

# **LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE**

Wednesday 4 November 2009

Session 3

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2009.

Applications for reproduction should be made in writing to the Information Policy Team, Office of the Queen's Printer for Scotland, Admail ADM4058, Edinburgh, EH1 1NG, or by email to:  
[licensing@oqps.gov.uk](mailto:licensing@oqps.gov.uk).

OQPS administers the copyright on behalf of the Scottish Parliamentary Corporate Body.

Printed and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by  
RR Donnelley.

---

# CONTENTS

Wednesday 4 November 2009

Col.

LOCAL GOVERNMENT FINANCE INQUIRY .....	2525
HOME OWNER AND DEBTOR PROTECTION (SCOTLAND) BILL: STAGE 1 .....	2547
DECISION ON TAKING BUSINESS IN PRIVATE .....	2569

---

## LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

27<sup>th</sup> 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:

Rachel Grant (Law Society of Scotland)

Eric Leenders (British Bankers Association)

Maureen Leslie (Insolvency Practitioners Association)

Blair Nimmo (Institute of Chartered Accountants of Scotland)

John Swinney (Cabinet Secretary for Finance and Sustainable Growth)

### CLERK TO THE COMMITTEE

Susan Duffy

### SENIOR ASSISTANT CLERK

David McLaren

### ASSISTANT CLERK

Ian Cowan

### LOCATION

Committee Room 4



# Scottish Parliament

## Local Government and Communities Committee

*Wednesday 4 November 2009*

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

### Local Government Finance Inquiry

**The Convener (Duncan McNeil):** Good morning. Welcome to the 27<sup>th</sup> meeting in 2009 of the Local Government and Communities Committee. I remind members and the public to turn off all mobile phones and BlackBerrys.

Item 1 on our agenda is oral evidence taking for our local government finance inquiry. I welcome today's panel of witnesses: John Swinney MSP, Cabinet Secretary for Finance and Sustainable Growth; Bill Stitt, assistant team leader in the local government finance division; and David Henderson, deputy director of the local government finance division. I offer the cabinet secretary an opportunity to make some brief introductory remarks before we move to questions from the committee.

**The Cabinet Secretary for Finance and Sustainable Growth (John Swinney):** I welcome the inquiry that the committee is undertaking, as local government and its relationship with the Scottish Government are crucial if we are to move forward through difficult economic times. Local government finance is clearly a major contributor in that respect.

The relationship between central and local government is working well. When we came into government, we realised that we needed co-operation and a strong partnership with our local authorities and set out to achieve that. The details were included in the concordat that was signed in November 2007. The level of funding that we were able to provide to local government was a strong driver of the new partnership, but we knew that the relationship had to be about more than money. As a result, we gave a commitment to reverse the previous declining trend and to increase local government's share of the Scottish budget year on year. We have fulfilled that, despite the tightest financial settlement since devolution. In return, we have agreed a set of shared outcomes that we want to achieve jointly. Local government is working towards that goal.

Over the 2008 to 2011 spending review period, we are providing local government with £35 billion. Local government's share of the budget will

increase from 33.4 per cent in 2007-08 to more than 34 per cent in 2010-11. The prospect of future year-on-year real-terms reductions in funding from the United Kingdom, plus a loss of income as a result of the economic downturn, together with higher demand for some services, will make life challenging for all our local authorities. We are continuing to work in partnership with the Convention of Scottish Local Authorities to consider the financial situation in the medium term and to identify the steps that will be required to ensure that the vital services that local government provides are maintained.

When money is scarce, it is vital that everyone prioritises and maximises the outcomes that are achievable and that we understand exactly what the available resources can deliver to keep the impact of the situation to an absolute minimum. The Government has worked effectively with COSLA on the economic situation. We have worked jointly to support the country in tackling the current downturn. The measures that we have taken include capital acceleration, provision of additional resources to allow councils to freeze their council tax levels and removal of the burden of paying business rates from a considerable number of small businesses.

The committee is aware that I initiated a review of the existing needs-based grant distribution mechanism. That joint review, with COSLA, has been completed and I am considering the recommendations that are contained in the report. Any agreed recommendations will be put in place for the start of the next three-year local government finance settlement in 2011-12. I would be delighted to answer questions.

**David McLetchie (Edinburgh Pentlands) (Con):** Good morning. I want to start today's discussion by focusing on the issue of pay and employment levels in Scotland's councils. Can you confirm the contractual position, as negotiated with the trade unions, in relation to projected salary increases in the 2009-10 financial year and indicate what pay increases are projected for 2010-11 and 2011-12?

**John Swinney:** Do you mean in relation to local government?

**David McLetchie:** Yes.

**John Swinney:** I am not party to the negotiations on pay levels in local government, but my recollection is that the pay deal for 2009-10 was of the order of 2 per cent. Because, as I said, I am not party to those negotiations, I do not ordinarily have that number at the front of my mind. For 2010-11, some local government employees will be involved in existing three-year pay deals. For example, teachers are in that category and police officers will be in it until the

end of 2011. There is no general local government staff pay deal beyond March 2010. That will be negotiated separately by local government beyond 2010. I am not aware of any pay deals that are extant for the period 2011-12.

**David McLetchie:** Do you have an estimate of the increase in the payroll bill for general staff for 2010-11, as part of your projections for the financial support that the Government gives to councils?

**John Swinney:** It would be entirely inappropriate for me to comment on that, because a negotiation has to be undertaken by the local government employers with the trade unions. That negotiation has not yet been completed, so it would be singularly unhelpful for me to speculate on the pay increase that would be appropriate.

**David McLetchie:** Yes, but the Government pays 80 per cent of the bill, in the form of central grants and business rates allocations. Is it appropriate that those matters should be negotiated wholly independently of the Government and that the Government, as the major funder, has no view on the appropriate level of salary increases in the current financial climate?

**John Swinney:** It would be completely inappropriate for me to intervene in that process. It is for local government to decide what its approach will be to pay levels. The Government puts in place resources that provide a significant amount of local authorities' funding, but local authorities are independent statutory institutions and are therefore perfectly entitled to take a decision on pay. Obviously, they must take a decision that is sustainable within the resources that they have available, but that is entirely a question for local government to judge and not one for me to consider.

I add the caveat that the Scottish Government produces a pay policy. We have produced the policy for 2009-10 and we will produce one for 2010-11, which I expect to be published in the spring of 2010 and which will set out the general parameters of the pay deals that ordinarily come within the ambit of the Scottish Government. That affects our non-departmental public bodies that have pay remits that have to be considered or relevant executive agencies that are covered by the public sector pay policy. Local authorities might consider and take cognisance of that policy, but they are free to consider another approach.

**David McLetchie:** The other side of the coin is the number of people who are employed in local government in Scotland. We have received evidence that, according to the most recent figures, the number of full-time equivalent employees in Scotland's councils has contracted by 6,700. Has the Government, in conjunction with

its wider economic advisers, made any estimate of what further contraction in local government employment numbers might arise as a consequence of the financial settlement for 2010-11 and the overall state of council finances?

**John Swinney:** It is hard to dispute the proposition that there will be a reduction in public sector employment in the years to come; that is almost inescapable according to estimates of the future financial position, particularly the revenue budgets, for the next five years. I have shared my expectation with Parliament a number of times, and I expect that we will have a number of years of real-terms reductions in the revenue budgets that are available to the Scottish Government until 2014-15, or 2015-16, or sometime around then.

As I said, it is inconceivable that we will see that pattern of real-terms reductions in budgets taking its course without reductions being made in public sector employment. I do not know what the exact numbers will be beyond 2010-11; I have no revenue budget numbers available to me beyond 2011 that allow me to give a definitive answer on that point. However, as a general observation, that is my conclusion.

**David McLetchie:** I have a question on another subject that is related to the committee's recently completed inquiry into equal pay and single status. You will recall that when we debated the committee's report in Parliament, you were able to announce that the Government was looking at a capitalisation scheme to help local authorities to meet some of the historic costs of settling claims. Can you update the committee on the progress of that scheme? Are you able to put a number on the size of the scheme? You were reluctant to do that at the time of the debate. How are you getting on with obtaining approval for the scheme from the Treasury?

**John Swinney:** Mr McLetchie is always keen to know how I am getting on with the Treasury. We have had good discussions and the framework of the scheme is in place, so we have no discussions to hold with the Treasury on the framework and the architecture of the scheme.

As I said to Parliament, I am unable to confirm the exact sum of money that would be capitalised because it has to be the subject of an evaluation of the business cases that are made by local government. That will be the course that we take. Obviously, the business cases have to be made to the satisfaction of the Scottish Government and Her Majesty's Treasury, and that is quite proper in this case.

We received the Treasury's approval of the draft scheme on 25 September. Consultation with local government on whether we will proceed with the scheme was issued on 7 October. It closed on 22

October, and applications are expected by 30 November. I expect to be in a position to make decisions on the business cases that I receive by 31 December.

**David McLetchie:** The end of the year.

**John Swinney:** Yes. Once that process has been gone through, I will report to the Parliament on the financial issues that have been associated with it.

**David McLetchie:** To return to the issue of contracting staff numbers in local government, it was suggested—by one of the local government witnesses, I think—that there might be some scope for capitalising redundancy costs where there was a long-term contraction in the number of people employed in a particular service. Is that matter being considered by you and COSLA in your private meetings?

10:15

**John Swinney:** It is certainly an option. I have not discussed the issue with COSLA, although local authorities have approached officials about it. It is a possibility, but it would have to be agreed with the Treasury. As I said during the debate, on the capitalisation issue on equal pay, we cannot expect the Treasury to agree to every scheme and initiative that comes forward. We will endeavour to secure the mechanisms that allow us to be as supportive as possible in any question that is raised with us, but I have to be mindful of the requests that we place in the Treasury to support schemes of that type.

**Mary Mulligan (Linlithgow) (Lab):** Good morning, cabinet secretary. In response to David McLetchie, you said that you are reluctant to intervene in the on-going discussions on pay settlements. However, do you intend there to be a council tax freeze in 2010-11 and, if so, do you think that that will impact on councils' ability to negotiate pay settlements?

**John Swinney:** I have made absolutely clear, as part of the Government's priorities, our view that a council tax freeze will help individuals to manage the financial pressures that they face. The Government has funded a freeze for two successive financial years, and it is a proposal for the draft budget that we fund a freeze for a third successive financial year. The Government is providing £70 million to support a council tax freeze. The gross domestic product deflator in the budget is 1.5 per cent. Essentially, the £70 million would equate to a 3.2 per cent increase in the council tax. Councils will get their share of that £70 million, but inflation will be running at less than half that rate, so there is a financial benefit to local authorities in the council tax freeze funding support that we are making available. I am sure

that that will help local government to manage the pressures that they wrestle with in relation to public finances.

I reiterate the point that I made to Mr McLetchie: negotiation of the pay settlement is entirely a matter for local government to take forward.

**Mary Mulligan:** One of the ways in which local government has dealt with pressures, especially in relation to staff costs, has been to outsource services. We have had evidence that that has sometimes resulted in the voluntary sector employing people on lesser wage rates and lesser conditions. Do you have a view on that?

**John Swinney:** Mary Mulligan will appreciate that the issue of differential rates of pay between the public sector and the third sector cannot be solved in the short term. The issue has been with us for a considerable time. As members, we have all been lobbied by the voluntary sector on the issue and, if my memory serves me correctly, the committee may even have taken evidence on it. We are taking steps to remedy the situation. We secured a joint agreement between the third sector, as represented by the Scottish Council for Voluntary Organisations, COSLA and the Government—in essence, it was on the role of the third sector in public service delivery. Progress is starting to be made on some issues, although I do not for a moment suggest that they are all now resolved.

We are interested in members of the public who are employed in the areas that we are discussing being properly remunerated for their activities, and the Government will do what it can, through the agreement that has been negotiated between the Government, COSLA and the SCVO, to promote that fair and appropriate approach to remuneration in the third sector.

**Mary Mulligan:** The witnesses who came to committee, particularly those who spoke about the voluntary sector, characterised the pay negotiations with local authorities as being in complete crisis. Do you share that view?

**John Swinney:** No—that is not a view that has been expressed to me by people in either the voluntary sector or local government.

**Mary Mulligan:** You have said that there are continuing discussions with local authorities and the SCVO regarding how to bring about an equivalence of value for the services that are delivered in the voluntary sector. At the moment, the gap between council employees and voluntary sector staff is increasing. Will it continue to increase? How do you stop it increasing? How do we recognise the jobs that are done by those voluntary sector staff who deliver essential services for communities?

**John Swinney:** I have absolutely no dispute with Mary Mulligan's last point. I have made clear many times the value that the Government attaches—and the value that I attach personally—to the role and work of the voluntary sector. Many vulnerable individuals in our society are enormously dependent on the services that it provides.

However, there is compelling evidence that demonstrates that the voluntary sector's support to vulnerable individuals can deliver better outcomes than public sector support can in a variety of different areas, simply because the third sector is able to provide services in a more flexible and appropriate fashion, which meets the needs of individuals. That fact should be embraced by local government and other public bodies, and we should encourage that in two ways. First, we should ensure that decisions are taken in the context of the principles and contents of the agreement to which I referred, between the Government, the third sector and councils. That agreement is about protecting the nature of services that are available to vulnerable individuals and about ensuring that the third sector is able to provide those services.

Secondly, we must make progress on pay. Where a service was formerly provided by the public sector and is now provided by the third sector, it is a matter of concern if the level of remuneration is now so different that it is not appropriate. We need to tackle that, and the agreement that we secured with COSLA and the voluntary sector was designed to do exactly that.

**Mary Mulligan:** My next question is about the awarding of contracts, to both the voluntary sector and social enterprises. Have there been discussions about including a community benefit clause in negotiations for contracts?

**John Swinney:** In our approach to procurement, community benefit clauses now play a much more significant part in the negotiation of contracts of the type to which you refer. There are a number of issues around the procurement of services on which members of the Parliament have expressed concern with regard to the tendering processes that are used. We have entered into discussions with various players, including those in the care sector, which, through third sector organisations, has made a very good contribution towards strengthening the tendering process to ensure that some of the practices that members are concerned about are tackled as part of the improvements that are being made. For example, there is now a presumption against an auction process in the procurement of some care packages. Those discussions have helped to build confidence in the way in which such issues are tackled within local government.

**The Convener:** Before we move on from the issue of what flexibility local government has to deal with the situation, it is worth noting that it was conceded at our round-table session that local government has been concerned over several years about the lack of flexibility that is available to it. However, Professor Stephen Bailey said that, the way that things are going, local government in Scotland is becoming more, not less, dependent on the centre for finance. Our old friend, Henry McLeish, who was also on the panel, said that

"local government has been creating a lot of inflexibility for itself, especially in the past two years. All the concordats, single outcome agreements and other initiatives, culminating in the council tax freeze, suggest to me that local government is becoming more aligned with central Government."—[*Official Report, Local Government and Communities Committee*, 1 September 2009; c 2207-08.]

There is a big difference or disagreement between your suggestion that local authorities have a greater degree of flexibility, including an inflation bonus that gives them greater financial flexibility, and the evidence that we have taken, which suggests that there is less flexibility rather than more.

**John Swinney:** I suppose that it is reassuring that Mr McLeish is still at odds with me about some points these days, as there is such vigorous agreement with Mr McLeish on many other questions. I simply leave that as a piece of morning entertainment.

One of the key words in that quotation from Mr McLeish is "aligned". There is better alignment between the work of public bodies and local government and the work of the Scottish Government at present, and I make no apology for that. To me, alignment is about ensuring that we avoid a situation in the public sector in which one group of organisations points one way and another group of organisations points another way. We must have a discussion between different public bodies about what we are trying to achieve for Scotland and for some of the vulnerable individuals in our society across a range of questions and about what the common routes of travel will be. I would call that alignment, although I suspect that your witnesses would call it far too close a relationship between local government and central Government.

I speak to members of the public constantly, just as I did when I was in opposition. They tell me about their frustration about the fact that public bodies point in different directions in their priorities—that one bit of government contradicts what another bit of government is doing. I do not for a moment suggest that we have eliminated all of that, but the process of alignment is helping to address it.



The local government finance arrangements mean that local government is significantly dependent on central Government for its finances. There are, of course, other ways in which that could be tackled, but they would require the Parliament to be equipped with much greater flexibility over taxation powers. Within the limitations of our present powers and the requirements of those powers, I do not see how we could fundamentally recast the fact that local government looks to central Government for the overwhelming majority of the resources on which it depends.

10:30

**The Convener:** You mentioned earlier that £70 million is available, but the Scottish Government decided to freeze the council tax with it. I do not disagree with that—it is entitled to do that—but is that approach sustainable? Will it hold for this difficult period? Should it be our priority to use that pool of money to freeze the council tax and not in another way when services will be under tremendous strain?

**John Swinney:** There is always a choice on that question, convener. As the committee is well aware, the £70 million is an implicit part of the Government's draft budget, which is yet to be agreed by Parliament. My argument is that, at the moment, households require a bit of support from the Government, when it can be made available, to protect their incomes, because not only the public sector but individuals and households face many challenges.

I come back to the point that I made to Mary Mulligan a moment ago. We have a differential between the inflation rate that will run on core services and the fact that a £70 million increase represents the equivalent of an increase in council tax of in excess of 3 per cent. That provides a financial advantage for local government to deploy in any fashion that it wishes. As I should have said in answer to your question about Professor Bailey and Mr McLeish, one of the other major factors is that, by relaxing the extent of ring fencing, we have given local authorities much greater flexibility to plan their resources and interventions to suit their individual circumstances.

**The Convener:** Do COSLA and the local authorities accept your argument? What debate and discussion has taken place about the inflation bonus? Do they accept the figures? What do you calculate the inflation bonus that is now available to local authorities to be, and do they agree with that figure?

**John Swinney:** I have not discussed those numbers with local government.

**The Convener:** Do you have the numbers?

**John Swinney:** I have just given them to the committee. They are crystal clear.

**The Convener:** I am talking about the inflation bonus.

**John Swinney:** On page 15 of the draft budget, I state that the budget is set against

"the latest estimated GDP deflator published by HM Treasury of 1.5%".

The £70 million that I have available equates to a 3.2 per cent increase in the council tax so, on a rough calculation, I would say that the difference is about £35 million or £37 million of advantage for local government. That takes into account the differential in inflation.

**The Convener:** That is money that local authorities now have that they did not have before. Has that figure never been discussed with COSLA or the local authorities? Is there no agreement on that? Have you not passed it on? Did you not think that it would be helpful to have that discussion with them?

**John Swinney:** I have no reason to have that conversation with COSLA because, at the outset of the spending review, I set out the approach that we would take to the £70 million. At no stage did I say to local government that the money that I made available for the council tax freeze would depend on the rate of inflation at any given time. I could have introduced variability and said that the proportion of the budget for the council tax freeze would be driven by the retail prices index figure at, for example, September each year. If that had been the case, I would have set it at -1.3 per cent this year, but I did not do that. Instead, I put in a fixed sum of £70 million each year because that was the calculation that was driven at the start of the spending review. We have had no reason to re-examine that because I have never cast any doubt on whether local government would receive that amount.

**The Convener:** So, in this new relationship with local government, you do not need to discuss such matters and benefits.

**John Swinney:** As I think I have explained to the committee before, we have a continuing discussion about a variety of the financial issues that we face. I talked to COSLA and the leaders of all its political groupings in advance of publishing the draft budget in September. I listened first of all to their concerns about the financial situation and then secured an agreement from them to work with the Government to deal with the financial pressures that we face as a result of the changes to the spending review picture with which we are all familiar.

**The Convener:** I have a final point before we move on. I think that you mentioned in your

opening remarks that the budget share available to local government is 34.6 per cent.

**John Swinney:** I said that it was 34.1 per cent.

**The Convener:** The Scottish Parliament information centre figures that we have are 33.9 per cent, which as I understand it—

**John Swinney:** For which financial year?

**The Convener:** 2010-11.

**John Swinney:** The number in front of me, from the Government's perspective, is 34.09 per cent, but we will have a discussion with SPICe about that if necessary. The key point is that I said during the spending review 2008-09 that the Government would reverse the declining share of the Scottish budget that is commanded by local government and increase the proportion. That is precisely what we have done.

**The Convener:** I go back to what I said before: the Scottish Government says that it is giving 34.1 per cent of the Scottish budget to local government in 2010-11, but according to SPICe figures it has given local government a reduced figure of 33.9 per cent. For a small local authority such as Inverclyde, that difference could be in excess of £4 million, which is no small matter. Right across local authorities it is no small matter; it is not simply an issue that needs to be discussed with SPICe. As I understand it, the figures to which I referred are SPICe figures and there is a dispute about them between the Scottish Government and the Scottish Parliament information centre, which is no small matter either.

**John Swinney:** I am certainly happy to get my officials to explain to SPICe where the numbers come from. The basis of the Government's calculation is all the money that goes into local government to fund services—and not all of it comes from the budget line in table 9.01 on page 135 of the budget document.

**The Convener:** Surely you are not disputing the SPICe figures.

**John Swinney:** Yes, I am, because what I think drives the SPICe figures is the £11.85 billion figure on page 135 of the budget document, but it does not represent the total amount of money that goes to local government. The total amount is £11.979 billion, which takes in other resources—for example, from the justice budget to pay for police numbers.

**The Convener:** Has there been a change of which I have not been aware? Perhaps there have been changes during the past few years.

**John Swinney:** No.

**The Convener:** Has there been any dispute about how SPICe calculated the share since 2002? Why has it happened now?

**John Swinney:** I have no idea, but on a like-for-like basis I can give you figures that demonstrate that when this Government came to office, local government was getting 33.39 per cent of the Scottish budget. When this parliamentary session ends, local government will get 34.09 per cent of the budget.

**The Convener:** Again, there is a variance in the figures. We can bandy figures about, but we need to resolve the issue. In 2007-08, the SPICe figure was 32.3 per cent. Is that different from the figure that you have just given us?

**John Swinney:** Yes. I am giving you a like-for-like comparison based on local government's share of the Scottish budget on the basis on which we have always shown the figures during the spending review. You mentioned the 2007-08 figure from SPICe, which is lower than the figure that I am using for that year. In any case, even if SPICe's figures go from 32 per cent to 33.9 per cent while my figures go from 33.3 per cent to 34.1 per cent, the key point is we both agree that local government is getting a rising share of the Scottish budget. That is exactly what the Government said would happen.

**The Convener:** We look forward to your resolving the issue for the committee's benefit.

**John Swinney:** I will be delighted to do so.

**Jim Tolson (Dunfermline West) (LD):** Mary Mulligan referred to the council tax freeze. The cabinet secretary and I do not share the same view about the freeze and its effects on local government, but he is right to point out that for the past two financial years his Government has put the freeze in place and seeks to do so in the forthcoming year. However, I suggest that with the great pressures that local government has found itself under in recent years, having been given more and more responsibility through the concordat and so on, and given the fact that in the financial downturn its income from planning, selling off land and many other areas has been reduced, the effects of the freeze have been negative. At what point will you and the Government decide that the freeze is unsustainable and act to ensure that services are not too adversely affected and, indeed, can still be provided?

**John Swinney:** My only response to that question is that the Government considers the council tax freeze to be sustainable in the 2010-11 draft budget, which is the only proposition before us. The question whether the freeze will be continued beyond that time will be considered in the formulation of the 2011-12 budget, which itself

will be heavily informed by the spending review. At that point, we will have to consider our overall financial position, but the outcome of that review will not be available to us until after the UK election in spring 2010.

Although I understand Mr Tolson's perspective on the freeze, I simply point out that his constituents have benefited from their council tax not increasing by the rate at which it was increasing before this Government took office. I do not need to remind the committee or Mr Tolson of the significant concern expressed at that time by members of the public, who find the council tax a very significant burden to bear, and I think that the Government's intervention has helped to address much of that concern.

**Jim Tolson:** I do not dispute that some people find the tax a significant burden, but they can be helped in a number of ways. If the freeze led to a reduction in front-line services, that would surely concern not only me and you but all members of the public.

The committee took a lot of evidence on efficiency savings, particularly with regard to the significant savings that Scottish Water has made in recent years. I realise that, whereas local authorities are multiservice providers with a wide focus on the staffing needs of their front-line services, Scottish Water is an intensive single-service provider, but do you think that local government can learn any lessons from the efficiency savings that Scottish Water has made? If so, how can its example be taken forward?

**John Swinney:** I am not sure whether Scottish Water's headquarters are in Mr Tolson's constituency; if not, they cannot be far away from it. The organisation's performance in improving efficiency has been excellent and it has had clear and effective leadership in that task. However, those savings have been achieved with significant reductions in the number of Scottish Water employees, which brings us back to the question about public sector employment that Mr McLetchie asked at the start of the session.

As we are entering a period of much greater pressure on public expenditure, it is imperative that we share across the board different bodies' experiences of meeting the challenge of delivering efficiencies. That is what the efficient government programme and the work of the Improvement Service in local government are designed to do. It is also a material part of the agenda that Sir John Arbutnott, from whom the committee has taken evidence, is looking at on behalf of a number of local authorities and other public bodies.

10:45

**Jim Tolson:** I appreciate the points that you make. However, as you would understand, I have spoken to senior executives of Scottish Water and I know that it has done more than make savings in the numbers. We are trying to get to the crux of the matter, which is that the organisation has become much more efficient. The number of complaints to members and, I am sure, the cabinet secretary with regard to delivery of Scottish Water's services has gone down significantly. It is seen as being much more efficient, regardless of whether it has trimmed the workforce, although you were right to say that it has.

**John Swinney:** For the avoidance of doubt, I appreciate and warmly endorse what Scottish Water has been able to achieve. Mr Tolson is right to say that there have been significant improvements in productivity, effectiveness, efficiency and customer handling in Scottish Water. That has been done at a time when charges for households have risen more slowly than the rate of inflation, which is a significant achievement into the bargain.

**Jim Tolson:** The committee has taken evidence from Professor Alan Alexander on the single outcome agreement process. He thought that it did not encourage efficiencies and that having a clear regulatory framework would help. Would you like to comment on the evidence that Professor Alexander gave to our inquiry?

**John Swinney:** I have a different view on single outcome agreements, which are effective in providing the type of focus that is required not just for local government but for all public bodies at local level.

This takes us back to the point that I made about alignment. As members, we all appreciate that there is nothing more frustrating to members of the public than being passed from pillar to post—from one public service provider to another—when they are on a journey through the public services. We have all had cases involving frail, elderly members of the community who have had an incident and been dealt with by the local authority, the health service and the third sector. If that journey is not smooth and well supported, it causes considerable anguish to the individuals affected. Single outcome agreements can help us to provide a clear focus to the delivery of public services at local level.

Single outcome agreements also allow the formulation of an agreed sense of what a range of public sector providers at local level are trying to achieve, which helps to improve the clarity of the agenda that is pursued at that level.

**Jim Tolson:** I am grateful for those comments. Finally on efficiency savings, we understand from

COSLA that no audit to assess the robustness of local efficiency statements has been carried out to date. We would be interested to know whether you think that that should be a continuing process or whether a more robust analysis of the system is required.

**John Swinney:** Local government reports on its performance in relation to the efficiency programme through the reporting mechanisms that the Government takes forward. I am a little surprised to hear local government say that there is not enough auditing—most of the time, it tells me that there is too much. Clearly, efficiency issues are material to the best-value approach that Audit Scotland is pursuing.

**Jim Tolson:** That is fair enough. The evidence that we received—

**The Convener:** Your surprise would be justified, but COSLA was not asking for more audits. There was a discussion with Professor Alexander, who proposed more regulation. He argued that regulation and auditing were the means by which efficiencies were gained in Scottish Water and compared that arrangement with the single outcome agreements, which he thought were failing. One example was that there are no audits of local efficiency statements and a lack of scrutiny in that process. Does that situation not need to be addressed? We all need to be assured that progress is being made to ensure, as your colleague has said, that we get more bang for our buck.

**John Swinney:** Placing in the Scottish Water context Professor Alexander's proposition that we can achieve all those things through regulation, I believe that it ignores the effectiveness of the leadership and workforce contribution to improving the organisation's efficiency. It was not just regulation that delivered the improvement in Scottish Water's performance; it was also the leadership of the management, the board and the chairman, and the active contribution of the workforce to that process.

If we tried to replicate that regulatory environment in local government, we would essentially remove any vestige of local flexibility. There is a fundamental difference between setting up a regulatory framework for a single national entity called Scottish Water and trying to apply that to 32 local authorities. The advantage of single outcome agreements is that they no longer involve just local authorities; they involve a range of public sector partners at local level: the local authority, the police, the health service, the fire and rescue service, the third sector and a variety of others. The focus of single outcome agreements is now very much on ensuring that those bodies work together for a common purpose. I think that we are seeing the fruits of that.

**The Convener:** We are focusing on local efficiency agreements. Is there not a case for ensuring that they are robust and that progress is being made? How do we measure that?

**John Swinney:** I thought that my answer to Mr Tolson a moment ago dealt with that point. Audit Scotland assesses the performance of local authorities. It has done the best value 1 exercise and is preparing for the best value 2 process, and the efficiency agenda is material to the issues that Audit Scotland considers in that respect.

**Patricia Ferguson (Glasgow Maryhill) (Lab):** Cabinet secretary, it has been put to us that the current business gateway contracts are too rigid to allow people to cope properly or successfully with the results of the recession. Do you have any comments on that?

**John Swinney:** Obviously, I would listen carefully to any evidence of that sort because we must ensure that the business gateway services are appropriate for the times and people's requirements. Clearly, given the circumstances that we are in, companies and the type of advice that they require will change. My priority would be to ensure that the advice that is available through the business gateway is appropriate to people's needs. If there is an issue about that, I would be happy to consider it.

**Patricia Ferguson:** It is not something that has been raised elsewhere, then.

**John Swinney:** It is something that has been raised with me by the Federation of Small Businesses, and it is part of the discussions that I am having with the FSB. Obviously, I am happy to take any further evidence from the committee in that respect.

**Patricia Ferguson:** Have you had an opportunity to consider what benefits have actually accrued from the devolution of the local economic development function to local authorities? Are they the ones that were expected?

**John Swinney:** What has become clear to me, when I look at how local authorities have responded to the economic situation, is that quite a number of local authorities—Patricia Ferguson will be familiar with this from her representation of the city of Glasgow—have themselves formulated economic recovery plans that take into account the fact that some of the issues around asset realisation, to which Mr Tolson referred, are not quite what people expected. Planning gain has most definitely not been what was expected.

I welcome the range of contributions that local government has made to the economic recovery. Part of my objective in the enterprise networks reform was to ensure that local authorities were activated as players in delivering economic

development locally. Any idea that local authorities somehow are not key players in making the local economy effective and prosperous misses an enormous opportunity to engage those organisations and to ensure that their interventions are helpful and beneficial to the development of the local economy.

**Patricia Ferguson:** The cabinet secretary is correct to identify my interest in the city of Glasgow. The committee has received evidence on the function outwith the cities of Glasgow and Edinburgh—I think that it was described as a Cinderella function. We heard that the devolution of the function perhaps has not had the same outcome as it has in cities such as Edinburgh and Glasgow. Have you received similar information?

**John Swinney:** That information has not been shared with me, but I am happy to consider it from the committee.

Local authorities throughout the country are very much involved in the process of economic recovery, and I have met local government representatives to discuss the issues over some time. Perth and Kinross Council, part of whose area I represent in Parliament, has formulated an economic recovery plan, which is actively deployed. Just a few weeks ago, in late September, I was in Inverness to inaugurate the extension and roll-out of the business gateway service to the Highlands and Islands where, previously, the service had not existed. I spoke to people from a range of companies at the inauguration of the service. Some of them were from the city of Inverness, but others were from Moray, where the service has been deployed on a satellite basis by Highland Council. That is an excellent example of a shared service across boundaries being undertaken by a larger authority on behalf of a smaller one. There was tremendous enthusiasm about the effectiveness of the support for the service that has been put in place.

The argument fits into a general point about the role of local government. For some time, the perception was that local government had nothing to do with the economy, but that rather ignored the planning and transportation responsibilities of local government, which are two significant factors in the development of a local economy. The steps that we have taken to reinvigorate local government's involvement in local economic development have been beneficial in assisting people through the difficult times that we face.

**Patricia Ferguson:** My final question is slightly at a tangent, although it is based on something that the cabinet secretary has just said. The committee has taken a particular interest in the town centre regeneration fund, as have I. We had hoped that the second tranche of funding would be announced at the end of October, but the date

became the beginning of November. I do not think that we have a date now, although some time later in November has been mentioned. I am not particularly concerned about that although, obviously, the sooner we get the announcement, the better. I understand that the dates can slip and that issues can arise about when announcements are properly made. However, given that the money is to be expended prior to the end of the current financial year and that bidders might not know whether they have been successful until the end of November or thereabouts, have you discussed with Mr Neil a possible extension for bidders, to allow them to accommodate what will be a curtailed timeframe for their projects?

**John Swinney:** Patricia Ferguson makes a fair point, particularly in relation to the second tranche of applicants. There is perhaps a different consideration in relation to the first tranche. However, it is an issue that Mr Neil and I have begun to explore. We will certainly continue to consider it and will report to Parliament accordingly.

11:00

**Patricia Ferguson:** I will follow that up, although I do not necessarily want the cabinet secretary to respond. It would be helpful if successful bidders could be given an indication of when they will receive the funding, because that might well alter their capabilities.

**John Swinney:** That is a completely reasonable point, which Mr Neil and I are actively considering.

**John Wilson (Central Scotland) (SNP):** Good morning. I have three lines of questioning, the first of which goes back to David McLetchie's question on the 6,700 jobs that witnesses on an earlier panel indicated have been lost from local government in the past two years. I understand that that figure was gleaned from the Scottish Government's statistics. The figure may also relate to the jobs that have been transferred in the past two years from local government to contracted-out services or limited liability partnerships, as it seems to be the fashion in particular local authorities to transfer large tranches of staff to arm's-length organisations. Does the cabinet secretary wish to comment on that? Will he give an assurance that the Scottish Government will monitor the situation in the future? There seem to be a large number of job losses in local government, but they might not be job losses at all—they might be jobs that have been transferred over to other agencies or partnerships that are delivering the same services.

**John Swinney:** On Mr Wilson's first point, it is a statement of fact that transfers will account for some of the difference to which Mr McLetchie

referred. On his second point, the Government publishes public sector employment statistics quarterly. We will continue to report those and we have started to report an additional series of statistics on employment within public bodies at a very disaggregated level, so it is possible to see the patterns of public sector employment down to a very detailed level.

**John Wilson:** My second line of questioning is on the issues that were raised by Councillor Cook when he gave evidence to the committee on behalf of COSLA. He indicated that, due to the economic circumstances in which local authorities find themselves, they may—I emphasise “may”—wish to seek a review or revision of the existing concordat. Have there been approaches from COSLA to undertake such a review or revision of the concordat?

**John Swinney:** I understand that, at its convention in June, COSLA considered the concordat and reaffirmed its view that it was a desirable and effective basis for a relationship with the Government. I am not aware of any desire to move beyond that position, which was agreed by the COSLA convention, which I think is representative of all local authorities.

**John Wilson:** Finally, I draw the cabinet secretary’s attention to an article that appeared in a Sunday newspaper on the tax increment finance scheme that has been suggested. The local authority business growth incentive scheme is also being discussed. What stage are we at on those two schemes? Our information is that there have been some developments on tax increment finance at Leith, in Edinburgh. Have there been approaches from other local authorities? How would the tax incentive finance scheme operate in relation to any borrowing or spending by local authorities under the scheme?

**John Swinney:** There have been discussions with local government about the model for tax increment financing. Essentially, the model is predicated on the definition of a particular area—let us say, for illustrative purposes, the Edinburgh waterfront—as an area where a development agreement is put in place and initiatives are taken to generate new economic activities that do not involve a displacement of economic activities from other parts of the locality. Within that system, non-domestic rates would be reserved and a separate, distinctive financial proposition could be developed that would involve borrowing on the strength of the revenue flow coming out of that activity in that defined area.

The City of Edinburgh Council has approached us about that model and I have discussed it with the council. I have also raised the issue with COSLA, as it raises questions about the current approach to the distribution of non-domestic rates,

whereby non-domestic rates are pooled before being redistributed. That causes a frisson of debate across the land, if I can put it as gently as that. Those discussions are taking place, and I have also discussed the subject with Councillor McCabe, the leader of North Lanarkshire Council, in relation to the Ravenscraig development. The discussions are still at an early stage, and we will continue to engage with the relevant parties on the issue.

**The Convener:** Let us go back to the theory that Councillor Cook and others have put forward, which is that the bigger issue is not what local authorities get through the settlement but what we increasingly expect from local authorities and what they do. That was a theme throughout the evidence that the committee took. There is a discussion within local government circles about the fact that, in the current financial crisis, local authorities are retreating to their statutory requirements. Councillor Cook’s comments have been repeated by John Wilson. Down the line, councils will have to do less than they are currently doing. What is your view on that?

**John Swinney:** We are entering a challenging period for public finances. For well over a year, I have shared with Parliament my expectation that, after 10 years of above-inflation increases in public expenditure in Scotland, there will be a number of years in which we will see real-terms reductions in public spending in Scotland. As I said in answer to an earlier question from Mr McLetchie, I expect that to continue until around 2014-15 or 2015-16.

We will be required to meet that challenge in a number of ways. Local authorities and other public bodies should not automatically restrict the activities in which they are involved, but they may deliver their services differently and more efficiently having learned lessons from other areas of the public sector. We have some distance to go in the sharing of good practice from one service area to another, and many service changes and developments still need to be undertaken. The constraints on public finance will apply some of the impetus to ensure that those changes and developments take place.

**The Convener:** What will that mean for the role of the Parliament? Will we have a view on what needs to be provided on a statutory basis, or will that be left to local authorities? As I understand it, there are certain services that local authorities are not statutorily required to provide. That means that a council that is faced with a requirement to deliver the business bonus, the council tax freeze and so on will look at services such as pre-five education and decide that that is where the hit must take place. Surely Parliament should have a view on

that. That should not be left up to individual councils, should it?

**John Swinney:** Parliament's position on statutory services could not be clearer. If it says in statute that something has to happen, it has to happen. There is no argument about that whatsoever.

**The Convener:** The logical conclusion is that the services that are not statutory are up for grabs. If we believe the talk, Aberdeen City Council is ahead of other local authorities in dealing with all the difficult situations that have arisen as a result of the financial crisis. It is retreating to statutory obligations and cutting other services as a consequence. Is that the future of local government in Scotland?

**John Swinney:** I do not think, by any stretch of the imagination, that local government will go through this period providing only statutory services. I do not believe that for a moment. I cannot see why that would be the case.

**The Convener:** Have you or your officials discussed with COSLA the trend that I have outlined? From the evidence that we have heard, I know that certain discussions are taking place.

**John Swinney:** I discuss with COSLA the challenges of the forthcoming financial climate. Of course I do that. That is an issue that we have to wrestle with.

**The Convener:** But have you discussed the issue of what councils are statutorily obliged to provide? Have you set limits in and around that issue?

**John Swinney:** I am duty bound to advise councils of their statutory responsibilities and—

**The Convener:** And only their statutory responsibilities.

**John Swinney:** In a sense, that is where the relationship between national and local government comes in. We are in a much healthier position today than we were before. The suggestion that local government will provide only statutory services misses the point about the role of local government. Local government, by virtue of legislation that we have passed in this Parliament, has wide and general responsibilities for community wellbeing and community enhancement, which are not deliverable only through statutory force; they are part of the dialogue that goes on between national and local government and between local government and the local electorate.

**The Convener:** You and your officials would recognise that a discussion is taking place within local government about the statutory boundaries and whether councils should retreat to them.

Michael Cook has also told us that the concordat needs to be revisited. Perhaps we need to get representatives from COSLA and you and your officials around the table in order to get some clarity on the issue.

**John Swinney:** I detect no enthusiasm in local government for providing only statutory services. Councils want to do much more than they are obliged to do by statute, and they do that.

The challenge for the whole of the public sector in the years ahead is how to maximise the impact of public expenditure and public services when public expenditure is falling in real terms. That is the challenge to leadership and management in the public sector, including local government.

**The Convener:** As there are no further questions, I thank the cabinet secretary and his officials for their attendance.

11:14

*Meeting suspended.*

11:25

*On resuming—*

## Home Owner and Debtor Protection (Scotland) Bill: Stage 1

**The Convener:** Item 2 is oral evidence on the Home Owner and Debtor Protection (Scotland) Bill at stage 1. Today we will focus on the bankruptcy aspects of the bill. I welcome the witness panel: Rachel Grant, partner at Brodies LLP, representing the Law Society of Scotland; Eric Leenders, executive director of the British Bankers Association; Maureen Leslie, partner at MLM Insolvency LLP, representing the Insolvency Practitioners Association; and Blair Nimmo, joint administrator and head of restructuring at KPMG, representing the Institute of Chartered Accountants of Scotland. Thank you for joining us this morning.

The committee has received a lot of written evidence, which it has reviewed. In the interests of saving time we will go directly to questions. If you feel that certain areas have not been covered, I will give you an opportunity to bring them up at the end of the session.

**Alasdair Allan (Western Isles) (SNP):** There is, as the convener said, no shortage of written evidence, much of which has been submitted to the committee by insolvency practitioners. I invite Maureen Leslie to say more about why so many of the evidence papers from insolvency practitioners are so hostile to certain parts of the bill. Perhaps she and other panel members could provide evidence to back up the views that the profession has expressed.

To take one example, we received a submission from Wilson Andrews, a firm of insolvency practitioners, in which strong language was used. It states:

“There is a real risk that where we currently have those who can and those who cannot pay we will be adding a third category of those who don’t have to pay. The current proposals will invite debt abuse.”

Does the panel share that view? If so, can you provide evidence to back it up?

**Maureen Leslie (Insolvency Practitioners Association):** I will not comment on the submission from Barry Stewart of Wilson Andrews. He is not a member of the Insolvency Practitioners Association, and that area was not covered in our submission. Our main concern is that while we understand Parliament’s desire to react to what it views as a homelessness crisis, it is rushing through legislation that will potentially have significant unintended consequences.

**Alasdair Allan:** Is that the view of the other witnesses?

**Rachel Grant (Law Society of Scotland):** On behalf of the Law Society, I can say that the changes that the bill will produce are quite fundamental. The proposals on excluding the matrimonial home from trust deeds was raised briefly at the debt action forum, but a consensus was reached that because those proposals involved such a fundamental change to personal insolvency and would potentially have far-reaching consequences, there should be full consultation on them. The Law Society understood that that would happen and was therefore surprised that the part 2 changes were contained in the bill. In our view, the bill exists primarily to deal with debtors who face repossession, and there is an element of urgency to get through changes to protect people in the present economic climate. However, the same urgency does not exist in relation to changing personal insolvency legislation. The bill deals with important issues that affect the fundamental rights of both debtors and creditors, and it should not be rushed through.

We need good law that is clear and understandable. That is not always easy to achieve—and it is rarely achieved when things are done in a rush. That is why the Law Society has requested—and still requests—full consultation to ensure that we get it right and that there are no unintended consequences or knock-on effects. We are looking for a coherent, joined-up approach to personal insolvency. Rather than dealing with trust deeds in isolation, we want to deal with trust deeds, sequestration and the debt arrangement scheme—indeed, the scheme is currently out to consultation.

11:30

**Alasdair Allan:** I appreciate the points that have been made about consultation, and I realise that I am concentrating on one particular paper, but the points that it makes are so strongly put that it is a good place to start if we are to find out whether the views expressed enjoy support in the Parliament. It is claimed that there is

“a very real danger of moral hazard if the family home was completely withdrawn as an asset ... It is not difficult to imagine a situation in which an unscrupulous debtor buys an expensive property partly funded by unsecured debt ... in the full knowledge that the unsecured creditors will not be able to rely on the equity in the house towards settlement”.

Is that view widely shared in your professions, or is it an isolated point of view?

**Eric Leenders (British Bankers Association):** I wonder whether I might change the perspective slightly. The panel is supportive of whatever measures will help individuals who find



themselves in financial difficulty and who have debt issues. In response to the point that my Law Society colleague made, there is concern that some of the potential unintended consequences could have been drawn out and reflected on more fully through a process of consultation. Some of the content of the documents that you have seen reflects an anxiety that those points have not been drawn out in that way.

In our submission, we suggested that several principles could be applied, including in situations in which debtors or borrowers are able to repay their debts—and they should always be encouraged to do so. We suggested that any changes should not necessarily prejudice people who repay their debts. There should not be a mechanism whereby the legislation can be gamed, which would not be in anyone's interests in the long run.

There is a correlation between the availability and pricing of credit and the amounts of debt that need to be written off. That point could be further drawn out—perhaps it will be in the course of this evidence session.

We found that, south of the border, particularly in relation to individual voluntary arrangements, where the market is perhaps inappropriately regulated, incentivisation may have led third parties to encourage people in financial difficulties to seek solutions that are not necessarily in the best interests of all the parties concerned. We would be keen to explore that aspect further with you, too.

**Alasdair Allan:** Do other panel members share that view that there are lessons to be learned from the experience in England?

**Blair Nimmo (Institute of Chartered Accountants of Scotland):** We are not in the best position to talk about that—Eric Leenders probably is. Returning to the original question about the ability of debtors to abuse the process, ICAS sees some potential for that to happen. In simplistic terms, if a householder decides to build an extension or garage with the support of a local tradesman or with the help of unsecured lending, they can put themselves into some form of restricted trust deed immediately after having built it. Theoretically, that person could retain the equity in their extension or garage at the expense of the debt that is due to the trader or lender. You can appreciate the potential for the process to be abused.

**Rachel Grant:** IVAs effectively achieve the same purpose in England as trust deeds achieve in Scotland, but they are quite different creatures. It is not possible to transfer bits of the law concerning IVAs that we think are quite good into the law relating to trust deeds. That will just not

work—it is a recipe for disaster. If the Government likes what happens down south and likes the IVA approach, something completely new will have to be brought in; the two things are not the same animal, and it is not possible simply to take the good bits and leave behind the bad.

I agree with Blair Nimmo that there is potential for abuse by debtors. Debtors might also be adversely affected. If creditors become aware that debtors might exclude assets and thereby potentially prejudice them, they might be encouraged to be far more proactive and aggressive in their approach. That might lead to more sequestrations, which is not necessarily a good thing because it restricts the debtor's choices.

**Maureen Leslie:** I want to pick up on a point made by Rachel Grant. If the committee thinks that what is going on in England and Wales is a good thing, that is fine. I represent the IPA, which regulates a large number of practitioners in England and Wales. As Rachel said, an individual voluntary arrangement is an entirely different animal. The bill says that we can propose excluding the family home, but once that has been put into a trust deed, the only mechanism for creditors who are not happy with that is to reject it. The trust deed would therefore fail, and the only recourse that the individual would have would be to go into sequestration, which puts the family home at risk. That is the unintended consequence.

An IVA is a negotiated document whereby a debtor can put proposals to his creditors, who are entitled to propose modifications to that document, which is what happens in practice. If the committee sees the IVA process as a better process for resolving issues, it should bear in mind the fact that an IVA is a different statutory animal.

**Blair Nimmo:** The knock-on impact could be that, because of the creditors' rejection of the trust deed or their more aggressive pursuit of the debt, there could be more sequestrations and more homes at risk.

**The Convener:** As well as the potential for abuse and sequestration, is it too fanciful to think that what has been proposed—this point has been mentioned in some of the evidence—could lead to more stringent lending criteria and higher rates in Scotland? Could it create a two-tier lending framework, with one framework for the rest of the UK and another for Scotland? Could that be a serious unintended consequence if we go ahead with things as they stand?

**Blair Nimmo:** We believe so. If a creditor has access to a debtor's home in England and Wales, but not in Scotland, the risk to the creditor is increased, and there is a price to pay for that risk.

Debt will either become less available or more expensive to people in Scotland.

**The Convener:** Is that a given? Do all the witnesses agree with that?

**Maureen Leslie:** Yes.

**Rachel Grant:** The Law Society agrees with that; we mentioned it in our written submission.

**Eric Leenders:** Just to expand on that, we must be careful to differentiate between different sectors and classes of lender. The banks position themselves as top-tier lenders in their view of the distribution of unsecured credit. The issue of pricing might only arise at the margins, but if one were to consider the provision of credit by near-prime and sub-prime lenders, it would be a more acute consideration.

At the end of the day, only three levers can be used when one is faced with increased risks to a lending model. The first is that pricing can be increased to cover anticipated losses; the second is that access can be reduced to mitigate the risk of loss; and the third is that the first two levers can be combined. Therefore, in the lower echelons of the credit market, the consequences could be a combination of reduced access and increased pricing.

**The Convener:** So a market in which things are already quite difficult could get worse.

**David McLetchie:** I invite the witnesses to comment on the processes by which the debt action forum came to its conclusions and report.

We have heard that all the forum's members were required to take a vow of confidentiality, that there was no wider consultation with the membership of the organisations that were represented and that some bodies with a material interest, such as unsecured creditors, were excluded from participation in the process. A report was produced on that basis, and we find that we have a bill that contains proposals that were never discussed or, certainly, never agreed in the forum. Is that any way in which to make new law in Scotland in this important area?

**Eric Leenders:** We participated fully in the completion of the report, on the understanding that that might lead to recommendations that would be consulted on, with some form of cost benefit analysis. The point has already been made that we seem to have missed out that middle part: a consultation and a cost benefit analysis that reflected the findings of the consultation. Given the confidentiality around the compilation of the report, we have not been able to consult our members as comprehensively as we might have wished. However, all those points are rather negative. At some point, something needs to get started. As a catalyst for debate such as we are having this

morning, the report has served its purpose, to an extent.

**David McLetchie:** Yes, but that is a different issue. It is no longer about having a catalyst for debate—we are considering a bill. Given your answer, is it fair to say that members of the debt action forum believed that their report and its recommendations would be the subject of a wider consultation process before the Government introduced any proposals such as those that are in the bill?

**Blair Nimmo:** That is my understanding. There was a consistent view that a number of stakeholders were not involved in the discussion group and did not know that the discussions would lead to the bill that is before us. Many of the provisions in the bill were not discussed at all. Some matters, such as the key issue of the family home, were discussed, but no consensus was reached. It was agreed only that further extensive consultation was required, because of the wide-ranging impact that the proposals would have in a number of areas. Members of the forum who were involved in the discussions were surprised to see the bill in its current form.

**David McLetchie:** So the Government is rushing to legislate in these areas without the support and consent of the stakeholders who were involved in the debt action forum.

**Blair Nimmo:** We agree.

**Rachel Grant:** That was the point that I made at the outset. In its submission, the Law Society refers to the final report, which states specifically:

"It must be noted that there was insufficient time to consider the paper in detail and some Forum members would have wished more time to reflect on the issues raised and an opportunity to fully consult with their membership on the potential impact of these issues."

The report also states:

"Members accepted that the whole subject of action against property was complicated and affected a lot of areas. They agreed that this paper contained a number of issues which should only be considered after a full public consultation."

No one is suggesting that it is wrong to explore the issues or to consider excluding assets. The point is that there will be such fundamental knock-on effects that are potentially undesirable for both debtors and creditors that full public consultation is required. Everyone here believes that that should now happen. We have the opportunity to have such consultation and we suggest that it takes place.

**The Convener:** Mr Leenders is anxious to respond further.

**Eric Leenders:** Like the Law Society of Scotland, I will rely on our written submission. In it,

we reference correspondence with Fergus Ewing, as chairman of the debt action forum, in which we stated:

“Formal consultation of proposed legislative changes would of course need to extend to cover lenders not represented on the Forum as well as other interested stakeholders.”

In the submission, we go on to make the point that the “recommendations” were not recommendations per se and to draw the committee’s attention to the introduction to the report, which clarified the position by stating:

“Not all members have had the opportunity to fully consult internally with their parent organisations and relevant stakeholders prior to this report being prepared. The report indicates where there were areas of broad agreement and any disagreement along with specific comments made during discussions. Members recognised that further consultation will be necessary in some areas.”

11:45

**David McLetchie:** In fairness to the Government, the view that we need legislation is born of the consideration that the number of reposessions may increase as a result of the current economic situation and that, therefore, we need to amend the law urgently to protect people who might otherwise be adversely affected by the operation of the existing law and procedures. That is a fair summary of the Government’s view on the matter.

Last week, when we asked members of the reposessions group what evidence exists that people are being evicted from their homes in a way that is prejudicial to their interests and does not give due consideration to their needs and so on, we were told that there is “very little evidence” to that effect. In fact, we were told that the evidence is barely anecdotal. Perhaps Mr Nimmo would like to comment on the following statement in the written submission from the Institute of Chartered Accountants of Scotland:

“In a survey which included Scotland’s biggest personal insolvency practitioners, there was not a single eviction by a trustee in a trust deed out of a total of 934 protected trust deeds in the past year, where the family home was an asset. There were zero forced sales.”

So, there is no evidence of prejudice in relation to part 1, and the submission from the Institute of Chartered Accountants of Scotland suggests that there is no evidence of evictions, in terms of law and practice, in relation to part 2. Why, then, are we considering the matter?

**Blair Nimmo:** We carried out that study to get a proper indication of whether there was any evidence to support the idea that the legislation needs be changed to protect the family home. At meetings at which we spoke to practitioners who deal with a substantial number of such cases, the

collective view was expressed that, over several years and several thousand cases, there has been very little evidence that any of us are having to force people out of their homes. We carried out that small study to get some proper evidence on the issue, and the conclusion was that there are no forced sales. To a large extent, that is because the trust deed involves a voluntary process in which the debtor enters into discussion with his trustee about where he is going. The process is, therefore, relatively consensual—it is not, as some people suggest, adversarial. In the two or three meetings that we had with the minister, we made the point that he seemed to be trying to solve a problem that does not exist.

**David McLetchie:** Were those meetings with Mr Ewing?

**Blair Nimmo:** Yes.

**David McLetchie:** I see. According to Wilson Andrews, when Mr Ewing came along to his first meeting with the Institute of Chartered Accountants of Scotland, he had not read your report and, at the second meeting, he refused to discuss it—is that correct?

**Blair Nimmo:** To be fair, at the first meeting the view was expressed that the report had been submitted too late and that he had not had time to consider it before the meeting.

**David McLetchie:** He is a slow reader.

**Blair Nimmo:** At the second meeting, the view was expressed that it was so near to the introduction of the bill that it would be inappropriate for him to discuss it with us.

**David McLetchie:** So, the report was never properly discussed with Mr Ewing.

**Blair Nimmo:** The institute recommended that the aim of part 1—to ensure that the family home is protected—could be achieved in a relatively simple way by agreeing the protection of some de minimis level of equity, which would take 90 per cent of people out of the process. For most trust deeds, the level of equity is relatively low, so protecting a de minimis level of equity would exempt most people and achieve much of what the Government is trying to achieve by a much simpler process and without giving rise to the unintended consequences to which we have referred. Similarly, we recommended a variety of other mechanisms whereby the aim of part 2—to ensure that some form of debt relief is available to all—could be achieved by making several relatively small changes to the existing procedure that would not have any knock-on impact. To be honest, however, we did not end up having any real discussion of those issues for the reasons that I have just given.

**Maureen Leslie:** Let me pick up a point that Mr Nimmo has made. First, the IPA was not invited to be a member of the debt action forum and did not even know that the forum existed. Nevertheless, we are prepared to accept that the Institute of Chartered Accountants of Scotland could represent the interests of our members, all of whom are insolvency practitioners.

Secondly, the IPA would support any piece of legislation that produced clarity in the law—for example, by providing for a de minimis level of equity below which we should leave a case alone because the costs of dealing with it would outweigh any potential benefit to creditors. We would appreciate and support such clarity, but we had no opportunity to take part in the considerations of the debt action forum.

When we made representations in that respect, we were told that one piece of legislation would be followed by another, on which there would be wide public consultation. We were led to believe that certain elements that have now appeared in the bill were to be part of the subsequent legislation that was to be opened up to full public consultation, and we are somewhat at a loss to explain what has happened.

**David McLetchie:** Is the view of the organisations represented on the panel that it would be better to include the provisions in part 2 of the bill in the forthcoming and more wide-ranging legislation that is to be the subject of consultation, and that the bill is premature, rushed and might give rise to damaging unintended consequences?

**Maureen Leslie:** That is the IPA's view.

**Blair Nimmo:** Speaking for ICAS, I agree entirely with that.

**Rachel Grant:** As does the Law Society of Scotland.

**Eric Leenders:** And my association.

**Rachel Grant:** The very fact that we are having this discussion; that, as Mr Nimmo and Mrs Leslie have made clear, alternatives exist; and that, as we have confirmed, we have always been willing to work with the Government on clear good law supports the argument for full consultation.

**Jim Tolson:** What effect will the bill have on advertising in the *Edinburgh Gazette*? We have heard that section 12, which removes certain requirements to advertise in that journal, will result in significant financial losses to the organisation and might well impact on jobs. Do the witnesses believe that the necessary information will be available and accessible in the register of insolvencies? Moreover, with regard to plans to amend protected trust deed regulations to remove further requirements to advertise such deeds in

the *Edinburgh Gazette*, do you think that the register of insolvencies can be extended to provide a similar service?

**Eric Leenders:** We were quite comfortable with those proposals, but we had not considered the point made in the submission that I think you highlight about potential financial and job losses at that newspaper.

**Maureen Leslie:** I, too, had not considered the point. However, I point out that, that in notifying creditors of an insolvency event, the *Edinburgh Gazette* provides not only a single register for searching but a number of associated names. A creditor will have an awful lot more work to do if they have to identify and relate names in the register of insolvencies to their customer base.

From an insolvency practitioner's point of view, the most important point is that publication in the *Edinburgh Gazette* brings an insolvency event to public notice. That has a number of legal effects that we can rely on; for example, as a result of publication, a creditor is deemed to become aware of the information. There are other quite technical issues on which Rachel Grant might well want to comment.

**Rachel Grant:** I suppose that this is another example of unintended consequences. I agree with everything that Maureen Leslie has said. A whole section of case law relates to deemed knowledge, and the idea behind trust deeds or sequestration is that the general public need to know because, obviously, those who have signed a deed or who have gone into sequestration are restricted in what they can do. Whatever form it takes, advertisement is very important. I do not know whether the register of insolvencies will achieve the same result; after all, even in this day and age, not everyone has access to computers. Moreover, how regularly will the register be updated? I think that additional legislation will be needed to clarify when deemed knowledge is deemed to have become available.

**Eric Leenders:** By extension, that suggests that advertising in the *Edinburgh Gazette* might be of more use to the involuntary creditor—for example, the small businessman who was mentioned earlier. There are other ways for our membership to access that information.

**Blair Nimmo:** I do not disagree with Maureen Leslie or Rachel Grant.

**Jim Tolson:** I appreciate those comments. There seems to be concern. As Ms Leslie rightly pointed out, the *Edinburgh Gazette* currently puts the information in the public domain, but the Government is seeking to use a more online way of doing that through the bill. Despite the concern about not everybody having access to computers, those who want to chase debts for whatever

reason will more than likely do so. I put it to the witnesses that the proposal is probably worth while, but there may be unintended consequences, as Ms Grant rightly said.

**Rachel Grant:** In principle, there is no reason why the proposal should not be taken up. However, that is another example of something that should perhaps be considered more fully.

**Bob Doris (Glasgow) (SNP):** There seems to be general resistance to many of the proposals in the bill. I do not mean that there is resistance to dealing with issues that exist; rather, I mean that there is resistance to the solutions that have been offered. I listened carefully to Mr McLetchie, who tried to establish whether there is a problem that needs to be solved. During the exchanges, one of the witnesses said that there is not a problem that needs to be solved, but all of you seem to be quite upset about the solutions that have been offered to solve a problem that does not exist. If the family home is not currently an issue, which is what you have said, why are you bothered about its being excluded from a protected trust deed? That does not seem to follow logically.

**Rachel Grant:** Perhaps I could help. It is important to understand what protected trust deeds are and why they were introduced. We have had trust deeds for hundreds of years, but protected trust deeds were introduced in 1985. They were viewed as things that would be more acceptable to debtors. There would not be a court process or the stigma of sequestration. However, the most important thing about protected trust deeds is that the debtor is given debt forgiveness. They are discharged from their debts. Debt forgiveness is probably the most important thing from a debtor's point of view. There is also debt forgiveness with sequestrations. Debt arrangement schemes are completely different.

The creditor side of things must then be considered. If creditors were going to accept debt forgiveness for somebody who was not being sequestrated, they had to be satisfied that they would not be adversely affected. To protect creditors and ensure that they were no worse off if there was a protected trust deed, it was important that the same assets that would be available to them in a sequestration became available to them in a trust deed. That is exactly how the law is drafted at the moment.

It is being proposed that the house and possibly other assets could be excluded from the protected trust deed, but that effectively upsets the whole system, which looks to sequestration and the protected trust deed having the same consequences for both debtors and creditors. That is our concern. If the Government decides that matrimonial homes should be excluded from protected trust deeds, it seems to be sensible to

exclude them from sequestration as well. The proposal as it stands puts everything out of kilter. The Law Society of Scotland is concerned about that. It is for the Government to make policy and decide where the balance lies between debtor and creditor, but a clear policy on which the law should be based seems to be missing in the proposal. I hope that that clarifies things.

**Bob Doris:** Unlike my question, your answer was very clear. I appreciate that.

I want to ask about protecting the creditor in the process. Representations have been made to me. I will give an example from where I stay. Let us consider a single parent living in an £80,000 flat in Maryhill in Glasgow that may be protected by a trust deed, and someone living in a £500,000 house in leafy Edinburgh, where Mr McLetchie might stay, that is also guaranteed by a protected trust deed. I can imagine the single parent in Glasgow thinking, "I would like this flat to be guaranteed," whereas it might not be unreasonable to expect someone who stays in a highly expensive property to staircase down or to expect some level of asset to be realised by the creditor from that property even if the family stays in it. Perhaps that offers a solution for protecting creditors and ensuring that they can realise assets that it is reasonable for them to realise without making vulnerable families homeless. For example, could there be a capital ceiling on the level at which a property is secured by a protected trust deed?

12:00

**Blair Nimmo:** In its submission to the minister, ICAS suggested a de minimis level of equity that would not be subject to attack by anybody. That would be one way of protecting such people without opening the system up to abuse by those with a substantial level of equity that is more than enough to pay their creditors. That proposal was not taken on board.

As the bill stands, what do debtors get out of the provisions? To a large extent, they do not get much out of them because, if sequestration stays as it is, a trust deed—which might become a restricted trust deed exempting a family home—will not be protected. That will result in a sequestration, in which the family home will be up for grabs. In that circumstance, the debtor is no better off. Similarly, creditors will be no better or worse off simply because we will be back to sequestration. Creditors are arguably less keen on that because they have less control over it and it is more costly. From the perspective of trying to balance up the interests of creditors and debtors, there is not a lot in the provisions for either party.

**Bob Doris:** The point that I am driving at is that, although you might not like the solutions that have been offered and you do not feel that you have been consulted on them enough, you have made suggestions about how they could be amended to make them more workable. Assuming that the bill was to make its way through Parliament, would you be interested in further development of the idea of having a discussion on the level of equity in any property that was affected?

**Blair Nimmo:** An informal protocol is under discussion with the majority creditors—the creditors who tend to be involved in a number of such cases—whereby, even if that *de minimis* was not legislated for, the profession as a whole could work with the lenders and agree a figure that was acceptable to all parties. It could be part of a legislative process or could sit outside it. There is a fair amount of consensus on trying to make the process work for the benefit of debtors and creditors.

**Bob Doris:** That is helpful. Looking through my notes on the matter, I see that some debts will be included in protected trust deeds, but others will not, which might lead to an uneven playing field between creditors as they try to pursue debts. Who will have the advantage: a creditor whose debts are outwith the protected trust deed or one whose debts are within it? Some more information on that would be helpful.

**Maureen Leslie:** That matter gives the IPA concern. I worked as a money adviser in the recession in the 1980s and I point to a potential unintended consequence of the provisions. I am certain that sub-prime lenders and others who lend to people at the margins of society—such as Provident Personal Credit, which was the big one—would seek to exclude themselves from every trust deed. Therefore, the bill may, in fact, disadvantage the people whom it tries to help.

**The Convener:** How many people at the margins of society own a home with significant equity in it and how many people are evicted from a home that is worth £200,000? We have had a page or so of evidence from a money adviser that differs from all the rest. It is right to put that evidence to you. His view is that

“proposals would be helpful in protecting debtors and would not result in any detriment to the vast majority of creditors in cases where there are small amounts of equity. The practice is to some extent already prevalent in many trust deeds, with small amounts of equity being disregarded by trustees and nominal amounts being accepted for that equity, rather than full value payments. An example of this is where a third party agrees to pay £500 for £3-4,000 equity held”.

He goes on to say—I will save you the pain of more quoting—that when third parties cannot be

found, the debtor sometimes finds the money to make such a payment.

I understand the anxiety about not being consulted and the fact that people do not like surprises that might have an impact on their business, but what is the extent of the problem for practitioners such as you?

**Blair Nimmo:** We agree totally with the quotation. In practice, the vast majority of people have no equity or have relatively small amounts of equity. The existing process deals with that—small amounts of equity are ignored and consequently the family home is not touched. That is why we have 934 cases—

**The Convener:** Where is the beef? Where is the argument?

**Blair Nimmo:** In the study that ICAS conducted, 90 per cent of cases involved less than £10,000 of equity. Such *de minimis* equity is already protected and an agreement could be made informally or under legislation that it would continue to be protected. However, we argue that, in the top 10 per cent, substantial equity could be involved and the measure could be open to the abuse to which we referred.

**The Convener:** We are talking about 10 per cent.

**Blair Nimmo:** A small number.

**The Convener:** If we follow Mr McLetchie’s train of thought, the issue does not arise, because not many people lose the family home and the numbers are declining all along the way. What number of cases does 10 per cent equate to?

**Blair Nimmo:** We could probably find a number.

**The Convener:** That information would be interesting, because it would allow us to focus on the issue.

**Maureen Leslie:** About 8,000 trust deeds were arranged last year.

**The Convener:** Trust deeds vary. How many of them involved significant equity, as described by Blair Nimmo?

**Blair Nimmo:** More detailed research would need to be done, but if the theory is that a figure of 90 per cent applies, 90 per cent of 8,000 will have no equity over £10,000. Beyond that, equity could range dramatically from £11,000 to a substantial amount.

**The Convener:** We heard evidence about unintended consequences—that the Scottish economy will be damaged, that people will lose their homes and that the system will be abused. Surely we are not a million miles away from doing work that would reassure lenders that abuse

would be targeted. The measures would free thousands of people from the additional anxiety, cost and worry of losing their home. In the economic crisis, surely we as parliamentarians should pursue such a purpose.

**Rachel Grant:** We do not disagree. We all agree that that aim should be achieved. Our issue with the bill is that it will not achieve what you described. Perhaps that is because the bill has been pushed through too quickly. We are all on the same side. We all agree—

**The Convener:** I do not want to be overly dramatic, but the reaction from practitioners uses strong language and is excitable about the consequences. We are talking about a relatively small number of people who might abuse the system. Surely we can look forward to productive discussions between your organisations and the Government to address the issues, rather than throwing the baby out with the bath water.

**Rachel Grant:** As we have said, following on from the debt action forum, our approach is that we want to work with the Government. As I said at the outset, good law is in everybody's interests.

**The Convener:** We return to the question from my colleague Bob Doris. If the current proposals are unsatisfactory and make you fear the consequences that have been described, what proposals do practitioners make to address abuse and relieve people of the additional burden and fear of losing their home? Where is your contribution to bring us to the point that we all want to reach?

**Blair Nimmo:** A number of parties have contributed to identifying the issues that need to be resolved in a more acceptable manner. ICAS, for one, has made a submission. It is just unfortunate that not much thought has been given to it. Although there is consensus about a number of issues, there are some sensitive issues, whose unintended consequences are not a place that you would want to be.

**Eric Leenders:** One of our suggestions is that there should be discretion to consider cases individually, rather than having blanket legislation. That might be another way of achieving the same end. The equity suggestion seems a reasonable way of containing that issue as well.

**Rachel Grant:** I think that we all agree on the important point that looking at trust deeds in isolation does not make sense. We should consider the whole personal insolvency arena and have joined-up, coherent legislation that is fit for purpose and serves the interests of debtors and creditors.

**The Convener:** The point is well made, and builds on evidence from last week.

**Mary Mulligan:** The evidence so far this morning has been quite helpful in explaining the technical side of what you are doing. However, to come back to David McLetchie's points, we are not having a debate; we are considering a bill, which was introduced by the Scottish Government because there were concerns about the number of people who, due to the economic circumstances, were likely to lose their homes. Last week, we heard that there was a feeling that part 1 of the bill would go some way to address that, although there were concerns that there had been insufficient consultation on it. Today, we hear that you feel that there has not been sufficient consultation on part 2 of the bill. To be honest, I wonder whether there is anything to be rescued from the bill in order to meet the aim that we have all said that we share, which is to protect people in difficult circumstances. Is there a need for this bill in order to meet that aim? Will the bill do that? If not, is there another way of addressing the issue, perhaps through a different, more effective piece of legislation?

**Maureen Leslie:** We do not believe that the bill will get you to where you want to be. As I said earlier, as a practitioner, I would appreciate clarity on the issue of dealing with equity, in trust deeds and in sequestrations. In many cases in sequestration, the family home is pretty much fully secured, and there are issues there requiring trustees to abandon interests in property. We feel that good legislation would come from considering all of those issues in the round, and we would be happy to provide input to that process.

**Blair Nimmo:** You would have a couple of options. You could either take some of the more simplistic, non-contentious suggestions such as imposing some sort of de minimis level of equity, and perhaps considering an adjustment to the low-income, low-asset debtor scheme to allow access by people who currently cannot access it. That can be done in the relatively short term, without any general consensus. You could then look at the wider matters as part of the consultation that you are engaged in or are about to be engaged in on related areas such as the DAF scheme. You could either take the short-term route of solving some of the issues quite quickly or wrap it all up in a much wider consultation, which would address inconsistencies—we have an inconsistency at the moment between trustees and sequestrations, which has to be resolved one way or another. This thing does not work unless you look at that, and consider where you want to be from a policy point of view.

**Eric Leenders:** Blair Nimmo makes a valid point in raising LILA. If we were to take a step back, one of the issues that we could usefully consider is the causes of people's financial difficulty. Right now, it is overwhelmingly income shock because of

unemployment. One of the unintended consequences of the bill is, in effect, to create another income-based remedy. A debtor would be making payments to their creditors through this scheme but, because they might not have money available to make those payments, they would be forced into sequestration. I do not know that the scheme necessarily addresses the issue of how to help an individual comprehensively when they face an income shock. That might be a different starting point from which to get to a far more mutually acceptable outcome.

12:15

**Mary Mulligan:** Ms Grant, I appreciate that the witnesses are being asked specifically about part 2 of the bill, but I want to ask about part 1, which is to do with repossessions in particular. Part of the repossessions discussion was around court protocols for repossessions. Does the Law Society have a view on how we can improve the protocols to protect people?

**Rachel Grant:** I am not an expert in the area of repossessions, but the Law Society's response covered various aspects of part 1. From my reading of the bill, I understand that there is consensus that the protocols must be followed to ensure that people are not evicted from their houses inappropriately. I am aware from my own experience that protocols are in place. It is probably just a question of ensuring that the law that is there is followed.

A general point is that giving people more and more information creates information overload, which can only add to the stress of being faced with losing their house. There are protocols to be followed, but it is clear to me, having read through the evidence last night, that making things too complicated for everyone with the intention of protecting the home owner is not necessarily going to protect the home owner. Something more simplistic is sometimes better. I do not know whether that answers your question.

**Mary Mulligan:** Thank you for that. I appreciate that the question was on an area that you were not asked to comment on. I just wanted to give you an opportunity to say whether you wanted to add anything to what your written submission said. However, thank you for that attempt, anyway.

**Eric Leenders:** We have direct experience of the pre-action protocol through the home loan divisions of the banks, and we would regard that as being very successful. Empirically, while I do not have the absolute figures to hand, a best-guess estimate would be that retail banking groups, applying the pre-action protocol, probably possess something of the order of two properties per 1,000 mortgages outstanding, whereas other

sectors possess four, five or six properties per 1,000 mortgages outstanding. The protocol has therefore had a significant impact. The Council of Mortgage Lenders suggests that the aggregate number is of the order of 75,000 possessions across the United Kingdom. The absolute number will fall far short of that, being probably more like 60,000 or 65,000. The protocol has therefore had a beneficial effect. Regrettably, we were not part of the working party that considered that aspect, but I am sure that our colleagues in the Council of Mortgage Lenders, who did participate in the working party, will have fed in that sort of information.

**Mary Mulligan:** The CML was represented at last week's meeting, but what you said is helpful—thank you very much.

**Patricia Ferguson:** I have a question about the role of the Accountant in Bankruptcy. The Scottish Government seems to suggest that the only people who would take the certificate of insolvency route would be those with very limited means, and that therefore the Accountant in Bankruptcy should be the only available trustee in that circumstance. Do any of the witnesses have a comment on that? More specifically, do you think that the Accountant in Bankruptcy is the right place for that role?

**Maureen Leslie:** You are right that the certificate of insolvency route leads directly to the appointment of the Accountant in Bankruptcy. If the bill as drafted becomes law and I, as a trustee, put forward a trust deed with a proposal to exclude all or some of the equity in a family home, and that trust deed fails to become protected, I will no longer have the right to present a petition for the individual's sequestration. I would have to sign a certificate of insolvency and the individual would be passed to the office of the Accountant in Bankruptcy. That individual would have been advised by members of my staff over a period and would have formed a relationship with them. Trust deeds are never signed on the basis of one interview. They would have a relationship with and a relative degree of trust in my staff. Under the bill, I would have to hand the matter over to someone else, which is not particularly satisfactory, not only from my point of view, but from the point of view of the people whom I advise.

**Blair Nimmo:** I agree with everything that Maureen Leslie said, but I will take it a bit further. The measure was one of the issues that was not part of the DAF consultation at all—the first sign of it was when the bill was produced. We see no reason why it should be the sole domain of the Accountant in Bankruptcy to do that work. The potential for breakage when the proposed but unprotected trust deed finds its way to the Accountant in Bankruptcy for sequestration will not be good for debtors and they will not particularly



like it. It will not provide the access to advice that they currently have. We do not think that the Accountant in Bankruptcy can provide the same quality of advice, as it does not have the people with the requisite experience to do so. Ultimately, the measure will result in a cost to the public purse that does not currently exist. In the circumstances, it is bizarre that a process is being suggested that arguably will increase the size of the public sector and which will be a cost to the public purse. At present, there is no such cost, but there would be a cost in respect of the people whom the Accountant in Bankruptcy has to administer.

**Eric Leenders:** An alternative might be a panel with prescribed standards. That would get round the potential bottlenecks and pressures and the public purse issues. That could be worked through. There are probably alternative solutions that would be far more acceptable and cost effective.

**Rachel Grant:** I agree with Ms Leslie and Mr Nimmo. The bill as drafted envisages that, prior to the Accountant in Bankruptcy being appointed as trustee, somebody who is called an "authorised person" will have a central role, yet we do not know who that authorised person will be, what qualifications they might have and whether they will be regulated or insured. Do we need those people? Who will pay for them? What will be their relationship, if any, with money advisers who deal with the DAS? Why not just use the insolvency practitioner profession, who are already there and who are experienced, qualified, heavily regulated and insured?

A second point that carries on from that is about the test that will have to be fulfilled if somebody is to be certified to go into sequestration—one assumes that it will not be a rubber-stamping exercise, because if it is worth while having an authorised person, I presume that they will have some function. They will have to establish an inability to pay debts as they fall due. That is a new legal concept in personal insolvency, although I think that it has been taken from corporate insolvency. On the face of it, the concept seems simple, but the fact that there have been several cases in the Court of Session in the past two years in which counsel and judges have argued at length about what it means suggests otherwise. If lawyers, IPs and judges have difficulty with the concept or accept that it is not straightforward, how can an authorised person be in a position to make that decision? What happens if that person gets it wrong? What comeback is there? The insolvency professionals are qualified, regulated and insured, so there is protection for debtors. The issue is not clear, because there is not a lot of detail, but there are concerns about the proposal from a legal point of view.

**Patricia Ferguson:** That is very helpful. You have asked what was going to be my second question.

**John Wilson:** I want to examine further Mr Nimmo's comments about the additional cost to the public purse. In evidence presented to us last week, we were advised that scrapping advertising in the *Edinburgh Gazette* could mean a saving of £890,000 to the public purse. Would Mr Nimmo or any of the other witnesses like to hazard a guess at the possible additional cost to the public purse of administering what is in the bill as it is presented?

**Blair Nimmo:** That is a very fair point. At one stage during the consultation process, such as it was, and the meetings that we had with Mr Ewing, it was mentioned that the Accountant in Bankruptcy could administer a process for £500. Most of the people around the table felt that that figure was surprising, so they asked for some analysis to support it. The minister agreed to provide us with the costing but, despite several reminders from ICAS, it was never forthcoming. Either the costing does not exist, or the Government is not prepared to provide it for some other reason.

That is indicative of our inability to suggest what the cost might be. We need to understand how what the Accountant in Bankruptcy does at the moment is costed, what it intends to do under the new process, how much of that it will subcontract out and what that will cost. It is quite a complicated equation and our impression is that either no costing exists, or the Government is not prepared to give it to us, so it is hard to answer your question. To move something from the commercial domain, where it exists at no cost to the public purse, into the public domain, could not be achieved at the cost to the public purse that the Government suggests. Such a move would result in a cost, but it is difficult to pinpoint what it would be without more detailed knowledge.

**John Wilson:** We could use the £500 figure and the calculations of how many cases would be referred to the Accountant in Bankruptcy to come to some figure. Are you saying that the £500 figure is unrealistic? Is it well short of what would be considered to be the actual cost of processing individual cases?

**Blair Nimmo:** Without any detailed assessment, our view is that it seems to be well short of what it would actually cost.

**John Wilson:** How far short?

**Blair Nimmo:** That is impossible to say. A subcontracted case currently has a fairly high cost, even before adding the cost that the Accountant in Bankruptcy incurs in running the operation, and the additional cost of providing the advice that the

insolvency practitioner profession provides at the moment but that would no longer be available under the proposals. You would take the subcontracted cost away from the Accountant in Bankruptcy and add it to the commercial profession's costs and the costs of the advice, and the final price could be significant. We could be talking about a multiple of £500.

**John Wilson:** Would any of the witnesses like to hazard a guess at the number of cases that would be referred to the Accountant in Bankruptcy?

**Maureen Leslie:** We have had a look at the bill's financial memorandum. I do not think that our submission is in yet. I understand that the AIB suggested that, if it were passed, the bill would lead to 500 cases. The only experience that I have is of the LILA—low-income, low-assets—scheme. The AIB suggested that there would be a maximum of 2,000 cases, and there were almost 10,000 cases in the first year of operation. Even assuming that the estimate is not quite so wildly out for the bill, there is still a substantial margin for error and we are working on that while looking at the financial provisions for the bill.

**John Wilson:** If there were 500 cases, and we use the Government's estimate of £500, there would be a saving of roughly £390,000 because of losing the need to advertise in the *Edinburgh Gazette*.

12:30

**Rachel Grant:** I have not looked at the issue in detail but a footnote on page 19 of the bill's financial memorandum refers to "£5.298 million" being available

"in each year for money advice services",

which I assume is for the running of such services and training. The authorised persons involved in the new procedure might well be money advice people, but if they are not insolvency practitioners, lawyers or accountants they will need to be trained to some level. I am not an accountant, but that figure jumped out at me and might be important when the committee comes to look at costings. The suggestion that, at £200 per case, the annual overall cost will be £100,000 might seem attractive; however, I assume that people will not make a career out of being an authorised person, so there will always be a steady stream of people coming through. As a result, there will need to be on-going training, the up-front costs of which will always be more expensive.

Even if the *Edinburgh Gazette* is scrapped, someone will be needed to keep the register of insolvencies updated on a daily basis. That might not cost £890,000, but it will incur some costs.

After all, if the register is not updated every day, it will not be worth having.

**Blair Nimmo:** The areas are not directly related. If in policy terms it is felt acceptable to stop advertising in the *Edinburgh Gazette*, that money will be saved come what may, irrespective of what happens in the rest of the process and whether or not the Accountant in Bankruptcy continues as proposed.

**The Convener:** I thank the witnesses for attending and giving evidence. It is very much appreciated.

## **Decision on Taking Business in Private**

12:32

**The Convener:** Moving to agenda item 3, I seek the committee's agreement to consider in private a draft report on legislative consent memorandum (S3)22.1 on the Child Poverty Bill, which is United Kingdom Parliament legislation, at its meeting on 11 November—not, as the agenda originally said, at its next meeting, which is on 10 November. Are members agreed?

**Members** *indicated agreement.*

**The Convener:** We move to agenda item 4 which, as previously agreed, will be taken in private.

12:33

*Meeting continued in private until 13:46.*



Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

Members who wish to suggest corrections for the archive edition should mark them clearly in the report or send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP.

The deadline for corrections to this edition is:

**Friday 13 November 2009**

#### PRICES AND SUBSCRIPTION RATES

##### OFFICIAL REPORT daily editions

*Single copies: £5.00*

*Meetings of the Parliament annual subscriptions: £350.00*

##### WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Published in Edinburgh by RR Donnelley and available from:

#### **Blackwell's Bookshop**

**53 South Bridge  
Edinburgh EH1 1YS  
0131 622 8222**

#### **Blackwell's Bookshops:**

243-244 High Holborn  
London WC1 7DZ  
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

And through other good booksellers

#### **Blackwell's Scottish Parliament Documentation**

**Helpline** may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

#### **Telephone orders and inquiries**

**0131 622 8283 or  
0131 622 8258**

#### **Fax orders**

**0131 557 8149**

#### **E-mail orders, Subscriptions and standing orders**

**[business.edinburgh@blackwell.co.uk](mailto:business.edinburgh@blackwell.co.uk)**

#### **Scottish Parliament**

**All documents are available on the Scottish Parliament website at:**

**[www.scottish.parliament.co.uk](http://www.scottish.parliament.co.uk)**

For more information on the Parliament, or if you have an inquiry about information in languages other than English or in alternative formats (for example, Braille; large print or audio), please contact:

#### **Public Information Service**

The Scottish Parliament  
Edinburgh EH99 1SP

**Telephone: 0131 348 5000**

**Fòn: 0131 348 5395 (Gàidhlig)**

**Textphone users** may contact us on  
**0800 092 7100**

We also welcome calls using the RNID  
Typetalk service.

**Fax: 0131 348 5601**

**E-mail: [sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)**

We welcome written correspondence in any language.