LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE

Tuesday 10 November 2009

Session 3

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LOCAL GOVERNMENT AND COMMUNITIES COMMITTEE
28th 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)
Margaret Curran (Glasgow Baillieston) (Lab)
Alison McInnes (North East Scotland) (LD)
Margaret Mitchell (Central Scotland) (Con)

*attended

THE FOLLOWING GAVE EVIDENCE:

Gavin Corbett (Shelter)
Keith Dryburgh (Citizens Advice Scotland)
Kennedy Foster (Council of Mortgage Lenders)
Yvonne MacDermid (Money Advice Scotland)

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

Tuesday 10 November 2009

[THE CONVENER *opened the meeting at 15:02*]

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

The Convener (Duncan McNeil): Good afternoon and welcome to the 28th meeting in 2009 of the Local Government and Communities Committee. I remind members and the public to turn off all mobile phones and BlackBerrys.

I have received an apology from Patricia Ferguson, who has a dental appointment today and so cannot be with us.

Agenda item 1 is to take oral evidence on the Home Owner and Debtor Protection (Scotland) Bill. I welcome the witnesses: Gavin Corbett is a policy manager at Shelter, Kennedy Foster is a Scotland policy consultant for the Council of Mortgage Lenders, Keith Dryburgh is a social policy officer at Citizens Advice Scotland, and Yvonne MacDermid is chief executive of Money Advice Scotland. I thank you for coming to the meeting.

We have received written submissions and have taken some evidence on the bill. In the interest of time, I will allow the witnesses to make brief introductory remarks if they wish to do so; if not, we will proceed to questions.

It appears that the witnesses wish to proceed to questions. Thank you for that co-operation.

Alasdair Allan (Western Isles) (SNP): My question is initially for Gavin Corbett, but is for the other witnesses, as well. I understand that Shelter in England has carried out research into the experiences of people who have mortgage and secured-loan arrears. I appreciate that the legal frameworks in Scotland and England are very different, but can you tell us more about those experiences and what we can learn from them?

Gavin Corbett (Shelter): I will be brief. Shelter has always worked with members of Kennedy Foster's organisation in considering how to help struggling home owners. That work has been fruitful. I think that Alasdair Allan is referring to an analysis of the adviser experience of early work with the pre-action protocol in England. We found that the pre-action protocol is having some impact, particularly on well-known lenders that have made public commitments on the extent to which they would exercise forbearance. They have acted reasonably responsibly as a result of the pre-action protocol, but we have found that that is much less the case among lenders in the sub-prime sector, who tend to have borrowers who are at the highest risk. There is evidence that the pre-action protocol in England has had much less impact on their practices, partly because it does not have any statutory force; it remains essentially discretionary.

My colleagues in England have been interested in the work that is being done in Scotland. In general, they think that we are forging ahead in a more progressive way than people have been able to in England.

Alasdair Allan: Do others take that view?

Yvonne MacDermid (Money Advice Scotland): Yes—I endorse the view that having the force of law behind the measure would make a difference.

Keith Dryburgh (Citizens Advice Scotland): My colleagues at Citizens Advice in England have pretty much the same findings as Shelter—that the bigger lenders have taken on board the protocol and that those that are on the fringes perhaps need to be targeted.

Kennedy Foster (Council of Mortgage Lenders): The Financial Services Authority announced a couple of weeks back that it would undertake a mortgage market review. It is fair to say that the FSA said that it would focus on firms whose business models and arrears or possessions levels are likely to indicate high risk. An example of that is that a couple of weeks back the FSA fined GMAC-RFC Ltd £2.8 million and asked it to repay £7 million to borrowers. The FSA is also considering enforcement action against four other firms.

Alasdair Allan: Would you go so far as to say that the pre-action requirements in section 4 of the bill provide more protection than is available in England?

Gavin Corbett: That is potentially the case, but the question is open. Most of us said in our submissions that the position will depend on what is in the statutory instrument that follows the bill. As our submission says, we have not yet seen that instrument. The framework could be more pervasive and effective than the pre-action protocol in England, but that will depend very much on what is in the statutory instrument.

Kennedy Foster: An important overriding principle for the lending community is that we are subject to mortgage regulation. We do not want the statutory instrument or the guidance to contain

provisions that go beyond what is in mortgage regulation. It would be perverse if the law of Scotland and mortgage regulation were intended to say the same thing but differed. What is in the statutory instrument and the guidance is fundamental.

The Convener: You will know that the scale of the problem has been raised in previous evidence sessions. We are under pressure to proceed with the bill quickly; for example, the consultation period was shortened. Citizens Advice Scotland refers to the scale of the problem in its submission, which mentions

"debt issues … increasing by 16% last year."

How much of that involved repossession or the consequences of repossession?

Keith Dryburgh: That is hard to say. We can say that we are encountering different issues. We are seeing more home owners who face repossession. The statistics in the submission are for April last year to April this year and we are pretty sure that the number of issues has increased since then. Situations are much more complex and people are approaching us at crisis points—for example, when they are close to losing their homes. The complexity and urgency of issues have increased, as well as the number.

The Convener: How will the bill help those people?

Keith Dryburgh: The bill will help those people in many ways. It will help them to defend repossession actions. Between only 5 and 10 per cent defend actions, because people do not know their rights and do not act on them. The bill will help to inform people and will help them to go to court to obtain more time or to defend successfully against repossession.

Yvonne MacDermid: I endorse what Keith Dryburgh said. The bill enshrines the introduction of lay representation, which must be a major step forward for consumer protection. The bill will give people their day in court, which they have not previously managed to have. However, that raises resourcing issues, as our submission says. I agree absolutely that the bill will help to strengthen people's rights in relation to repossession of their homes.

Keith Dryburgh talked about the number of people who are coming for advice and the fact that their cases are complex and time consuming. Sometimes, such people might have second and third charges on their homes. Previously, such debtors could well have considered debt consolidation as a way out of the problem, but because of the environment that we are in—the recession—credit is less available than it was, so people must examine alternative solutions. People are presenting issues that are much more complicated to deal with and, often, not many solutions are available for them. The bill certainly provides some solutions.

The Convener: We have received a submission from the Govan Law Centre, which we have circulated. Its opening sentences are:

"The Bill as presently drafted is not fit for purpose. In our experience if the Bill were passed as drafted it would cause significant detriment to consumers in Scotland."

That completely contradicts what you just said.

Gavin Corbett: Yes, I mean—

The Convener: I was addressing Yvonne MacDermid, because she made the strong point that the bill will be beneficial to consumers in Scotland. I will, of course, let you follow up, Mr Corbett.

Yvonne MacDermid: We do not see the bill as the Govan Law Centre sees it. I understand and respect the position that it has adopted, but we believe that the bill offers debtors many opportunities that did not previously exist.

I mentioned lay representation. The fact that people can have a lay representative in court is beneficial. Despite the best efforts that are being made to make more legal representation by solicitors available through the Scottish Legal Aid Board funding and other lay representation, there is simply not enough. We need people to come at an earlier stage so that we can halt proceedings, take a well thought through case to court and let the sheriff decide on the merits of the individual case.

Gavin Corbett: I read the Govan Law Centre submission briefly. I would like to read it in more detail, because the centre is a respected organisation and the submission deserves closer attention. I could not understand why observations about detailed drafting points—which, if they are accurate, can be taken account of in any subsequent changes to the bill—became a reason for rejecting the bill entirely. The submission clearly makes the case that the legislation needs to be changed; we would have to start all over again and prepare another bill. I am not sure what the advantage of that time loss would be for the home owners that the Govan Law Centre and all of us represent.

On the need for the bill, we pointed out in our evidence that sheriff court statistics, which are limited, show a 20 per cent rise in actions taken and a 50 per cent rise in decrees granted against home owners. That order of magnitude is not explainable by changes in statistics. We also have the strange situation in Scotland whereby, if somebody is a tenant of a social landlord, the case will call in court, but we do not have that degree of

scrutiny for home owners. That seems to me to be wrong, when debt potentially spans across all groups. That is why I agree with Yvonne MacDermid and Keith Dryburgh that the bill provides a better balance between the interests of home owners and lenders, but not to the extent that it minimises the interest that lenders have in a property over which debt is held, or minimises borrowers' responsibility to ensure that they borrow responsibly.

The Convener: The court figures come heavily qualified. You used percentage terms. Will you confirm the numbers of actions that were taken in the courts throughout Scotland?

Gavin Corbett: That is detailed in our written evidence. In 2007-08, 7,364 actions were taken to court but, in the most recent year for which we have details—that is, up to August—it was 8,861; that is the 20 per cent rise. There were 4,531 decrees granted in 2007-08, but 6,628 in the most recent year for which we have details; that is the 52 per cent rise. In that time, there has also been a rise in the number of actions that have resulted in decrees against borrowers.

The Convener: How many repossessions took place among the people who found themselves in that situation?

Gavin Corbett: One of the great limitations of the Scottish data is that we do not know—as we know for the United Kingdom as a whole—how many actions resulted in repossessions. The estimate in our submission is that there were 5,000 to 5,500, based on previous evidence of the number of decrees that resulted in repossession.

The Convener: Is that 5,000 in Scotland?

Gavin Corbett: Yes. In the most recent year, around 5,000 to 5,500 resulted in repossession. That could also include other actions that did not go to court.

15:15

Kennedy Foster: We provide figures only at UK level. Lenders report the figures to us. We do not get a regional breakdown. Much of the work that the Scottish Government has started on the bill was a result of our forecast that UK possessions would rise to 75,000 in 2009, from 40,000 last year. That was the peak figure back in the 1990s during the previous recession. We have about 1 million more mortgage customers since then. The present recession is somewhat different from the previous one in that we previously had high inflation and high interest rates. In the current recession, we are fortunate to have low interest rates and inflation. However, the common factor is increasing unemployment, which is the main factor in repossessions.

In the first quarter of this year, there were about 24,000 possessions in the UK, so we revised our figure for the year down to 65,000. On Thursday of this week, we are due to release numbers for the third quarter of this year, our revised forecast for 2009 and the 2010 figures. Unfortunately, those figures are embargoed, so I cannot give them to the committee this afternoon. However, I can say that the current trend line is pretty flat with the first half of the year, so I believe that our 65,000 figure has been somewhat pessimistic.

Jim Tolson (Dunfermline West) (LD): My question is for Mr Foster and follows on from a point that the convener made. The evidence that we have is based on UK information, as Mr Foster rightly said. Mr Corbett confirmed that we can get only a best guesstimate of the repossession figures for Scotland. Is there any reason why we cannot gather that evidence on a Scotland or England regional basis? What might help us to do that?

Kennedy Foster: One reason is the lenders' information technology systems, although some lenders can provide regional data. Members might be aware that, after the UK Government took stakes in some of the banks, it established a lending panel, which involves a home finance forum. Although I have not seen the statistics, I believe that some lenders who report to the home finance forum do so on a regional basis. I have suggested to Scottish Government officials that they might want to speak to the Treasury and get hold of that information. However, much of the issue is to do with allowing development of lenders' IT systems to give a regional breakdown.

Jim Tolson: That is helpful. Do the other panel members have any evidence that might give us a better feel for Scotland's repossession figures?

Keith Dryburgh: We do not have any better statistics. One point that must be made is that there is often a long tail-off to a recession. Once a recession starts and people lose their jobs, it can be up to 18 months before a home is repossessed, so even when we come out of recession, the problems will persist. The issue will not go away as soon as the recession stops.

Jim Tolson: Fair point.

Yvonne MacDermid: I endorse what Keith Dryburgh said. Our focus is on the sub-prime market, which was mentioned earlier. As we mention in our written submission, lenders in that market move to repossession much more quickly. For us, the issue is about how the process has escalated. The mainstream lenders have forbearance arrangements, which can sometimes be in place for up to a year, and the breathing space scheme is now in place. However, in the sub-prime market, the period is sometimes very

short and people are not really allowed enough time to do something about their situation.

Jim Tolson: On a different point, the bill seeks to put in place an authorised person in relation to certificates for sequestration. What are the witnesses' views on that? Would you welcome money advisers being called on to become authorised persons?

Keith Dryburgh: Citizens Advice Scotland welcomes that as a new route for solving debt for a group of clients who have been without a debt solution for a long time. A recent report that we produced on the debt arrangement scheme found that up to a fifth of our debt clients have no route out of debt. We think that many of those people will be able to use the certificate for sequestration. If money advisers are to offer that, their role will change slightly, as they will become decision makers. We call for that to be done, but in a strict way, with clear guidelines to ensure that it is done correctly.

Jim Tolson: Previously, Citizens Advice Scotland indicated that it had some concerns about the provision. Can you explain in more detail how those concerns could be addressed?

Keith Dryburgh: We consulted about 35 of our money advisers. The majority are in favour of the provision, but there are concerns about the role that money advisers would have to play. We consulted the Accountant in Bankruptcy, which told us how the provision is likely to be implemented—as a last resort, once it has been proved that people cannot use the DAS, individual voluntary arrangements and so on. One of our concerns was that bureau advisers would be turned into decision makers and that certificates for sequestration would be issued based on their opinion that someone could go bankrupt. In fact, people will go down that road only if no other route is available to them.

Yvonne MacDermid: We, too, welcome the introduction of the authorised person provision. It has a pivotal role to play, in combination with the home owner mortgage support scheme and the role of approved adviser, which is already enshrined in statute under the debt arrangement scheme regulations. Money advisers will be subject to regulation much more than was the case way back when we started this journey.

We welcome the provision, but have some concerns. Money advisers must be well trained and competent, and resources must be adequate to ensure that that is the case. Provided that we have the resources to do that work, I am sure that we will be able to make it happen and to bring everything together. There is recognition of the value of the work that people who are involved in money advice do. There is payback not just to creditors but to society from the money that is generated for the local economy, especially through maximisation of income from the benefits system and backdating of benefits. Money advisers have a clear role to play.

We have had sight of an early draft of the statutory instrument, which lacks a bit of detail on the money adviser's role. Once we see that, we should be in a better position to comment. We share the concerns that Keith Dryburgh has expressed about what the work of money advisers will entail, because the agencies are committed to providing free, independent, impartial and confidential advice. That could present them with some challenges.

Kennedy Foster: We are part of the repossession group, so I have not been involved with part 2 of the bill. The position of mortgage lenders would be secured by first charge on the property.

Gavin Corbett: My involvement has been with part 1 of the bill, so I leave it to my colleagues to comment.

Bob Doris (Glasgow) (SNP): In the build-up to the bill, we heard a great deal about the use of pre-action protocols and how they have worked in England. The bill will, if passed, introduce statutory pre-action requirements and I am keen to get more information on how the arrangement stacks up. We have looked to England to see what is happening there. What is the strength or otherwise of pre-action requirements? Could you contrast or compare them with pre-action protocols?

Gavin Corbett: As I said earlier, the detail is still to be revealed in the statutory instrument, which should come before the committee soon. Until that happens, we cannot fully compare the two approaches. In my written evidence, I gave examples of provisions that are included in pre-action protocols in England and suggested that they might merit inclusion in the Scottish statutory instrument. I am confident that those points will be taken account of in the instrument, and that coverage will be comparable. The advantage in Scotland is that the sheriff will have to have regard to pre-action requirements and that the lender will be under much greater pressure to ensure that they have conformed to them. In England, pre-action protocols are not enforceable.

Kennedy Foster: You have to consider the background to the development of the pre-action protocol. South of the border, there is an organisation called the Civil Justice Council, which has responsibility for administration of the English courts system. There are a number of protocols in the English civil justice system, which involve trying to resolve cases before they arrive in court and assisting with the smooth running of the court process.

The protocol in England started off as a consultation by the Civil Justice Council. A lender that goes to court in England has to demonstrate that it has done all that it is required to do in terms of mortgage regulation, in order to make possession a matter of last resort. One of the most important features of the pre-action protocol is the extent of the evidence that has to be produced to the court. Since the introduction of the protocol in England, a lot of work has gone on to refine it and to consider, for example, whether every piece of correspondence between lender and borrower should be produced. In effect, what has been developed south of the border is a checklist. That checklist is now being used a lot by lenders in Scotland when they pass cases to solicitors.

The one advantage of the protocol south of the border is that it can be amended regularly—it is being amended as we speak—to take account of issues such as the fact that the lender should always consider whether the customer qualifies for income support for mortgage interest and so on. South of the border, the protocol is being amended and developed on an on-going basis.

My slight concern about the Scottish approach is that it is being stuck in statute. The FSA has started a mortgage market review, and has said that at the beginning of January it will have a consultation on arrears and possessions. If there are changes to the mortgage conduct of business rules—which is, I imagine, likely following that consultation, because the FSA has said that it definitely wants to put some of its guidance into more detailed rules—you will have to introduce a new statutory instrument.

Bob Doris: Would anyone else like to add to that?

Yvonne MacDermid: We welcome the fact that the requirements in the bill are being enshrined in legislation and are not being left to protocol. That is the bill's strength. The inclusion of a requirement for the creditor to provide the debtor with information about the sources of advice and assistance with regard to the management of debt is also extremely useful.

Bob Doris: I am wondering whether that is something that Mr Foster did not make clear in his reply. My understanding is that although the pre-action protocol can be effective in England, it has no statutory footing, so the courts do not have to follow it. In Scotland, the courts will have to follow it. That is a distinction that you perhaps did not make clear. [*Interruption.*] I hope that that is not my BlackBerry—that would be naughty of me.

This is about ensuring that, where possible, cases do not reach court. That is where Citizens Advice Scotland, Money Advice Scotland and Shelter come in, because they do a lot of good work. It may have been obvious for some time and we have all missed it, but when a case goes to court, the most obvious people to represent individuals, who have been there right from the start and who have provided moral support and good debt advice all the way along, would be the likes of Money Advice Scotland, Citizens Advice Scotland and Shelter. Could that have happened some time ago? Should we welcome it? Are you up to that challenge?

Yvonne MacDermid: Over the years, in written and oral evidence, we have stressed the importance of lay representation. It is important that people have their day in court, and that there is someone suitable to represent them. I agree entirely with what you said about the adviser having been there from the start. They have almost felt the pain of the debt, alongside the debtor; they, too, should have their day in court and be able to put their case. The framework in the bill will take us a long way towards where we need to be. We are certainly up for the challenge but, as I said earlier, we need the resources to help us to meet that challenge.

Kennedy Foster: I am unaware of any court in England and Wales in which the district judge is not applying the pre-action protocol. The fundamental difference between England and Scotland is that in England, all possession cases call in court, so the judge has to consider them.

15:30

There are certain subtle differences between the process in Scotland and the process in England and Wales. For example, in England and Wales, the judge can grant what is called a suspended possession order, whereby if an arrangement is reached with the lender to pay, say, £250 a month, and that falls through, the lender can proceed to possession without going back to court. Under the bill, the lender will have to go back to court again if the borrower breaks an arrangement.

Bob Doris: It is good that judges in England appear to be using their discretion, but what I asked was whether you thought that Money Advice Scotland, Citizens Advice Scotland and Shelter were well placed to represent people.

Kennedy Foster: We have no problem, provided that any lay representatives are properly accredited.

Gavin Corbett: I see the issue from both angles. Shelter has an in-house housing law service, and I see the advantages of that, as there is no doubt that it is beneficial in complex cases. There is also the practical consideration that there is not enough legal advice out there. When we looked at the issue in the group, we acknowledged that, purely in practical terms, there is a role for lay

advisers in ensuring that people are getting advice and representation, particularly in those areas of Scotland where there are virtually no services. This is, therefore, partly a pragmatic response to the problem.

The Convener: On that pragmatic approach, if we overcome all the legal difficulties and fast track the bill—the committee is having an extra meeting this week to that end—how long will it be until we build up the capacity in the Scottish Court Service, Citizens Advice Scotland, Money Advice Scotland and Shelter that will make a practical difference to people on the ground?

Gavin Corbett: The expectation is that the parts of the bill that are important will go live next spring. We can plan for that just now, and have already taken some steps to increase capacity, although everyone here would say that they need to do more in that regard.

There is also an opportunity to consider the other pressures that are on the court system. We already know that 20,000 social and rented sector tenants are taken to court each year. It is unnecessary for a lot of those cases to be in court, as there are much more effective ways of dealing with them much earlier. Promising measures are being taken by some landlords to reduce the number of eviction actions that are needlessly littering the sheriff courts. The Scottish Government has agreed to host a summit on that in a couple of weeks' time. As well as enhancing capacity, there are ways in which we can reduce pressure over the period.

The Convener: The bill will not help many of the people whom you have just described—the tenants of social landlords who are being evicted. Is it important only that people who own their homes should not be evicted?

Gavin Corbett: What I am saying is that the concern about court capacity could be addressed by ensuring that there are far fewer of those eviction cases in the court, as many of them do not need to be there. That would free up court time to ensure that the additional scrutiny that is needed for additional mortgage possession cases that come before the court is possible.

The Convener: A small percentage of cases go to the court now. It is the ambition of the bill that more should do so—a 50 per cent rise is a big jump. The questions of the practical difference that will be made to individuals and of who will build the capacity and who will fund it remain. How will your organisation be able to employ and train the extra people you will need to meet that demand?

Yvonne MacDermid: I might be able to offer some solutions. Yesterday, we met as part of the Money Advice training, resources, information and consultancy services—MATRICS—project, which is grant funded by the Scottish Government. At that meeting, we considered what the legislation will bring into our in-basket and what the implications of that will be. We have already scoped what we think we are going to need to do to skill people up as a result not only of this bill but of other legislation that will come on its heels. The trick for us is to work out how we can work smarter as well as considering the additional resources that we will need if we are to deliver the amount of lay representation that will be required.

We plan to hold five workshop-type seminars across Scotland to deliver training on whatever the outcome of the bill is. We are already planning for what is going to happen at that point. Of course, there will be constraints, but we have worked out a methodology that we know works. We will take that legislation training on tour throughout Scotland to encourage as many people as possible to bite the bullet.

As I state in my written evidence, a fundamental issue is that, although we have many highly skilled specialist money advisers operating within local authorities, they are not being allowed to undertake the lay representation because of a possible conflict of interests. The issue needs to be worked through so that they can do that and we can get to where we all want to be—the avoidance of future repossessions and as many people as possible seeking advice at the earliest stage.

Keith Dryburgh: The Scottish Legal Aid Board has received funding from the Scottish Government to increase the legal advice that is available and the Government has said that, as part of that, it will look to increase the capacity of lay representation. There are already in-court advice services in some parts of Scotland. I believe that the Government's proposal would help to increase the capacity of those in-court advice services to provide lay representation and increase capacity elsewhere, as well. We will work with the Government to improve the resources for that.

The Convener: What is the capacity of Citizens Advice Scotland to provide in-court advice?

Keith Dryburgh: Many advisers are already providing that service on other legal issues. There is a precedent for it. With the recession, resources are tight, but we nevertheless see a lot of bureaux taking it on, although I cannot give you any numbers.

The Convener: How many people does Citizens Advice Scotland have available to provide in-court advice and how many people are they providing such assistance to?

Keith Dryburgh: I will have to check that and get back to you. A lot of people throughout Scotland are already doing that.

Gavin Corbett: You would not expect to have representatives of three charities at the committee and not hear that resources will be an issue. Some plans have been put in train, but more perhaps needs to be pressed from ministers on that.

On organisational efficiency, to ensure that mortgage cases come to court much more frequently, they could be clustered in the same way that eviction cases are. Currently, eviction cases tend to be called on the same day, which allows in-court services to be directed towards them, but mortgage actions can be called at different times. Clustering mortgage cases would allow in-court services to be directed towards them so that good use could be made of the resources that are there.

David McLetchie (Edinburgh Pentlands) (Con): Good afternoon, everyone. I wonder whether Mr Foster can deal with these questions. With regard to the recurrent issue of the lack of information on the number of Scottish repossessions as opposed to the UK total, is there any reluctance—or is it a matter of policy—on the part of the Council of Mortgage Lenders to provide the figures, or is that a practical issue?

Kennedy Foster: It is a practical issue.

David McLetchie: How is it a practical issue? I imagine that every person who fills in a mortgage application is required to provide the postcode of the home for which they have their mortgage. I am no IT expert, but it is not rocket science to suggest that you collate all the Scottish postcodes to give the Scottish number.

Kennedy Foster: That is a very good question. I ran a major bank's mortgage processing operation in the convener's constituency, and I know that extracting information from some of the systems is not the easiest thing to do—it requires IT development—although a lot of lenders can do it. We used to produce Scottish statistics, but we got them from only a certain number of lenders and had to extrapolate the total on the basis of those lenders' market shares.

With the development of the sub-prime market in particular, we found that more repossessions were coming from that part of the market yet most of our information was coming from mainstream lenders, so our figures were becoming inaccurate. The challenge is to get the information. One thing that could be done—this was in the repossessions group report—is to ask the Financial Services Authority to make it a requirement on lenders to produce regional statistics. In Northern Ireland, where I look after the CML's interests, the Northern Ireland Assembly is looking for exactly the same type of information. I sympathise with you because you are trying to develop a policy when you do not know the exact statistics in Scotland.

David McLetchie: Thank you for clarifying that. I was interested in what you said earlier: that the CML's projection that the number of repossessions could rise in 2009 from 40,000 to 75,000 was the catalyst for the formation of the debt action forum and the repossessions group and that that is the driver behind the bill and, presumably, the imperative for why we have to consider the matter separately from a wider review of bankruptcy and personal insolvency.

If I understood correctly your answer to an earlier question, although you cannot give us the exact information—it will be published in the next few days—you said that that forecast has been officially revised downwards to 65,000 repossessions, and I think I heard you say that, given the trends, the figure of 65,000 is likely to be pessimistic. That being the case, how fair is it to say that the imperative to act is based on a false premise or a projection that is proving not to be correct?

Kennedy Foster: It is fair to say that whatever the figure is this year, we have an historically high level of repossessions—there were 40,000 last year. However, a number of factors are assisting in keeping down repossessions. One is that lenders are showing more forbearance, particularly when customers are endeavouring to resolve their payment problems and have a realistic chance of doing so. The second factor is that we have been extremely fortunate to be in a low interest rate environment, which allows arrears to grow less quickly and gives borrowers an opportunity to get back on track. Some of the changes that the UK Government made to income support for mortgage interest, reducing the waiting period from 39 to 13 weeks and, from memory, upping the limit to £200,000, have all made a tremendous difference. A lot of work has gone on between lenders and advice agencies, not only at CML level but at individual lender level. It is about getting people to speak to advice agencies and lenders as soon as their problems begin to emerge. The earlier you can get to the person in difficulty, the more chance there is of resolving the problem.

David McLetchie: Your reference to all the other actions that have been taken, their impact on the statistics and why things are not perhaps as fearsome as people feared at the outset was helpful.

I will pick up on what you said about many lenders regarding repossession as a last resort. In our first evidence-taking session, I asked Fiona Hoyle of the Finance and Leasing Association what the approximate interval is between a borrower falling into arrears and repossession action being taken. She suggested that, in most cases, the average time is likely to be 18 months.

None of the other witnesses on the panel demurred from that estimate. From your perspective—I would appreciate comments from the other panellists, too—is 18 months a fair estimate of the interval that is likely to elapse between a borrower falling into arrears and repossession action being taken?

15:45

Kennedy Foster: I will answer that in a slightly indirect way. Obviously, averages are averages, but mortgage regulation says that the lender cannot adopt what I would call a one-size-fits-all approach and must consider the individual circumstances of each borrower. Without a shadow of a doubt, repossession is in the best interest of some borrowers and the best advice that we can give them is to take that route. I believe that lenders are showing forbearance when they can. Every lender in the country has signed up to having a three-month period before repossession action is taken, while some have signed up to six months and some will go up to 12 months. What Fiona Hoyle said is probably not far off the mark. When I speak to the main solicitors in Scotland who act for lenders in taking possession, they say that it can be 12 months, 18 months or two years from mortgage default to when the case comes to them—it just depends on the circumstances.

David McLetchie: One to two years. Perhaps Mr Corbett, Mr Dryburgh and Ms MacDermid can comment on that from their experience.

Gavin Corbett: Fiona Hoyle said that the period could be up to 18 months, but that seems quite a long time if it refers to the period until repossession action is initiated rather than concluded. It probably refers to the period up to when a resolution is found rather than to the period from when the problem first emerges to when action is initiated.

I want to pick up on the point that Kennedy Foster made in response to your first question on the trigger for the repossessions working group. I echo what he said, which is that we are in an unusual period. Mortgage arrears and repossession actions have risen since last year—irrespective of the flat line that there may be this year. However, this period of very low interest rates is unlikely to continue, and I do not imagine that the current level of forbearance will continue indefinitely. In the absence of other action, the only way in which repossession figures can go is up. To me, that is a case for taking action, as the repossessions working group recommended.

There was also a case for considering other action, anyway. The recession and the increase in unemployment that leads to repossession were a prompt for considering how effective existing legislation was. When we gathered round the table, it was clear from listening to people that there are significant problems with existing legislation that would have to be addressed anyway, whether or not we had this unfortunate recession.

Keith Dryburgh: We do not have average figures for the time it takes to get to repossession. What has been said about lenders' forbearance, the state of the housing market and interest rates being low indicates that there is not much to make lenders hurry into taking repossession. However, my worry is that many schemes have targeted people who have had income shocks, which continue because we have not come out of recession and they have not found another job and do not have an income. As Gavin Corbett said, the only way for repossession figures to go is up, because those people will eventually run out of time and go down the repossession route.

Yvonne MacDermid: I return to my earlier point about the sub-prime market. Invariably, the average number of months for initiating repossession in that market will be lower because such lenders initiate the process much more quickly; if there is a default on an outstanding loan, there is sometimes a follow-up call within 24 hours. It is different strokes for different folks. It depends on the lender and what arrangements they have in place. Arguably, it also depends on how quickly an individual seeks advice. Coming back to my earlier point, I think that the bill is so powerful because it will ensure that people are given the opportunity to seek advice and that a creditor must give them that opportunity.

David McLetchie: Is it fair then to say that action that is taken prior to formal repossession is much more important in managing the problem than anything that is done thereafter? In a sense, if one gets to the repossession stage, one has failed.

Yvonne MacDermid: Yes.

Kennedy Foster: Mortgage regulation requires the lender to do various things and explore various avenues with the customer. For example, the customer could convert the mortgage to an interest-only mortgage for a period or they could extend the term. The lender is supposed to look at such things before it goes down the route of taking possession.

David McLetchie: I have some questions on specific recommendations of the repossessions group, of which you as individuals or your organisations were members. The bill requires affidavits to be produced—at some expense, we gather—in cases of voluntary surrender. At our first evidence-taking session on the bill, we were

told by witnesses who represented the repossessions group that the group never agreed to recommend that procedure to the Government. They were critical of the value and necessity of the approach, yet it appears in the bill. Why is that?

Gavin Corbett: I read that part of the evidence closely and with a lot of interest. I do not think that it is accurate to say that it was never discussed. It is true to say that there was no specific recommendation that we must have a voluntary surrender process that includes affidavits. We certainly discussed the merits of a process that allows people, where both they and the lender conclude that the mortgage is no longer sustainable, to exit from it as quickly and easily as possible, but we also allowed for a possibility that the surrender might not be as voluntary as the term implies.

There was a discussion about the need for a process that ensures that people can exit but which also provides assurances that they do so with full knowledge of what they are doing and that any other people in the property, including any tenants, are taken into account. I am not sure whether the affidavit in its current form strikes the correct balance, so that might be a difference. However, it is right to have a system that requires a degree of formality around what is a pretty dramatic decision. We know that voluntary surrender sometimes results in people giving up keys even though they could have had other options to remain in the property. That cannot be right. The FLA itself said that when it gave evidence.

Kennedy Foster: I echo that. The repossessions group had some discussion about voluntary surrenders, but no conclusion was reached. I have no idea why the Scottish Government chose the cumbersome procedure that it now proposes. I suspect that our members will not use the process and will simply raise court proceedings in all cases. I was interested to read the Govan Law Centre's comment today, which echoes our views. It says,

"We have not come across any problems with the current practice",

and it notes that the proposed procedure

"will result in an additional cost to homeowners."

David McLetchie: You believe that, if the procedure is introduced, your members will not use it but will instead go straight to a repossession procedure.

Kennedy Foster: Yes. That is the feedback that I have had from my membership.

David McLetchie: So it will be a dead letter as far as your members are concerned.

Kennedy Foster: Yes.

David McLetchie: Thank you. Do Mr Dryburgh and Ms MacDermid want to comment?

Keith Dryburgh: The group also discussed the positives to the affidavit procedure, although I am not sure that there was a conclusion. For example, there are people who have no chance of being able to pay off their arrears and they just want out, and the procedure provides a formal process for them to hand back the property. At present, in Scotland, if someone hands back the property, that is not the end of the process and arrears can continue to accrue. The procedure therefore has at least one benefit.

Yvonne MacDermid: I agree. We welcome the introduction of the affidavit for the reason that Keith Dryburgh outlined. It offers some scrutiny rather than the situation where the person simply hands over the keys. However, I return to the point that earlier intervention is important so that people do not get to that stage. I am certain that there have been some "voluntary" surrenders that could have been avoided. If the person had sought advice at an earlier stage, they could have come up with a different solution. People sometimes prioritise unsecured debts over secured debts.

David McLetchie: I appreciate that only two of the panel were on the debt action forum, but last week we were told in evidence on part 2 of the bill that the proposal that the family home be excluded from protected trust deeds was another measure that was never discussed, and certainly not agreed to, by the debt action forum, yet it appears in the bill. Is that correct?

Keith Dryburgh: I was not the representative on the forum, so I will let Yvonne MacDermid answer.

Yvonne MacDermid: I have drawn the short straw. We discussed that topic and papers were brought to us on it, but its complexity meant that there were different views and no straightforward recommendation was made. That was my take. We discussed the issue and papers were brought to the forum on it. Most people agreed that it was extremely complex, given the existence of many different competing interests.

David McLetchie: That is exactly what last week's witnesses said. They gave evidence to the effect that, in their opinion, because of the complexity of the issue, it should not be legislated on in isolation in part 2 of the bill but should be removed from the bill and considered in the wider context of personal insolvency and the proposed bill on sequestrations. Would you support that approach?

Keith Dryburgh: There is some reason to include the measure in the bill because it deals with the theme of helping people to stay in their

homes. We support its inclusion in the bill and think that a minority of debtors who have equity in their homes would benefit from it. It has been suggested that people could take advantage of it, but only a vanishingly small number would do that.

Insolvency practitioners often talk about wanting more flexibility in relation to the family home, and the proposal would give them the flexibility to negotiate protected trust deeds with creditors.

David McLetchie: The point that was made was that legislating for a particular situation in the context of protected trust deeds would create an imbalance in the system between a protected trust deed and a sequestration and might prejudge the outcome in subsequent legislation. It was suggested that it might be better to look at the issue in its entirety and not pick out and deal with one element in isolation. The objection was not necessarily to the principle, but to the fact that one element had been stuck in the present bill, when much bigger issues will be the subject of wider consultation for a later bill.

Keith Dryburgh: My comments were to the effect that the measure would have a positive impact on our clients. Whether it should be in the bill is perhaps a bigger discussion.

Yvonne MacDermid: I think that it would be unhelpful to disaggregate the issue from the bill because it sits alongside home owner and debtor protection. As I have not seen the bill that will follow on the heels of the one that we are discussing, it is quite difficult to say whether it would be better for the proposal to sit there or in the present bill.

Gavin Corbett: I have a general observation to make. As someone who has looked at part 2 quite passively and has not been involved in the discussions on it, I understand the point that Mr McLetchie makes, which is different from the arguments that no consensus has been reached and that it is a complex area. Neither of those is a particularly good reason for not legislating, unless we think that all measures must be the subject of consensus, which is not always the case.

We need to do something to disentangle the complexity. There is no point in buying time and coming back in six months' time, or whenever the new bill is introduced, only to say, "This is a complex issue." In principle—I do not know about the detail—I accept David McLetchie's final point that if we look at the measure in question in isolation, there is a danger that it may have to be looked at again when the subsequent bill comes along. That is different from the first two points.

16:00

The Convener: You will agree that there is a lot of concern about the bill's fast tracking, which reduced the consultation period, and the fact that there might be some unintended outcomes such as an increased incidence of sequestration. It was claimed last week that the bill could distort lending policy here in Scotland. I asked whether that was fanciful, and I was told that it was not; it was realistic—the approach that has been taken could distort lending policy.

Gavin Corbett: It is for the committee to weigh up the extent to which such claims are backed by evidence. I have not looked into it in detail, but people occasionally seek more time without being clear about what that additional time would buy. How would the bill and the measures to follow from it be significantly different if we took a more leisurely approach? I have not heard anything to suggest that there would be significant benefits in that. Let the benefits be for the home owners—for the people who are affected by the measures—six months earlier than would otherwise be the case.

The Convener: The puzzlement that I am expressing is because of a distinct lack of evidence from all the witnesses. No one has said which group of people or how many of them would benefit from the bill, or explained how lenders would benefit from its provisions. We are all proceeding simply on the basis of the bill's proposals being a good idea.

We are not having a discussion here; we are processing a bill that will become law in Scotland. That is an entirely different proposition. The committee has a responsibility to have evidence presented to us about the number of people who would be affected and the number of people who would currently not be affected by some aspects of the bill.

On the protection of the family home, for instance, we were told last week that the provisions could apply for 90 per cent of people but not for a significant minority of 10 per cent. Legal practitioners—people with a legal brain—have told the committee that the bill's proposals are complex and radical. There is a sparsity of evidence all round, Mr Corbett. That is our concern.

Gavin Corbett: I agree that we do not have a perfect evidence base, and I suspect that that is always the case with any piece of proposed legislation. However, we know that the incidence of mortgage repossessions is rising; that demand for legal aid for mortgage actions is also rising, as the Scottish Legal Aid Board's written evidence shows; and that there is currently a very high level of forbearance by lenders. We also know that interest rates are very low—the suggestion is that

that will not always be the case—and that the Mortgage Rights (Scotland) Act 2001 does not provide the extent of protection that it was intended to provide, because of how it interacts with court cases. We know that the pre-action protocol in England has moved things on there, and we are assessing the extent to which we can build and develop on that.

I feel that that information presents a significant case for taking action through the bill, and that is why we strongly support it. I am not saying that every aspect of the bill is perfectly drafted—clearly not—but the case for the bill is as compelling as when we first discussed it at the repossessions group.

Mary Mulligan (Linlithgow) (Lab): I share the convener's concerns that the bill needs to do what we intend it to do, which is to build on the existing legislation to protect people who face repossessions, giving them the added support that would be required should they all need to go to court. What advice has been given so far? What have lenders done so far in response? I am concerned about whether the proposed legislation will actually provide that protection and support, and about whether there is sufficient direction for advice. I am also concerned about some potential unintended consequences of the way in which the bill is framed.

In its written evidence, Money Advice Scotland asks questions about the interpretation of a "reasonable time". That point is also made in the submission received today from the Govan Law Centre. It is all very well to say that the bill heads in the right direction, but legislators need to know that the words that we use will produce the right outcomes, so something as simple as what "reasonable time" means needs to be addressed. Yvonne MacDermid might want to kick off the answers, given that I mentioned her submission. Is there an issue about the interpretation of "reasonable time", which could affect people?

Yvonne MacDermid: There are issues, as we said in our submission and as, I think, colleagues in the lending industry say. Cases must be taken on their individual merits and we would not want to put strictures around what can or cannot be done in a certain timeframe, but it is important that there be at least some understanding of what is meant by "reasonable time".

We have talked about how long it takes for repossession to take place and whether the timescale starts when a calling-up notice is issued. Why can we not provide a framework or guidance in relation to the repossessions that there might be? We can do that in other contexts. It is important that we know how "reasonable time" will be interpreted and that we build that into the bill, because people will make different decisions.

Mary Mulligan: What is your interpretation of "reasonable time"?

Yvonne MacDermid: It is down to the individual case, is it not?

Mary Mulligan: Not if we put it in legislation.

Yvonne MacDermid: The sheriff would make the decision.

Gavin Corbett: It is in the nature of legislation that it is hard to be prescriptive about situations that will vary from person to person. I suppose that that is why section 4(4) refers to a statutory instrument, which will refer—I hope—to matters such as forbearance activity, which tends to take place over a particular time, and income support for mortgage interest, which kicks in at a certain point. There is also mention in section 4(4) of guidance, which is important, as Yvonne MacDermid said.

When courts come to interpret the provision they will have regard to the Parliament's intentions, so it is right that we discuss what is reasonable. We cannot say that a "reasonable time" is six months, nine months or a year, because to do so would constrain discretion. The issue will depend very much on the borrower.

I do not understand the distinction that is made between "period" and "time" in the Govan Law Centre's paper. It is perfectly easy for ministers and the Parliament to clarify that no distinction is implied and that that should be taken into account when sheriffs make decisions.

Mary Mulligan: I will be happy to raise the issue with the minister at our meeting tomorrow.

We have talked several times about statutory instruments and guidance that remain to be produced. You seemed to suggest that we will get them shortly. Do you know something that we do not know? Like the convener, I am concerned about agreeing that legislation should proceed, given that in every evidence-taking meeting we have heard that more information is needed before the bill proceeds.

Gavin Corbett: I make it clear that I was not implying that I had seen something that the committee has not seen—I certainly have not done so. However, from the outset I have understood that because the process is relatively condensed the draft statutory instruments that give life to section 4 will be produced during the bill's passage, so that the committee will be able to learn the detail of the intentions behind section 4. I understand that that remains the case and that a draft order is imminent, although I do not know the exact timescale.

Yvonne MacDermid: That is my understanding, too.

Mary Mulligan: That is another question for tomorrow.

Kennedy Foster: I met the Government last week to discuss pre-action requirements, and I was told that a statutory instrument and guidance are imminent.

Mary Mulligan: That word, again.

Are the witnesses content that there are sufficient resources for training on money advice issues and to enable the courts to cope with the increased business? Mr Corbett had a suggestion about how to streamline the process. Are we putting enough resources behind the bill in that regard?

Gavin Corbett: On the courts issue, there are three things that we can do: ensure that rent arrears actions are reduced, to create capacity; take new applications through summary application rather than ordinary cause procedures, which should be simpler; and cluster cases so that we can direct in-court advice more effectively. The Scottish Court Service raised concerns about increased court business early on, when the repossessions group reported, but I have heard that it is now more satisfied that the extra demand on the courts will be sustainable.

On the advice capacity, I have never been in a situation in which we have had enough capacity, and it would be helpful if we continued to press Government to ensure that the voluntary and advice sectors and the legal profession have enough resources to deal effectively with the increased business.

Mary Mulligan: Would the witnesses from Citizens Advice Scotland or Money Advice Scotland like to add to that?

Keith Dryburgh: Resources for advice provision are always tight, and particularly so in a recession. With regard to the practicalities of the bill, the certificate for sequestration is likely to involve some training for money advisers so that they are able to offer it. The Scottish Government hopes that that training will be delivered through the MATRICS programme, which Yvonne MacDermid may be able to tell you more about, and we hope that money advisers will be able to implement it quite quickly.

We have also discussed the lay representative element, and under Scottish legal aid funding there should—I hope—be an increase in capacity.

Kennedy Foster: The advice that we as lenders have received from the solicitors who act for us is that the courts, particularly those in the large cities, may struggle to cope with the increased workload. We certainly have no evidence yet of the Scottish courts' ability to cope with the additional workload; the Scottish Court Service should be asked about that.

Our members will undoubtedly compare the situation here with what happens south of the border, where the bulk of mortgage business in the UK is written. If cases take far longer to go through the court system in Scotland, it will disadvantage not only the lender but the borrower as interest on the debt continues to accrue. Our members will contrast and compare the situations and may adjust their lending policy if they view the Scottish system as disadvantageous.

Yvonne MacDermid: I mentioned earlier the five training events throughout Scotland that will cover approximately between 300 and 350 advisers, but that is just one hit in relation to the bill. There will be subsequent training on lay representation and on authorised persons, so additional resources will be necessary.

We need to keep on with business as usual, because we have a throughput of new volunteers—especially through the citizens advice bureaux—who need the whole gamut of training, which covers the introduction to money advice, consumer credit, bankruptcy and insolvency options. We provide a raft of training, and we need to run that alongside the training that relates to continuous professional development for the existing advisers. We will need additional resources to do that and more foot soldiers to deliver the messages.

Mary Mulligan: In answer to an earlier question, you each appeared to imply that part 1 of the bill, although it is not perfect, goes some way towards addressing the problems that we discussed earlier. Is that equally true of part 2? Is it necessary that we proceed with part 2 at this stage? Will part 2 have the effect—as I mentioned earlier—of protecting those who are in danger of repossession, or should we spend more time consulting on it? The committee's evidence sessions during the past few weeks have raised a number of questions and concerns that part 2 might give rise to the wrong results.

Gavin Corbett: As I said earlier, if it is a question of more time, we need to ask what will be done with that extra time. What additional information or insights will emerge during that time to ensure that the improvements that are sought—which we are not clear about—would actually happen?

I do not see why some elements of part 2—such as the proposal in section 11 to introduce for trustees in sequestration situations provisions that already exist for lenders, requiring them to inform local authorities of any imminent action that would make someone homeless—should not go ahead, because they are not particularly controversial. Some aspects of part 2 need to be scrutinised, but not all of it.

16:15

Yvonne MacDermid: I agree. The introduction of the certificate for sequestration, for example, will make a big difference to a lot of people who cannot access the low-income, low-asset scheme or satisfy apparent insolvency criteria. At the moment, some people are being pursued quite vigorously—indeed, hounded—for their debts, and they have no way out of their situation. It would be a great pity if that provision were to be dropped, because it would provide something that does not exist and would help a lot of people in Scotland.

I would also be very disappointed if the authorised person provision were removed. After all, we are moving in the direction of having approvals authorised, and it is important that money advice be regulated in some way. Given that everything else is regulated, why should money advice not be, especially as we are expecting the people involved to have such high-level skills?

Keith Dryburgh: We very strongly support the introduction of a certificate for sequestration. As I said before, a fifth of our debt clients are getting phone calls and sometimes quite threatening letters, but they have nowhere to go and no access to debt solutions. The certificate would greatly benefit a large proportion of that 20 per cent.

John Wilson (Central Scotland) (SNP): Mr Dryburgh, did you say earlier that only 5 per cent of debtors are aware of their rights?

Keith Dryburgh: I meant that 5 to 10 per cent of debtors actually represent themselves in court under the Mortgage Rights (Scotland) Act 2001.

John Wilson: I just wanted to clarify how many people actually understand their rights and know who to turn to for advice. After all, those issues are the crux of what we are dealing with, particularly in part 1.

Ms MacDermid, you said that Money Advice Scotland has already scoped out the expected costs of training and delivering other services in relation to the bill. Have any figures emerged from that scoping exercise? If so, are you able to share them with the committee or do you want to keep them to yourself for the moment?

Yvonne MacDermid: By scoping out, I meant that we have looked at what we need to do. We met only yesterday and have not yet worked out any costs—I can come back to the committee with figures when we have them. However, I can tell members that additional resources will be required, particularly in delivering training and getting advisers to meetings. After all, when advisers are being trained, they are not giving advice—and we need them to be giving advice.

John Wilson: Do the other witnesses think that additional costs will be incurred in implementing the bill and making representations on behalf of or giving advice to debtors? For example, has Citizens Advice Scotland discussed the issue with citizens advice bureaux and, likewise, has Shelter had any internal discussions about the additional resources that might be required to meet the expectations that the bill's provisions will raise in many debtors?

Keith Dryburgh: More resources will be needed, but we do not have an overall figure in that respect. We tried to estimate the cost of a lay representative representing their client, but that applied only to one case, and I cannot remember the figure. I know that, when we tried to extrapolate from that figure, we found it difficult to reach an overall figure without knowing how many people had come through the doors.

Gavin Corbett: We were all consulted on the preparation of the financial memorandum. I admit that this answer might not be helpful, but the fact is that we are looking not so much at a new volume as at a new process. Our figures for representation were reached by looking at the ordinary cause procedure, but they might not be typical of future costs. I repeat that my answer might not be of much help, but it has been difficult for an organisation such as ours to reach a figure for costs.

John Wilson: Although citizens advice bureaux do lots of good work throughout Scotland, I know that many feel that they cannot cover some issues—particularly legal ones. It is important that the new act ensures that, no matter where they live, anybody in Scotland can receive the support and advice that they require to help them through the process. I seek assurances, in particular from the voluntary sector organisations that are represented at the committee today, that we can ensure that every debtor who needs support and advice can get it. I know that that will come down to resources, but it is also about ensuring that the services are there to provide every debtor, no matter where they live, with adequate support and advice.

A comment was made earlier about "reasonable time" and reasonableness. Lawyers in Scotland and elsewhere in the UK make a lot of money arguing the case about what is reasonable and what is reasonableness in relation to UK legislation, never mind Scottish legislation. For me, the bill is about trying to ensure that everyone has the opportunity to access advice and information, no matter what the argument may be. I seek assurances from the panel that that advice will be available.

Gavin Corbett: I echo a comment that Yvonne MacDermid made previously: we cannot

necessarily give a categorical assurance just now, but we have processes in place. As well as the MATRICS process that Yvonne mentioned, the Scottish Legal Aid Board is convening a separate group to look at the advice sector's capacity, while the Convention of Scottish Local Authorities and the Scottish Government have also been talking about how to enhance the sector's capacity. I do not think that any of us could confidently say that after the bill is passed—if it is passed—absolutely everyone will get the advice on day 1. However, we could say reasonably confidently that processes are in place that allow us to take account of the legislation. I think that we are not a million miles away from being able to give such an assurance, but it is rare for any campaigning charity to say that it has everything that it needs in place.

Yvonne MacDermid: What we can certainly commit to is a willingness to try to make the legislation work and to provide training. We have no jurisdiction over the individual agencies because they are autonomous—some of our agencies are local authorities. It is disappointing that neither COSLA nor any local authority has put evidence before the committee, because they will all be affected by the legislation.

As the MATRICS project, and certainly as Money Advice Scotland, we can commit to doing everything that we possibly can, including trying to work smarter and more efficiently, but there is a limit to what we can do. I mentioned that we would have to carry on with business as usual in addition to scoping out what we need to do in relation to the new legislation, but there is no question but that we will make that a priority, because people in Scotland who are giving advice need to know what the current legislation is.

Keith Dryburgh: That is our view as well. It will certainly be a priority to try to enable our bureaux to give such advice, but what is important when the statutory instruments are published is that there are no barriers to representation. We do not want our advisers to have to jump through hoops to be lay representatives, because in a recession there are competing pressures and we want to make it as easy as possible to fulfil that role. We therefore hope that the statutory instruments ensure that it is easy for our advisers to provide representation.

John Wilson: My final question is to Mr Foster. The CML's submission hints that, if the bill is passed, lenders may take a different approach to setting rates in Scotland from their approach in other parts of the UK. Can Mr Foster expand on or explain why he feels that lenders may take that view? Would any other panel member like to comment on the concept?

Kennedy Foster: That is not quite what I said. Basically, the point that I made was about the court process. If lenders find that it takes much longer to take possession through the Scottish court process, they will undoubtedly compare and contrast the situation in Scotland with that in England and Wales, where 90 per cent of the mortgage business in the UK is written. That is why I flagged up the issue.

Obviously, lenders have different market shares in Scotland. One could see a lender with a relatively small market share saying, "Why should I really bother with the hassle of the Scottish court process?" Lenders with much bigger market shares could take a different view. I was not necessarily talking about different interest rates and so on. Outcomes, the courts' ability to cope and how long it takes to go through the court process in Scotland will determine the lenders' attitudes.

Gavin Corbett: The concept is speculative at best. I simply cannot see the additional responsibility that would be put on lenders significantly altering major strategic decisions about which markets to intervene in or Scottish borrowers being significantly compromised by relatively modest differences in practice between England and Scotland. We are talking about putting into statute what has been put in a protocol in England. I simply cannot see that leading to significant changes in market behaviour.

Kennedy Foster: I should add that we do not have any issues with the protocol south of the border. A protocol is also being introduced in Northern Ireland. Provided that what is brought in is similar to the protocol south of the border, we will not have any issues with it; in fact, we will welcome it. However, I am genuinely concerned about the Scottish courts' ability to cope with an increased case load. I have heard no evidence today about how the court system will cope.

The Convener: Ms MacDermid expressed surprise that neither local authorities nor COSLA provided any evidence or comments on the bill to the committee. Given local authorities' role in section 11, in dealing with homelessness, in the notification of people in debt and in the provision of money advice, are the other witnesses also surprised that COSLA decided not to make comments on the bill or give evidence to the committee on it?

Gavin Corbett: I would have expected some of the larger local authorities, rather than COSLA, to have commented on the bill. Perhaps that shows COSLA's confidence in its voluntary sector colleagues making the arguments that it would have made. I do not know why it has not produced evidence; it may be worth asking it why it has not

done so. Perhaps we, too, should do that and encourage it to provide evidence.

The Convener: Are you aware of COSLA's position or of any papers that it has produced or direct discussions that it has had with the Government in response to the bill?

Gavin Corbett: COSLA was represented on the debt action forum and the repossessions group. Nothing came up in them that suggested its dissent from their main conclusions, and I have no evidence that it has a significantly different view now.

The Convener: But it decided not to give evidence in support of the bill.

Gavin Corbett: I do not know whether that inference can be taken. It might be worth clarifying that with COSLA.

The Convener: I may be being disingenuous, but most people who were on those groups have stated whether they support the bill. COSLA seems to be in a strange position.

Keith Dryburgh: As you have said, local authorities have a big role to play in all types of housing, so one would have expected COSLA to have a view on the bill. As Gavin Corbett said, it was represented on the debt action forum and the repossessions group, and it certainly had no huge complaints about the recommendations that came out of them.

The Convener: The ministers will give evidence tomorrow, so COSLA may not get the chance to express a view.

Members have no further questions. I thank the witnesses for their attendance, the time that they have spent here and their evidence.

Members will recall that we previously agreed to take agenda item 2 in private.

16:29

Meeting continued in private until 18:27.

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