LOCAL GOVERNMENT COMMITTEE

Tuesday 18 January 2000
(*Afternoon*)

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2000.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate Body.

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

Her Majesty's Stationery Office is independent of and separate from the company now trading as The Stationery Office Ltd, which is responsible for printing and publishing Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 18 January 2000

Col.

ABOLITION OF POINDINGS AND WARRANT SALES BILL 492
ETHICAL STANDARDS IN PUBLIC LIFE ETC (SCOTLAND) BILL 527

LOCAL GOVERNMENT COMMITTEE
3rd Meeting 2000 (Committee Room 1)

CONVENER:

Trish Godman (West Renfrewshire) (Lab)

DEPUTY CONVENER:

*Johann Lamont (Glasgow Pollok) (Lab)

COMMITTEE MEMBERS:

*Colin Campbell (West of Scotland) (SNP)
*Mr Kenneth Gibson (Glasgow) (SNP)
*Donald Gorrie (Central Scotland) (LD)
*Mr Keith Harding (Mid Scotland and Fife) (Con)
*Dr Sylvia Jackson (Stirling) (Lab)
*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)
*Bristow Muldoon (Livingston) (Lab)
*Mr Gil Paterson (Central Scotland) (SNP)
*Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

*attended

THE FOLLOWING MEMBER ALSO ATTENDED:

Tommy Sheridan (Glasgow) (SSP)

WITNESSES:

June Deasy (Federation of Small Businesses)
Stephen Lewis (Credit Services Association)
Dr Roger Lucas (Credit Services Association)
Mr Frank McAveety (Deputy Minister for Local Government)
Joanne McDougall (Scottish Executive Development Department)
Cliff Poole (Credit Services Association)
Dr David Nichols (Scottish Law Commission)
Trudi Sharp (Scottish Executive Development Department)
Jane Todd (Federation of Small Businesses)
Niall Whitty (Scottish Law Commission)

COMMITTEE CLERK:

Eugene Windsor

ASSISTANT CLERK

Craig Harper

Scottish Parliament

Local Government Committee

Tuesday 18 January 2000

(*Afternoon*)

[THE DEPUTY CONVENER *opened the meeting at 14:05*]

The Deputy Convener (Johann Lamont): I welcome everyone to this meeting of the Local Government Committee. Let us get started. I am conscious that we have a heavy timetable this afternoon.

Trish Godman, the convener of this committee, is unwell. In her absence, I shall chair the meeting. I suggest that we follow the usual format in taking evidence, and I ask members to be aware when asking their questions of the amount of business that we have to deal with.

I want to raise a small matter at the beginning of the meeting. At one point today, it seemed that, because of family circumstances, I might not be able to stay for the whole meeting. That would have created an anomaly—if neither the convener nor the deputy convener are available, the meeting cannot go ahead. I am asking the clerk to pursue that point with the appropriate people as we could have ended up not being able to take the second element of evidence.

I note that Tommy Sheridan MSP is with us today. He is not a member of this committee but of course he is entitled to attend any committee meeting—as we all are. I welcome Tommy, who, like other members, will have an opportunity to contribute to today's business.

Abolition of Poindings and Warrant Sales Bill

The Deputy Convener: The first item on our agenda is the Abolition of Poindings and Warrant Sales Bill. This will be our second evidence-taking session on the bill. I am happy to welcome Niall Whitty, the commissioner of the Scottish Law Commission, and Dr David Nichols, who is an assistant in the commission's diligence team.

We hope to complete this item of business by 2.45 pm. We will have a brief presentation from the witnesses and then I will ask members to indicate if they want to ask questions. The usual procedure is for members to ask one question, with the opportunity to ask one supplementary question. We have found that that is the most effective way of allowing everyone to make a contribution. With that said, I hand over to Niall Whitty.

Niall Whitty (Scottish Law Commission): Thank you, convener.

As stated in our memorandum to the Justice and Home Affairs Committee, the Scottish Law Commission has a twofold interest in the Abolition of Poindings and Warrant Sales Bill. First, our 1985 report formed the basis of the Debtors (Scotland) Act 1987, which regulates poindings and warrant sales. Secondly, on 30 November of last year, under an urgent reference of 2 September by the Minister for Justice, who asked us to revisit the question of poindings and warrant sales, we issued discussion paper 110 to the public. We took the liberty of sending a copy of that paper to all members of the Scottish Parliament, for information. That reference by the Minister for Justice could be superseded by the progress of the bill—no doubt, some people think that it should be, but that is politics and it is above my head. Many other papers have been issued; I need not refer to them, as Mr Peter Beaton did in his evidence to the Justice and Home Affairs Committee.

As the commission is still consulting on this topic, I can give the committee only our provisional views, not our final views. Please read into anything that I say that these are my provisional views, as sometimes I will forget to say that.

I want to make five points. I was told that I could have 10 minutes—is that all right?

The Deputy Convener: Yes.

Niall Whitty: That will be two minutes a point.

First, I should say that we fully recognise that the bill addresses genuine social problems of immense importance. Clearly, it has been very

successful in pricking the conscience of the nation. However, in our provisional and respectful view, its solution—the abolition of poinding and sale—goes beyond its social policy objectives and therefore could be described as too drastic and undiscriminating.

The main principle on which systems of debt enforcement in Europe and the Commonwealth are based is that all the property of a debtor should be attachable by his creditors to pay his legally constituted debts and taxes, subject to specific exceptions enacted by specific laws. The most important of those exceptions, for our purposes, is property—generally household goods, some tools of the trade and the like—that is exempt from enforcement for humanitarian reasons to protect a basic standard of living for the debtor and his family.

In our memorandum, which members may have copies of—it is the blue document that I gave to the clerk—those principles are set out at paragraph 7. Paragraphs 23 to 31 detail the sort of exemptions that are found in other legal systems. Our further research into this matter found those principles affirmed by comparative studies. For example, article 2092 of the French civil code says that

"whoever is under a personal obligation is bound to fulfil his engagement with all his moveable and immovable property present and to come".

That is the internationally accepted principle, but the bill is inconsistent with it. Its effect would be that all movable goods in a debtor's possession—the most common type of property that people have, apart from money in the debtor's possession, which in our law is not attachable—would be creditor proof outside insolvency proceedings.

My second point relates to my first. With regard to the legitimate social aims of the bill, our provisional opinion is that the case has not yet been made for the abolition of poinding and the sale of movable goods outside dwelling houses. A dramatic example would be an aeroplane at Turnhouse. Critics might say that that is an unusual example, but there are other important examples.

Poindings outside dwelling houses should not be dismissed as numerically unimportant. Central research unit research on 1991-92 data suggests that about one third of poindings and two thirds of warrant sales under court decrees—I am not talking about council tax cases—are against commercial debtors and that many of the goods are commercial goods in commercial premises. You will see a reference to that data in paragraph 16 on page 10 of the memorandum that we provided. We agree with Mr Sheridan that it may be difficult for the bill to distinguish between commercial and private individual debtors, but it would be relatively easy to distinguish between goods in dwellings and those in premises other than dwellings.

Thirdly, in our provisional view, it has not been established that an equally effective and more socially acceptable alternative to poinding and sale exists or can be devised. That is because, obviously, the forms of diligence against property and income assets are limited by the types of assets that people have. Scots law already provides for diligences against all assets except money in the debtor's possession.

Table A on page 4 of the memorandum shows all the types of property and the diligences that have been adapted to them, but in many cases they are not realistic alternatives. Many poindings are used against tenants, yet inhibitions freezing land cannot be used against tenancies. Earnings arrestments against wages and bank arrestments can be used only if the creditor knows the details of the debtor's employment or bank account. A debtor's bank account may be in overdraft or unidentifiable by the creditor, and a self-employed person has no wages. The legal system does not give any help to creditors in identifying arrestable assets, but often creditors will know the debtor's home or business address and can poind goods there, thereby indirectly gaining access to such funds, bank accounts and earnings as the debtor has.

For many reasons, insolvency proceedings are no alternative—we elaborate on that point in discussion paper 110. The total debts for sequestration of an individual debtor must be £1,500. Two thirds of poindings under court decrees are for less than that amount. The cost of insolvency proceedings is three or four times the cost of poinding and sale; we must remember that one of the criticisms of poinding and sale is that it is not cost effective. Discussion paper 110 contains tables comparing the costs of sequestration and poinding. The liquidation of a company is even more expensive.

14:15

Time-to-pay orders and informal arrangements for payment by instalments are to be encouraged. They are alternative means of making payments, but they do not replace diligence, because they may depend on diligence in the event of default. Such arrangements are more like diligence stoppers than forms of diligence.

Under the Debtors (Scotland) Act 1987, household poindings have become a diligence of last resort. In contrast, in England, enforcement against goods, including household goods, is nine times more common than all other kinds of

enforcement. The abolition of the last resort in Scotland would deprive creditors of their only ultimate remedy. If poindings are abolished, it is difficult to see how diligence can be done against the self-employed or those whose wages and bank accounts are unidentifiable. The fact that there is no alternative may suggest to the committee that the bill should not go beyond its accepted social policy objectives.

Fourthly, it is said that poinding and sale are ineffective because so many poindings result in so few sales. In relation to council tax, there are 275 poindings for every sale; in ordinary cases, there are only 16 poindings for every sale, even though there are restrictions on sale in ordinary poindings. The transaction costs are fairly high compared with other diligences and the proceeds of sales are low. However, that argument discounts or ignores the role of poinding as a spur to payment—a phrase that has been criticised, but we cannot think of a better one. In England and Wales, where, unlike in Scotland, there are statistics on the amounts recovered—payment is made through the court and can be monitored—execution against goods is mainly used as a spur to payment. The number of sales is not even counted because, statistically, it is insignificant. In England, there are 589,000 warrants per annum for execution against goods, not including council tax cases. That is set out in table J on page 31 of the memorandum. There are very few sales: the ratio is one sale for 500 enforceable warrants. However, the recovery levels are significant.

Fifthly, it is said that abolition is necessary because the poor and vulnerable should not be put under pressure to pay. There are three things to be said about that. First, abolition of poindings and sales would protect the rich as well as the poor—the "can pay, won't pays" as well as those who, as Mr Adams said in his evidence last week,

"can't pay and would like to."—[*Official Report*, *Local Government Committee*, 12 January 2000; c 442.]

Secondly, coercive pressure to pay is a necessary part of any system of debt enforcement. Without it, payment of debt would become voluntary and a matter of conscience. Thirdly—this is where the shoe pinches—pressure must be imposed by a form of diligence that is socially and morally justifiable. That is where the trouble arises, because it is becoming clear that poinding of goods that are not worth selling is no longer regarded as acceptable by society. The Debtors (Scotland) Act 1987 was based on the view that the appropriate response to social concerns was to keep poinding as a spur to payment, but to relieve the poor and vulnerable from undue pressure through time-to-pay directions and orders. It is now becoming clear that that spur-to-payment role, when it is applied to goods of insufficient value for sale, is difficult, if not impossible, to defend.

At present, non-exempt goods can be poinded when it is known to the officer and creditor that the expenses will swallow up the proceeds of sale. The sheriff has power in ordinary poindings to refuse warrant of sale on the ground that the future expenses of removing the goods to an auction room and selling them there would not be covered by the proceeds of sale. That test of whether a sale is worth while is very restrictive. Our memorandum discusses the case for expanding the test, so that the proceeds of sale must cover not only the expenses of removal and sale of goods, but all the diligence expenses up to that date and the interest; they must also make some contribution to paying the principal sum in the decree or summary warrant.

Furthermore, there is a very strong case that that test should be applied not at the later stage, when the sheriff determines whether a warrant of sale is justifiable, but at the stage of the poinding. At that stage, the sheriff officer knows, from the appraised value, what the likely proceeds of sale would be, and knows, from experience, what the likely expenses would be, and can compare the two amounts.

At the moment, creditors are bluffing debtors when they use poindings of goods whose sale would be economically unjustifiable. Bluffing is an integral part of our adversarial system of litigation. Cases are settled every day by parties who pretend that they have stronger cards in their hands than they do.

Under our law, it is not extortion to threaten to take legal proceedings. A creditor may send demands for payment to a debtor, saying that he will send the case to a debt collection agency if nothing happens. The debt collection agency can make demands and threaten to send the case to a solicitor. The solicitor can make demands and threaten to bring a court action.

At each stage, the threat may simply be bluff, because the creditor does not wish to throw good money after bad, or might not wish to lose customer goodwill. However, in a poinding, by virtue of holding a decree, the creditor and the sheriff officer are in a strong position, and the debtor is in a weak position. There is a disparity in such cases, as there is in local authority council tax poindings. The question for our Parliament to consider is whether that bluff is justifiable. Speaking provisionally, I find it difficult to defend.

What, then, is to be done? Parliament could abolish all poinding, or it could abolish household poindings. Our memorandum and discussion paper 110—at somewhat inordinate length—consider three different measures falling short of

the abolition of household poindings. One proposal is the reform of poindings and sale. We could increase exemption levels. We could prohibit not only economically unjustifiable sales, but economically unjustifiable poindings, of non-exempt goods. We could regulate forcible entry much more carefully—it is not true that Scotland is the only country that has it. In this paper we refer to Sweden and Norway, to some Australian states and to some other states. An article in the 1997 "European Review of Private Law" contains a survey of different ways in which forcible entry is done in the European Union.

The second measure that we could introduce to improve debtor protection would be to improve what I call the diligence stoppers. That is in the memorandum at paragraphs 46 to 50 and in our discussion paper 110 at part 7. We could try to make time-to-pay directions and orders more accessible, although that is not easy, or we could introduce debt arrangement schemes, although that is controversial. Contrary to our provisional opinion in discussion paper 110, it seems likely that time-to-pay orders in connection with summary warrant poinding for council tax would be highly desirable. Sheriff officers could be required to give application forms to debtors who claim inability to pay outright in a lump sum. There is always the problem, of course, of helping debtors to make applications to the court. The 1987 act did what it could by providing that none of those applications would cost the debtor anything but, as we all know, the problem is getting debtors to act.

The third range of measures that we could use would be to divert enforcement away from poinding and sale. We have already made poinding and sale a diligence of last resort, at least against household goods. Compared with what happens in England, we have been enormously successful in that, as the statistics show. If we chose that course, we would be reinforcing an existing trend.

There are two ways of diverting enforcement, given that creditors get no help in identifying arrestable assets under the legal system. The first is to obtain information about arrestable assets from the debtor through compulsory means inquiries—oral examinations on the English or foreign models. We have always set our face against that, because of the difficulty that we have in getting debtors to turn up to means inquiries. We have statistics only for district courts, but they show that, in 68 per cent of summonses to appear at a means inquiry, the debtor does not turn up. We are then left with the coercive procedures of arrest. For all its faults, our legal system has since 1880 managed to avoid arrest and the threat of imprisonment for debt.

A more promising avenue is to enable the court or some other agency to obtain information from third parties, such as the clearing banks, building societies, the Inland Revenue, the Department of Social Security and the Driver and Vehicle Licensing Agency. That is set out in paragraph 45 of our memo and in part 6 of our discussion paper. It is interesting that, at the moment, the Lord Chancellor's Department is actively considering such measures as part of its current review. The department's consultation paper No 4, which was issued last week, says that, of all its procedures, oral examinations were criticised most. That confirms us in our view that we should not introduce them in Scotland. The department is considering means of persuading the Inland Revenue to help creditors, through the DSS and so on. We might be able to piggy-back on that, although that is not within the gift of the Scottish Parliament, as these are United Kingdom departments. The Scottish Executive will insist that it and Scottish interests are consulted to ensure that any new machinery fits into our system.

That said, even measures of increased debtor protection—let alone abolition of poinding and warrant sale—are likely, in my respectful submission, to have a serious adverse effect on recovery levels. That effect is difficult and perhaps impossible to quantify.

That is not decisive. The crucial question for our Parliament is how far the social benefit of abolition or increased protection for debtors will outweigh the disadvantage of reduced recovery levels. We are weighing moral considerations against recovery of money.

14:30

In conclusion, I remind the committee that, historically, other creditors remedies, including, for example, wage arrestments and ejection from dwellings, have been used as engines of oppression of poor people in Scotland. However, the legislative response has always been measured and discriminating. Those essential remedies are still available for appropriate use in cases where they are not regarded as oppressive. I take wage arrestment as an example. We worked away on it until at last, in 1987, we seemed to have achieved a type of diligence that satisfied the different interests involved—the creditor, the debtor and the employer.

I respectfully invite the committee to consider whether, instead of agreeing to abolition, our Parliament should seek a consensus on reform of poinding and sale, reconciling the important competing interests in the same way as we reformed arrestments.

The Deputy Convener: Thank you. Does Dr

Nichols have anything to add at this stage?

Dr David Nichols (Scottish Law Commission): No.

The Deputy Convener: We are pressed for time, and we have much more evidence to take, but I want everybody to have the opportunity to ask questions. I ask people, in doing so, to be disciplined.

Mr Kenneth Gibson (Glasgow) (SNP): Mr Whitty, is there a difference between the collection rates of local authorities that actively pursue poindings and warrant sales and the rates of those that do not?

Niall Whitty: I believe that there is, although I cannot give you chapter and verse. It was referred to in the evidence given by the sheriff officers and there is something on it in the Institute of Revenues Rating and Valuation's report on council tax collection arrangements in Scotland, England and Wales. I will write to you about that.

Mr Gibson: Do you have any view about the effect of abolition on the subsequent willingness of creditors to lend?

Niall Whitty: I do not. The giving of credit is not part of the diligence system. Various views have been put forward. For example, where exemptions apply, the price of exempt goods could be excepted, so that people would not be deterred by the existence of exemptions to sell those goods on credit. That is used in one or two legal systems on the continent.

Mr Gibson: The last two sentences of paragraph 37 say:

> "It is nowhere suggested there that poinding and sale should be abolished. Rather the emphasis is on retaining the existing diligences and improving the measures of debtor protection for use in appropriate cases."

Can you suggest ways in which that can be done?

Niall Whitty: That can be achieved by the measures to which I refer: the exemptions, the restrictions on economically unjustifiable poindings, the promotion of time-to-pay directions and orders and possibly even debt arrangement schemes and, by the Inland Revenue and other third parties giving information on arrestable assets to creditors, the diversion of enforcement away from poinding towards those arrestable assets.

Donald Gorrie (Central Scotland) (LD): Do you see any moral difference between poindings and warrant sales against private people and against companies? In your experience, is there any practical difference? Is one type of poinding more effectual than the other?

Niall Whitty: The Scottish Office central research unit research paper statistics show that poindings and warrant sales against business debtors are substantially more effective than those against individual debtors. Tables S and T on pages 94 and 95 and tables U and V on pages 99 and 100 of our discussion paper give some figures.

Recovery rates at warrant sale stage can be miserable. For individual debtors, warrant sales do not even cover the diligence expenses. In 4 per cent of cases, more than half the principal sum was recovered, while in 13 per cent of cases, under half the principal sum was recovered. That means that any contribution whatever to recovery of the principal sum was made in only 17 per cent of cases.

The picture changes for business debtors. In 8 per cent of cases, the entire principal sum and all diligence and other expenses were recovered. In 21 per cent of cases, more than half of the principal sum was recovered. In 25 per cent of cases, under half of the principal sum was recovered. Therefore, in 54 per cent of cases, some contribution was made. Members should remember, however, that there are very few warrant sales.

At poinding stage, the picture is much better. Table V shows that in 96 per cent of cases against business debtors some contribution was made towards recovery of the principal sum. In 61 per cent of cases, the entire principal sum and all expenses were recovered. In a further 18 per cent of cases, more than half of the principal sum was recovered. That means that in a subtotal of 79 per cent of cases, more than half of the principal sum was recovered. In a further 17 per cent of cases, under half of the principal sum was met. However, I do not want to keep giving statistics.

There are, of course, far more cases of poinding than there are of warrant sales. By warrant sale stage, there are only the people at the bottom of the barrel and the goods are almost unsaleable.

The Deputy Convener: The document to which you refer has not been circulated to committee members, but copies are available from the clerks.

Donald Gorrie: It would be helpful to have a copy.

Niall Whitty: We sent a copy of our document to each individual MSP.

The Deputy Convener: If Dr Nichols has nothing to add, I will move on to Tommy Sheridan.

Tommy Sheridan (Glasgow) (SSP): I beg your indulgence, convener. If I can keep my questions short, I hope to be able to get in two or three.

Mr Whitty and Dr Nichols, how many poindings have either of you attended?

Dr Nichols: None, in my case.

Niall Whitty: Back in the 1980s I attended one or two poindings. I often do not have any direct experience of the law with which I deal. I have dealt with domestic violence and divorce, but fortunately have managed to avoid both.

Tommy Sheridan: The reason I ask the question is that the evidence of the people who have suffered poindings and warrant sales is of the great stress, fear, humiliation and loss of dignity that the whole process causes.

You gave some historical examples. I have an example from last Friday, involving a disabled woman of Burndyke Square in Govan, who cares for her disabled daughter who is a victim of cerebral palsy and is confined to a wheelchair. The woman has a council tax debt, despite the fact that she is in receipt of income support and has informed the sheriff officers that that is the case. Nevertheless, the sheriff officers entered her home on Friday and carried out a poinding of, among other things, a hoover and a tumble dryer. Given that her daughter is incontinent as a result of her cerebral palsy, it seemed rather frightening that a sheriff officer could carry out a poinding for a tumble dryer that is used to dry clothes. A microwave oven was also poinded—

The Deputy Convener: Tommy, I do not want to be unhelpful, as I am conscious of the sensitivity of the cases that you are describing, but I am also stressed out by the clock ticking on. Without diminishing the point that you are making, will you come to your question, please.

Tommy Sheridan: I will not go on to describe the other items, but the total amount that was poinded was £70, for a principal debt of £1084.

I give that example not because it is an exception, but because that is generally the case.

Niall Whitty: It is typical.

Tommy Sheridan: If, as you say, this is typical and it is happening today, surely you should accept that poinding and warrant sale is not being used as a last resort. In fact, it is being used as a first resort, to frighten the poor. Would you accept that?

Niall Whitty: I accept the fact that it is used as a threat against the poor, but I would not accept that, when creditors have a choice of using another type of diligence, they would use poinding and warrant sale. The statistics show that that is not the case. According to council tax statistics, for every 10 poindings there are between 66 and 99 ordinary bank arrestments, and between 66 and 125 earnings arrestments. The IRRV report said that, when it is possible, orders for deduction from income support or jobseekers allowance are used—which are the only two social security benefits that those orders can be used on.

I can only go on the written evidence that we can either read or which can be given to us. My strong impression, backed by the evidence, is that poinding and warrant sale is not used as a first resort. However, I agree that it is used as a threat against the poor: that is my whole point about the spur to payment.

Tommy Sheridan: If advice was given that debtors need not worry about poindings, as only luxury goods such as cars or valuable antiques could be poinded, would you think that that was good advice?

Niall Whitty: No, not under the present law. We know what the statistics are. They are in our discussion paper.

Tommy Sheridan: I ask because—

The Deputy Convener: Can you make this your last point, Tommy?

Tommy Sheridan: I will make this my last point.

I ask because the advice that is given by the diligence committee of the Law Society of Scotland, in its submission, is that debtors need not worry, as only

"luxury goods such as a car, valuable antiques, stock and the like"

can be poinded. Is it not incredible that the Law Society of Scotland—such an eminent and reputable body—is so ill advised, yet ordinary debtors are supposed to be aware of this law?

Niall Whitty: I honestly do not think that the Law Society of Scotland had much time to prepare its submission. In fact, I know that it did not.

There are statistics on this in the central research unit report that show that 50 per cent of all poinded goods are electrical household appliances. A further 13 per cent are kitchen appliances, such as microwave ovens, and 30 per cent of such goods are furniture. The remaining 8 per cent comprises miscellaneous items. A small increase in the exemptions could have a devastating effect.

Dr Nichols: Even without increasing the exemption levels, the type of emotive case that you have just put forward would be stopped by our proposals. The poinded value is clearly nowhere near sufficient to meet the expense even of selling them. That would be outlawed under the present system if the sheriff was on the ball. Under our system, poinded goods up to a value of about £300 would fail any not-worth-it test. The poinding and warrant sale would not be justifiable under those circumstances.

The Deputy Convener: Thanks. Two members will be able to speak before we close the discussion.

14:45

Dr Sylvia Jackson (Stirling) (Lab): I want to make a general point. I do not know whether it is because I am getting old, but I had a problem catching everything that you said earlier, and all the legal bits. That is just a general point. I caught most of what you said, however.

My main point is on the second reform that you mention in your discussion paper, on allowing more time-to-pay directions and orders. The matter was raised last week, and the main point which came from it was the resource implication. Whether we continue with poindings and warrant sales or not, it strikes me that that is a measure that we would want to develop. Could you comment further on some of the practicalities and resource implications of that reform?

Niall Whitty: I must first declare an interest, deputy convener: my wife is an adviser in a citizens advice bureau.

This matter goes outside the diligence system. In my personal opinion, the CABs are terribly underfunded. It is ridiculous that they have to go to the national lottery to get money. One thing that we have said is that, if debt arrangement schemes—a kind of mini-sequestration scheme for people who only have income—are not introduced, Government must provide the resources. One reason given by Government for not introducing debt arrangement schemes is that it is adequate to have informal payment arrangements brokered by the money advice centres, trading standards departments of local authorities and the CABs. If Government uses that reason, it must resource those institutions, which provide their services for nothing—they are not paid a penny. The value that the public gets from them is an essential part of the welfare state. It is remarkable.

Bristow Muldoon (Livingston) (Lab): Niall, during your contribution, you recognised some of the social reasons behind the introduction of this bill. You also drew a distinction between personal debts and commercial or business debts. As you drew that distinction, would you think it practical for the bill to abolish warrant sales and poindings for personal debts and for homes or dwelling-places, while retaining them for business or commercial debts? If it were practical, would that be something that you would support?

Niall Whitty: I can only give a provisional view, Mr Muldoon. It is much easier to draw a distinction between goods in dwelling-houses and goods in premises other than dwelling-houses than to draw a distinction with business and commercial debtors.

I do not think that there is any case for abolishing the poinding and sale of goods in commercial premises: it does not bear thinking about. That, in my opinion, would go far beyond the appropriate social objectives of the bill. If that is accepted, the crucial question is then what to do about household poindings. My provisional view is that that the Parliament should not abolish household poindings completely.

The supporters of the bill will make the point—and this is quite true—that threats to poind could still be made against the poor. The creditor would still have the right to send in a sheriff officer to assess the goods that are there. We should not have tunnel vision only about the problems of the poor; we have to cater for all sorts of sectors in our society. We are a commercial nation as well as a caring and inclusive one.

We have to balance the various interests. It is going too far to allow middle-class people with plenty of antiques to keep them. I agree with Mr Sheridan: at the moment, such people are not affected by poinding and sale, but a different problem would emerge after abolition because the people who pay further back in the debt recovery process could well slip into an enforcement stage.

Bristow Muldoon: I cannot see how we can achieve the aim of protecting the poor, which you accept would be worth while, while domestic poindings and warrant sales are retained. The reason why many more middle-class debts do not result in poindings and warrant sales may be that creditors use other forms of recovery such as earnings and bank account arrestments.

Niall Whitty: But what is a creditor to do if he does not know where his debtor banks? Even bank arrestment may not be successful; if the debtor is self-employed, the account may be an overdraft. The creditor may not know details of the debtor's employment and there is no way of getting that information from the debtor. There is no option for the creditor but to poind. A local tradesman may go into a middle-class household—a posh house—and install a fitted kitchen. He can see antiques all over the joint but he cannot touch them if he does not receive payment. That is a serious matter.

Mr Gil Paterson (Central Scotland) (SNP): Can I just ask—

The Deputy Convener: Sorry, no. I said that that was the last question.

Mr Paterson: It is a point of clarification.

The Deputy Convener: Very quickly, then.

Mr Paterson: I will be quick. You said that the test should be expanded. I take it that you mean that the goods available for poinding should be identified, and that the remaining goods would be worth a sum of, say, £300. Is that correct?

Niall Whitty: Not quite. The proceeds of sale must cover the diligence expenses, plus the interest; they must also make a significant contribution to the amount of the debt. We are consulting on that. When Dr Nichols mentioned £300, he was referring to the existing law.

Mr Paterson: But if the test were to be expanded—

The Deputy Convener: You are stretching your question beyond clarification.

I thank Niall Whitty and Dr David Nichols for attending. We look forward to hearing your definitive position on the subject, as well as the provisional one.

Niall Whitty: Thank you. It has been a privilege to appear before the committee.

The Deputy Convener: We will now hear evidence from representatives of the Credit Services Association, whom I thank for attending. Dr Roger Lucas is the vice-president, Stephen Lewis is the president and Cliff Poole is a council member. I will simply hand over to them, in whatever order they want to speak, after which the committee will ask questions.

Stephen Lewis (Credit Services Association): Thank you, convener, for allowing us to give oral evidence today.

As an introduction, I am Stephen Lewis, president of the Credit Services Association. To my right is Dr Roger Lucas, our vice-president—to whom questions should be addressed—and to my left is Cliff Poole, who is a council member and past president. With Roger Lucas as chairman, we make up the association's committee on this matter.

The Credit Services Association is the national trade body for the UK debt recovery industry. We represent 114 member companies, which, in turn, represent 90 per cent of the debt collection industry. Last year, our members were tasked with collection instructions in excess of £3.5 billion. Our members work within a strict code of conduct, which is one of only nine industry codes endorsed by the Office of Fair Trading, with which we enjoy a good working relationship. We are considered to be the only debt collection representative body in the UK.

While most of our collection procedure is pre-litigation, our members have traditionally used the Scottish legal system for debt recovery, when and where appropriate, relying upon the Scottish system for effective enforcement. Because of our position in the recovery process, our members are aware of those debtors who require some help and protection. Within our industry, our proactive debt collection procedures recognise hardship as an issue and many members have specific departments to deal sympathetically with such cases. As an association, we also have council representatives who liaise with the money advice liaison group, which includes CABs and Money Advice Scotland.

That said, as stated in the Scottish Law Commission's discussion paper, effective enforcement procedure is necessary to give ultimate credence to the force of law in our recovery procedures. Such procedure is paramount to responsible lending practice, and to collection activity, if necessary, thereafter. As stated by the Scottish Executive justice department, it is necessary to have in place systems that enable the creditor to achieve effective recovery from those who seek not to fulfil their obligations.

We are fully aware of a need for a balance between debtor and creditor interest. However, without effective alternatives, the principle of this bill undermines that initiative and will probably lead to a change in lending patterns, which will be detrimental to the consumer as well as contrary to the principles of enforcement procedure in Europe.

Thank you, convener, for allowing me to make that brief introduction. We are happy to take questions.

The Deputy Convener: Thank you. Tommy Sheridan will ask the first question.

Tommy Sheridan: From the evidence that was given by the Scottish Executive and most of the evidence submitted in relation to debt recovery, it has been suggested that the overwhelming majority of debtors are people who want to pay but who are in difficulty. Do you accept that assumption?

Dr Roger Lucas (Credit Services Association): Our aim is always to find those who can afford to pay and who want to pay, to help them to do so. As debt collectors, our biggest problem is getting information and, initially, making contact with people. Remember, we start our work in the commercial world of lending, with banks, credit card companies and so on, and often at the early stages just a few payments of a routine nature have been missed. As soon as we become involved, we try to establish contact with the debtor.

At all stages, from letter to telephony, from advising that solicitors may become involved to actually involving solicitors, through to litigation and so on, we learn enough about individual cases to know whether, and to what extent, each individual debtor can afford to make repayments. Our aim always is to facilitate those repayments. We have about 600,000 cases a year in Scotland, the vast majority of which will result in payment arrangements. We would like, but do not often

expect, to get payment in full.

Of those 600,000 cases, about 60,000 decrees are awarded in Scotland as a whole, of which 15,000 go to our members—about 2.5 per cent reach court action. By the time we take court action, we are fairly sure that the expense is justified—we would expect to recover the cost of the court action. We deal on an entirely commercial basis.

15:00

Tommy Sheridan: Thank you. That evidence confirms what others have said. If poinding and warrant sales were not available under Scots law, do you have any evidence to suggest that your debt recovery procedures would be severely hampered?

Dr Lucas: As the removal of poindings and warrant sales has not happened, the evidence, such as it is, comes from removing other steps in debt recovery. It is not a reversible experiment. We cannot tell half the population of Scotland that they will not be subject to poinding and warrant sales and see what would happen. We cannot experiment—we can only refer to other instances where particular debt collection practices have been stopped.

We spend much time experimenting with what are called champion and challenger techniques, where we set up a new collection procedure and measure how it performs against an established one. We do that regularly, particularly when litigation is not part of the equation. As long as it is not known to what we would call the debtor population, the effect is small. However, as soon as the changes become known, particularly in the commercial world, where there are only half a dozen big accountancy firms—once the word has got round that we will not sue for a certain type of debt—collections are affected.

I feel passionately—as passionately as Mr Sheridan feels about his bill—that collections will be seriously affected by the removal of poindings and warrant sales. The Scottish legal system is very effective—we have statistics to show that what we do here is more effective than what happens in the 5 million cases in England and Wales.

Tommy Sheridan: Do you agree that your feeling that poinding and warrant sales should be retained is subjective?

Dr Lucas: If we remove any stage of the collection process, there will be an effect further up. The effects of removing the ultimate sanction are unknown.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): Do you have any comments on the evidence that we heard from the Scottish Law Commission? Is there any disagreement? Will you comment on the Scottish Law Commission's push as to how we might alter the legislation, aside from the bill's proposals?

Dr Lucas: I listened with interest to that presentation. I found myself in agreement with most, if not all, of what was said.

Mr Stone: There was no disagreement?

Dr Lucas: I did not make any notes. There were one or two points that I would have expressed differently, but I agreed with the message behind them.

Mr Stone: What about the suggestions for changing legislation? Can you comment in detail on that?

Dr Lucas: The proposal that we should be reasonably sure that the costs of an action will be returned and some contribution made towards the debt is excellent. We try to reach that decision on a commercial basis, with the knowledge that we glean from various sources. If we can, we talk to debtors—our collectors regard themselves as debt counsellors, examining income and expenditure in detail.

We also have information from other sources. Of course, when we begin to work with sheriff officers, on poindings and so on, information ultimately becomes available so that we know what the debtor owns, and what it would raise at sale. All the way through the process, we make decisions about whether the next course of action can be justified, in purely commercial terms. We do not sue people from whom we do not believe we will get back our court fees.

Mr Gibson: What proportion of final warrant sales did not give you a return on the debt?

Dr Lucas: Do you know how many final warrant sales we have?

Mr Gibson: You tell me.

Dr Lucas: Very few. We think that our members in Scotland are responsible for about 25 per cent of poindings, which means about 1,500 poindings. The association tries to survey its members, but statistics are hard to gather, because we are all commercial organisations, and hold our cards very close to our chest. We have conducted an informal survey of the main debt collection agencies in Scotland, some of which are represented here today: the number of warrant sales that they carry out can be in single figures. The vast majority of cases are resolved when information comes back from sheriff officers after a poinding.

Mr Gibson: I take it that the proceeds from those warrant sales cover all the costs

Dr Lucas: Probably. The sales will tend to be commercial and successful.

Mr Gibson: Mr Lewis stated that implementation of the bill would lead to a change in lending conditions. Can you be more specific about that?

Dr Lucas: Yes. We cannot speak for the British Bankers Association or the Finance and Leasing Association. We can only speak from our experience about the impact that we think our actions have on the lending market. We contribute data on our recoveries to credit reference agencies. We know how the data that are stored by credit reference bureaux feed into credit scoring systems. Lower recoveries for us will almost certainly lead to a tightening of lending criteria through those credit scoring techniques.

Mr Gibson: Do you mean that fewer people will have access to credit, or that there will be higher interest rates, or both?

Dr Lucas: On the balance of probability, I think that lower, slower and more costly recoveries will not affect the profits of lenders, because of their bad debt provisions, but will affect either the cost of credit or its availability. As this will become a geographical issue, on the balance of probability, I think that the effect will be on availability. That is the view of the association; I am not speaking on behalf of lenders.

Mr Harding: I am intrigued by the Law Commission's suggestion that the exemption of goods could be extended. You thought that that was probably a good move. What is to prevent people who have assets from moving them before the poinding takes place? I believe that seven days' notice of poindings is given.

Dr Lucas: That highlights the difficulty of abolition in just one sector. In some cases of commercial debt involving sole traders and small, unincorporated, non-limited businesses, debtors are able to move goods rather more freely, for example, between a workshop and a house. It would be extremely difficult to determine which were private and which were commercial debts.

Bristow Muldoon: You said in your answer to Tommy Sheridan that you believed that the legislation would impact on your members' ability to recover debts to the same extent as at present. If poindings and warrant sales were abolished, what alternative debt recovery measures or enhancements of current procedures would your association like to be introduced?

Dr Lucas: We use the court system as a very effective recovery tool. We can express opinions, of course, but it is not within our competence to suggest alternatives.

There are people whose speciality is the diligence system, and we should leave it to them to suggest alternatives. We know that the Scottish system of diligence is effective. It is more effective than the system in England, and we would like it to be preserved until and unless it is replaced by something that is demonstrably more effective.

Donald Gorrie: Would I be right in thinking that the great volume of your members' work relates to commercial debts and not to personal debts?

Dr Lucas: No, that is not the case. The value of commercial work per case is much higher, but the majority of our members are consumer agencies that work for banks, credit card companies, finance leasing associations, the mail order sector and so on.

Donald Gorrie: Some years ago when I was a Lothian region councillor in the days of the poll tax, I spent a lot of time in this building in meetings with gentlemen like yourselves who assured us of the excellent conduct of debt recovery activities. We then met a lot of citizens, who gave a different view. Do you accept that the true picture of what happens in the average house is somewhere between those views, and that it is not quite as Santa Claus as you make out, but possibly not quite as unpleasant as some of the anti-warrant sales people make out?

Dr Lucas: I have not been called Santa Claus before.

We represent 120 to 130 debt collection companies, but there are many more. For example, the *Scottish Business Directory*, in which companies pay to advertise, lists 52 companies. We have 18 members in Scotland. There are many more unregulated agencies than the regulated ones that we represent. We regulate the industry through a code of conduct, which, as the president said, is approved by the Office of Fair Trading, and we have six-monthly meetings with the Office of Fair Trading to police the operation of the code. We also meet regularly at the money advice liaison group, and in other forums, to ensure that the industry, as far as we are concerned, is properly regulated.

We represent the vast majority of consumer transactions. The bad press and the majority of complaints that are received by the Office of Fair Trading and by us concern agencies that are not members of the Credit Services Association. I am afraid that the debt recovery industry attracts other companies that are not members.

Donald Gorrie: Thank you. That was helpful.

The Deputy Convener: Will you indulge the chair and let me ask one question that relates to Bristow Muldoon's point? Obviously, many organisations are seriously concerned about the way in which warrant sales and poindings impact on people's lives. Given that concern, which is

held not only by those who wish to abolish poindings and warrant sales, does your organisation see a role for itself in looking for, and developing, alternatives? As warrant sales and poindings exist, you are not looking for an alternative, but an effective alternative could come from organisations such as your own, or from your members.

Dr Lucas: We appreciate being asked, and for every issue on which we have been asked to contribute we have done so—from the Data Protection Act 1998 through to the enforcement review that the Lord Chancellor's Department is undertaking just now. We are contributing actively to all those areas, and we would like to be asked to contribute on this matter, but until we have been asked and until we have put some work into the issue, it would not be right for us to make suggestions.

The Deputy Convener: My point is that as long as the warrant sales system is in place, the work on alternative systems will not be done, yet when there are moves to abolish warrant sales, you argue that your work would be damaged by their removal. That is a circular argument. At what stage would your organisation be willing to examine alternatives? Will you look at alternatives while the current system is in place?

Dr Lucas: Yes. The order in which to proceed is to find, develop and discuss alternatives before removing the current system. That is the approach which is being taken by the Lord Chancellor's enforcement review. We have had the Woolf reforms at the earlier stages of litigation and have now moved on to an enforcement review. A similar process should be set in train here.

Cliff Poole (Credit Services Association): Alternatives are already being explored in our industry, way before court action takes place. We are pioneers in what we would call proactive collection. We make telephone calls to debtors with a view to making contact and getting a resolution of the settlement. That includes helping and counselling debtors. Everything that we can do before initiating litigation is attempted. That includes using vastly improved technology to make contact with large numbers of people.

15:15

The Deputy Convener: Do any other members wish to ask questions, as we have a bit of time left?

Bristow Muldoon: This follows on from one of the answers that we have just heard. You made the point that most of the complaints that are received about the debt recovery industry concern unregulated firms. Would you therefore support a move towards regulating all debt recovery firms?

Dr Lucas: Every firm has to be licensed by the Office of Fair Trading. The Consumer Credit Act 1974 has as its ultimate sanction the removal of the licence. The law is widely drafted, so that virtually any issue can become a licensing issue without another law such as the Criminal Justice and Public Order Act 1994 being contravened. The Office of Fair Trading currently takes the view that self-regulation is better than other forms of regulation, which is why it is so keen to work with us to police our industry. We are making great strides in that regard and our business is a great deal more professional than it was 10 or 15 years ago.

Bristow Muldoon: How would you deal with the businesses that are causing most complaints about the industry?

Dr Lucas: We have no jurisdiction over those businesses, but the Office of Fair Trading and local trading standards officers do. There is good feedback to trading standards through the CABs, and the OFT always has a number of matters of a licensing nature under consideration. Consumer debt cannot be collected without a Consumer Credit Act 1974 licence.

The Deputy Convener: I will take questions from three more members, if they are all relatively quick.

Donald Gorrie: While Mr Lewis was speaking, I scribbled down the words "lending practice"; I did not get the whole context. Regardless of how we progress with Tommy Sheridan's bill, do you think that there is any scope for improving the public responsibility of lenders, some of whom seem to act in an extraordinarily irresponsible fashion? I am not blaming you for bad lenders, but I was wondering whether you had any comment on that because you have to pick up the pieces.

Stephen Lewis: It is difficult. We cannot speak for the lenders, but we are in a credit society. I think that that has prompted your question. When people switch on the television or open a newspaper or magazine, they are bombarded with offers of credit. This is a problem for society in general. We must make rules for responsible lending, responsible collection and responsible borrowing. That is a task for everybody, from social services through to the individual in the street. For good or for bad, that is where we are.

Tommy Sheridan: My concern is that poindings and warrant sales are very discriminatory, in that they are discriminately used against the poor. The middle-class people whom Keith Harding talked about who wilfully avoid paying their debts are usually clever enough to know how to avoid a poinding as well. It is easy for someone to do that if they know the law. Do the majority of cases that you come across in which poinding procedure or

warrant sales have to be used affect the poor?

Dr Lucas: We do not work in the summary warrant environment. We work only with commercial lending and commercial debt.

As I said earlier, if a case reaches consideration of poinding, it is because we have been unable to get the information that we require to make any other decision. If we were able to get information earlier, perhaps we would not reach that point. Poinding is occasionally the first opportunity that we have to make the decision that we should not pursue a case. I do not think that it is used against the poor, but it is used against people with whom we cannot communicate; if those coincide, it is unfortunate. It would never be our intention to spend money on a hardship case that we could never recover.

Cliff Poole: It is not in our interest to throw good money after bad. The more information we have before we take action, the better. In some cases, a gap of silence appears and poindings can help us to bridge that gap and sometimes to make a commercial decision to write off the debt. In debt collection, that is good practice, because it enables people to concentrate their efforts on debts that can be collected.

Dr Sylvia Jackson: You mentioned alternatives that are being used or thought about by your association. Will you tell us more about those alternatives?

Cliff Poole: The alternatives to which I referred were ways of recovering debts much earlier than at the court stage. The earlier we can make recovery or create payment plans or some form of successful settlement, the better it is for everybody, including the debtor. Being proactive is one alternative approach—to bridge the silence or to prevent a reactive situation with the debtor, we try to make contact first. Eighty-four per cent of people have telephones today and probably 90 per cent have access to one, so we can make the first move by negotiating with the debtor that way.

The Deputy Convener: Thank you again for coming to meet the committee and for taking so many questions.

15:22

Meeting suspended.

15:31

On resuming—

The Deputy Convener: I welcome Colin Campbell, who has just joined the committee. I also welcome the representatives of the Federation of Small Businesses. They are June Deasy, the federation's deputy parliamentary officer, and Jane Todd, a policy development officer.

June Deasy (Federation of Small Businesses): Thank you for the opportunity to address the committee today.

The members of the FSB in general find poindings and warrant sales distasteful. Small businesses are part of the social community and they share its concerns. The challenge is for the Scottish Executive to find the will and for the Scottish legal community to find the way to replace this often ineffective and unpopular system with a more effective and socially acceptable approach.

The FSB is not here to present solutions to the challenge or to argue points of law, but to represent the views of the small business community.

The current system has proved to be financially ineffective. Forty-six per cent of business warrant sales make no contribution to the debt and meet only partly the expenses of the case. In only 8 per cent of cases is the debt entirely repaid. It is also widely accepted that business or domestic goods are accorded values that do not reflect the importance of such items to the debtor and which are a pittance of the replacement cost. Such valuations are a primary cause of the distress that is inflicted on the debtor.

Poinding is effective mostly because of the threat of the warrant sale—which is a threat because it is often destructive. It is often the final humiliation for the debtor, yet the creditor rarely gains from it. There might also be a divide between rural areas and urban areas. Urban-based businesses might consider poinding and warrant sales because they do not have a close personal relationship with the debtor, but in rural and remote areas the use of that method of debt recovery is a sterling way for a business to lose customers and to destroy its reputation.

We have major concerns about the summary warrant procedure, which is regarded by businesses as a fast-track procedure. It is used significantly by the Inland Revenue, Customs and Excise and local authorities. There has been an increase in calls made to the Federation of Small Businesses regarding summary warrant enactments by the Inland Revenue. Callers to our UK legal helpline have expressed the view that they might use poindings and warrant sales to recover debt because the Inland Revenue would not think twice about it.

Recent figures from Dun and Bradstreet show that Scotland recorded 4,554 business failures in 1999—an increase of almost 14 per cent on the previous year. Liquidations increased by 19 per cent to 1,311 and bankruptcies increased by 11.9 per cent to 3,243.

Like many domestic debtors, many businesses on the receiving end of summary warrants are experiencing circumstances that have disrupted their usual cash flow, such as divorce, dissolution of partnerships or changes in the marketplace. In an era when the debate about business birth rate has increasingly been seen as shadowing the necessary debate on business death rate, we cannot afford a system that forces viable, but temporarily fragile, small businesses to go to the wall.

The FSB would like the Inland Revenue, Customs and Excise and local authorities to make greater use of their capacity to negotiate settlements.

From the perspective of improved debt recovery for small firm creditors, reinforcement of the small claims court might be the answer. Raising the threshold to £5,000—in line with England—might open up a more simplified and effective route for debt recovery.

To conclude, the FSB asks the legal experts in the Scottish Executive to devise and implement a reasonable alternative to an increasingly unpopular and ineffective system of debt recovery. We stress, however, that despite the fact that the current system is often ineffective, it cannot be abolished until another more effective system of debt recovery is put in place.

Jane Todd (Federation of Small Businesses): I have very little to add to what my colleague has said, except to say that when we started taking soundings from our members in various sectors of the small business community, we were surprised at the consensus of feeling that this method of debt recovery was distasteful. Even the people who provide the removal vans that take property to public places for sale and who acquire business from the practice, find the whole process distasteful and would like a more effective means of debt recovery to be developed.

The Deputy Convener: Thank you.

Mr Paterson: I should declare an interest, as I am a member of the FSB. Do the witnesses have any information about the methods that members of the FSB use? Is there one method that is used predominantly, instead of resorting to warrant sales? I was interested in your suggestion that the ceiling on recovery through small debt claims—which is £750 or £800—should be increased to £5,000. Will you expand on that, please? It seems like a reasonable idea.

Jane Todd: I am advised that the limit for small debt claims is £750. The threshold has been raised to £5,000 in England, where small debt claims are used much more widely as a means of pursuing this form of debt recovery. It might, therefore, be an avenue that we should consider in Scotland.

The feedback we have had is that a lot of businesses that choose not to pursue the poinding and warrant sale route frequently write a debt off, because an effective means of pursuing that debt—or a means that they choose—is not available.

Those who choose that route frequently do so because they believe that the person who owes them money is a serial debtor. In such cases, people are, perhaps, a little more prepared to accept such a route than in cases of individual debt. However, even those who choose that route have indicated to us that they would be interested in using the small claims court system if it covered the amounts of debt that they are talking about.

Mr Paterson: Do you have any evidence of the impact on recovery of raising the threshold in England to £5,000?

Jane Todd: I am sorry, but I do not have such figures with me, although I am sure that we could find them for the committee if that would be of use. Figures from our legal helpline—which receives 100,000 calls a year—indicate that far more members are happy to pursue the small debt claims path now that the threshold has been raised.

In England, it is recognised that the recovery of the debt, even in the event of a small claims court judgment in a member's favour, can be a problem. A proposal is, therefore, being considered under which a court official would become responsible for securing payment of a debt. That is, in some ways, a very radical approach, but it is one that the small business community in England is keen to see being adopted.

Mr Paterson: One of the principles attached to small debt claims is that people can represent themselves. I have heard, however, that that is a daunting task. Does raising the threshold to £5,000 give people a bit of leeway? For £750, someone could barely get a lawyer to write a letter, let alone represent him or her in court. Does the figure of £5,000 take into account the possibility of some assistance from a lawyer being made available?

Jane Todd: I have no indication that that is the intention behind the £5,000 threshold, which we understand was set at that level to cover larger debts, rather than financing lawyers' fees. Although it can be daunting to represent oneself, it is becoming increasingly acceptable to do so, and there are other ways in which people can be assisted in that process that do not require employment of lawyers and large financial commitments.

Donald Gorrie: If I understood you correctly,

you felt that public authorities such as the councils and the Inland Revenue often resort too quickly to debt recovery procedures and that, with more sensible treatment, bankrupt firms could work through their difficulties. Does that happen?

June Deasy: Public authorities do not have to go through as many mechanisms before they reach the stage of warrant sales, which means that the debt recovery procedure is faster than non-summary warrant procedures. Those authorities also choose to make the process faster.

Donald Gorrie: Does your organisation have any anecdotal evidence about, or statistics on, the number of firms that have been unnecessarily put out of business?

June Deasy: We could certainly find some.

Jane Todd: We have anecdotal reports from quite a few of our members who have found themselves on the receiving end of summary warrant procedures, which have been raised by the Inland Revenue in particular. In such cases, firms almost have to choose to settle a debt—which they recognise that they owe either to the Inland Revenue or to Customs and Excise. Being pushed straight into the summary warrant procedure makes them feel that they have lost any room for manoeuvre in negotiating a settlement over a period of time, which would allow them to operate as a viable business. As people find themselves frequently in such a situation through a combination of circumstances, they need an opportunity to catch their breath. The Inland Revenue tends to move more quickly to summary warrant procedure now than it did three or four years ago, when the business community felt that that organisation was more willing to negotiate.

Tommy Sheridan: In the light of the written and oral evidence that the committee has received, and of my discussions with your chair and other members of the federation at business forums, it seems remarkable that your opinions are very much in line with those of citizens advice bureaux and other bodies that represent debtors. They say that, although they want other reforms, they see no place for poindings and warrant sales as they are currently. Does that accurately reflect how you feel about such measures?

June Deasy: When we consulted our members, we were surprised to find that they are so unhappy with a situation that helps neither them nor the debtors. However, their emphasis is on finding a new way, but without removing existing measures until a more effective method is in place.

Tommy Sheridan: I appreciate that some sectors of the business community feel an alternative to poindings and warrant sales should be found before those measures are removed. That is a difference of emphasis from that of citizens advice bureaux, which feel that poindings and warrant sales should be removed anyway, and which seek further reforms. However, do not you accept that the difficulty for small businesses is that some larger businesses use what is called contractual mugging, which leads to major problems with jiggling small businesses' debts? As a result, with the Inland Revenue breathing down the necks of small businesses and threatening summary warrants, some such firms can go to the wall. Would the introduction of a debt protocol alleviate debts by recognising that some problems are caused by the larger companies not paying up in time?

Jane Todd: It is valid to say that there are contractual issues—which can place pressures on small businesses—concerning the relationships between large companies and small businesses. When there are undue cash-flow pressures, such businesses become vulnerable to the summary warrant procedure, which can challenge the viability of a business.

It is important not to lose sight of the fact that small businesses can be the victims of poinding and warrant sales; they are not always the instigators.

15:45

Mr Gibson: With the exception of increasing the limit for small debt claims, do you have any suggestions that the Scottish Executive might introduce to replace this bill?

June Deasy: If the legal establishment were to come up with suggestions, we would be happy to be involved in the consultation process, to point out the practical implications of any proposals. However, we have no suggestions of our own.

The Deputy Convener: Are there any other questions?

Members *indicated disagreement.*

The Deputy Convener: Thank you for your contribution to the committee—I think that members found it useful.

We have a responsibility, at this stage, to pass on our comments on the evidence that we have heard. It is suggested that we write a letter to the Justice and Home Affairs Committee. The clerk has suggested that we decide on the content of that letter and that we leave it to the clerks to draft it. Members will then have an opportunity to look at it via e-mail and to add comments. We can finalise the letter at our meeting next Monday in Glasgow.

If that is acceptable to members, we should focus on the areas on which we would like to

comment. The thrust of the argument today seemed to be whether we should, by removing the current procedure, first put pressure on organisations to find an alternative, or whether we should keep warrant sales until an alternative has been identified. That would involve judging the extent to which people would look for alternatives while the current procedure exists.

My instinct is to include in the letter something about the responsibilities of the appropriate bodies—local authorities and so on—to offer early, genuine debt advice and counselling, when it will have an effect, rather than it being a theoretical service that exists somewhere out in the ether. People should be directed to such counselling, which should help to support them in addressing the problems that they face.

The other issue is whether the warrant sale system does what is claimed for it. Does the threat of it affect the "won't pays" rather than the "can't pays"? There is some debate about that, which we need to pull together to give the clerks an idea of what members want to discuss.

Bristow Muldoon: In our response to the Justice and Home Affairs Committee, we should indicate clearly our support for the general aims and principles of the bill. We might want to raise the question whether there should be any differentiation between the ways in which individuals and businesses are treated.

I hope that the bill will achieve the clear aim of protecting individuals. I do not know whether Tommy Sheridan has given any consideration to the question of businesses, rather than individuals. If he has, I would be interested to hear what he has to say.

In general, we should express support for the principles behind the bill and we should emphasise the need for the Justice and Home Affairs Committee—or any other appropriate committee of the Parliament—to give due consideration to alternative measures of debt recovery. However, those alternative measures do not need to be put in place in advance of the bill.

Mr Paterson: I am concerned about what Bristow Muldoon said, and will return to one point that he made.

Since we have been taking evidence, no one has come up with an answer to the problem of the effects on the people against whom a warrant sale is carried out. The evidence on which we have concentrated has been based on the recovery of the debt rather than on its effects. In whatever system finally emerges—if we put in place new a system, rather than simply abolish the old one—the effects on the individual should be the prime consideration.

However, if we try to come up with a system that separates the individual from the business, we will have to be careful, when dealing with a business such as mine—I am the business, as it is a private company—about what measures we take in relation to European law. I have tried to quantify anything that could happen against an individual, directors or a business. In my own case, I could not be protected as an individual, as I am the business—the name of the company is Gil's Motor Factors.

Mr Gibson: Are you giving out leaflets, Gil? [*Laughter.*]

Mr Paterson: The thought went through my mind that we could have such a separation. However, I do not think that it is possible. I am anxious—from my experience of the poll tax campaign—about the effects on individuals. As a businessperson, I do not think that warrant sales hold the candle.

The Deputy Convener: Does any other committee member want to come in? I will allow Tommy Sheridan to speak in a minute on the points that have been raised.

Donald Gorrie: We should support the general thrust of the bill. With respect, there is a third way forward. It is not necessary to abolish warrant sales to implement an alternative at some future stage. Nor is it necessary to introduce an alternative before abolishing warrant sales. On an issue such as this, when a head of steam is built up, that steam should be used, whatever it does—it boils the kettle, or something.

It would be reasonable to have a bill that specified that, in two or three years' time, warrant sales would be abolished and that, in the meantime, various other measures would be put into effect. That sort of pressure makes the clever guys get stuck in and invent something. If that does not happen, the forces of conservatism will continue to rule.

Until the previous meeting, I, like Bristow Muldoon, was coming to the conclusion that perhaps we should draw a distinction between private people and small businesses. However, I was extremely impressed by what the two ladies from the Federation of Small Businesses said, so I would now drop that idea.

The issue of having much better counselling and so on needs to be addressed seriously. That would involve putting money into citizens advice bureaux, for example, which successive Governments and local authorities have dismally failed to do.

This may be utopian, but I think that the Parliament should examine the disgraceful way in which credit is flogged, from the Bank of Scotland

to the wee man in Pilton with the two heavies who knock down the doors of people who do not pay up. That is perhaps outwith our powers but, bearing in mind that prevention is better than cure, we should aim for better credit control and better advice on debt and for a twin-track approach whereby we push for the bill but date it some way ahead. In the meantime, people could think up a better way of dealing with the "won't pays".

Mr Stone: I would be interested in Tommy Sheridan's comments on this suggestion: it might be a way forward to stress the supremacy of home and a decent way of life. If we take that as a foundation stone, we can build legislation on it. That would be an important guiding principle, which could take us through the minefield of the individual versus the business.

I echo what you, convener, and Donald Gorrie have said about the patchy provision of advice—it is good in some areas, but not so good in others. As Donald suggested, offering an advice service may require money—for the CABs—but it will also take political will. If my memory serves me correctly, provision of advice is not a statutory part of councils' work load, but it is sometimes a bolt-on luxury that is available in some cases but not in others. From personal experience—concerning a member of my family—I have seen how important money advice has been in picking one's way through the minefield of debt.

Mr Gibson: I agree that it is important for this bill to be passed. I do not want a delay of two or three years before it is implemented—if it is implemented. I would like work to be done simultaneously on all the humane alternatives to poindings and warrant sales. Whether it takes two or three years or two or three months, I am sure that the powers that be can come up with an alternative if necessary.

I am not sure that I agree with what Donald Gorrie said about credit control. I am concerned that, if poindings and warrant sales are abolished without more humane alternatives being available, organisations either would be less likely to lend legally or would lend at higher interest rates, which might force some desperate people into dealing with loan sharks.

Even if we want to control people's ability to borrow, it may be the case that Christmas is coming—those people's children want the same Christmas as other children have. With that in mind, we should do our best to try to see this bill through as early as possible.

Tommy Sheridan: I want to return to some specific points, one of which was raised just now by Kenny Gibson, about loan sharks and the worry that, if poindings and warrant sales were abolished, there would be a decrease in the willingness of lenders to provide credit.

I hope that members of the committee will accept that there is no evidence to suggest that that will happen, although assumptions have been voiced and opinions have been given on it today. I ask the committee to consider the current situation, in which the very existence of poindings and warrant sales encourages sheriff officers to seek lump sum payments so as to avoid the process. The fact that debtors are asked for lump sum payments is what forces them into the loan shark scenario. In order to get a lump sum, they have to go to family and friends first. If that does not work, they have to go to the next alternative. All the evidence from individuals, through the Communities Against Poverty Network and Citizens Advice Scotland, shows that that is the case here and now.

In promoting the bill, John McAllion, Alex Neil and I considered the differentiation between personal and commercial debt. We came to a similar conclusion to that of the Law Commission—sometimes it is possible to agree with those with whom we usually disagree—that the inability to differentiate means that such a division would become meaningless and ineffective.

Forgetting for a moment the economic arguments and the percentages that show that poindings and warrant sales are an inefficient method of debt recovery, we also felt that it was immoral in the 21st century for debt recovery to rely on fear, intimidation and humiliation. All the evidence that has been heard by the three committees that I have had the pleasure to attend shows that other forms of diligence are not only effective but widely used. It must be said, however, that those other methods of diligence require reform—for example, there are no conditions to control the amount secured in a bank arrestment.

16:00

Before we conducted the detailed debate, one of our fears was that the small business community would oppose the change. I heard talk of bankruptcies and businesses going to the wall. However, during the evidence-taking sessions, I have heard that small businesses hardly ever use poindings and warrant sales. They find them ineffective and, as the Federation of Small Businesses put it, distasteful. More effective methods of debt recovery are available, including inhibition of property, sequestration, bankruptcy and bank account arrestment.

Convener, you repeated the phrase used by the Law Commission—that poindings and warrant sales are a spur to payment. I think that they are a

cruel spur to payment and I hope that this bill will be a spur to change, even though it is a member's bill and so bound to have some weaknesses because of the limited resources available. Once poindings and warrant sales are abolished, you can bet your bottom dollar that all the people involved in debt recovery will come up with better and more humane ways of doing their job. I hope that the committee will give the bill fair wind and I hope to see it passed.

The Deputy Convener: The question that I was trying to pursue was whether organisations will ever try to change their methods while poindings and warrant sales remain. While that method is available, how can anyone create the dynamic to encourage those organisations to take responsibility for finding alternatives?

There are some areas of agreement. We support the aims and principles of the bill. Gil is right to say that we are particularly exercised by the impact that the system has on families and by the broader ripples that affect young people from those families at school and in other areas of their lives. We are aware of the question of appropriate counselling. As well as offering counselling to those who choose to take advantage of it, the approach must be proactive and seek out those who need help. We must also consider how quickly alternatives could be put in place. My feeling is that something has to give if alternatives are to be sought.

Dr Sylvia Jackson: I agree with what you have said, convener. However, as the Local Government Committee, we must not lose sight of the Convention of Scottish Local Authorities' reasoning on council tax debts. A proactive approach to counselling is needed even if we do not get rid of poindings and warrant sales, but the practicalities and resource implications of supporting councils must be considered.

Mr Stone: This is a small but important point that arose from the final piece of evidence that we heard. The FSB suggested that the Inland Revenue is apt to pull the ceiling in on a business and collapse it rather more quickly than was the case a few years ago. That is only an allegation but it could be important from the business sector's point of view. I would seek the clerk's advice on how we should consider that issue. If there is any truth in the allegation, someone should look into it.

Mr Paterson: If Inland Revenue staff are not on bonus points, they may be on commission.

The Deputy Convener: I should have spoken about the letter from COSLA at the beginning of our discussion. COSLA has not yet provided full written evidence but paragraph 12 of the report published last year indicates its position. I believe that it will provide us with something further.

Dr Jackson: I do not know whether the time scale will allow for that submission to be included—I doubt it.

Tommy Sheridan: I do not want to be petty but the request for submissions on the bill was made several months ago and a lot of organisations provided evidence. It is disappointing that COSLA has not, particularly because a lot of COSLA members support the abolition of poindings and warrant sales. Perhaps COSLA has not given evidence as a body because there is disagreement within it. The committee has heard evidence from the trading standards department of Glasgow City Council and there is evidence from COSLA members from West Dunbartonshire Council and Clackmannanshire Council.

I hope that the committee will not hold back its submission to the Justice and Home Affairs Committee, which is operating at breakneck speed and is anxious to have a stage 1 committee report by the end of January. If this committee delays its submission, it is in danger of knocking everything else off the rails.

The Deputy Convener: We can deal with COSLA's position at our meeting next week. If we have the information then, we can add it in.

Dr Jackson: Perhaps we could get information from some of the councils. Did the councils that you mentioned give evidence elsewhere, Tommy?

Tommy Sheridan: West Dunbartonshire Council and Clackmannanshire Council gave written evidence to the Justice and Home Affairs Committee in support of the bill.

The Deputy Convener: My understanding is that West Dunbartonshire Council argues that, under the best-value policy, it ought not to use warrant sales, as they are inefficient.

Bristow Muldoon: We should not delay the bill just because COSLA has not yet submitted its evidence, especially as there may be differing views within COSLA. The local authority on which I served had a policy of not pursuing warrant sales, but was not among the lowest collectors of council tax in Scotland. It would be interesting to see the range of ways by which councils currently collect council tax. The removal of warrant sales could act as a spur to COSLA to come up with alternative ways in which to improve collection levels.

Mr Harding: In the evidence that we have heard, everyone says that we should not remove poindings and warrant sales until something else is in its place. Do we support what Donald said and agree that warrant sales should be abolished but within a time scale that allows an alternative to be introduced?

The Deputy Convener: That is not my impression from the balance of contributions. The debate is on which should come first. The committee's view is that alternatives should be sought to avoid a meltdown scenario for council tax, with people who can afford to pay not paying. Committee members see the need for alternatives but I get no sense from the committee that it wants to delay the bill. We can look at that issue in detail when we consider the draft. We are clear about the general areas that we want to cover and about our general position, but the detail will have to be sorted out on Monday.

Mr Stone: Perhaps I am being a bit awkward, but I think that COSLA's position is clear—the comments of the joint Executive-COSLA officer group count as a submission. The letter stated:

"In our view, abolition of poinding and warrant sales would have a major adverse effect on Council Tax collection levels (and therefore council services)".

The Deputy Convener: COSLA is saying that the comments do not represent its worked-out position—they reflect where it is in terms of developing a position. Perhaps that quote is an indication of the way in which COSLA is thinking.

Mr Stone: I was a councillor for a number of years, and I know that councillors can talk until the cows come home, but my view is that abolishing poindings and warrant sales will be a problem. We should send the strongest possible message to the Justice and Home Affairs Committee that it must, as a matter of urgency, seek an alternative course of action, notwithstanding anything that Tommy Sheridan has said. I predict that there will be chaos in council budgets if we just abolish poindings and warrant sales.

Dr Jackson: And there will be resource implications.

Mr Stone: Yes.

Tommy Sheridan: John McAllion, Alex Neil and I will be visiting West Dunbartonshire Council to view the recovery unit that it has established as an alternative to poinding and warrant sale. The unit is proactive in contacting debtors and reaching arrangements with them, and is extremely effective. That is happening here and now. If poindings and warrant sales were not available to local authorities in Scotland, perhaps what West Dunbartonshire Council is doing would be replicated more enthusiastically.

The Deputy Convener: Is not it also the case that a lot of local authorities feel that, if their recovery rates are not appropriate, they are under pressure to use warrant sales, simply because the system exists? They end up using a system of which they do not approve. We can make it clear in our letter that we are aware of the importance of the security of council funding, and that people are troubled by the prospect of abolition not simply because they have a deep abiding affection for warrant sales; we can say that the issue can, and should be, resolved. We will have a draft letter before Monday's meeting, when we will reach the hard decisions about what should be in the final version.

We will leave that item there. I suspend the meeting until 4.15 pm, when we will hear from the minister.

16:12

Meeting suspended.

Ethical Standards in Public Life etc (Scotland) Bill

16:16

On resuming—

The Deputy Convener: I welcome Frank McAveety, the Deputy Minister for Local Government, who is here to give evidence on the draft ethical standards in public life etc (Scotland) bill. I also welcome Trudi Sharp and Joanne McDougall, who are civil servants who work with Frank in this area.

Minister, you have in front of you a list of points from the previous meetings at which we took evidence on this bill. We have heard from the Accounts Commission, the Convention of Scottish Local Authorities, the Scottish Trades Union Congress, the health boards general management group, the Society of Local Authority Lawyers and Administrators in Scotland and the local government ombudsman. I draw your attention to a letter from the ombudsman in which he emphasises a number of the points that he made in his submission and extends them.

The points from those initial meetings were pulled together and you have copies of them, minister. It would be helpful if you could address them. I intend that we then open the meeting to committee members to ask questions. It would be helpful if those points were covered, but obviously there is no restriction in any real sense on other areas that members may wish to explore with the minister. We will use the same procedure as before. I ask the minister to begin.

The Deputy Minister for Local Government (Mr Frank McAveety): Would you like me to respond to the questions that were raised? That would enable an open debate afterwards.

Members *indicated agreement.*

Mr McAveety: I thank the committee for the opportunity to expand on the principles behind this bill. It aims to ensure that the public have the utmost confidence in those of us who are elected to office. It is important that we deal with this issue. I welcome the fact that the bill's scope has been expanded from the original concept into other areas of public life. This morning, I met COSLA. That was one of the key issues we reassured it on. The initial perception of the bill was that it concerned only local government, but it is important that the bill sends out a message about public service in general.

I would like to address several areas, but if members feel that it is appropriate to stop at a particular point I am happy, following guidance from the convener, to do that if it would be helpful. I will try to give detailed responses to the points that have been raised.

The Deputy Convener: My instinct is to ask you to go through the points unless any issues are raised. My concern is that we might focus on a couple of issues and not address all of them.

Mr McAveety: I know how incredibly tedious this can become, but I will do my best.

The first key question is whether a procedure for appealing the commission's decisions is needed. We argue that the bill should provide for cases to be considered much more fairly and efficiently than has, perhaps, been the case to date. It will include independent investigation and adjudication in particular, but with the benefit of hearings and, where appropriate, representation by lawyers or others.

Whether the code has been breached, which the commission will deal with, is relatively straightforward. The commission has to operate within the framework of administrative law and, if it fails to do so, judicial review procedures will kick in. That is our broad thinking on whether we feel it is appropriate to have an appeals procedure.

COSLA raised the issue of greater consistency of treatment, and of parallel treatment, of elected members and those who are involved in non-departmental public bodies. That is also one of the committee's key questions. We want to address the fact that they are different organisational creatures. While we should have a broad framework of operation, we should also recognise their different nature and structure. The key difference is that one group is elected by the public whereas members of NDPBs are appointed. It is important to reflect that; it is also important to have an intervention strategy that is appropriate to the different levels.

Those who make public appointments are judged to be ultimately responsible for the role that members of NDPBs play—we are accountable for ministerial appointments. We need to address that issue effectively. Most appointments to the bodies that the bill proposes to cover are made by ministers or by the Crown on ministers' advice and, in making such appointments, we are delegating some of our duties and responsibilities. Therefore, the Executive considers it appropriate that the appointing body or person should decide the sanctions that should apply to appointees whose conduct falls below the standard expected of those in public office.

The fourth question was whether the scope of the bill should be extended to other bodies, such as local enterprise companies, college councils of further education colleges and university

governing bodies. The Executive examined that proposal in detail, but felt regulations already exist to describe the intervention to be taken if members of those bodies err in terms of public standards.

For example, LECs are subject to a strict regime under company law, which clearly sets out their duties and responsibilities and provides for sanctions if they fail in those duties. Further education college boards are autonomous and independent and their members are not appointed or directly elected. Again, there are rules within which they operate.

We considered a host of other organisations, such as housing associations and advisory NDPBs, in respect of which there are further distinctions. For example, housing associations have a fairly strong regulatory framework—supported by legislation—should intervention be required by the behaviour of representative members. On advisory NDPBs, we genuinely thought that since such minimal use of public funds is involved, including them in the bill would be a disproportionate response, given their scale and number and their relationship to the direct control of budgets.

This morning, COSLA also raised the interim suspension—that idea that action should be used sparingly and within strict time limits. I have experience—although not personally—of having to deal with such matters and I accept that investigations should be carried out expeditiously. It is not fair to the individual concerned, never mind the institution, to drag out an investigation for too long. We must deal with that issue.

The draft bill quite clearly sets out a six-month maximum interim suspension, although it could be extended if issues of concern still required to be addressed. We will ensure that we deal with that point effectively, without creating a hindrance, as some folk can spin situations out and, technically, a deadline could be imposed without the central issue ever being dealt with.

Members have raised the issue of the suspension of a member leading to the loss of a majority. That would, of course, depend on the political circumstances in an area. I argue that the existence of a standards bill—and of a standards committee—will make people reflect much more carefully on the impact of an individual's conduct on the wider organisation.

Alleged breaches of the code will be the subject of independent investigation and adjudication. The benefit of that, which answers a potential concern, is that there may well be no local political axe to grind. COSLA presented the scenario today that malevolent claims could be made, which would require some sort of investigation and, as a result, take someone away from political activity, which may or may not be advantageous, depending on the circumstances. That is a fair point, on which we need to reflect more carefully before we arrive at a final bill for Parliament's consideration.

The seventh point refers to how legislation will relate to

"Executive and non Executive directors, for example of Health Boards".

The bill will cover members who are not employees or ex officio members. Employee members will continue to be covered by employment law in general and by their terms and conditions. The code could, of course, be applied to such members by varying their terms and conditions of employment, or by ex officio members agreeing to abide by it.

The bill will also provide that ministers may confer additional functions on the commission, relating to the conduct of employees and other members. That power could be used to allow the commission to carry out an ad hoc inquiry, for example, into the conduct of an employee member.

The eighth point concerns the removal of the power of surcharge. Respondents to the consultation paper were supportive of the repeal of the surcharge criteria, provided something much more effective was put in its place. I agree with that. In other parts of the UK, the local government bill will remove surcharge, but it is important, for effective intervention, that the opportunity exists to introduce something more effective than surcharge, which is perhaps unwieldy.

The ninth point asks why the chief investigating officer will be appointed by ministers rather than by the commission. To return to an earlier point, it is important to separate investigation and adjudication. If the CIO were appointed by the commission, that could undermine the commission's visible independence. An issue of transparency is involved, on which we want to deliver.

The 10th point states:

"It is considered that the Standards Commission should investigate only complaints made in writing."

That is a legitimate point, but on further inquiry the system might be less effective should only written complaints be investigated. That could be a barrier; a number of folk who could reveal information might find it difficult to do so in writing, because of local circumstances. How we handle the issue will be a matter of judgment. The investigation will provide an opportunity to go through things much more accurately.

The CIO will have discretion to decide what matters to investigate and whether to abandon an investigation. That should allow the CIO to deal

with unfounded allegations. For example, staff in many organisations currently have the opportunity to raise matters confidentially without anything being written down, in particular in cases of bullying at work. We need to take such issues on board and I hope that the CIO would exercise appropriate discretion in such cases.

The next point concerns who takes decisions on sanctions. Should it be the council or the NDPB, or would political issues make it difficult for a council to make such decisions? We need to have further discussion on that point, as it raises genuine concerns. I think that the person responsible for appointment should be responsible for imposing sanction. For public bodies, the Executive intends that the commission will make its recommendation to the relevant appointing body, which in most cases will be ministers.

The position is different for councillors, who are appointed by the electorate; it is not realistic to hold a referendum on sanctions. We believe that the independent commission will be best placed to impose sanctions on councillors. Again, COSLA raised that issue with us today. The benefit of the independent commission is that it will separate the matter out from local political issues. At the moment, people sometimes agree that sanctions should be undertaken but are careful, or even nervous—politically—about that decision. The commission will provide an opportunity for the decision to be much more independent.

We also agreed with COSLA this morning that the flexibility of continuing with local standards committees, if appropriate, was worth pursuing. We think that that would help to improve the general public's awareness and create a culture of mutual understanding of behaviour and conduct under the Nolan principles.

The breadth of sanctions that were set out in the consultation paper was endorsed by respondents. The sanctions for members of public bodies cover a range of options, from censure to disqualification. We believe that that range is accurate and realistic in terms of the likely breaches of conduct.

16:30

COSLA raised the issue of the remits of the different agencies. The standards commission, the Accounts Commission and the local government ombudsman are different institutions. If it is set up, the standards commission will deal with ethical standards, the ombudsman will deal with matters of maladministration—over and above the conduct of elected representatives and appointed members of public bodies—and the Accounts Commission has intervention strategies for the failure to deal with financial matters appropriately. I would expect all three bodies and the police—who would deal with serious breaches of criminal law—to have a good working relationship. That is an area that we need to tighten up and I welcome comments and ideas.

The protection of employees and other public servants from excessive investigation is another problem that has arisen in local councils. I believe that we should deal with matters expeditiously, because that clears the air effectively. We should allow the chief investigating officer to proceed only when there is substantial evidence to support allegations that are worth pursuing.

Another question that COSLA raised today is whether the bill should be extended to MSPs—several councillors have referred to this in local discussions and I think that it is important to consider the statements made by ministers and members of the Local Government Committee. We believe that the bill, if it goes through, should be used as a template and an exemplar of expected good conduct in public service. However, the structure of the Parliament means that the Standards Committee is addressing the code of conduct for members of Parliament.

Discussions about the draft bill are taking place across the Executive, the Local Government Committee and the Standards Committee. The purpose of the bill is not to select a particular level of public service, but to serve as an exemplar for everyone in public service. I have made it clear to councillors in my constituency that I have the same expectations of the conduct of MSPs as I have of that of councillors. I hope that people understand that message. Some folk have tried to claim that a code of conduct that applies only to MSPs will differ markedly from a code that will apply to councillors. That is clearly not the case.

Those are the questions that have been raised with me in the past. They are fairly detailed. Trudi Sharp, who has been involved in the creation of and responses to the first consultation paper, can give you more detailed information. I hope that I have clarified the Executive's position and I am happy to answer any questions that I can.

The Deputy Convener: Do you want to comment on any other aspects of the bill, or are you happy to move on to questions about these particular issues?

Mr McAveety: The questions that were raised concentrated on the ethical framework for elected members. The other part of the bill relates to the amendment of section 2A of the Local Government Act 1986. There is broad support across the Parliament for modification of the aspect of that section that we see as discriminatory and against the principle of toleration and understanding that we want in

Scotland. In case it is misunderstood, I would like to reiterate that any repeal of section 2A will be contextualised within the changing framework and guidelines available for the 5 to 14 curriculum and for personal and social development in schools.

I am concerned that there have been criticisms and claims that this is about proselytisation. The bill is designed to ensure that there is a proper framework that will allow teachers to provide guidance and information to reassure youngsters and parents. Any consultation will involve not just local authorities and directors of information, but school boards and parents organisations. From day one, Wendy Alexander has said that about the proposal to repeal section 2A. We want to continue to discuss the issue, and in the past we have given organisations the opportunity to meet the ministerial team to raise concerns. There is strong support in the consultation, which closed on Friday, for the repeal of section 2A. In fact, three quarters of those consulted favoured repeal of the section and the introduction of guidelines making clear that this measure is about providing guidance and information, rather than about proselytisation.

The Deputy Convener: Thank you. I am keen that when we question the minister we attempt to take on the whole of the bill. I hoped that we do not lose sight of any questions that we flagged up earlier.

Mr Keith Harding (Mid Scotland and Fife) (Con): I want to come in on the last point, as Mr McAveety has raised it. I understand through the press that a consultation process is taking place on section 2A. Can you confirm that any comments that are received will be taken on board by the Executive? You mentioned that three quarters of the councils that have responded are supportive of your line; three of them, two of which are Labour led, are not. It is also obvious from the huge mailbag that we are all receiving that the vast majority of parents are against repeal. I would like you to confirm that this will be a meaningful consultation and that you will take on board what people are saying.

Mr McAveety: The responses to the consultation went much wider than local authorities. The consultation has taken on board individual responses as much as it has institutional and local authority responses. We have said from day one that the repeal is about toleration and the removal of discrimination. Since the announcement in Parliament, we have also said that we will engage in consultation with local authorities and school boards on the issue of guidance, to ensure that this is not about the promotion of any particular lifestyle, whether heterosexual or homosexual. It is important to stress that. We want to ensure that there are appropriate guidance and frameworks.

I have been concerned about the some of the language that has been deployed in the debate over the past few days. As someone who has been involved in teaching for a long time—particularly denominational teaching—I have been concerned to ensure that we engage in a rational debate about ensuring that the information is suitable for the age group that is being dealt with. Ministers have given that guarantee repeatedly. This consultation is not the place for condemning particular lifestyles. That is a separate matter that people can address themselves. It is a pity that some folk have focused on that rather than the core issue of ensuring that there is guidance and a framework that allows us to engage with teenagers in schools.

Donald Gorrie: I am a bit confused about the chief investigating officer. If I understand you correctly, you feel that the Executive should appoint him or her because the commission is in some way party to the proceedings and therefore biased. I did not find that very impressive, so I would be grateful if you could clarify that.

Mr McAveety: The argument is that if the chief investigating officer is appointed by the commission, their autonomy and independence may be compromised. It is of key importance that the chief investigating officer should be able to consider matters as impartially as possible. The dilemma we face is as follows. First, if this were left to local authorities, it could get caught up in complications arising from the political composition of councils, as well as the personal enmities that can flash at local authority level as much as at Scottish Parliament level.

Secondly, we want to ensure that there is a separation of investigation and adjudication. Responses to the first stage of the consultation process suggested that people broadly supported that, and that is reflected in the bill.

Donald Gorrie: Mr Marks was not enthusiastic about that proposition. He alleged that the fact that people involved in the Executive could appoint judges could mean that we fall foul of European law. The appointments would be suspect. If the Executive appoints the chief investigating officer, he is not independent.

Mr McAveety: I am unaware of any correspondence from Mr Marks that has been sent to me or to the Minister for Communities. I will check whether we have received anything. It is difficult for me to comment without having seen the substance of his allegations in detail. I am, however, happy to take that on board.

On the issue of appointments, the thinking behind the idea was that the Executive should appoint the CIO, who would deal with the

investigation and then report back.

Donald Gorrie: The suggestion came in a follow-up from Mr Marks to his visit to the committee.

I want to raise one other issue.

The Deputy Convener: Very briefly, please, Donald.

Donald Gorrie: Will the standard of proof required by this quasi-legal process be the same as for the courts?

Mr McAveety: My adviser has just helpfully whispered to me that the standard of proof required will be the same as for civil proceedings.

The Deputy Convener: A lot of people want to come in, so members will need to be disciplined about asking supplementaries.

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): Will the minister clarify what would happen if a political majority could be affected by a suspension? Is it possible that a series of political changes could be made while someone was suspended pending an inquiry, only for that person later to be proved innocent? The person would have been the subject of a wrongful investigation. Are such issues covered in the bill?

Mr McAveety: I do not have a simple answer to that. It is a possibility. One of the ways in which we can ensure that members deal with their conduct is to ensure that the opportunity does not arise. COSLA has legitimately raised the same point with us. The logical counter-argument is that no action should be taken in a hung council in case there was a loss of majority, which would be a recipe for inaction.

COSLA has made a couple of helpful suggestions today and I hope that they will be pursued, because there are concerns about when suspensions should be used and their impact. I accept what you say. Difficult budget decisions could be taken by a local authority, reversed immediately and then changed again two months later because the person against whom serious allegations had been made was vindicated.

I do not have the wisdom of Solomon. The situation you describe could arise; I thank you for raising that classic Lanarkshire scenario.

Dr Sylvia Jackson: I hope that you do not mind, convener, but I have two related points to raise.

The Deputy Convener: I do not mind as long as you make them speedily.

Dr Jackson: The first was raised by the Forum of Private Business and relates to an incident involving the area tourist board. If the minister is not familiar with the case I can pass the details to him. It relates not only to the extension to the groups that are covered by the bill—we have already spoken about local enterprise companies—but to the criteria that will be covered and, later, the codes of conduct that will be developed.

The second issue, which was raised by the Commission for Racial Equality, is not only the absence of explicit measures in the bill to address issues of discrimination and equality, but the process that will be used to draw up the codes of conduct. That may come later, in which case you can tell us about it, but how will groups such as the CRE be able to have an input?

Mr McAveety: I defer to Trudi on the detail of that.

16:45

Trudi Sharp (Scottish Executive Development Department): The bill would allow ministers to introduce a code for local government through secondary legislation, so the matter would have to come before the Parliament again. The draft bill recognises the importance of ensuring that what is in the code of conduct—as it will be such an important document—is well thought out and widely consulted on. The draft bill allows ministers to invite COSLA to produce a first draft of that code and to consult whomever else they think might be appropriate. I cannot speak for ministers—

Mr McAveety: Except in this circumstance.

Trudi Sharp: I am sure that ministers would want to consult widely with those who have an interest in this issue.

As the draft paper sets out, the differences probably render unworkable a single code for NDPBs. Ministers will bring a model code before the Parliament and there will be consultation on it. It will be for each body that is covered by the code to come up with a model code for its own circumstances, which will have to be approved by ministers.

Dr Jackson: That is reassuring.

Mr McAveety: I welcome some of the stuff you mentioned about discrimination and equality, as that has not figured fully in much of the consultation or the public debate.

Bristow Muldoon: For the record, I declare a registrable interest in this matter, as my wife is a local authority councillor. I want to ask Frank McAveety about the appeals mechanism—or the lack of one—and about the consistency of treatment.

Almost all the bodies that gave evidence to us raised their significant concern about there being

no appeals mechanism. As there are many forms of disciplinary procedure in the workplace, it would be good practice to have an appeals mechanism of some form. You mentioned a judicial review acting in that capacity, but as you are aware, a judicial review is a potentially very expensive road. We may need to be confident of success before we go down that road. Can you expand on that?

One of the issues that was raised in the context of consistent treatment of councillors and members of public bodies was the idea that the commission's decision in relation to councillors would be mandatory. Effectively, a sanction, such as disqualification for five years, would be imposed. For appointees to other public bodies—quangos, et cetera—it is suggested that there would be a recommendation to the minister. If the impartiality of the commission is to be upheld and there is to be consistent treatment of both types of person, why should there not be a mandatory requirement for a sanction to be placed on appointees to public bodies, rather than a recommendation to the minister?

Mr McAveety: The first issue is something on which we are happy to take further guidance. The legal advice was that it was best to have left it, and that the independent investigation would no longer require the appeals stuff. Two things came from COSLA today, which were taken on board. The first is the financial issue. A judicial review is an expensive business, and sheriff courts might be a more appropriate place to engage in that kind of process. There are a lot of issues that we want to consider further, and we have indicated to COSLA that we are happy to do so.

You mentioned the issue of the distinction between bodies. The question concerns the philosophy that underpins them rather than the mechanics, as each body is different. It is to enter a minefield to try to separate them. Starting from the point that it is important to have high standards in public life—which no one disputes—the problem is how to enforce and police that, given the nature of the organisations and institutions that have arrived at the present stage in history through different evolutionary stages, legislation and legal situations. The matter is much more complex. A noble aim is sometimes caught up in technicalities.

The philosophy underpinning sanctions should be that they should be quite punitive in the most extreme cases and should apply across the board. How they are implemented might vary slightly, but the principle is that a councillor should not be judged any differently from a person on an appointed body for an offence of the same severity. We are trying to win over the public's view on the philosophical framework, so that we can assure it that those of us who hold public office conduct ourselves to high standards.

Another point that Trudi Sharp touched on is the model code. Much work has to be done to frame and shape the model code to reflect nuances.

I intended to address the matter of ministers not implementing the commission's recommendations, but I thank Trudi for reminding me to do that. It would be an exceptionally brave—or reckless—minister who would allow for one level of sanction in one case, but decide not to implement it in another. There should be consistency of approach to punishment, but it might have to vary according to circumstances.

Mr Gibson: I welcome the comprehensive response that you have given to most questions. I am pretty sure that everyone in this Parliament will be proud of this bill as it progresses. I fully support what you said about restoring confidence in public life.

On standards committees in local authorities, you and I will have fond recollections of the Glasgow model. Should that model, which took the politics out of issues by having a rotating chair and no political majority on the committee, be replicated by other local authorities, or should they be left to construct their own standards committees?

Mr McAveety: Underpinning the bill is the belief that there should be a national standards commission. Local authorities should have flexibility in how they set up a local standards committee. The composition and nature of that committee is best left to local authorities. To ensure that the public believes in the decisions of the standards committee, it should not have a majority of members from the party that dominates the authority. Even in councils that do not have significant party representation, it is important to ensure that membership of the standards committee broadly reflects the views of the local authority. Committees without party majorities, or with a majority of opposition members, offer benefits to members. In particular, they give discipline and a challenge to those of us who have enjoyed majority control for a long time

Two things are needed to underpin the operation of any standards committee. The first is a willingness not to examine issues on a party political basis. That is hard in many parts of Scotland because of the partisan nature of politics.

Secondly, and much more complex, is the confidentiality that is required on the issues that are dealt with by a standards committee. There have probably been technical breaches of confidentiality in terms of information that has been allowed to emerge; information that is discussed in a closed session can lead to public comments. People need to work on upholding confidentiality, as many members feel that by

appearing before any standards committees they are identified as members who have erred.

Members need to be reassured about that. Tragic situations could develop where—heaven forbid—malevolent people could put someone before a standards committee and then issue a press release to say that it is terrible that they have been investigated by the committee. A lot of the stuff in my own city was dealt with in the press in that manner, but the people involved were vindicated when the final decision was made by a standards committee that had a majority of opposition members.

I also find that officers have to do a lot of work to ensure that information is collated in such a way that it is transparent how decisions are made. To be fair, many folk in councils are examining ways of using such models to deal with local circumstances. It would be helpful to address issues of conduct locally; however, larger alleged breaches might require the chief investigating officer to investigate. There needs to be flexibility within that.

Mr Gibson: It is obviously unfortunate that one well-meaning section of the bill appears to have dominated most of the media coverage. For the record, minister, I want to reassure you that my party will be supporting the Executive on the repeal of section 2A, just in case anyone thinks that anyone is wobbling on the issue. I have heard that people of all parties are wobbling on the issue; however, we are certainly not. Again, for the record more than anything else, will the Executive take the earliest opportunity to defuse some of the hysteria over the proposed repeal and provide parents with reassurance by issuing for consultation the teachers' guidelines that will be published following that repeal?

Mr McAveety: Wendy Alexander's statement to the Parliament and subsequent responses to oral and written questions have given an assurance that no legislation will be repealed until guidelines are in place. The nature of the consultation is central because they are educational guidelines. Sam Galbraith will be meeting the Scottish School Boards Association tomorrow to discuss that subject, and we will ensure that guidelines fall within the framework of existing guidelines.

It is important to reassure people, and existing guidelines are available if people require them. To be fair, papers have reported a number of criticisms about the alleged use of packs that might breach guidelines. I can reassure committee members that no local authority or school has utilised any such packs and existing guidelines have been used to reach a very firm decision that some of the subject matter in those packs is inappropriate for the school curriculum. That is a testimony to both the existing guidelines and the ability of local education authorities and teachers to make such judgments in an informed way. The public's concerns on this issue will be addressed, and I welcome Kenny Gibson's remarks that the issue is not about proselytisation, but about genuinely informing the public and ensuring that youngsters are dealt with appropriately. The removal of section 2A is more about tolerance than discrimination in Scotland.

The Convener: I will take Colin Campbell and Gil Paterson next and then will ask a question myself to close the session.

Colin Campbell (West of Scotland) (SNP): My contribution will startlingly short, because Bristow Muldoon has already asked my questions. For the record, I shared Bristow's concerns. Perhaps that will reinforce the point so that it adds up in the minister's brain.

Mr Paterson: On the issue of interim suspension, will councillors who are suspended also have the meagre resources that they receive from their council duties suspended at the same time?

Mr McAveety: COSLA and others have already raised concerns about whether conveners or people who receive special responsibility payments and who are suspended can still carry out those duties. Local authorities and COSLA have been discussing how interim suspension should operate. Some people have said that a distinction can be drawn between an executive-type councillor and a councillor with just ward duties, and that perhaps suspension should cover both positions.

17:00

That is a sensitive area because someone could, for example, accept temporary suspension from a convenership, pending investigation, but want to exercise their rights as an elected member in relation to hearings and so on. Equally important is the issue of the nature and severity of the allegations. Discretion would come into play and I would not want to say that there is a fixed position on that at the moment. Some people are dependent on the allowance that they receive, and we should bear that in mind.

Mr Paterson: Should we draw a distinction between someone who relies on responsibility payments and someone who relies on a lower allowance as they have no responsibility payments?

Mr McAveety: Trudi, you must have received a number of responses on that matter.

Trudi Sharp: The bill follows the existing statutory position on payments of basic and special responsibility allowances. To qualify for a

special responsibility allowance, a member would have to attend meetings and so on. If they were suspended, it would follow that they would not qualify for the allowance. It will be interesting to see whether respondents to the review have views on the matter.

Richard Kerley is considering the issue of remuneration of councillors. That might have an impact on this area.

Mr McAveety: We have also asked for COSLA's view on the matter. The view of a council leader can differ greatly from that of an ordinary council member. We would take that into account before proceeding.

Mr Stone: I understand that Highland Council has discussed section 2A. Has the council made a submission?

Mr McAveety: The responses have not come directly to me. Two local authorities have indicated opposition so far, to my knowledge: Argyll and Bute Council and Falkirk Council, whose policy and resources committee was empowered to respond on the council's behalf. I believe that Highland Council has sought further clarification but has not yet taken a position. I will get back to you on that, Jamie.

Mr Harding: How about North Lanarkshire Council?

Mr McAveety: North Lanarkshire Council's leadership has referred the matter to the full council for consideration. I understand that there is a request for a free vote on the matter.

The Deputy Convener: I have no doubt that the information will come into the public domain as the responses come in.

Perhaps I should declare an interest as my husband is a councillor. However, I made up the question that I am about to ask without his input.

I would welcome any efforts by your ministerial team in making the point that, although an issue is not obviously about equality, we should nevertheless go through the process of consulting organisations such as the Commission for Racial Equality.

There is a long-term question about whether MSPs should come within the responsibilities of a standards commission. Anxiety is caused by the fact that some bodies would not be within its responsibilities. The feeling is that some people will be more policed than others and that, although we have the Standards Committee, no independent body scrutinises our behaviour. If MSPs are not accountable to an independent body, the Scottish Parliament might be seen to be opting out of the process of scrutiny. That would undermine its authority. Will you consider that issue again?

Mr McAveety: I have no influence over that; it is for Parliament to decide. As members of the Scottish Parliament, we should ensure that there is fairness, equity and parity of esteem for elected public members across Scotland. If the ethical standards bill is part of the standard for a system that could subsequently apply to MSPs, that is fine, but it is a matter for the Standards Committee and the Parliament. I will contribute to that debate when it is appropriate to do so.

The Deputy Convener: There will be an opportunity to do that. I am trying to clarify whether the Executive will recommend that MSPs should be covered by the ethical standards bill.

Mr McAveety: I understand that it is a matter for the Standards Committee. There was a stushie before Christmas about whether the Executive or the Standards Committee would decide standards. The Standards Committee would send a clear message about that.

The Deputy Convener: The Executive could put something into its bill that the Standards Committee could then resist. That would be different from the Standards Committee having to amend the bill.

Mr McAveety: I will allow my technical expert to give a technical answer to that.

Trudi Sharp: The bill introduces a piece of legislation that the Parliament can decide whether to pass. Matters governing the conduct of the Parliament itself, however, are matters for the Parliament. I could write to the committee about this, but I do not think that it would be possible for there to be legislation governing the behaviour of the legislative body.

The Deputy Convener: Thank you for attending this meeting and for taking time to go so thoroughly through the points that we raised. You clarified some of the key areas of concern that we identified. Unless you have further comments to make, I propose that we conclude this part of the meeting, although I am aware that you will continue to pursue some of the points that have been raised.

Mr McAveety: Thank you for that opportunity. It is helpful to hear the views of the committee, which shape and influence the bill. I want to hear about such issues as discrimination and the equalities agenda, as well as how the terminology of the bill can be refined. If members can assist in that process, I am happy to continue that dialogue between committee meetings if that would be helpful.

The Deputy Convener: Thank you.

Let us now pull things together. I am aware that

it is late and my anxiety to get away is beginning to impinge on my ability to think, but we must consider what we are to do next. It has been suggested that the committee should write a report, which is rather different from the letters that we have written in the past.

We will be writing a formal committee report that will include all the submitted evidence as well as the *Official Report* of all our discussions and evidence-taking sessions. We must decide what we want to emphasise in that report to assist those who are to draft it. A draft report should be available by Thursday and will be approved at the meeting in Glasgow next Monday. I know that there are some technical issues to consider. We must also reflect on what the minister has said.

Mr Gibson: It would not be appropriate to do that right now. The clerk might have a different view, but we have covered quite a lot of ground. If we are going to put together a formal report to the Executive, we need a few more days to work on the nuts and bolts of it.

The Deputy Convener: I was trying to get a sense from the members about the areas on which they think we should focus. However, I am conscious that it is late on in the meeting.

Mr Stone: I would like to go away and think— you could retaliate by saying that I should have thought about it by now. However, if we come to this issue fresh on Monday in Glasgow, we might get a more coherent view. Speaking for myself, I am getting past it. [*Laughter.*]

Eugene Windsor (Committee Clerk): The reason for the urgency was to try to tie in with the end of the Executive's consultation period on Friday. The meeting on Monday in Glasgow could give members the opportunity to consider it in more detail as part of that meeting. That is assuming we can get the Executive to agree to take a submission later, as part of the consultation period. It would give the Executive less time to get the committee's views into the revision of the draft bill.

The Deputy Convener: We would not object to a draft; it is realistic for you to be able to pull together something, without us having to have a discussion just now. We have to take your judgment on that.

Dr Sylvia Jackson: I suggest a compromise, which is that additional points that were made quite strongly by people on this committee might be added to the draft. That could be the basis for Monday. Eugene, would you be able to go through the *Official Report* quickly enough to do that?

Eugene Windsor: To clarify, convener, is the member suggesting that, additional to the points that were made in the original letter, the letter is amended to reflect today's discussion?

Dr Jackson: Yes, but briefly.

Mr Gibson: Let us be honest, there are few areas of contention in this; it is more for clarification and fine-tuning. I do not see any major difficulty.

The Deputy Convener: If any member has an issue that they want to ensure that the clerks know about, now is the time to raise it.

Mr Gibson: Surely it should have been raised by now.

The Deputy Convener: So we agree that we will have a draft before us on Monday and that if, on reflection, people begin to feel strongly about something, it is incumbent upon them to raise it with the clerks before then, to ensure that we can consider it next Monday.

Eugene Windsor: The official report has agreed to give this meeting priority, so the report will be available as soon as possible. Members should be able to see it tomorrow or the next day.

The Deputy Convener: I am grateful for that.

Mr Harding: To clarify, I agree with most of what has been said but, as I have made obvious, I have a problem with section 28. Do I have to say that at this stage, or do we debate such matters in Parliament when the bill is introduced?

The Deputy Convener: Will the report reflect the variety of views on the committee? Will it acknowledge any minority views?

Mr Gibson: What has been discussed so far is effectively the view of the committee—I would imagine that, on that particular point, Keith Harding could add a note of dissent. If someone wants to express dissent on any aspect of the bill, they should be free to do so.

The Deputy Convener: I was trying to clarify the language you used. Do we go to a vote, and then that is the view of the committee—

Mr Harding: There is only one area on which I have a problem. If we just put a note of dissent, that would be it.

Mr McMahon: The guidelines on reports indicate that if there is any dissent, it should be noted.

Mr Stone: When will there be an opportunity to do that?

The Deputy Convener: We will discuss it on Monday.

Donald Gorrie: Will the clerks include Mr Marks's view on this? I know that he thinks that he should have the job.

Dr Jackson: Mr Marks has submitted his views, Donald.

Donald Gorrie: Perhaps we could get a response from him, because we do not want to get into the same stushie as we did over temporary sheriffs.

Mr Gibson: I do not think that we agree with Mr Marks's view that the bill is fundamentally flawed. We should distance ourselves from that view.

Donald Gorrie: I agree, but he has a particular point about who appoints the CIO.

Dr Jackson: I am mindful of the time because I have to catch the 5.33 pm train.

I thank Colin Campbell for giving the feedback about the visit to Perth and Kinross Council while I was at the European Committee yesterday. In case Colin did not mention it, we saw an exceptional joint strategy for care for older people in Perth. If anyone is interested, I have material on it.

The Deputy Convener: Thank you.

I thank the official report for making us a priority so that we can move this forward at our next meeting.

Meeting closed at 17:15.

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 would like a copy of the bound volume should also give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the bound volume should mark them clearly in the daily edition, and send it to the Official Report, Parliamentary Headquarters, George IV Bridge, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Wednesday 26 January 2000

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5
Annual subscriptions: £640

BOUND VOLUMES OF DEBATES are issued periodically during the session.

Single copies: £70

Standing orders will be accepted at the Document Supply Centre.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £2.50
Special issue price: £5
Annual subscriptions: £82.50

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £2.50
Annual subscriptions: £80

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 0171 242 6393 Fax 0171 242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 01232 238451 Fax 01232 235401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF12BZ
Tel 01222 395548 Fax 01222 384347

The Stationery Office 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
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by The Stationery Office Limited

ISBN 0 338 000003 ISSN 1467-0178