

LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Wednesday 18 March 2009

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

8th 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:

Philip Barr (City of Edinburgh Council)

Peter Dawson (East Renfrewshire Council)

Jamie Hamilton (Scottish Government Housing and Regeneration Directorate)

Graham Johnston (Shetland Islands Council)

John O'Hagan (North Lanarkshire Council)

Stewart Stevenson (Minister for Transport, Infrastructure and Climate Change)

Nicola Sturgeon (Cabinet Secretary for Health and Wellbeing)

Norie Williamson (East Renfrewshire Council)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

David McLaren

ASSISTANT CLERK

Ian Cowan

LOCATION

Committee Room 1

Scottish Parliament

Local Government and Communities Committee

Wednesday 18 March 2009

[THE CONVENER opened the meeting at 10:02]

Equal Pay

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

Agenda item 1 is evidence from local authorities on equal pay in local government. We have received a written submission from the Convention of Scottish Local Authorities, which was collated on behalf of all local authorities. I welcome our witnesses, who are Philip Barr, head of human resources with the City of Edinburgh Council; Norie Williamson, director of finance with East Renfrewshire Council; Peter Dawson, corporate human relations manager with East Renfrewshire Council; John O'Hagan, executive director of corporate services with North Lanarkshire Council; and Graham Johnston, head of finance with Shetland Islands Council.

We will go directly to questions, and I will kick off. Do the councils believe that they have an obligation and duty to resolve the equal pay issue with their employees?

Philip Barr (City of Edinburgh Council): Yes, we believe 100 per cent that we have an obligation to resolve the issue. In fact, in the next few weeks, we hope to reach agreement on it with the trade unions.

Graham Johnston (Shetland Islands Council): Shetland Islands Council certainly takes the same view and is heading for a ballot with the unions in the course of the next month. We hope to implement thereafter.

The Convener: I take it that everyone agrees that councils have an obligation and duty. Does anyone disagree?

Peter Dawson (East Renfrewshire Council): No.

Norie Williamson (East Renfrewshire Council): No.

The Convener: Why has it taken 10 years?

John O'Hagan (North Lanarkshire Council): I will have a go at that. The history of equal pay has been chequered, right from the mid-1970s, when it was self-evident that the legislation was due to take effect. There is also the history of pay restraint in the public sector, productivity deals and the preparations for compulsory competitive tendering. It is fair to say that the collective eye in the public sector was taken off the ball and that the issue was only brought into focus in the aftermath of local government reorganisation, when there was a particular focus on negotiating core conditions for the new authorities. The constituent local authorities had wildly different conditions of service. It was only once that was resolved that the elephant in the room was tackled in the late 1990s. That resulted in the national collective agreement of 1999, which we are now looking to sort out.

The councils are all at different stages. My council implemented the outcome of our job evaluation model with effect from November 2006. Separately, we negotiated a collective agreement on single status and core conditions, which was implemented with effect from approximately a year later—November 2007. That deals with the immediate requirements of the national collective agreement, but it does not of course resolve the equal pay issues that are now going through the tribunal system. We can talk more about that, but I suspect that those issues have some way to go yet before they are flushed out.

Peter Dawson: We implemented our job evaluation scheme with effect from July 2006. On the history of the job evaluation scheme, the committee heard evidence from the trade unions that, initially, under the national agreement, we were supposed to implement in 2002, but the job evaluation scheme was not in a usable state until May 2002. That is why it has taken us so long. Last week, the unions said that the period of two years from 2002 to 2004 was too short a time to implement.

Philip Barr: I have been with the City of Edinburgh Council only since 2003, but I can say that, in my history in human resources, I have not seen such a complex exercise in terms of logistics and legalities. We are considering new terms and conditions for about 17,000 employees and more than 2,000 job titles have to be evaluated. While that has been taking place, changes have occurred to the job titles and job descriptions and the law is continually changing and being interpreted. An example of that was the decision in the case of Redcar and Cleveland Borough Council v Bainbridge last year, which caused all councils to take a step back and consider what to do in the implementation of new pay and grading structures and whether to protect pay. All those

factors came into play and caused the timescales that we have.

The Convener: We will return in later questions to pay protection and the Bainbridge case.

Jim Tolson (Dunfermline West) (LD): Correct me if I am wrong, but I assume that you have read the *Official Report* of last week's evidence session. I will refer to the evidence from Mark Irvine of Action 4 Equality Scotland, who made a few statements that, to put it politely, put an uncertainty in my mind. I would appreciate your response to those points. First, Mr Irvine stated that local authorities do not want to reach settlements and that they are "playing for time". As has been suggested, we have had a lot of time in which to reach a negotiated bargain, but about 35,000 tribunal claims are on the go. Do you agree that it is imperative that a settlement is reached as soon as possible in your local authorities and, if so, why? That was one of Mr Irvine's key points.

John O'Hagan: The committee's witnesses come from different points of the compass. North Lanarkshire Council takes the view that we have implemented the outcome of the job evaluation exercise. Indeed, our three-year detriment period is due to expire in 2009.

That view is not universally accepted by union colleagues. We took the view that we were entitled to implement the outcome, having involved the unions in the exercise. The tribunals and perhaps, ultimately, the courts will require to determine whether that outcome was legitimate, as we think that it was. We needed to remove uncertainty from the workforce and to begin to address uncertainty about the council's future finances. That is why we took that step. For right or wrong, we separated the issues of conditions of service and single status and implemented what we accepted as being properly the outcome of a collective bargaining arrangement.

It takes two to bargain, and the issue was not without difficulty. It was November 2007 before we were able to sign up with union colleagues. Separate negotiation was required with craft workers, who were a small group that was not part of the 1999 collective agreement. Only this month were we able to settle a local collective agreement with those workers.

Our focus is now on dealing with the litigations and the constantly changing legal landscape. Courts can decide that we have got the detriment position wrong, but our detriment period will have come and gone by the time that the issue is decided.

Philip Barr: We have definitely not been dragging our feet. It is in everyone's interests to resolve as soon as possible an issue that is a millstone round the necks of councils, particularly

their HR functions, given the time and effort that we are putting into it.

The City of Edinburgh Council has met Mark Irvine and Stefan Cross Solicitors and we have agreed compromise agreements for their clients—and the same compromise agreements for all our rated-as-equivalent women manual workers. Those people have been paid during the period of discussion with trade unions while we implement the new scheme. Compromise agreements are costing us approximately £5 million a year while we put together a new grading scheme for rated-as-equivalent women manual workers. As you can imagine, it is in our interests to move as quickly as we can towards resolution.

The Convener: How many of the councils whose representatives are present have a negotiated or an imposed agreement with their trade unions?

Norie Williamson: East Renfrewshire Council reached a negotiated agreement with its trade unions.

The Convener: Is that the norm or the exception?

Graham Johnston: Shetland Islands Council is heading to a ballot and is hoping to implement an agreement later in the year.

The Convener: Do you plan to impose a settlement if that approach is not successful?

Graham Johnston: No. We want to see the results of the three ballots from the main unions before we decide on our next step.

Peter Dawson: East Renfrewshire Council had a collective agreement when we implemented our scheme. I think that we are in the minority of councils who achieved a collective agreement. However, we were heading down the road towards enforcement before we achieved an agreement.

Jim Tolson: Last week the committee heard that there are 35,000 claims against local authorities in Scotland—witnesses have mentioned the claims. Given that many councils have not yet reached a settlement or settled in the litigation cases, do you think that the influence of Action 4 Equality Scotland and Stefan Cross Solicitors is an aid or a barrier to reaching a solution?

Philip Barr: It is a fact of life. Action 4 Equality and Stefan Cross are lawyers. They are representing women who have suffered clear injustice. We will deal with that—that is how I see it.

10:15

John O'Hagan: I take a slightly different view. It might be said that no-win, no-fee lawyers have

galvanised part of the process—that is true—but the agenda has not been ignored, at least not since the collective agreement in 1999. We were working with union colleagues towards a settlement of the issues—perhaps not at a pace that was appropriate or suitable, but within the constraints of the local government finance that was available. There is no doubt that the appearance of no-win, no-fee lawyers has led to progress, but there is a downside to that. I refer to litigation against union colleagues who negotiated with councils, such as *Allen v GMB*, which had the effect of making many union colleagues take a large step back. That was not particularly helpful at a number of stages.

The Convener: If you agree generally with what has been said, you should not feel impelled to answer.

Peter Dawson: There are 35,000 cases across the country. I can speak only about those that have been submitted against East Renfrewshire Council. The trade unions would have you believe that all the cases are valid. They all have different strengths, but we see no validity in a number of cases that have been submitted against us, which name comparators who earn less than the women who are making the claim. Not all of the 35,000 claims are valid.

The Convener: Equally, there are a number of claims that you would concede.

Peter Dawson: Yes, there are a number of very strong claims.

The Convener: The question is: why are people stuck in litigation when we all acknowledge that many of their claims could be settled? Before the evidence session finishes, we may be able to consider how matters could be moved forward, rather than just the history of the issue.

Alasdair Allan (Western Isles) (SNP): The written evidence that COSLA submitted raises all sorts of questions about how on earth local authorities can plan for the future. COSLA's response to our question about likely outstanding legal costs was

"How long is a piece of string?"

I invite you to comment on the issue, as COSLA's evidence does not tell us much. How are councils planning ahead for the legal costs associated with this exercise?

John O'Hagan: Legal costs will not be a make-or-break issue for North Lanarkshire Council. For the most part, we have tried to deal with the matter by developing and implementing a job evaluation scheme, the appeals process for which finished at the end of December. We have tried to deal in-house with most of the litigation that is in hand. Fees of counsel are involved from time to time, but

we have deliberately tried to minimise external costs.

Costs are and will continue to be very uncertain. They will depend on the outcome of the Bainbridge and Surtees cases, on what is decided in relation to the detriment argument and on the outcome of tribunal cases that are currently being heard. Some major test cases will come before tribunals in this calendar year and beyond, and I have no doubt that some of them will reach the courts.

Many councils have made budgetary provision. North Lanarkshire Council budgeted £30 million for job evaluation over five years, beginning in 2006-07. There will be a tail-end of some millions beyond that, as people drift to the top of the grades that have been established. Separately, we have budgeted about £23.5 million to deal with equal pay claims. We can be reasonably clear about the cost of job evaluation, but we cannot be absolutely clear about the eventual cost of equal pay compensation. However, many of us have done as much prudent budgeting as is possible in the current climate.

Norie Williamson: I agree with John O'Hagan. I would not call the legal costs immaterial, but they are certainly a far lesser sum than the potential costs of the equal pay claims, which are what is of concern to us. Like North Lanarkshire Council, East Renfrewshire Council, having reached a collective agreement, has a good assessment of the single status costs. We have provided for that through efficiency savings that we have required of service departments. We have also made provision in our accounts for 2007-08 for our assessment of the potential costs of the equal pay claims that are at the tribunal stage, but the uncertainties of the legal cases that are being considered present difficulties. We are well aware that the financial picture is looking fairly bleak and we are taking steps to address that, but if equal pay came along on top of that, we would be in an extremely difficult financial position and we certainly do not have the reserves or the funding in place to address the worst-case scenario that might result from the cases that are being considered.

Philip Barr: I underline that last point. COSLA is correct when it says that it is difficult, if not impossible, to determine the exact costs of litigation—they could be massive. Most councils would find it extremely difficult, if not impossible, to make provision for worst-case scenario costs, as they have already used up sums to deal with Bainbridge.

Edinburgh has set aside resources to pay for the three years' protection, as we are obliged to do by the agreement. Protecting the men means that we have to pay for litigation by, or make compromise

agreements with, the females, and we have provided for that. We know exactly what we will have to pay for as we move forward with our new pay and grading approach. However, we do not know what will happen in court with the equal value claims that will come along or the sex discrimination cases that might follow. We will not know that until the cases have been dealt with in court. However, major sums are at stake.

Alasdair Allan: Mr Williamson mentioned reserves. COSLA's submission provides us with a limited picture, stating that two councils indicate that 0 per cent of the pay claims would be covered by reserves and that four councils indicate that 100 per cent will be. Where do reserves fit into the picture when councils are thinking about this issue?

Norie Williamson: Audit Scotland is encouraging local authorities to hold a prudent level of reserves to cater for any unforeseen circumstances that they might face. Given the current economic situation, those unforeseen circumstances, beyond equal pay, could be significant.

East Renfrewshire Council has a policy aim of holding a general reserve of 4 per cent of its net expenditure. Currently, that reserve stands at 2.3 per cent. Given the current climate, I regard that as a prudent level. However, when we made the compromise agreements in 2005-06, 94 per cent of the employees to whom we offered the compromise agreements accepted them, which resulted in a drain on our reserves of about £3.5 million. We have been trying to build that up again during the past couple of years.

Reserves can be used only once. One of the issues that local authorities are talking to the Scottish Government about with regard to the worst-case scenario is the possibility of capitalising redundancy and equal pay claims and writing off the costs over a number of years. Clearly, we would still have to meet the cost, but that arrangement would certainly help us to manage the situation over a longer timescale. At the moment, we receive no additional financial support from the Scottish Government either for single status or equal pay claims.

The Convener: I am sure that COSLA would accept that the historical stuff is the legal responsibility of local authorities rather than the Government. However, as Bainbridge is a new liability, is there an opportunity to speak to the Scottish Government about funding in that regard?

John O'Hagan: It is difficult to say no to that. Clearly, any Government assistance that can be provided would be welcome. However, at the risk of adding more uncertainty to the area, there are a lot of arguments around Bainbridge that are still to

take place. For example, initial commentaries suggested that detriment of any kind would be unlawful, so we would all have to revisit detriment schemes. However, the reality is that the structure of the collective agreement in England and Wales is quite different from the structure of the agreement in Scotland. South of the border, the agreement required local collective agreements on issues of detriment, whereas the national collective agreement in Scotland specified a three-year period.

When we get deeper into the judgment, it strikes me that tribunals will interpret it in such a way as to suggest that as much regard will be had to the outcome of the detriment process as to the pay model in determining whether the detriment process is gender neutral. In my council, the split is 51 per cent to 49 per cent, so we are not admitting that we have a problem with Bainbridge at this stage. However, during the coming months and years the tribunals system will take a view on that and we will have to reflect in light of that view.

The Convener: Are 32 local authorities taking 32 different positions? Is that the heart of the problem? Has COSLA advised councils to make provision for paying out because of Bainbridge?

John O'Hagan: Advice has not yet been published, but I think that it is being prepared.

The Convener: Joe Di Paola told the Equal Opportunities Committee that COSLA had communicated with councils about the liability that might arise from Bainbridge. Mr Barr said that the City of Edinburgh Council has made provision and is preparing to pay out, but your council has taken a different position. Will North Lanarkshire Council challenge the Bainbridge decision?

John O'Hagan: No, I did not say that we were going to challenge the decision; I said that the tribunals will have a job to interpret it.

The Convener: You will make women fight another battle to enforce their rights.

John O'Hagan: No. We have settled about 3,500 compromise agreements so far.

The Convener: As a result of Bainbridge?

John O'Hagan: No, not as a result of Bainbridge. I am saying that I do not think that the received wisdom should be that Bainbridge necessarily creates a universal set of new liabilities. The position will be different for each council.

The Convener: Your council says that there is no automatic liability; Edinburgh says that there is. What do the other councils say? Have they made provision to pay out more as a result of Bainbridge?

Peter Dawson: East Renfrewshire Council has not made provision in relation to Bainbridge. I think that you are hearing a difference of opinion between Mr Barr and Mr O'Hagan because North Lanarkshire Council has implemented its scheme and is coming to the end of its detriment period, whereas Edinburgh has yet to implement its scheme. The councils have different problems.

Graham Johnston: We think that the offer that Shetland Islands Council has made, which will be balloted on, will not generate claims under Bainbridge. We think that the offer will address the problem.

The Convener: However, like Edinburgh, you have yet to settle.

Graham Johnston: Yes, but we think that the settlement that we have put on the table will not generate Bainbridge-style problems.

The Convener: Mr Barr, did you want to clarify the position at City of Edinburgh Council?

Philip Barr: Thank you. We sought and received advice from counsel. We are paying compromise agreements for the three years' protection because we are protecting bonus—other councils might not be doing that. We are doing what we are doing because the national agreement says that the males should be protected for three years. The males are receiving bonus, which is discriminatory, therefore the females have a case—that is what our counsel said. Other councils might not be protecting bonus, and other types of protection might not be discriminatory, as our approach to protecting male bonus would be.

10:30

David McLetchie (Edinburgh Pentlands) (Con): In dealing with regrading and the creation of single status pay structures, I can see that it is desirable to have pay protection mechanisms for employees who will be adversely affected. Mr Barr presented a report to the City of Edinburgh Council the other week that said that 90 per cent of staff end up in a better situation after pay modernisation while only 10 per cent are worse off as a result of regrading and linking into the new system.

I will describe what I find slightly difficult to understand about the whole Bainbridge situation. The legislation is 30-odd years old. Why, given that pay inequalities existed, did nobody think that transitional arrangements should be made to ensure that people were not worse off? I understand that that is what pay protection is all about. How has pay protection for the minority that Mr Barr's report describes ended up creating multimillion-pound claims for everybody else? That

is bizarre. Surely the legislation should have allowed for transitional arrangements to level the playing field and deal with the situation once and for all, so that we could get on. We seem to be getting deeper into the mire.

Philip Barr: That comment is very good and echoes what I said to counsel some years ago when we considered the issue. I thought that we could have a holiday, as it were, from the legalities while we redeemed the situation. However, I was told that, although we have had time since the 1970s to resolve the issue, we have not done so; that our economic difficulties do not supersede an individual's rights under law; and—I might be wrong, but it is what we were told—that even if we in Scotland or in the United Kingdom attempted to move away from the legalities, that would be overcome in European courts, because the matter involves human rights, equalities and justice. We are where we are, so we must deal with that under law.

David McLetchie: I happened to read the report that Mr Barr made to the council. I understand from it that Edinburgh has set aside between £15 million and £20 million in the next three years to meet Bainbridge claims on behalf of some categories of employee. You made it clear that that arises from bonus protection schemes.

Philip Barr: That is correct.

David McLetchie: The report contains alarming unspecified liabilities for other Bainbridge-related costs from claims by staff on administrative, professional, technical and clerical grades and further equal pay claims from administrative, professional, technical and clerical staff that are not Bainbridge-related but are based on other criteria. Do you have a ballpark figure for those costs? I know that your report does not contain one.

Philip Barr: That is a very good question. The report does not, for various reasons, contain a ballpark figure. First, we have not calculated with our counsel the worst-case scenario. We have been told to compromise with women manual workers—those whose jobs were rated as equivalent—because we cannot win against them in court. The APT and C claims—which involve not manual workers but white-collar workers who were paid monthly—are from women who say that they have similar claims to women manual workers. We have been told that we can and should contest those claims, and our council has said that it will do so because that is in the taxpayer's interest.

It might well be that we win. However, if we do not win, and thousands of women win instead—in Edinburgh's case, between 2,000 and 3,000 women could claim successfully—we will be in a different position. Males who sat next to those

women doing the same APT and C jobs will make not an equal pay claim, but a sex discrimination claim, on the basis that those women are receiving money because they are women and the men are not receiving it because they are male. Once that happens, every male manual worker who does not receive a bonus will be able to make a sex discrimination claim.

A raft of developments will follow. That is why I pointed out the complexities of what we are dealing with and the requirement to get the arrangement as precisely right as we can under law—not only for now, but for the future, so that we never face such a situation again.

Councils are taking their time to do this properly because we never again want to find ourselves open to such complex litigation and difficulties arising from pay and reward. That is why we are all jumping through hoops, as it were, to resolve the situation. Does that answer the question?

David McLetchie: Yes. That was helpful.

I put this question to witnesses last week. It seems to me that there was a period from 1999 to 2004, when the national agreements were being negotiated and single status was being set in discussion with the trade unions, when relatively slow progress was made. We then had the galvanising effect—I think that that is how Mr O'Hagan described it this morning—of the entry of the lawyers, the equal pay claims and the tribunals, when judgments started to flow and compromises began to be reached, which accelerated the process.

Would not it have been better to have had at the start a few judgments from the tribunals—a series of test cases—to establish the ground rules for equal pay in terms of people's rights under the Equal Pay Act 1970? That would have given you a framework against which to judge single status. It seems that we thought that single status was going to resolve the issue but it did not. Five years or more passed and then we started getting all these tribunal decisions, which have complicated the matter. Maybe, if we had asked the tribunals first, we would have established the law in relation to equal pay. You could then have negotiated single status around that.

Peter Dawson: I am sorry, but we did take advice. We perhaps did not go to tribunals at the time, but the Scottish councils job evaluation consortium was formed, which took advice from lawyers and even from Queen's counsel. Is that right, Philip?

Philip Barr: Yes.

Peter Dawson: We took advice from QCs, particularly on the detriment issue, before we started to develop our pay and grading schemes.

At that stage, the advice was that we could provide three years' detriment, as per the national agreement. It is only recently that the Bainbridge decision has come along and turned that advice on its head. We did plan for what we were doing.

David McLetchie: Right. Not very much seems to have happened for five years, however, until people started going to Stefan Cross Solicitors and other lawyers to lodge tribunal cases. That was a galvanising factor, as Mr O'Hagan put it.

Surely, the law in relation to equal pay should have been established earlier. You could then have got on with negotiating your agreement to deal with the problem. At the moment, everybody seems to be rushing to play catch-up to an ever more complicated series of tribunal decisions involving the multiplicity of factors that you have described. I am not confident that we are going to get to the end of the process. No sooner do you come up with a solution to one problem than somebody pops up with another claim elsewhere. Where is it all going to end?

John O'Hagan: That is exactly my analysis—there is no simple solution. No sooner do we tackle one problem than it gives rise to a separate issue. I am not suggesting that anyone in this room would do this, but one of the worst mistakes that one could make on this subject would be to try to simplify it.

I have encouraged my elected members to consider the liabilities in two broad categories. The first category consists of what we call green book claims, which are claims arising from work that is rated as equivalent—the type of claims to which Mr Barr has referred. Those arise from a national agreement for manual workers that dates back to 1987 and which have, for the most part, been the focus of the recent tribunals. They are backward-looking claims. For example, a cleaner of a certain grade might be worth a gardener of another grade, but the gardener got a bonus and the cleaner did not. For the most part, councils either have tackled such claims or are in the advanced stages of tackling them.

The future uncertainty stems from the fact that having taken part in the job evaluation scheme and shared it with colleagues—in our case, 15,000 employees were affected by it—we are giving what some might feel is evidence of past inequalities. As a result, people who might be due to move up a grade can use the evidence from the job evaluation scheme to claim that they have been underpaid; indeed, claims that are moving forward under red book conditions are not for work that has been rated as equivalent but for work that is of equal value.

Those claims will start to arise as soon as the job evaluation schemes roll out. However,

because of different history and different circumstances, they will, for the most part, be different in many authorities. We could be self-critical and wonder why local government did not tackle the issue in the distant past, but given the present position, I do not see any simple way through this. This issue has still some way to go.

Philip Barr: I should make one key point about why we did not take a few cases to the courts initially to try to find a way forward. I understand why people ask that question; indeed, I asked it myself when I joined the City of Edinburgh Council in 2003. As my colleagues made clear to me, every council was in a different position legally with regard to, for example, whether bonuses were variable or guaranteed, whether a new pay and grading structure would eradicate bonuses, the percentage of guaranteed pay in the bonus and so on. Because each council had a different legal statement about what they needed to do under litigation or to defend themselves, we ended up with 30-odd councils doing 30-odd different things.

David McLetchie: Mr Williamson said that because claims have been financed by money from reserves, the council's reserves have been depleted to a level that is below what might be described as desirable. If I understand Mr Barr correctly, the £15 million to £20 million that the City of Edinburgh Council approved last week for the interim settlement for the Bainbridge cases is coming off the payroll budget. Is that right?

Philip Barr: Yes, it has been provided for over the period.

David McLetchie: Is it a payroll cost?

Philip Barr: Yes.

David McLetchie: Will that therefore cause other complications in respect of the number of staff that the council will be able to employ and so on?

Philip Barr: It will place immediate pressure on the council.

David McLetchie: Is it expected that the claims will have to be managed on a payroll basis? Is there a reserve for paying them? How will all this be financed?

Norie Williamson: The draw-down reserves that I referred to earlier were for the compromise cases that were settled two or three years ago. The fact is that we do not have the reserves to accommodate payouts of the amounts that we have been talking about, if more cases come forward. Given that future grant settlements will most likely be tighter, we are already radically reviewing our processes and service provision and making any efficiencies that we can while continuing to try to deliver better services for the customer. However, if claims come on top of all

that on-going work, that will impact seriously on the services that we can provide.

The Convener: You never tackled this matter during the 10 years of unprecedented growth in public expenditure and when you did not have a legal logjam to deal with. Is it not a bit too convenient to come up with all these excuses and say now that the matter is now complicated, that you have become bogged down in legal processes and that you do not have the money any more? After all, we established at the start of the meeting that you have a legal obligation to the workers, who are mainly women.

Norie Williamson: I acknowledge that there was an unprecedented growth in local government finance over the past 10 years. However, with that came priorities and responsibilities such as free personal care—

The Convener: Do you really think that it is not a priority to fulfil a legal duty to your female employees or to plan for a legal imperative at a time of unprecedented growth in funding?

10:45

Philip Barr: I understand exactly why you are saying that. However, we planned for new pay and reward structures; we made a provision of 3 per cent, which equated to £10 million in the first year, increasing to about £15 million in year 5. We also accepted and provided for the fact that introducing the system would compromise female manual workers. However, the problem is the unforeseen litigation costs for the APT and C cases—which, I should point out, may or may not be won.

The Convener: I accept that.

Philip Barr: We in Edinburgh are saying that the costs could be dangerous, and we feel that it is only right to highlight the possible legal risk. However, as I say, we provided for and financed anything that could have been foreseen and that we knew was on the horizon.

Norie Williamson: Absolutely. I do not want to suggest that we did not regard the matter as a priority. We settled the cases that we were aware of; it is all the uncertainty that is causing the concern.

The Convener: Does anyone disagree with the view that was expressed last week that many of the 30,000 historical claims for backdated money that have gone to tribunal are relatively simple and could be negotiated and fast-tracked? This is like some breakdown in a dysfunctional family in which the family members rush to lawyers and get stuck in the mire.

Let me try to break up and simplify the big problem. As I understand it, there are historical

claims, many of which could be negotiated and fast-tracked, and there is the here-and-now Bainbridge problem, which the 32 authorities could address through some joint conclusion instead of dealing with 32 different legal positions. For example, could the advice that these cases are unwinnable—which was provided by the QCs that the City of Edinburgh Council got in—be applied to other local authorities?

Finally, in an effort to ensure that no more lawyers need be involved and that there is no more prevarication, could we get more academics in to ensure that what is put in place in the 32 local authorities is future-proofed and equality-proofed?

Philip Barr: We have been using Kay Gilbert from the University of Strathclyde to ensure that our pay and grading structures do exactly what they should do—that is, pay appropriately and fairly—and that there is no further litigation.

It is a no-brainer for most councils: we cannot win these cases in court. As a result, we are doing exactly what you have suggested. We in the City of Edinburgh Council know that those women are entitled to settlements, so we are settling with them.

Stefan Cross has said that the situation is in some way the councils' fault. I understand why he is saying that—some might say that he would say that—but in Edinburgh alone there are 850 Stefan Cross claims outstanding from women who still want to go to employment tribunal. The problem is that there are 3,500 cases associated with those 850 women, because Mr Cross keeps putting in more and more claims for each of them. He simply will not stop. I understand the point about the churn, but the legal backlog that the councils face is not a problem solely of their own making.

The Convener: I accept that. If the lawyers instituted a voluntary moratorium on new cases, we might have some space to deal with the existing ones.

However, those questions were asked last week. This morning we are questioning the local authorities, not Stefan Cross.

Mary Mulligan (Linlithgow) (Lab): Many of my questions have already been asked. I have to say that I am still uncertain about why it has taken so long to deal with this matter and why it has become so complicated. I hear what you say about not trying to simplify the issue, but I am concerned that we have allowed it to become so complicated that there seems to be no resolution. I have not heard from any of you how we can solve the problem.

Is there at this stage an opportunity for councils to work more closely together to find solutions that will not bring about yet more challenges to what

you have settled on? There was initial reluctance to settle because nobody wanted to be first or to be the test case, then people started to settle, others came in behind them and there were further challenges. There seems to be a rolling programme. I accept that local authorities are the legal employers and must operate as such, but there does not seem to have been a great deal of collective working between the authorities to arrive at a settled position.

John O'Hagan: More could have been done, but, in COSLA's defence, it is not the case that nothing has been done. A standing commission has been given to a firm of specialist employment lawyers, which advises COSLA as emerging case law takes hold and is then tested, supported and overturned. We must bear it in mind that these are, for the most part, reserved issues, so a number of steps must be taken through the court system south of the border before there is clarity. In many cases, the initial outcomes have been changed and decisions have gone in different directions once the Court of Appeal down south, and sometimes the House of Lords, has looked at them.

It is not the case that nothing has been done. I come back to the point that local authorities are at different stages. My council, for good or bad, was in early. We were one of the first to implement job evaluation and the like. I have occasionally taken stock and asked, "Was that a wise decision?" As we have just about let a detriment period of three years expire, I view with some horror the prospect of a court decision that states that that was all abortive expenditure and that we all have to start again, or something along those lines.

Local authorities have come from different positions. I will not be too specific, but in a number of areas some of the major categorisation divides in local government between APT and C workers and craft and manual workers and the like were changed by internal processes, particularly as we tackled conditions-of-service issues after the reorganisation in 1995. A number of us took the opportunity not to do away with bonuses but to rationalise them. That did not solve the problem, but it addressed an issue about service delivery. Our council inherited all or parts of four districts, two sub-regions and a new town, so our effort was concentrated on dealing with service delivery continuity rather than with tackling the equal pay challenges. That is not an excuse, but it is an explanation.

Mary Mulligan: It is interesting that your situation, whereby reorganisation brought together all those different local authorities, has allowed you to reassess where you are, which has perhaps helped. However, Edinburgh, for example, was still one local authority with one set

of rules and yet it has not reached the stage that North Lanarkshire Council has reached. That seems perverse.

John O'Hagan: I will not speak for Philip Barr or the City of Edinburgh Council. The point that I seek to make is that different issues arise in different contexts in different councils. One example is home support workers. In many cases they are treated as what we have called green book claims, because they were under that categorisation, but we moved home support workers from manual grades to APT and C grades in the late 1990s. One or two other councils also did that. We think that it changes their status in respect of being good claimants. It changed our risk analysis, so when we dealt with, for example, compromise claims with what we thought were the high-risk categories, the offer that we made to home support workers was a compromise amount, which was discounted to reflect that legal risk. In the case of other local authorities, such action may not have been appropriate. I cite that as an example of authorities approaching similar issues from different perspectives.

Mary Mulligan: Where do we go from here to ensure that we do not spend the next 10 years continuing along the path of claims and counter-claims? How do we resolve the situation so that all your employees know that they are being treated fairly?

Philip Barr: The solution lies in two areas. First, we must apply correctly and robustly an equality proofed comprehensive pay and reward system. That will be done in every council throughout Scotland.

Mary Mulligan: Will there be a national system, or will there still be local systems?

Philip Barr: There will be local differences, because certain jobs are different, but that should not necessarily cause a major problem, as long as the process is carried out properly in each council.

How else will we bring the current situation to an end? Over the next few years the equal value claims—the APT and C claims—will be dealt with and any sex discrimination claims will be dealt with one way or another. We will then be on the path home and, under those circumstances, we will have a pay and grading system that is not open to litigation. We must keep it that way and maintain the disciplines surrounding it to ensure that the current situation never arises again.

Mary Mulligan: My last question comes back to the point that the convener raised about fast-tracking some cases. Mr Irvine suggested in his evidence last week that we should use genuine material factor hearings. Would that be helpful?

Philip Barr: Yes. We all go for pre-hearings and a genuine material factor hearing is basically about asking, “Do we have a defence that says that these women are not entitled to this money?” They would say that they are entitled to it. Our defence would be a genuine material factor: that is, that there is a good reason under law why the women are not entitled to make that claim. That is what would happen in an employment tribunal.

We have been told by our counsel that it is worth defending the cases and that there are defences that we can put forward, and we shall do so. I cannot see where Mr Irvine is coming from. If he wants to have a pre-hearing, one can be held should the law require it.

Mary Mulligan: It is another step rather than a solution.

Philip Barr: Yes.

The Convener: It is clearly your responsibility to defend cases when you feel that there is a clear defence. However, we have heard from trade unions, Stefan Cross Solicitors and others and, indeed, by implication, from local authorities today, that there are fewer defendable cases. People have conceded that the value of the award is the issue rather than the legal point. That is what Mark Irvine discussed and what Mary Mulligan and I have discussed this morning.

John Wilson (Central Scotland) (SNP): Good morning, gentlemen. A number of questions have been asked today, and we are finally getting somewhere on equal pay and single status.

I reiterate the point that the convener has just made. As I understand it, the majority of tribunal claims are for the difference between the settlement figure that the local authorities have offered and what the individuals think they would be able to receive if they went to a tribunal. You can clarify whether that is true.

Mr Dawson said that a number of claimants had strong cases against his authority that they could win at a tribunal. We are trying to find out why councils do not settle, but instead keep the situation going. The convener said that Action 4 Equality and Stefan Cross's company continue to throw in tribunal claims. The difficulty of the tribunal system is that claims must be made before they are time barred. We cannot ask for a moratorium on claims from employment lawyers who are acting for the unions or on a no-win, no-fee basis, because that would mean that people were time barred from pursuing their claims against authorities. As the convener said, why do councils not settle the strong cases?

How far are the local authorities that are represented today prepared to take tribunal claims if they lose them? Are they prepared to go to an

employment appeal tribunal or all the way to the House of Lords, as has been mentioned?

11:00

Peter Dawson: You raise several points. You said that I stated that we recognise that different claims have different strengths. We have engaged with employee representatives—Stefan Cross and the trade union lawyers—to reach agreement. We have made increased offers to claimants, but we have not yet reached an agreement with their lawyers. We place a value on the claims and the lawyers place another value on them. We must reach a prudent settlement and we are engaged with lawyers on that.

Mr Barr and I said that we regard a range of other claims as being not as strong. In fact, we do not recognise at all a number of claims against us. We must defend such cases. You asked how far we are prepared to go. That is tied in with how much our lawyers' fees will be. No decision has been made at an employment tribunal yet. After employment tribunals have dealt with some test cases, a range of councils might step back and say that argument is lost and they now need to settle.

John O'Hagan: We are at not a tipping point—that is the wrong phrase. We are at a stage in the process at which several issues are being flushed out and clarified through the courts. I suspect that the tribunal hearings that are going on and those which are scheduled for the coming months will result in decisions that apply the law as it is understood and which are based on evidence and conclusions on factual outcomes. We will all consider those decisions and reach a view on whether, although we have settled claims—my council has settled more than 3,000—after a further consideration of the risk analysis, we should offer compromise deals on another raft of claims. I suspect that that will be flushed out in the next few months.

I honestly do not know whether significant changes in the legal background will occur, but none of us anticipated four or five years ago the legal changes that have happened in the past couple of years, so such changes cannot be precluded.

To answer one of John Wilson's questions, nobody will be so intransigent as to take cases to the inner house of the Court of Session or the House of Lords if doing so has no purpose, if it does not serve the public purse well or if the balance of argument is in the claimant's favour. However, before the tribunals speak, I am not sure whether a significant raft of claims is ready for settlement.

John Wilson: We have heard that COSLA engages employment lawyers to advise it of the implications for staff of employment law changes. I assume that it also takes counsel on some issues. How many of the local authorities that are represented employ counsel and external advisers, in addition to the COSLA advice?

John O'Hagan: As I said, my council has mostly dealt with the matter in-house. We have a standing QC whom we consult from time to time on particular issues. He will represent us at the first tribunal hearing, which will take place shortly. However, we do not have a separate standing firm of employment solicitors.

The Convener: Thank you, gentlemen, for your time and your evidence.

We will take a moment to change over the witnesses.

11:05

Meeting suspended.

11:08

On resuming—

Child Poverty

The Convener: Agenda item 2 is to take oral evidence from the Cabinet Secretary for Health and Wellbeing and her officials as part of our child poverty in Scotland inquiry. I welcome the cabinet secretary; Frances Wood, the deputy director of social inclusion; and Samantha Coope, the team leader of the tackling poverty team. I invite the cabinet secretary to make introductory remarks before we proceed to questions.

The Deputy First Minister and Cabinet Secretary for Health and Wellbeing (Nicola Sturgeon): Thank you for the invitation to come here today to speak about child poverty, which is very much at the top of the Government's agenda as well as the agendas of all the parties represented here today.

As we know, around one in five children in Scotland are growing up in poverty—that means that, right now, more than 200,000 children throughout the country find themselves denied the positive future that should be their birthright. The good news is that child poverty has been declining in Scotland; the less good news is that our progress is, quite frankly, far too slow. There is no doubt that our challenge has been increased by the economic downturn; the impact on the jobs market throughout the UK limits opportunities for families to lift themselves out of poverty through good, sustainable employment. That said, nobody would see that as an excuse to take our eye off the ball or to deter us from the ambition that we all have—to eradicate child poverty. Indeed, it should strengthen our resolve to ensure that poverty does not blight the prospects of another generation. In my view, which I am sure is shared widely, child poverty has no place in a modern Scotland.

The Government is fully committed to working with all our partners to do everything we possibly can to help achieve the UK Government target of halving child poverty by 2010 and eradicating it by 2020. We believe in social justice, which is why we set ourselves the solidarity target of increasing, by 2017, the overall income and proportion of income received by the poorest 30 per cent of households. Last year we published "Achieving Our Potential: A Framework to tackle poverty and income inequality in Scotland" which, with "The Early Years Framework" and "Equally Well: Report of the Ministerial Task Force on Health Inequalities" sets out our approach to tackling poverty and income inequality. The policies represent a comprehensive attack on the poverty and inequality that blight Scottish society.

Also relevant to the debate is the recently published UK Government child poverty bill, which the Scottish Government is considering closely. We look forward to seeing the outcomes of the consultation on the bill. We are absolutely committed to working co-operatively with the UK Government and stepping up our collective efforts on child poverty—this time last week I had a constructive meeting with Stephen Timms about the UK bill.

It would be remiss of me not to say that we are concerned that, as it stands, the UK bill does not bring with it any further investment. We will all be mindful of the research published last month that confirms that significant short-term action is required if we are to meet the interim target. That can be achieved only by extra investment by the UK Government in tax credits and benefits, and the Scottish Government will continue to call for that. We are concerned that the current devolution settlement limits what we can achieve for Scotland by our own hand—for example, the way the social security system operates puts barriers in the way of our poorest families lifting themselves out of poverty.

It is critical that we work as hard as possible to ensure that policies pursued by the UK Government in reserved areas—it is absolutely entitled to pursue such policies—do not undermine our efforts to meet child poverty targets. We have already made known our views on the UK Government's welfare reforms. Although we are not opposed to many of the principles behind those reforms, we have some concerns about their practical implications.

The committee might be interested to know that I had occasion yesterday to write to the Department for Work and Pensions to raise concerns, which are shared strongly by COSLA, about the decision to cap at the rate for a five-bedroom house housing benefit for families who need six or more bedrooms. Our analysis suggests that that would force some families into overcrowding. It could affect 2,000 to 3,000 children in Scotland, frustrate attempts to tackle child poverty and have a disproportionate effect on ethnic minority families.

We are all aware that we face big challenges in our efforts to end child poverty, but we should all be determined, as the Scottish Government is, to address the root causes of poverty. I believe, on the basis of the *Official Reports* that I have read, that the committee's inquiry has gathered a great deal of valuable information about, and insight into, the problem. I am glad to have the opportunity to contribute to the inquiry. I look forward to the outcome of the inquiry and will ensure that it is fed into the Government's work.

The Convener: Thank you for those opening remarks. John Wilson has the first question.

John Wilson: Good morning, cabinet secretary. I welcome your remarks about your continuing discussions with the UK Government on some of the levers that can help to take people out of poverty. I am interested in the Scottish Government's assessment of the present economic situation. Targets have been set for 10 and 20-year interim periods—to eradicate poverty by 2020, for example—but they were set when, as one politician famously said, we expected an end to boom and bust in the UK. We are clearly almost in a bust situation, and that will affect families and individuals. What discussions have been held with the UK Government to address some of the issues arising from the homelessness and job losses that may occur, more about which we will probably hear later?

Nicola Sturgeon: As you would expect, different departments of the Scottish Government have discussions with different UK departments about a range of issues that are being caused or exacerbated by the current economic climate and how we can work together better to respond to those challenges. We in the Scottish Government have our six-point economic recovery plan and much is happening at the UK Government level. Some of that falls within our respective discrete responsibilities, but we can do and are doing much to work together.

11:15

I think—and I am sure that most people readily accept—that, even without the economic downturn, we have a big challenge on our hands in meeting the UK Government's child poverty targets. The Joseph Rowntree Foundation recently published a study that illustrated the scale of that challenge well and gave its first estimate that a financial injection of £4.2 billion a year might be needed to reach the targets—in addition to what is being spent on tax and benefits.

The challenge was already considerable and there is no doubt that the economic climate makes it more acute. Evidence such as that in the Joseph Rowntree report suggests that, although the overall figures might not be hugely influenced, changes will take place underneath. More children might fall into relative poverty because their parents have lost their jobs or found obtaining work more difficult, but more children might come out of relative poverty not because they are better off but because average earnings have fallen. The overall effect might be neutral, but that will not take us where we need to go at the pace at which we need to go.

The Scottish Government can do, is doing and will continue to do much, which I am sure we will discuss. We all take our responsibilities seriously. The UK Government is doing much. We might

think that it can do more, but that is a matter for discussion. We will continue to discuss what we can do together. In my introduction, I referred to my meeting with Stephen Timms last week to discuss how we can work together in relation to the child poverty bill. We are not absolutely sure whether we agree with all the proposed approaches in that bill to achieve our shared objectives, but we want to have a constructive working relationship on it. We both agreed that that was the right approach.

John Wilson: You said that average earnings are usually one of the measures that are used to determine poverty. Given that you said that average earnings could drop because of the current economic climate, are they a good enough indicator to determine whether families or children live in poverty?

Nicola Sturgeon: The question is interesting. The committee might go into that in its inquiry outcomes and I would be keen to explore the issue more today. Average earnings and income are a fundamental measure of poverty. The standard measure of poverty for the purpose of the target is relative poverty, which is defined as an income that is less than 60 per cent of median earnings. Not to have that as a key standard measurement would be absurd.

Nevertheless, many data are available on other aspects of child wellbeing. Last week, Stephen Timms and I kicked off discussion about how we put together a basket of indicators that the Scottish Government can use to measure better our progress towards eradicating child poverty, and which we can usefully use to feed into any UK reporting. The UK bill proposes an annual report on child poverty, which we would want to feed our progress into. Income and earnings are a fundamental measure, but they are not the only factor that we should consider in determining whether we are making progress.

John Wilson: I thank the cabinet secretary for her answer. Average earnings as a baseline might fall, but other inflationary pressures in society might mean that food prices and other prices rise. However, as I said, average earnings are one measure. I welcome what the cabinet secretary said about using a basket of measures to measure impacts and what might happen in the future. Wages and earnings may be reduced—I am not saying that they will be—but there might be inflationary pressures on the shopping basket that parents must buy which mean that real targets relating to the pressures on people living in poverty or at a level just above poverty might be missed.

Mary Mulligan: Good morning, cabinet secretary. I am sure that you have had the opportunity to consider some of the evidence that

has been taken in the inquiry so far. The provision of child care is one of the main issues that have arisen. What has the Scottish Government done to promote flexible and affordable child care?

Nicola Sturgeon: I will answer that question in two parts. I have read the evidence and agree that the provision of affordable, accessible and flexible child care is fundamental to enabling people, particularly lone mothers, to get back into work. Therefore, I accept the premise of the question.

Obviously, there are two sides to the provision of child care. First, there is the supply side. We supply universal free provision for three and four-year-olds. Members will be aware that the Scottish Government set a manifesto commitment to increase the number of free child care hours by 50 per cent. We are making good progress towards that. The number of such hours has already been increased to 475 a year, I think, and is due to go up to 570 in August 2010. That takes us 38 per cent of the way on the journey. Obviously, we will consider how we can fulfil the 50 per cent commitment in 2011. That commitment is important.

The other side is the demand side. Child care is funded primarily through tax credits and child care vouchers. The need for parents to have access to high-quality and affordable child care is at the heart of the early years strategy, which, as members know, is a joint strategy with COSLA. That strategy clearly sets out the steps that we think need to be taken at the national and local levels to overcome the accessibility and affordability challenges.

One objective that the early years framework sets for local partners is to conduct a strategic review of child care accessibility and to use that review to start to address the gaps that exist. That duty—if I may call it that—is similar to what English local authorities are required to do under the Childcare Act 2006. In the Government's view, the longer-term objective is to provide much better access to integrated pre-school and child care services in every community. I do not want all of the discussion to be about what we think the UK Government should be doing, but it is difficult not to stray into discussing the UK Government's powers. I strongly believe that the UK Government needs to introduce a much simpler and more progressive scheme for supporting parents with child care costs.

We are therefore doing a range of things, but not all of what we think needs to be done is within our power to do. Child care is a fundamental issue to address in tackling child poverty in the longer term.

Mary Mulligan: You mentioned that there is a legal obligation on local authorities in England

under the Childcare Act 2006. Would you introduce such an obligation here?

Nicola Sturgeon: There are no plans at the moment to implement such a duty. Local authorities, in conjunction with local child care partnerships, are responsible for ensuring sufficient child care in their areas.

I understand that the relevant departments in England do not have any statistical evidence on the impact of the statutory duty in the Childcare Act 2006 since it was implemented. That is interesting.

Given the rural nature of much of Scotland, the prevalence of shift working and a range of other issues, the English policy is not entirely appropriate for our circumstances. As far as I am aware, local government is not looking for any new laws to place a statutory responsibility on it, but it is important to recognise that although the different Governments might take different approaches to the same end, it is nevertheless the end that is important. Through the early years framework and our work on universal provision of child care, the Government is working constructively with our local government partners to ensure that there is provision of accessible child care.

One of our concerns about the Welfare Reform Bill—although we have received welcome assurances about this from the Department for Work and Pensions—is the idea that a lone mother could lose benefit because of an inability to access child care. Obviously, we want child care to be available and we do not feel that particular issues around child care should lead to benefit sanctions in that way. That is part of the continuing discussions with the UK Government about the welfare reform proposals.

Mary Mulligan: You mentioned that you hope to increase the availability of time in early education for children aged three to four. Such provision is being extended, but it is my experience that it is often easier to manage children at that age into child care and that parents find it more difficult to access support and care for schoolchildren. How is the Government encouraging local authorities to make progress on provision of, for example, after-school clubs?

Nicola Sturgeon: Local authorities have a responsibility to make progress. I agree with you—I speak not from direct experience but from constituency experience—that many parents find it much easier to arrange care for pre-school children than for schoolchildren because trying to integrate and juggle school and child care can be difficult. Local authorities have a responsibility to ensure that there is provision in that area. I am not going to get into a bout of concordat talk here, but

it is clear that because of the relationship that we have with local authorities, funding is increasing and local authorities have a responsibility to ensure that they deliver in the kinds of areas you are talking about.

Mary Mulligan: In relation to the directive from the Scottish Government, some local authorities have raised issues about providing free school meals for children in their area that might result in their reducing provision of breakfast clubs. What do you think of that?

Nicola Sturgeon: Given the concordat agreement and the funding that we are providing to local authorities, I would not consider that that would be the case. It is always open to local authorities individually or through COSLA to discuss such issues with ministers. We might come back to this, but I believe that the commitments to deliver free school meals made by the Scottish Government and local authorities are extremely important in the context of the child poverty debate, as is the provision of universal free school meals in primary 1 to 3 from next year and the extension of eligibility to children whose parents are on maximum child and working tax credits—a move that will benefit more than 40,000 children. Those are significant steps and, although they are only part of the picture to tackle child poverty, they are an important part. My colleagues in local government are enthusiastic about those steps too.

Bob Doris (Glasgow) (SNP): Good morning, cabinet secretary. You mentioned in your introductory remarks the changed economic times and the challenges that they pose in tackling child poverty. I was hoping to ask about how to get people off benefits and into work or tackling in-work poverty. Given the current climate, the reality for many families is that people are moving out of work and on to benefits. That shines a spotlight on how the benefits system works at a UK level and on the Scottish Government's responsibility to work in partnership with the UK Government to ensure income maximisation and the full uptake of benefits.

Our briefing paper mentions that the Scottish Government has increased the funding it provides for debt and money advice services, but it has been highlighted that this Government and the UK Government support a number of agencies to give that advice. The issue is co-ordination. I do not want to get into a discussion about fuel poverty, on which the committee has already held an inquiry, but the idea is that the first stage of the energy assistance package will involve a full benefits entitlement check for everyone who phones the telephone number to find out about cavity wall insulation and so on. That will be an example of good practice. Are there other examples that you

can give of how the Scottish Government, either on its own or in conjunction with the UK Government, is looking to work more cleverly on income maximisation and benefits advice?

11:30

Nicola Sturgeon: I will give you a range of examples as briefly as I can. I agree that income maximisation and uptake of benefits are important and that the Scottish Government must take responsibility for them. We do not have responsibility for the benefits system; we think that we should, but I suspect that that is a debate for another place and time. We should take seriously our responsibility to do what we can.

In "Achieving Our Potential", the poverty framework that we published towards the end of last year, we gave a commitment to put £7.5 million into income maximisation over the next two years. We have not yet determined the details of how all of that resource will be spent, but I can run through some of the initiatives that the Government is funding, to help in that area. As I think you have heard from previous witnesses, we fund the Child Poverty Action Group second-tier advice project, which provides support and helps with capacity building of front-line services on benefits advice and uptake. We also fund One Parent Families Scotland, which runs the lone parent helpline. The helpline provides advice and signposting on a number of issues, including benefits uptake.

In addition, as you rightly identified, there is the energy assistance package, which will be an extremely important vehicle for ensuring that as many people as possible receive a benefits check. The benefits checks that have been carried out under the central heating and warm deal programmes that were put in place by the previous Administration have been hugely successful. They focused mainly on pensioners. I will probably get the figure wrong, but I think that, in the last financial year, £1 million has been delivered in additional benefits for pensioners. That shows the success that we can have.

In future, as you rightly say, provision will be made for benefits checks as part of the first stage of the energy assistance package. For people over 60, those checks will be carried out by the pension service, which carries out the checks under the existing schemes. For people under 60, checks will be carried out by Citizens Advice Direct. The potential of the energy assistance package to get people checked for benefits and to help more people get the benefits they deserve is huge. An interesting aside on child poverty is that the energy assistance package will make low-income families with children under five or disabled children under 16 eligible for central heating, which is another important initiative.

We have worked with Macmillan Cancer Support to pilot and, we hope, roll out its income maximisation service for people who are affected by cancer. Many children can be affected as a result of parents having cancer. We often hear from cancer patients that while in most cases, I am glad to say, the clinical care that they get is excellent, they find the financial implications of having the disease extremely difficult.

Another area that we are pursuing is work with housing associations, which are key intermediaries, particularly for older people, in ensuring that benefits are taken up. We are looking to work with Linkwide, which is part of the Link social housing group, to extend its older people advice service throughout Scotland. I could mention other initiatives, but in the interest of brevity I will not. That gives you a flavour of the work that we are doing.

Bob Doris: I think that that is a new definition of brevity, but I thank you for your answer. Although I welcome the list of things that you mentioned, the fact that so many different things are happening at one time demonstrates the need for co-ordination. I hope that you will consider ways of signposting different groups in society to benefits advice. Would it be possible to carry out some kind of quantitative assessment after six months or a year of the additional benefits that have been accessed, via the UK Treasury, to see how successful the initiatives have been?

Nicola Sturgeon: Yes.

Bob Doris: The initiatives are welcome. Taxpayers' money funds them—that is as it should be, because they are part of Scottish Government policy. I am sure that the committee would like to assess how successful they have been.

Nicola Sturgeon: Quantification is essential. We will be able to tell you over time exactly how many people access the different levels of support within the energy assistance package. That will include information on the number of people being signposted for benefits advice and on the benefits that they take up as a result.

I take your point about duplication, which is fair. We need to look at a range of approaches. We are not dealing with a homogenous group of people; we are dealing with people in different age and demographic groups and with different life circumstances. I am probably horribly misquoting John Dickie—I apologise if I am—but I think he said in one of your previous evidence sessions that we should not worry too much about duplication and that we want to ensure that people have access to the services that will ensure that they get what they deserve.

The Convener: I think he did say that, but I am sure that he said that co-ordination is important too.

Nicola Sturgeon: I appreciate that.

The Convener: You mentioned housing, which is also part of our inquiry's remit. We have heard evidence that a cut in the subsidy for building houses will push up rents, which will have a big impact on the low-paid and the working poor. Advice will be available on managing that, but there is a recognition that housing costs will have a big impact on people on low pay, who face the prospect of rents being increased as a result of a policy that your Government is pursuing.

Nicola Sturgeon: I would be genuinely interested in any evidence that you can show me to back up the assertion that you have just made. If you can provide such evidence, I will take it seriously.

As you know, the Government is increasing investment in housing by 19 per cent over the spending review period. Just last week, the Minister for Housing and Communities announced the allocations from the affordable housing investment programme for the next financial year, which are record allocations, partly because we have been able to accelerate some of our spending into the next financial year to help deal with the economic downturn.

This Government is investing strongly in housing. In our first year in government, we had more public sector housing starts than there had been at any time since the early 1990s. There is evidence of our commitment.

The housing association grant assumptions are about how many houses you can get for the money you are spending. It is right for the Government to try to be as efficient as possible and to try to get as much for our investment as we can.

We took decisions around HAG in our first year in government. The economic downturn happened thereafter. We listened carefully to housing associations, as a result of which we have increased the HAG assumptions. We are in dialogue with housing associations and we are not at all insensitive to the wider economic climate, but we have to remain committed to getting as much in the way of new house building out of our investment as we can.

The Convener: But the housing associations—not Duncan McNeil—are saying that it will cost them more to meet the requirements in the plans that they have in place. There are three ways that things can go: housing associations can build less; rents will go up; or the quality of the build will go down. That is housing associations' contention, not mine.

Nicola Sturgeon: The HAG assumptions are based on the assumptions that housing

associations themselves make on, for example, rent increases. The intention is not to make rents go up. If you can show me evidence that that has been the result, I will be happy to discuss it with you.

As I have told you, we have responded to some of the concerns that housing associations have expressed in relation to the economic downturn. That is why the HAG assumptions have increased. We will continue to discuss these issues with housing associations. They are the main providers of social housing, so it is essential that we work with them to ensure that we are meeting our social housing objectives. In addition, in our efforts to get even more out of the money that we are spending, we are trying to incentivise councils to come back into the building game.

The Convener: I am quite sure that housing association tenants will take some comfort from your assurance that rents will not go up and that their income will not be affected.

Alasdair Allan: Notwithstanding what has been said about the difficulty that people are having in finding jobs, the question arises of how people manage the transition from benefits to work. Does that issue, which is a perceived problem area, come up in your conversations with Westminster?

Nicola Sturgeon: Because of the overlap between workforce plus, which the Government seeks to roll out across the country, and the work of Jobcentre Plus, discussions continue on all the employability agenda. It is important that we give people the skills to access the labour market. A range of work is under way, both by the Scottish Government and by the UK Government, to make things easier for people. Notwithstanding the difficulties in the economy, such work is important.

Because of my other responsibilities in health, I am particularly keen that the public sector plays its part. Through health academies, national health service boards work hard with people who are traditionally quite far from the labour market. They provide pre-employment training and opportunities to help people to get into work. NHS boards are working hard, and they have some joint working relationships with Jobcentre Plus. There is undoubtedly scope for them to do more, and scope for local authorities and other parts of the public sector to do more.

Alasdair Allan: A perceived deterrent that has been suggested to the committee is that, when people move from unemployment into work, they think that they might lose housing benefit. Have you given consideration to that perception?

Nicola Sturgeon: Yes. I genuinely do not want to make this party political, but there are frustrations for the Scottish Government because many of our responsibilities and policy levers are

influenced by levers at Westminster. For example, housing policy is completely devolved but housing benefit is completely reserved. I have already given an example of how a decision on housing benefit can have a severe impact on what we are trying to achieve in our policies on housing and tackling poverty.

It would make much more sense for benefits and the tax credit system to be devolved so that we can properly integrate our policies. In my constituency—and we will all have had similar experiences—I know of people who have found themselves in what is colloquially known as the benefits trap. They cannot get into work because the financial hit is too great. It is a big issue. As well as giving people skills to access work, we have to ensure that the work genuinely pays. There is a lot of scope for the Scottish Government and the UK Government to work together on that, but it would be much easier if the Scottish Government had the powers to ensure that the system made sense.

The Convener: I am interested in this area, because there is a gap when it comes to supporting people who get out there and take low-paid work. We have learned of recent innovations in Glasgow City Council and in London in relation to the living wage. Have you and your Cabinet colleagues discussed how such innovations could benefit people on low pay?

Nicola Sturgeon: A commitment in “Achieving Our Potential” was to publish this year an analysis of how the public sector can play a bigger part in tackling low pay. I am very interested in what Glasgow City Council is doing, and most people would welcome it.

I have responsibility for the NHS, and about 8,000 out of 160,000 people in the NHS are slightly below the £7-an-hour mark—not a great deal below but slightly below. There is scope for us to think much more about the issue. It goes back to my answer to Alasdair Allan. The public sector as a whole is a massive employer in Scotland, and if we are genuine about tackling poverty, including in-work poverty, we cannot ignore the role that it has to play.

11:45

The Convener: Have you gone beyond thinking about the issue? Have you discussed with your colleagues encouraging other local authorities to introduce a living wage? Are you discussing with trade unions and the NHS how you would achieve a living wage?

Nicola Sturgeon: As I said, there have been no Cabinet-level discussions since Steven Purcell’s announcement. Obviously, other local authorities have to make their own decisions, as it would not

be right for the Government to dictate to them. I am sure that they will all look at the example of Glasgow and make their own decisions. I have already pointed you to "Achieving Our Potential". I will let the committee know when we expect the analysis of what more the public sector can do to be published, which will be at some point this year. There is further scope to maximise the role that the public sector plays.

The Convener: It is interesting that London rolled out its living wage in and around the Olympics. Has any work been done to replicate that in Scotland in and around the Commonwealth games? We would be dealing not only with the public sector but with the private sector. Has any work been done on that?

Nicola Sturgeon: I cannot speak off the top of my head for the Commonwealth games organising committee, but I am happy to come back to you with the detail of anything that it is considering.

The Convener: That is something that it would be within your powers and influence to do.

Nicola Sturgeon: Absolutely. I have said all along that I will have no hesitation in saying and make no apology for saying where I think the UK Government has to do more or where I think we should have more powers, but I will never deny that we have a considerable amount of power in our own hands, which we should use to the full.

David McLetchie: Good morning, cabinet secretary. I will follow on from Bob Doris's line of questioning about the multiplicity of debt and money advice services and how we might achieve a better co-ordination of such services.

When I was walking along George Street this morning, I saw an advert on a bus for a money advice service that is being run by West Lothian Council. As you might expect, the advert gave a freephone number. It is obviously commendable that West Lothian Council should offer that service, but I could not help but wonder what happens when someone phones that number who is not from West Lothian.

It struck me, as I was thinking about the discussion that the committee would have this morning, that there should be a mechanism whereby people could phone a single number for such publicly funded advice services and agencies; if they live in West Lothian, they could be directed to an appropriate office or meet a money advice counsellor in West Lothian—and ditto for Edinburgh. If an Edinburgh person with money advice worries happened to be walking along George Street this morning, they might have been deterred and wondered, "What do I do? I don't live in West Lothian." It strikes me that, although there is an awful lot of advertising of such individual services, it does not necessarily hit the

body public who might all share the same general concern.

Nicola Sturgeon: That is a fair point. In the distant past, I worked in the advice sector in a law centre. I know that when people phone a number that they have seen somewhere but they do not fall within the catchment area for the service provided, it can be difficult always to know where to signpost them on to, so you make a fair point.

Some review work is currently being done with COSLA on how better to tie up and integrate the work that individual local authorities do. The outcome of that work is not due imminently, although it is due this year. I am happy to give the committee more detail on when you can expect the outcome of that work, because it obviously has a bearing on your inquiry.

In addition, people can phone Citizens Advice Direct, for example, and be signposted through that. Another service that the Government funds, which is focused not so much on benefit uptake but on debt advice more generally, is the national debtline. That is a single number, so anyone who phones from Scotland will get Scotland-specific advice. There are more generic services, although I accept that there is a fair amount of work to do to join them all up properly, particularly with services that local authorities are rightly providing in their areas.

David McLetchie: I will move on to how we focus specifically on child poverty. The committee is holding an inquiry on child poverty and we have a joint commitment from Her Majesty's Government and the Scottish Government to end child poverty by 2020. Against that back-cloth, why does the concordat with local government talk not about decreasing the proportion of children living in poverty as one indicator of progress but about decreasing

"the proportion of individuals living in poverty"?

If there is a particular policy focus on reducing—indeed, eliminating—child poverty in 11 years, one would have thought that in the agreement between the Government and councils, that indicator would have been more specifically focused.

Nicola Sturgeon: I have followed the evidence that the committee has taken on that, which is an interesting point for debate. I will try to explain why the national performance framework and the outcomes and indicators are as they are, after which I will touch on single outcome agreements and what we are doing to try to ensure that they reflect the objectives that the Government has set on child poverty.

Children who live in poverty are the victims of their families' economic circumstances so, in tackling the parents' economic circumstances, by

definition and as a consequence we tackle the circumstances in which children live. Therefore, achieving the national indicator on decreasing

“the proportion of individuals living in poverty”

and meeting the targets in “The Government Economic Strategy” to increase the share of income that is earned by those whose income is in the lowest 30 per cent will impact on child poverty. The debate is fascinating, but we cannot necessarily isolate child poverty from the wider poverty issues. To return to the point that John Wilson raised, although income measurements of child poverty are fundamental, there is a bigger picture on child poverty and wellbeing. That takes us back to the need to consider various indicators to ensure that our progress is comprehensive. That is, I hope, a semi-coherent explanation of why we do not isolate child poverty but see it in the bigger context of overall poverty.

The single outcome agreements are important in ensuring that, at a local level, the Government's objectives are met. The agreements for the present financial year were the first of their kind, so everybody accepts that there is a lot of learning to be had from them. About half of all the single outcome agreements had at least one proxy indicator for child poverty and they all had indicators that were connected to child poverty. For the next set of single outcome agreements, which have been submitted in draft form, we have made clear to community planning partnerships through guidance on the agreements that prioritising “Achieving Our Potential”, the early years framework and “Equally Well” is of real importance for next year.

We must consider child poverty as part of the bigger picture of poverty. However, that does not take away from our clear commitment to work towards the UK targets of halving and then eradicating child poverty.

The Convener: I have a follow-up question that goes in a slightly different direction. We have papers that say that 200,000 children in Scotland still live in poverty. I accept absolutely the general thrust of your argument that we need to improve families' wellbeing and income—that was raised in studies that we have received on issues such as kinship care. It depends on whose figures we believe, but it seems that 25 per cent of those children are likely to live with a parent with addiction. Irrespective of how we maximise such parents' income, the money is more likely to go to drug dealers than to the children. I accept your general argument about families' wellbeing, but what work has been done to drill down to those children who live in difficult circumstances, in poverty and competing with addiction, and to ascertain how we can connect benefits to where they should go?

Nicola Sturgeon: You are right that the figure of 200,000 that we use is based on the measurement of child poverty for the purposes of the target. I think that that is a reasonable way of measuring, but I do not think that it is the whole story. You are right that there will probably be many children in Scotland who do not fall into that definition of child poverty and who live in the most extreme and horrendous situations. You referred to children living with parents with drug or alcohol addiction. Obviously, our drugs strategy is important in that respect. I am more than happy to come back to the committee with more detailed explanations of exactly what is happening to ensure that we are getting underneath the overall strategy and reaching children who do not fall within the broader definition but nevertheless should not fall outside our efforts.

The Convener: I would welcome that information.

Jim Tolson: Good morning—I think that it is still morning. I want to take you back to the point on child care that Mary Mulligan started with earlier. Some witnesses have expressed concern about the impact of the loss of ring-fenced funding on the provision of child care by local authorities. For example, Fife Gingerbread, which is a group that I know fairly well, stated in written evidence:

“Although considerable Scottish Government funds have previously been made available for the development of childcare, as of 2008, these funds are no longer ring-fenced for that purpose”.

How is the Scottish Government monitoring the loss of ring-fenced funding to provide child care? What outcomes have so far been found?

Nicola Sturgeon: Obviously, I have just spoken a bit about single outcome agreements. I am not going to get into a debate about the removal or not of ring fencing. I suspect that nobody wants me to do that.

The Convener: Please do not.

Nicola Sturgeon: We have the relationship that we have with local authorities. We fund local authorities and are providing them with increased funding over the spending review period. It is for them, mindful of the Scottish Government's objectives in the national performance framework and so on, to ensure that they deliver locally.

We will of course look at and evaluate the single outcome agreements. The draft single outcome agreements for the next financial year are being looked at and discussed with local authorities as we speak. As I said earlier, we have made very clear in the guidance to community planning partnerships that one of the strategies that should be reflected in single outcome agreements is the early years framework. Clearly, child care and child issues are very much at the heart of what we

expect to see in single outcome agreements for the next year.

Jim Tolson: I appreciate the focus on single outcome agreements. I understand and welcome that. You said earlier that your previous work life was connected very much with the voluntary sector. A lot of child care is provided by that sector. Do you acknowledge that there is extreme pressure on some of that child care provision, now that there is less certainty—at least, in the voluntary sector's view—about where their funding is coming from?

Nicola Sturgeon: Again, from personal experience, I know that the voluntary sector always works under pressure. It does a great job, and we value it very strongly. Funding to local authorities has increased and funding to the voluntary sector has increased in line with that. If anybody wants to bring us particular examples of lack of funding, we will of course look at them. However, I repeat that it is for local government to ensure that it funds and provides the services locally that meet its local needs and to ensure that the objectives that the Government sets can be met. That is the responsibility of local government. We give local authorities the funding to do that and their responsibility is to use it in that way.

Patricia Ferguson (Glasgow Maryhill) (Lab): Good morning, cabinet secretary—it is still morning, just. I would like to follow up a question that Duncan McNeil posed earlier on the issue of a living wage. I take your point that the Scottish Government does not have control of the benefits system. We might have an argument on another day about whether that is the correct approach to take. Nevertheless, the Scottish Government has a great deal of influence—not to say opportunity for direction—in agreeing the concordat with local government. Is there an opportunity for the Scottish Government to show its commitment to tackling poverty in general by making that a feature of the concordat with local government?

12:00

Nicola Sturgeon: The overall concordat with local government—and, I would contend, the single outcome agreements with individual local authorities and community planning partnerships—prioritises the tackling of poverty. The fairer Scotland fund, which we have not mentioned yet, aims to regenerate communities by tackling individual poverty and helping people back into work. Those objectives should be and are at the heart of the agreements that local government has with central Government.

I have made my views on the general issue of the living wage known. You have put your finger on an important point regarding the tension that

can exist between devolved and reserved responsibilities. Another example that has been mentioned this morning, although not in any detail, is the kinship carers allowance. If we gave kinship carers a bigger allowance, without relevant changes to the benefits system all that would happen is that the money would be clawed back through the system. We would end up subsidising the benefits system, not increasing people's incomes. The same issues arise in relation to the idea of a living wage, although that is not to say that it is not something that we should explore. From my earlier comments, you can take it that I am enthusiastic about ensuring that the public sector—whether local authorities, the NHS or whatever—is playing its full part in tackling poverty.

Patricia Ferguson: However, there are two points to make further to that, on which you may wish to comment. First, if there is a benefits trap—our evidence suggests that there is—one of the ways in which we could encourage people who are on benefits to get into work is to ensure that the wage that they would receive would allow them to get out of the benefits trap. That is one lever that the Scottish Government has with which it could address that issue, which we all recognise. I would have thought that the Scottish Government would use that lever.

Secondly, we seem to be saying that particular local authorities are taking forward the initiative. I do not believe that the Scottish Government would want disparities to begin to appear between local authority areas in relation to the minimum rate of pay at which people could expect to be employed by local authorities.

Nicola Sturgeon: On your first point, I agree with you generally that there is influence to be exercised there. I think that I have made my views on that fairly clear.

On your second point, we have a relationship with local government whereby we allow local government to fulfil its responsibilities and to be accountable for the way in which it does that. Given your views, I am sure that you will make it clear to your local government colleagues and to those in other local authorities that you think that they should follow the example of Glasgow City Council. I dare say that others will do likewise. Nevertheless, we must recognise the fundamental responsibility of local authorities to make their own decisions.

The NHS, which I have mentioned, is in a different position from that of local authorities. Most of those who work in the NHS are already paid at or above the £7-an-hour minimum wage that has now been set in Glasgow, but there are some who are not. That is an issue that we have to think about.

Patricia Ferguson: It strikes me that there is a great deal of inconsistency. On the one hand, the Scottish Government can criticise Westminster for not using the benefits system as the Scottish Government would deem appropriate or for not giving the Scottish Government the power to use the system in such a way. On the other hand, when you have a lever at your disposal, you are not particularly inclined to use it. You say that the health service, in which you have some control over pay, will pay at £7 an hour or above. Do you agree that it is iniquitous to suggest that another part of the public sector in which levers are available to you will not do so as well?

Nicola Sturgeon: With respect, that is not what I am saying. I am simply recognising the reality that local authorities are autonomous within their spheres of responsibility. I know that there is some disagreement and conflict within other parties that are represented in the Parliament about whether that is a good or a bad thing, but it is clear to me that it is for local authorities to take decisions in the areas for which they are responsible. We all have opinions about the decisions that local authorities take or do not take, but such decisions are their responsibility.

The Convener: We will have a couple of brief questions from Mary Mulligan and John Wilson. John will finish the evidence session, which he also began.

Mary Mulligan: My question relates to the issue of the living wage. The cabinet secretary has responsibility for staff employed by the Scottish Government or its agencies. What percentage of those staff are employed through employment agencies, rather than directly?

Nicola Sturgeon: I cannot provide the statistic off the top of my head, but I am sure that I can get it for the member. I am also sure that it is not hugely different from the figure under the previous Administration.

The Convener: When was that? It seems a long time ago.

Mary Mulligan: I would not know whether what the cabinet secretary has just said is true. Is the Government in a position to examine employment agencies' rates of pay? My experience is that they do not pay the same rates as the Government, so you may not be promoting a living wage when you have the ability to do so.

Nicola Sturgeon: I will come back to the member with the statistic that she seeks, as I do not have it with me. The Scottish Government is reviewing its pay policy; that review will be published later this year. I have made my views on the issue clear, and there is no huge disagreement between us. Ultimately, the UK Government sets the level of the minimum wage. If members do not

think that it is set high enough, perhaps they should say something about that. I would be more than happy to find some common ground with them on the level of the minimum wage.

Mary Mulligan: As a member of the Scottish National Party, the cabinet secretary does not have the ability to lecture us on the minimum wage.

Nicola Sturgeon: Actually, I think that I do.

The Convener: We will move on. John Wilson has a question.

John Wilson: I understand that Glasgow City Council, under Steven Purcell, has introduced a minimum wage, not a living wage. We need to be careful about the terminology that we use. I have worked for an organisation that promoted a living wage and know all about Unison's campaign in London for a living wage for the 2012 Olympics. There are clear differences in definition between a minimum wage and a living wage.

My question follows on from those of Mary Mulligan. Would the Scottish Government be prepared to ask the UK Government to consider raising the minimum wage to the same level that Steven Purcell has suggested for Glasgow's workers? When the national minimum wage was introduced in 1999, the UK Government department that was instructed to administer it admitted that many of its staff were not being paid the minimum wage that had been set. Currently, the UK minimum wage is £5.90 an hour. If we introduce a minimum wage and ask for that to be imposed throughout the public sector and the Government, the cabinet secretary could ask the UK Government to ask the Low Pay Commission to consider setting the national minimum wage at a level that is more appropriate than the current one.

Nicola Sturgeon: I will discuss that suggestion with my colleagues. The committee may also want to pronounce on the matter in its report. John Wilson is right to make the point that a living wage should not necessarily be equated with the minimum wage.

The Convener: Our economic advisers might have something to say about that. Anyway, there is a debate to be had.

This is not a plea for money, but you will be aware that we have been taking evidence on equal pay. Glyn Hawker of Unison told us last week that, fundamentally, the issue of equal pay is about taking women working in the public sector out of poverty. She said that an increasing majority of women who are in poverty are in work and that it is "a scandal" that many women in that situation work in the public sector in Scotland. In your remit as cabinet secretary, do you accept that equal pay is about taking women out of poverty?

Nicola Sturgeon: Yes.

The Convener: Can you use your role to bring a focus on the issue? I am aware of the argument about who provides the funding, but there is a logjam at this point which, if it is released, could put serious money in the pockets of some of the lowest-paid people in Scotland. Can you use your position and influence to help to break that logjam.

Nicola Sturgeon: It does not fall within my Cabinet portfolio responsibilities, but I am more than happy to raise that point with colleagues. Some local authorities have resolved equal pay issues, but that does not apply so much to others.

The Convener: I was talking about the public sector, and Glyn Hawker represents people in local authorities and the NHS, where there are 12,600 claims.

Nicola Sturgeon: Indeed—there is an issue in the NHS. Some cases have not come to hearing yet. I am very much aware of the issue in the NHS, but there is nothing that I can add to this discussion that would give you information that you do not already have.

The Convener: Can you show us an example from the NHS of a better way of dealing with the issue and fast-tracking it?

Nicola Sturgeon: I am more than happy to look into the suggestion that you are making and to come back to the committee.

The Convener: Thank you.

That is the end of the questioning. Thank you very much for being with us for this item, cabinet secretary—and you will be staying with us for some further items. I also thank your officials for attending; they are going to change round now.

Decisions on Taking Business in Private

12:13

The Convener: I invite committee members to agree to take consideration of the main themes arising from our evidence sessions on child poverty in private at our next meeting and also to take consideration of a draft report on child poverty in private at future meetings.

Members indicated agreement.

The Convener: I should also ask members to agree to take consideration of the work programme next week in private.

Members indicated agreement.

Subordinate Legislation

Housing Support Grant (Scotland) Order 2009 (Draft)

12:15

The Convener: Agenda item 4 is on an affirmative Scottish statutory instrument. I welcome back the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, from whom we are taking oral evidence on the draft Housing Support Grant (Scotland) Order 2009. The cabinet secretary is accompanied by Jamie Hamilton, a policy analyst with the Scottish Government. I invite the cabinet secretary to make any brief introductory remarks.

Nicola Sturgeon: The draft Housing Support Grant (Scotland) Order 2009 sets out the amount of grant that is payable in the financial year 2009-10. The purpose of the order is to provide grant to any local authority that could not otherwise balance its housing revenue account without raising rents to unaffordable levels. Only Shetland Islands Council, because of its high housing debt, continues to qualify for grant, and in 2009-10 it will receive around £1.4 million, payable in 12 equal monthly instalments. Shetland is an exceptional case given that its debt per unit of housing stock is more than four times the Scottish average level. Without the grant subsidy, its rent levels would have to increase from the current average of about £56 to around £72 a week. Currently, all other councils can balance their housing revenue accounts from rental income.

The Convener: Do members have any questions?

David McLetchie: How did Shetland get into this state of affairs? When 31 other councils in Scotland can balance the books, why does Shetland Islands Council, which has benefited substantially from its oil fund for many years, need the Scottish Government to give it a housing support grant of £1.4 million?

Nicola Sturgeon: Obviously, I am not responsible for the period over which the council incurred its debt, but I will make a couple of points. First, Shetland's reliance on the grant is decreasing—this year's grant is around £200,000 lower than last year's. Secondly, although Shetland is now the only council that gets a housing support grant, that has not always been the case. Other councils have received support previously but do not require it now.

On the reasons why Shetland is in this situation, the council has indicated that the expansion of the oil industry in the 1970s meant that council houses were required quickly to house the incoming

workforce, and it had to incur high levels of debt to pay for the construction. There is a difference between Shetland and other councils in that other councils tend to borrow principally from the UK Government, whereas Shetland's debt is internal, as the money was borrowed from the council's reserves. Nevertheless, the debt charges still fall on the housing revenue account, which is why the account cannot balance without this grant.

David McLetchie: So Shetland is lending money to itself, and the Scottish Government is subsidising that, using the general body of taxpayers' money. Is that right?

Nicola Sturgeon: You would have to ask Shetland about the arrangements. It is a historical position, not something that is current, but I do not think that that changes the situation materially. Other councils have borrowed from the UK Government. The fact is that, without the grant, rents in Shetland would rise to unaffordable levels. That justifies the action that the order is taking.

David McLetchie: I can understand why someone might get financial support for borrowing from a third party such as the UK Government—that is what I would call a real debt—but someone borrowing from themselves as part of a book-keeping exercise and then getting financial support to pay their own interest sounds like the sort of financial jiggery-pokery that you might expect from some of the organisations that have come to prominence in the past few months.

Nicola Sturgeon: I do not think that that is a fair comment. Whatever the reasons for the debt—they predate this Government and they probably predate the establishment of the Scottish Parliament—we have a situation in which, without the grant, tenants in Shetland would bear the burden of unaffordable rents. That is not acceptable.

David McLetchie: I have a question on one of my favourite subjects, and it would be remiss of me not to ask it. If Shetland Islands Council were to transfer its stock, would the UK Treasury not write off that debt, thereby sparing us the need to pay a subsidy of £1.4 million a year?

Nicola Sturgeon: As I am sure you agree, the future of the stock is entirely a matter for the people of Shetland.

David McLetchie: Yes, but could you confirm, for the record, that the current deal on the table is that, if the council transferred the stock, the Treasury would write off the debt, which would mean that that money would come from Her Majesty's Government and the Scottish Government would not have to pay for the grant?

Nicola Sturgeon: I am not sure that that is the case in Shetland because of the different nature of

the debt that I explained earlier. The UK write-off applies only to debt from the UK Government.

David McLetchie: In other words, real debts, not money you notionally owe yourself. Is that right?

Jamie Hamilton (Scottish Government Housing and Regeneration Directorate): I am not speaking for the council, but Shetland could equally borrow that money from the UK Treasury. The option would be open to the council to do that if it wanted to.

David McLetchie: Then it could transfer its stock and get it all written off.

Jamie Hamilton: That would be for the council to decide.

Nicola Sturgeon: Neither of us speaks for Shetland Islands Council, but we have a situation in which, without the order, tenants in Shetland would face rent hikes.

The Convener: This is an entirely innocent question—

Nicola Sturgeon: I am sure that it is not.

The Convener: I assure you that it is. How do you set a fair rent? It occurs to me that people in my constituency are not paying a fair rent because they are already paying more than people pay in the Shetlands. We are working pretty hard to keep it down. I would not want to see a disproportionate hike in Shetland's rents, but how do we set a fair rent?

Nicola Sturgeon: I will reserve judgment on whether that is an innocent question but it is a fair question. There is no set level of rent that a council must hit before housing support grant can be paid and, as members will no doubt be aware, there is no precise definition in Scotland of what is an affordable rent. The figures that I used in my opening remarks are based on the average rent throughout Scotland, which is £56 a week. Without the support grant, Shetland would be looking at rents around £72. That is judged to be considerably above the average.

The Convener: I accept that, but in areas such as mine, people are paying £60-odd.

John Wilson: How long are we likely to provide housing support grant to Shetland Islands Council? What period of borrowing did the council establish under the internal borrowing mechanism to build those houses? Was it a 30-year or 50-year period? Does the Scottish Government expect to be picking up the housing support grant for years to come?

Jamie Hamilton: On current trends, the grant would dwindle away to zero in about seven years, but it depends on Shetland's finances over the

next seven years: if they prove to be better, it will be less than seven years.

John Wilson: Is the figure that the cabinet secretary gave for the average rent—£56—the average weekly council house rent in Scotland?

Jamie Hamilton: Shetland's rent is £56; the average council house rent is about £51.

Mary Mulligan: If we did not provide the grant, would the necessary increase cause Shetland Islands Council to have the highest rents in Scotland?

Jamie Hamilton: Absolutely. If you did a comparison today, that would be the case.

The Convener: That concludes our questions, so we move to agenda item 5. I ask the cabinet secretary to move motion S3M-3508.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Housing Support Grant (Scotland) Order 2009 be approved.—[*Nicola Sturgeon.*]

Motion agreed to.

Housing Revenue Account General Fund Contribution Limits (Scotland) Order 2009 (SSI 2009/43)

The Convener: Agenda item 6 is consideration of two negative instruments. The first one is linked to the affirmative instrument that we have just considered, so the cabinet secretary and her officials may stay for this item. Members have received a copy of the order and have raised no concerns. Do members have any points of clarification on the order?

Mary Mulligan: On the general fund contribution, given the present economic circumstances and the increasing demand for affordable rented housing, did the Government ever consider whether it would continue with the policy?

Nicola Sturgeon: We have not specifically discussed discontinuing the limit on general fund contributions. Having such a limit is important because it protects council tax payers from subsidising tenants. I do not say that that we would never discuss or consider such a proposal, but we have not done so to date.

The Convener: There are no other questions, so do members agree that the committee does not wish to make any recommendation on the order?

Members indicated agreement.

The Convener: I thank the cabinet secretary and her officials for their attendance.

Home Energy Assistance Scheme (Scotland) Regulations 2009 (SSI 2009/48)

The Convener: We move to the second instrument under agenda item 6. Members have received a copy of the regulations and have raised no concerns about them. Do members agree that the committee does not wish to make any recommendation on the regulations?

Members indicated agreement.

Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 (Draft)

The Convener: Agenda item 7 is consideration of a draft affirmative SSI, on which we will take oral evidence from the Minister for Transport, Infrastructure and Climate Change, Stewart Stevenson MSP. I welcome the minister and his officials: Allan Crawford and Jeff Gibbons, who are policy officers; and Jacqueline Pantony.

Does the minister wish to make any brief introductory remarks?

The Minister for Transport, Infrastructure and Climate Change (Stewart Stevenson): Convener, I am obliged for the opportunity.

The aim of the order is to introduce legislation providing for the licensing of taxi and private hire car booking offices in the interests of public safety and preventing crime. At present, licensing authorities have legislative powers to license the operation of taxis and private hire cars in their areas, but they currently have no powers to regulate the operation of booking offices.

Over the years, the police and licensing authorities have made repeated calls for the introduction of licensing for booking offices, following concerns that such businesses are sometimes used as a cover for illegal activities such as money laundering and drug-related activities. More recently, the number of reports of involvement of organised crime in the trade has increased. Concern has been expressed that, by buying into or purchasing legitimate taxi or private hire companies and vehicles, criminal elements could be provided with the opportunity to launder the proceeds of criminal activity.

Stakeholder consultation in 2005 confirmed widespread support for the introduction of licensing legislation. That has informed our considerations on the scope of the provisions in the order.

The order will introduce a new licensable activity: the use by a business of premises as a place for the taking of bookings for taxis and private hire cars. The legislation will allow licensing authorities to exercise regulatory control

over the operation of such businesses for the first time.

12:30

The application of the licensing regime will ensure that a copy of any licence application is sent to the relevant chief constable. The police will carry out a fit and proper assessment of any applicant. The enforcement of licensing legislation is a matter for local authority enforcement personnel and, where a criminal offence has been committed, the police.

Introducing the new licensable activity into the Civic Government (Scotland) Act 1982 will allow authorities to regulate the operation of businesses. Where breaches of licences occur, authorities have powers to take punitive action by suspending licences.

I am happy to take questions.

The Convener: Thank you. I invite members to question the panel.

Bob Doris: The fit and proper assessment of applicants for licences is an important aspect of the order. I might be going off at a tangent, but would you be interested in working with the UK Government—given that the matter is reserved—to introduce a similar test for the running of MOT stations? There are concerns that organised criminals also use those as a base.

Stewart Stevenson: I would certainly be happy to work with the UK Administration on that matter. I am not sure that I have any specific powers that would enable me to pursue that, apart from powers of persuasion, but it is increasingly recognised that there are some risks in that area of life.

The Convener: Given the discussions that we have had this morning, I will soon have to ask the clerks to arrange for UK ministers to be at our meetings.

Alasdair Allan: Can the minister give us any more information on the extent of the problem? I know that there is anecdotal evidence from the police, but what problems have come to the fore? What motivated the legislation?

Stewart Stevenson: The matter has been under discussion for the best part of a decade, in fairness. There is a pretty unanimous view from the police, local authorities and people in the licensed taxi trade who want to protect their trade from infiltration by criminals that there is a range of associated criminal activities. The laundering of money is one, and the use of taxis to courier drugs around is another. Prosecutions have not been directly associated with such criminal activities in relation to taxis. However, the order, with the

support of all who are involved, will enable the trade to return to the kind of trade that can be relied on.

Taxis are often used in rural parts of Scotland to transport children to and from school, and they are used by some of the more vulnerable people in our communities as their only means of transport. Particularly at weekends or at the end of an evening at work, lone women or vulnerable people often rely on taxis to take them home. A high standard of oversight of taxis and the confidence that is built by having such a regime are therefore well worth pursuing.

Is there objective, analysable evidence that specifically says A, B and C? Probably not. It is well recognised that the problem exists mainly in city areas and in certain parts of the west of Scotland. It is not universal. However, now is the time to proceed, with the support of the trade and everyone else.

Patricia Ferguson: I am interested in the cut-off point of four vehicles, which is the point at which the order kicks in. I understand from the Executive note why that was arrived at, but are you concerned that those who might have something to fear from licensing might look to diversify, divesting themselves of a larger undertaking and moving into several smaller ones? Will you consider that in due course?

Stewart Stevenson: Our consultation was based on a range of two to five vehicles. I absolutely accept that choosing four at this stage, rather than three, two or five, is a judgment call and is not objectively defensible.

However, we can change the provision through secondary legislation. We will monitor its effects and if it becomes clear that four is not sufficiently encompassing we will be entirely happy to come back to the issue—which, of course, is something that we can do relatively quickly through secondary legislation.

I do not want to pretend that we have used some magic formula. It is, as I say, a judgment call, pure and simple.

Mary Mulligan: Returning to Bob Doris's point that only a fit and proper person can have a licence, am I right in thinking that, under the order, the licence relates to the premises or office rather than to the individuals working in it?

Stewart Stevenson: The licence is provided to a person—in this context, that includes a body corporate such as a limited company. In that case, all the directors would have to be fit and proper persons.

However, the licence covers not only the people who have the controlling interest in a booking office but a specific location. In fact, it

encompasses people who although not formally part of the business exercise some control over it. The purpose is certainly to catch anyone who has control over such an office.

Mary Mulligan: But the licence would not cover everyone who works in the office. Earlier, you referred to security issues with regard to people who use taxis, and those who use them regularly in particular. Obviously the people who work in a booking office have access to such information, but it appears from what you are saying that they will not be licensed.

Stewart Stevenson: That is correct. The licence will not cover individuals who are employed in a booking office, but it will cover the manager, the owner and the people who control and are responsible for what goes on in a business.

Of course, duties that are placed on the business will have to be discharged by people in the booking office. For example, all the calls will have to be recorded—not in audio form, I should add, but details such as which driver and which vehicle is undertaking which journey will have to be written down. The member is quite correct to suggest that certain information will have to be protected, but that will be part of the duty to be discharged by the owners of the business. Indeed, that is the case with many other businesses.

John Wilson: Although I welcome the order, I am concerned by comments made on Monday night's "Panorama" by Graeme Pearson, who said that the authorities are finding it difficult to keep up with the many effective ways that criminals are finding to elude detection. The order is intended to tackle what we perceive to be criminal activities that are taking place in booking offices. However, as other colleagues have made clear, such activities might extend beyond the booking office; indeed, we know from various attempts to seize the proceeds of crime that criminals have offloaded money, property and whatever else to other named individuals. In an infamous case that is still going on in Glasgow, the state has paid out legal aid for the defence of a criminal's activities while the individual's estimated fortune of £2.5 million has been farmed off into some bank and cannot be accessed.

Although the order makes it clear that the owners of a licensed booking office will be responsible, what is to stop criminal activities taking place if someone fronts the organisation for another individual? Moreover, are there any controls of individual taxi operators? After all, many booking offices do not employ the taxi drivers directly; instead they hire out taxis or private hire cars to drivers.

One issue is the authority of local authorities to license taxi drivers and private hire car drivers. We

are trying to pass legislation that prevents money laundering, but how will we prevent money laundering by people—whether they are asked to drive taxis or private hire cars or to front booking offices—who have cleared all the police checks and whom the police do not consider to be unfit and improper persons to hold licences, but who front organisations that are clearly linked to criminal activities?

Stewart Stevenson: Mr Wilson raised quite a lot of issues. I will make the obvious point. His last comment was about organisations that are clearly involved in criminal activity. If such involvement were clear, the reference under the order to the chief constable would give them the opportunity to test whether somebody was a fit and proper person—that is much better than me or any other minister testing that. I made the point that this is not just about the applicant but about whether the applicant controls what is going on. The intention is to catch the controlling person under the provisions.

Implicit in Mr Wilson's remarks were two issues. I was a member of the Justice 1 Committee two or three years ago when it met Graeme Pearson, who suggested—I hope that I do not misquote him—that between 1.5 and 5 per cent of gross domestic product in Scotland came from the drugs industry, so we know that the problem is significant. Will the order magically transform the figure to virtually nil? No—of course not. The order simply provides an additional useful power that the taxi trade wants to be in place, to protect it from being abused by criminal elements.

The order will help, but it is by no means presented to the committee as the final and total answer to an insidious problem. As Mr Wilson properly suggested, the intervention is likely to lead to criminals looking for other ways to launder money. So be it. I am doing my bit and I hope that we will do what we can in other ways.

Mary Mulligan: That brings me back to the point that I pursued earlier. Would it not be better to license people who work in booking offices? Did you consider that?

Stewart Stevenson: To be candid, we did not consider that. However, if we saw that as an issue, we would be happy to consider such licensing further. Simply licensing booking offices has a benefit. It is clear that responsibility to run the operation will rest with the person who holds the licence.

Forgive me, convener—I should have said in response to Mr Wilson's questions that taxi drivers and drivers of private hire vehicles are subject to a licensing regime. By making the order, we simply complete the picture.

Bob Doris: I promise to be quick. Do people who work in taxi offices need to be licensed? Could the chief constable say that, if known associates of the potential licence holder were disreputable, the applicant would fail the fit and proper person test? People who are in and around licensed premises could be covered indirectly.

Stewart Stevenson: Mr Doris makes a perfectly reasonable point. The chief constable is probably in the best position to determine who fit and proper persons are and to maintain an interest in any inappropriate organisations.

The licensing regime creates the power for premises to be visited at any time without a warrant. Visits to unlicensed premises would require a warrant, in the normal course of matters.

Drawing such premises inside the regime has a range of benefits. It makes supervision in a broad sense easier to undertake and it contributes to dealing with various kinds of criminality throughout Scotland.

The Convener: Members have no more questions, so we move to item 8. I ask the minister to move motion S3M-3507.

Motion moved,

That the Local Government and Communities Committee recommends that the draft Civic Government (Scotland) Act 1982 (Licensing of Booking Offices) Order 2009 be approved.—[*Stewart Stevenson.*]

Motion agreed to.

The Convener: I thank the minister and his officials for their attendance.

Meeting closed at 12:45.

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