be made to women who accepted the first payment. Some councils have said, "Okay, you're right. We'll make the second payment"; in fact, some councils have made a third or even fourth payment because they have not managed to get their new pay structure in place. If councils refuse to make the second payment, we move to an employment tribunal.

We have done all we can, and it is now simply a matter of wait and see. It is the same with the Bainbridge judgment, which is what might be called the third phase for us. We will take the same approach: we will say to councils, "Look, there's a liability and you need to pay our members." If they do, that will be great; if they do not, we will go to tribunal.

Mary Mulligan: One last question—

The Convener: We need sharper questions and answers. The Minister for Parliamentary Business was due to begin his evidence some time ago.

Mary Mulligan: I have a last quick question. Do you think that the tribunals have the capacity to deal with upcoming cases?

Glyn Hawker: They have certainly been allocating additional resources in that respect. You have received a submission from the Tribunals Service, which has acknowledged that demand has been phenomenal, but so far the tribunals have met that demand and handled case management issues effectively.

John Wilson: In an attempt to be brief, I will lump my questions together.

First, Ms Hawker said that there are reasons why the number of claims going to tribunal is higher in Scotland than it is down south, but she did not say what they were.

My second point, which is for Alex McLuckie, is also about claims. Will you comment on the remark in East Ayrshire Council's submission, which says that although it had settled 1,500 claims,

"in the last 10 days we have received … 510 supplementary claims"

from the GMB alone?

Thirdly, you referred to 32 negotiating bodies, one for each of the local authorities. However, will some of the new arm's-length organisations that have been created cause further problems for the unions in their negotiations on historical equal pay or single status agreements?

Glyn Hawker: I am pretty sure that I explained why there have been more claims in Scotland. Local government workers, predominantly women, believe that they might have equal pay cases to bring, and the number of claims is higher in Scotland not because there are different equality issues to deal with but simply because of timing and the point that we have reached in implementing single status. Sadly, I am confident that the numbers of cases in England and Wales will increase, because employees there will take exactly the same view with regard to equal pay claims for back pay or continuing claims.

Your third question was about arm's-length bodies—the non-departmental public bodies. Unison has been involved in a number of negotiations with those employers and with others that are undertaking their own job evaluations, such as the police authorities. That is not a problem for the union, because such negotiations are why unions exist. Some bodies have used the SJC scheme or similar schemes, but others have brought in their own schemes or used pre-existing ones, so the processes, negotiations and outcomes have been slightly different. Those processes will give rise to equal pay claims and have already done so. Some of the issues are slightly different because most of the bodies are newer and so do not have historical issues that go back to the dark ages, as some local government arrangements do. We are involved in negotiation with a number of bodies and have been for some time.

Alex McLuckie: We have to deal with three areas in relation to the claims that East Ayrshire Council refers to in its submission. The first is historical claims which have, to all intents and purposes, been dealt with. The second concerns the gap between the signing of the compromise agreement and the introduction of the new scheme, which we call the gap period. The grievance from the GMB that East Ayrshire Council refers to applies to that gap period. We say that there is a second equal pay claim for our members and have lodged a grievance on their behalf to get that second payment. I do not want to upset East Ayrshire Council too much but, in time, there will probably be a third grievance, which will relate to protection.

I agree with what Glyn Hawker said about the arm's-length bodies. It just means that we have more employers to deal with. When I say that there is no get-out-of-jail-free card on equal pay, I

really mean that. If an employer sets up an arm's-length trust to try to remove the risk of equal pay claims, I am afraid it will not work because the risk will either stay with the council or transfer to the new organisation. It does not make a blind bit of difference to what councils will have to do to resolve the wider equal pay issue that we are dealing with.

Cordia (Care) LLP is the latest limited liability partnership that Glasgow City Council has set up. It is for the catering, cleaning and care services and is, by the way, the first at-arm's-length trust for care that we have seen, which is a worry. The documentation for that LLP says that any equal pay liability will stay with Glasgow City Council. Ironically, one of the reasons the council gives for having to set up the LLP is that the significant trading operations within direct and care services could not break even over a rolling three-year cycle—as they are required to do under the Local Government in Scotland Act 2003—because of the £17 million-worth of equal pay money that they had to pay back.

John Wilson: I congratulate Unison on the definition of best value in its submission. It is a new interpretation of best value to me.

Glyn Hawker: A new one? You surprise me.

John Wilson: Well, it differs from what we have heard in the past.

Bob Doris: I will try to be brief, because time is moving on. I mentioned the Glasgow settlement to Mark Irvine. Cheques were offered just before Christmas 2005, and my understanding is that Unison recommended that deal to the workforce. Whether we like, love or loathe Mr Irvine, others in Glasgow will get a considerably larger settlement than the people who took the money just before Christmas 2005. I do not judge Unison on that as other people do. However, workers and trade union members will go with Unison or the GMB only if they trust the unions. If they do not trust them, the unions will chase those workers into the arms of Mark Irvine, Stefan Cross and others. Do the witnesses agree that trust needs to be built among the trade union membership in some cases? How can we do that?

12:45

Glyn Hawker: Any trade union needs to have the trust and respect of its members if it is to succeed. You are suggesting that we recommended the Glasgow arrangement. If we did, that is news to me. We have rarely, if ever—although I cannot confirm that—recommended the offers, because they have exclusively been lower than the sums that we would expect to achieve for our members in court. Part of the trust and respect that you talked about is our responsibility to tell our members the potential consequences of their accepting or not accepting the offers that are made to them. We tell them that we will continue to support them and we have to respect the choices that individuals members make, but we must advise them properly. I do not doubt that we have done that. There are no grounds for any lack of trust.

Bob Doris: On the Glasgow situation, if I got that wrong, I apologise. I will go back and confirm the position.

Glyn Hawker: So will I.

Bob Doris: Absolutely. I will amend what I said accordingly.

You talked about the figure that you could expect to achieve at a tribunal and the figure that could be achieved in a negotiated settlement, which might be 48, 52 or 65 per cent of the total that could be achieved at a tribunal. Why would any trade union member in their right mind accept 48 per cent, when 100 per cent would represent equality?

Glyn Hawker: It is a classic bird-in-the-hand scenario. People are being told that they can have the settlement amount now. A number of councils set up signing sessions, where they sent along members of senior staff with great big piles of cheque books and told people that if they came along now, they would be paid £1,000 or £10,000—or whatever—which they could spend. The councils told them that if they did not accept the settlement, they would still have a potentially valid claim, but they used words such as "potential", "possible", "maybe" and "expectation".

For the most part, we are dealing with women who are low-paid local government workers, who would never in their whole lives have had a lump sum approaching the size of what was being offered to them. I might have recommended strongly to our members that they reject the offer because it did not reflect their worth, but it was a heck of a lot of money for those people and very many of them took it, for reasons that I quite understand. Equal pay cases take a long time to resolve. People might get £5,000, £8,000 or £10,000 eight years down the line, but they might be dead, never mind retired, by then. Trade unions represent people in society, who make their own decisions for good or ill.

Bob Doris: Would the trade unions accept it if local authorities, in order to get them out of a financial tight corner, were to arrive at a figure closer to 100 per cent to be paid in instalments over a number of years?

Glyn Hawker: Yes—we have done that before. Agreement on the Cumbria NHS cases was reached on the basis of staging the payments in

that way; it was acknowledged that the money was owed but that it would be difficult to pay it. We would not have any difficulty with discussing that. As Alex McLuckie said, it is about putting things right for the future. A lot of money has been spent on back pay and dealing with historical issues, but it is about ensuring equal pay for women for the future, so that they are paid at the levels that they want and their pensions are calculated on those levels, which the back-pay issues do not cover. I would be more than happy to talk to any local government employer about reaching that point over a staged period.

Alex McLuckie: Bob Doris talked about the service that we provide for our members. In every settlement, the GMB wrote to every member to outline what we believed the settlement was worth. In the vast majority of cases, we recommended that the settlement be rejected, because it was about 50 to 55 per cent of what it was worth. Even though we made that recommendation, 90 to 95 per cent of our members still signed up to the compromise agreement, although we gave our advice and we told our members that if they were not happy with the compromise agreement we would take a case for them. It would be wrong for us to say whether they were right or wrong to accept the deal, because we do not know their circumstances. Glyn Hawker is right. Take the example of a cleaner who is buffing away quite merrily and has never heard of equal pay. If someone taps them on the shoulder and says, "Come along to this meeting, sign this document and there will be nine grand in your bank account in 14 days", many will say, "Thank you very much."

The Convener: Patricia Ferguson will ask the last questions.

Patricia Ferguson: I will be brief, convener.

You have explained that trade unions reflect their membership and that the trade union's attitude reflects the attitude of its membership, but Mr Irvine seemed to be of the opinion that local authorities were unwilling to be part of the process and to reach the kind of settlements that, ultimately, most of them will have to reach. Do you agree or does it just come down to whether they have the money to do what they need and will, ultimately, have to do?

Glyn Hawker: No. Money is an issue. We obviously referred to that in some detail in our submission, although the situation varies across councils: some have more money than others and there have been different arrangements. It is a factor for some and, where it is a factor, we have suggested potential solutions.

One of the small number of points on which I agree with Mark Irvine is that this has been and is a very difficult process. It is technically and emotionally difficult; it requires a lot of resources and a lot of investment.

I am not aware of any areas where there has been a conscious decision by the local authority to say, "We're not going to do this" but a natural and human reaction may have led them to say, "This is difficult. Is there something else more important that we need to do first?" I know that I am in trouble when I start thinking that I am going to clean the oven rather than do something else. In some areas there has been a similar kind of thinking about the issue, because it was going to be difficult to bite the bullet. Very few people are experts in job evaluation, but the process required a lot of people to learn a lot and become proficient in job evaluation. No one likes to lose either pay or status, but that is inevitably the case for a number of people involved in a job evaluation process and it is difficult to deal with the fall-out from that.

A number of issues arise for everyone involved in the process, which makes people take a deep breath and think that there is perhaps something else to do. There are always things to be done in local government and any kind of public service, whether in Scotland or the UK. I could have checked what other challenges faced local government in those years; I know that there will have been many of them. Some of them will have been local and others will have been Scotland-wide. I am sure that there were times when things were put on hold.

A number of factors must be taken into account. We must accept what has happened and decide what we can do that will take us the last few steps on the journey, because we are now most of the way through the journey on implementation of single status. We are a long way from achieving equal pay but, as was pointed out previously, they are separate. Although they are related, they are different.

The Convener: Thank you for your oral and written evidence. The committee has found it helpful and we will do what we can to meet your general requirement to confirm the liabilities and seek ways to eradicate them. Thank you for your attendance.

Subordinate Legislation

Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations (Draft)

12:54

The Convener: Item 2 is a Scottish statutory instrument that is subject to the affirmative procedure. I welcome Bruce Crawford, the Minister for Parliamentary Business, and ask him to accept my apologies for the delay.

It is good to see you back in post, minister—you were missed at certain points in the chamber last week, but Michael McMahon did a grand job on your behalf.

I welcome Stephen Sadler, who is head of elections and local governance; Andy Sinclair, who is a senior policy officer in the referendum and elections division; and Colin Brown, who is a senior principal legal officer. Does the minister wish to make brief introductory remarks?

The Minister for Parliamentary Business (Bruce Crawford): Thank you, convener. I am sure that I tutored Michael McMahon well in saying, "Formally moved"—it was a fantastic job for him.

Thank you for inviting me to the committee today to address these issues. I will make a few opening remarks.

The draft regulations will implement measures that were introduced by the Local Electoral Administration and Registration Services (Scotland) Act 2006. They are part of a package of regulations to facilitate the introduction of absent-voter identifiers for local government elections in Scotland.

Postal voting is, as we all know, geared towards helping those who are unable to attend to vote on an election day. It is a convenient way to contribute to the overall turnout of the electorate. Whatever we do in making regulations, we must try not to create unnecessary barriers to enabling people to vote. The package of instruments introduces what we believe are fairly simple measures that are aimed at combating electoral fraud while not creating any unnecessary obstacles for postal voters to overcome.

We propose that in the future, voters who apply for an absent vote will simply be asked to provide a signature and a date of birth. I stress that we do not believe that electoral fraud is a problem in Scotland, but we cannot be complacent. We fully recognise the need for safeguards against any attempt to vote fraudulently, so these simple regulations will put such safeguards in place.

The instrument sets out the process by which personal identifiers are collected, and how they are to be used to check the validity of returned postal votes. The regulations require that applicants for postal votes must include a signature and date of birth, although an exception can be made for voters who suffer from a disability or an inability to read or write.

The intention among returning officers in Scotland, in line with practice in England and Wales, is that personal identifiers will be checked using computer software. The systems will scan the postal vote statement that is returned with the postal vote paper, and cross-reference it with the control signature and date of birth that have been provided previously. The returning officer will then examine the two sets of identifiers side by side to establish whether they correlate.

I do not need to say much more, given our timescale today, other than to say a few words about the 20 per cent figure for mandatory checking. That exists to ensure that there is consistency of process across all elections. The figure of 20 per cent is statistically robust for sample checking, and will provide a good indicator of whether fraud is occurring. The regulations make it clear that if a returning officer considers from checking the sample that there is a real risk of fraud, they can specify that all postal voting statements must be checked.

The figure of 20 per cent is the checking level for Scottish elections, European elections and UK elections. If we were to introduce a different percentage, that would create more of the fragmentation in the electoral process that Gould wishes us to avoid. That said, returning officers are encouraged to check 100 per cent of postal votes if circumstances allow, as has happened in the Greater London Authority for example, in which 100 per cent of postal voting identifiers were checked during the most recent elections, despite the law requiring a minimum check of only 20 per cent.

The regulations will bring Scottish local government elections and anti-fraud measures into line with other countries in the UK. I commend them to the committee.

The Convener: We have had the benefit of previous discussions, briefings and papers, but members may have some questions for the panel.

Jim Tolson: I welcome the statutory instrument that has been laid before us today, but I want to have on the record a point of clarification. I do not want to be seen to set the hares running.

New regulation 24A(4) states:

"the returning officer must show"

rejected votes

"to the agents and must permit them to view the entries in the personal identifiers record which relate to the person to whom the postal ballot paper was addressed".

Will the provision allow agents to view signatures and dates of birth, but not votes, so that the secrecy of the ballot paper is not compromised in any way?

13:00

Bruce Crawford: I confirm that that is the case.

John Wilson: I have a question about the opening of personal identifiers within the view of agents and candidates. In 2007, the local authority that conducted the elections in the area that I represent opened ballot papers almost daily without notifying candidates and agents. Will there be a way of ensuring that returning officers notify agents and candidates of when personal identifiers will be checked, so that they can be present to carry out the obligation that the regulation imposes?

Bruce Crawford: I understand that the normal process is for agents and candidates to be notified every time ballots are opened. In the future, 20 per cent of ballots will be checked at every ballot opening, not just on one occasion.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Representation of the People (Postal Voting for Local Government Elections) (Scotland) Amendment Regulations 2009 be approved.—[*Bruce Crawford*.]

Motion agreed to.

Absent Voting at Scottish Local Government Elections (Provision of Personal Identifiers) Regulations 2009 (SSI 2009/35)

The Convener: We will deal with the first of two instruments that are subject to the negative procedure and which relate to the future conduct of the Scottish local government elections. The minister and his officials are here to deal with any questions of clarification.

The Subordinate Legislation Committee has questioned whether part of SSI 2009/35 is within the Parliament's vires. Does the minister wish to comment on that point?

Bruce Crawford: I wish to be helpful and to provide clarity early. You are right that the Subordinate Legislation Committee has suggested that there is doubt about whether it is intra vires for the Scottish minister to make some of the provisions in regulation 10. Any doubt about vires is a serious matter. Having considered the committee's comments, I decided that a further order should be made to put the matter beyond doubt. That order was laid yesterday.

At issue is the use of the personal identifiers record, which records the personal identifiers of absent voters—their dates of birth and signatures. Regulation 10 will insert a provision stipulating how long a person's identifiers must be retained after they cease to be an absent voter. If there is to be any fraud investigation after a poll, for example, it is essential that records are available. Regulation 10 also provides that returning officers may disclose the information in the record to candidates or agents attending postal ballot proceedings. The intention of the provision is to enable the record to be viewed by candidates and agents, so that they can check whether the returning officer is accepting or rejecting postal ballot papers correctly.

I do not accept that regulation 10 is ultra vires, and I am as confident as I can be that the regulations as drafted are fit for purpose. I note that the Subordinate Legislation Committee acknowledged that the point is debatable. However, when it comes to electoral law, there is a requirement on all of us to put any issue beyond doubt. That is why I made a further order yesterday to ensure that no doubt remains about whether the returning officer can provide the information. I hope that all members will welcome that. I commend the regulations to the committee.

The Convener: Do members agree that the committee does not wish to make any recommendation in relation to the instrument?

Members *indicated agreement*.

Scottish Local Government Elections Amendment Order 2009 (SSI 2009/36)

The Convener: Members have received a copy of the order and have expressed no concerns about the proposals that it contains. Do members agree that the committee does not wish to make any recommendation in relation to the order?

Members *indicated agreement*.

Non-Domestic Rates (Levying) (Scotland) Regulations 2009 (SSI 2009/42)

The Convener: Members have received a copy of the regulations, which are subject to the negative procedure, and have expressed no concerns about the proposals that they contain. Do members agree that the committee does not wish to make any recommendation in relation to the regulations?

Members *indicated agreement*.

The Convener: Thank you, minister. I apologise once again for the delay.

Bruce Crawford: No problem.

The Convener: That concludes today's business. We have another heavy agenda next week, when we will hear from Nicola Sturgeon and local authorities.

Meeting closed at 13:05.

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