SOCIAL INCLUSION, HOUSING AND VOLUNTARY SECTOR COMMITTEE

Wednesday 1 December 1999
(*Morning*)

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SOCIAL INCLUSION, HOUSING AND VOLUNTARY SECTOR COMMITTEE
11th Meeting

CONVENER:

*Ms Margaret Curran (Glasgow Baillieston) (Lab)

COMMITTEE MEMBERS:

*Bill Aitken (Glasgow) (Con)
*Robert Brown (Glasgow) (LD)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Fiona Hyslop (Lothians) (SNP)
*Mr John McAllion (Dundee East) (Lab)
*Alex Neil (Central Scotland) (SNP)
*Mr Lloyd Quinan (West of Scotland) (SNP)
*Mr Keith Raffan (Mid Scotland and Fife) (LD)
*Mike Watson (Glasgow Cathcart) (Lab)
*Karen Whitefield (Airdrie and Shotts) (Lab)

*attended

WITNESSES:

Michael Clancy (Law Society of Scotland)
Frank Johnstone (Law Society of Scotland)
Frank McConnell (Law Society of Scotland)

COMMITTEE CLERK:

Martin Verity

ASSISTANT CLERK:

Rodger Evans

Scottish Parliament

Social Inclusion, Housing and Voluntary Sector Committee

Wednesday 1 December 1999

(*Morning*)

[THE CONVENER *opened the meeting at 10:03*]

The Convener (Ms Margaret Curran): I welcome everyone to the meeting. Thank you all for turning up.

Fiona Hyslop (Lothians) (SNP): On a point of order. I am raising this matter now because there is no suitable point on the agenda at which to raise it. There has been some speculation about the joint ministerial task forces between Westminster and the Executive that are being proposed by Gordon Brown. I am concerned, as should be other committee members, that this committee will be working with other bodies, for example, the relevant select committee from Westminster. Announcements such as that should be discussed by this committee first, and should not be announced from London.

Is there an opportunity for this committee to discuss the possibility of working with committees from Westminster? We have already discussed housing benefit, warrant sales and evidence from the Department of Social Security, so there are specific areas of common ground on which we can work together, but I would prefer it if this committee could agree on the basis on which that is done.

The Convener: Thanks, Fiona. I will take advice from the clerk. Is it appropriate to deal with this matter now as a point of order, or should we put it on the agenda, Martin? I am happy to deal with it now.

Martin Verity (Committee Clerk): We can address the issue now if it is dealt with as a point of order.

The Convener: There are two separate points. There are issues with regard to the ministerial task forces working together that we should take an interest in. We should look at how we do that, and get some information.

The issue regarding select committees is different. Rodger Evans circulated the information that we received from the Social Security Committee and the Scottish Affairs Committee. I asked Rodger to convene a meeting with me and David Marshall, the chairman of the Scottish Affairs Committee, so that we could determine our lines of interest, the degree of overlap between our committees and how we would take the matter forward. I would then bring the outcome of that meeting to this committee.

A press report last week said that we were doing a joint investigation. That was a bit presumptuous on the part of the press, because we have not agreed to that. Clearly, it would be for this committee, not for me or the select committee, to decide whether to have a joint investigation. No agreement has been reached. I am in contact with David Marshall's office to try to arrange a meeting, because there are areas of interest that we may wish to pursue, and we should give that some consideration. However, no decisions will be taken without coming back to this committee.

Are there any other issues regarding that matter?

Fiona Hyslop: Will you take guidance from the committee on the basis and parameters on which we want you to have that discussion with David Marshall?

The Convener: I am happy to put that on the agenda. The initial contact was purely exploratory. It was not meant in any way to pre-empt any decisions made by this committee.

Mr John McAllion (Dundee East) (Lab): I endorse what you say, convener. The Scottish Affairs Committee's major inquiry currently is examining poverty in Scotland. Obviously, we have common ground with that committee and we should meet with it soon to discuss how it is addressing the issue and how we can learn from each other.

We are interested in social security, and the Social Security Committee holds the Westminster Government to account on that matter. We have common ground with that committee as well. I am delighted that we are forging links with those committees, and I am happy for you to make arrangements and report back to this committee.

The Convener: So can I do that? If people have ideas, please submit them to me. I must state that the first meeting will be exploratory. It will not in any way pre-empt any decision making on the part of the committee.

While we are on the subject, I draw to the attention of committee members the possible dinner arrangement that we have with the Social Security Committee next week. We can confirm arrangements for that by e-mail.

The ministerial issue is also of interest to this committee, and I will ask the clerks to put that matter on the agenda so that we can be informed properly about it.

Alex Neil (Central Scotland) (SNP): On a separate point, which I suppose I have to raise as

a point of order, this week's agenda does not have action items on it. I am particularly keen to address the lack of progress by Scottish Homes on the comparative analysis of the funding that we requested. That was four or five weeks ago. Frankly, in the light of the resources that are available to Scottish Homes, and especially if it is in discussion with the Scottish Executive, I think that it is about time Scottish Homes got its finger out and replied to us.

The Convener: Was that parliamentary language?

Alex Neil: Yes.

The Convener: Can the clerk translate that into parliamentary language? We have had a short paper, but not the substantial one from Scottish Homes.

Martin Verity: We were advised at the previous meeting that Scottish Homes would write to us shortly, and that it was in discussion with the Scottish Executive about the bigger piece of evidence that Scottish Homes agreed to submit.

Alex Neil: I think that we agreed, with regard to housing, that at some stage we want to take evidence from potential lenders. We need the information from Scottish Homes before we take evidence from the lenders, because it is relevant.

The Convener: We can address that matter when we reach item 2 on the agenda, which concerns housing stock transfers. We may need to ask for that information by a particular date. We will address any other housing matters under that item.

Before we move on to item 1 and our discussion with the Law Society of Scotland, I ask for a declaration of interests from those committee members who are lawyers.

Robert Brown (Glasgow) (LD): I declare my interest as a member of the Law Society of Scotland, which is not a financial interest in the context of today's proceedings, but is relevant and should be known to the committee.

The Convener: Yes, and that will be on the record.

Are there any other declarations? There are none, so I thank committee members.

Abolition of Poindings and Warrant Sales Bill: Stage 1

The Convener: I welcome Michael Clancy, Frank Johnstone and Frank McConnell. Thank you for the paperwork that you submitted. It was helpful, and many of us found in useful in determining our lines of questioning. You have probably been told that we would like you to keep the introduction brief because most of the content will be covered in the question and answer session. You will get plenty of time to answer questions and give your views. We have scheduled quite a lot of time for this evidence. I thank the Law Society of Scotland for coming to give evidence.

Michael Clancy (Law Society of Scotland): I am the director of the Law Society of Scotland who deals with law reform. I will explain what the Law Society is and why we are interested in the measure before the committee.

The Law Society is established under an act of Parliament, the Solicitors (Scotland) Act 1980. Section 1 of that act states that the society's objectives are to promote the interests of the solicitors profession and the interests of the public in relation to that profession in Scotland. Therefore, we have taken an active interest in law reform issues over a long period of time. We comment on proposals for law reform, whether they come from Brussels, Westminster, this Parliament or any other source. Some members of the committee have already received documentation from us in other places, in relation to other measures.

The broad nature of the solicitors profession in Scotland, with almost 10,000 members in practice on a range of issues, in both the public and private sectors, gives us an opportunity to engage in discussion on points of interest relating to the law. We thought it appropriate, when Mr Sheridan's bill was introduced, to make submissions both to the Justice and Home Affairs Committee and to this committee.

The Social Inclusion, Housing and Voluntary Sector Committee has received those submissions, which come from two committees of our society: first, the consumer law committee, which deals with matters of consumer law interest, and second, the diligence committee, which deals with matters relating to the enforcement of debt and court judgments.

I will introduce my colleagues. Frank Johnstone is the convener of our consumer law committee and is a solicitor in practice in Glasgow. Frank McConnell is a member of our diligence committee and a solicitor in practice in Edinburgh. Before I get confused about the two Franks, I will hand them over to you.

I do not think that an opening statement is necessarily what you want, so we are at your disposal if members want to launch into questions.

The Convener: You do not want to make any preliminary remarks?

Michael Clancy: You have our submissions

and, in other circumstances, questions are bubbling all the time.

The Convener: The Law Society paper raised a number of issues that members will pursue. I will ask a question on the diligence issue. One of the issues featured in the publicity surrounding this bill is that Scotland is unique in how it deals with this matter. In your paper you compare the situation here with that in England in relation to imprisonment. You also make other international comparisons in relation to enforcement. Do you have information about how often imprisonment is used in terms of the enforcement of debt in England? What are the different enforcement models internationally and how coercive are they?

Frank McConnell (Law Society of Scotland): A paper, issued yesterday by the Scottish Law Commission, suggested that throughout the European Union and the Commonwealth every country has a system of attaching moveables. The paper states that 42 countries in the western world have a similar system to Scotland.

Our preliminary researches indicate that the debtor protection measures that we introduced in Scotland in 1987 are not replicated in England. We have wider debtor protection measures in Scotland than apply elsewhere in the United Kingdom, because of the introduction of the Debtors (Scotland) Act 1987. In relation to England, my understanding is that there is provision for imprisonment in the recovery of local rates, where the failure to pay rates is deemed to be wilful.

We in Scotland have moved away from that approach in relation to debt. I cannot remember an instance in Scotland where someone was imprisoned for debt. There are exceptions in relation to imprisonment for breach of interdict and that kind of thing. That is looked on as a contempt of court rather than a sanction against failure to pay debt. In Scotland we think that we are better placed than many of our neighbours in the UK, Europe and the Commonwealth in debtor protection.

The Convener: Do you think that the Debtors (Scotland) Act 1987 was helpful in protecting the most vulnerable members of society?

10:15

Frank McConnell: It was once suggested that it went too much in favour of debtor protection. I must say, after 12 years, that I think that the Debtors (Scotland) Act 1987 probably got it right on the raft of debtor protection measures that it introduced. I was on the rules council of the sheriff court, which made the regulations. We were keen on simple applications to every sheriff court in the country, which were free, giving the sheriff clerk a role in advising people who were under this kind of pressure to make application to the court to set aside enforcement procedures, of one sort or another, on a range of matters. That seems to work well in practice, so much so that it is virtually impossible, where the poor and vulnerable have debt, to enforce the decree by way of poinding and sale.

The Convener: This committee has had evidence that some clauses in that act are not at all well used. They may be there to protect the most vulnerable, but they are not used so the vulnerable do not feel protected. Is that a problem with the act that we should examine?

Frank McConnell: There are debtor protection measures, which are used. I will distinguish between conventional decrees, or court decrees, and summary warrant, because underpinning this bill, which has raised this important issue, is the use of summary warrants by local authorities. That comes through strongly in the bill.

In conventional diligence—conventional court procedure—any person being sued for debt has the right to fill in a simple form setting out their personal circumstances and making arrangements to pay the debt by instalments. My information from the Scottish Courts Administration is that, by and large, most creditors accept these time-to-pay directions, as they are called. That begins to manage the debt. If the offer is refused, the matter must come before a sheriff. From personal experience, I can say that sheriffs are sympathetic. If someone is earning so much, they can pay beyond a certain figure and sheriffs will grant decree payable by that figure.

The protection goes beyond that, because after a decree has been granted and a charge served, which is an intimation to a debtor that a decree has been granted and it can be enforced, there is a further provision in conventional court actions, where a person can apply to the court for a time-to-pay order varying the original decree. Again, that is an opportunity to make payment. In practical terms, creditors recognise that and if, after a decree has been granted, someone demonstrates that they are unemployed and not in a position to pay the debt instantly, arrangements are made for the repayment of the debt.

I said that there was a distinction between conventional debt and summary warrant. The difference—and this is where part of the problem might arise in relation to this bill—is that local authorities, Inland Revenue and HM Customs and Excise can use this summary warrant procedure. It is summary procedure and there is no due process of law. They put in a list to the sheriff and get a summary warrant. There is no service on them. There is no provision for the debtor to come to an arrangement with the local authority, Inland

Revenue or HM Customs and Excise to make payment before the summary warrant.

There is no encouragement, in one sense, to do that beyond what they may do as an institution in relation to their own credit control procedures. Once the summary warrant is granted there is no provision for a time-to-pay order. One of the things that came out of the evidence that the committee received from other sources was that, under a summary warrant, the debt becomes instantly payable as a matter of law. The whole sum is due and can be demanded. In practical terms, that ought not to happen.

One of the ways to ensure a realistic approach to the problem would be to review the summary warrant procedure to see whether it offers a fair degree of debtor protection. Debtor protection has not been left out of the Debtors (Scotland) Act 1987. All the debtor protection measures that apply to poindings and warrant sales also apply to summary warrants in the act, but there are certain areas of debtor protection in the early stages of the summary warrant procedure that are excluded in the act. That may be something that causes more real concern than poindings and warrant sales. However, I believe that the nature and extent of the measures in the Debtors (Scotland) Act 1987 give almost absolute protection to the poor and vulnerable.

The Convener: I am sure that people will want to explore that with you.

Mr McAllion: I was interested in the fact that you do not think that poindings and warrant sales can be used against the poor and vulnerable. By far the majority of warrants issued through the courts are summary warrants. Of 23,000 poindings carried out last year, 16,000 were summary warrants. Is that right?

Frank McConnell: I am not sure, as I do not have the figures. I am not sure where the figures you mention come from, as my understanding was—

Mr McAllion: The Justice and Home Affairs Committee of the Parliament took that evidence two weeks ago.

Frank McConnell: Under summary warrants, poindings are not reported to the court, unlike conventional diligence. I wonder, therefore, where the figures came from, although I accept them.

Mr McAllion: Do you accept that 16,000 of those 23,000 poindings were summary warrants and that under that procedure the poor and the vulnerable are at risk? One of the instances quoted by the principal solicitor of the Govan law centre was a woman who was on £80 a week benefit who had council arrears of £255. She had sheriff officers at her door demanding that she pay £75 rather than the £5 a week that she could afford. I suggest that the poor and the vulnerable are at risk from that procedure. If you do not know that, you should.

Frank McConnell: I wonder whether that is not a flaw in the summary warrant procedure. There is a requirement—and I am not unsympathetic to this being the case—to consider the person's position and come to some arrangement. One way of doing that is to allow the courts to reconsider the debt and to take into account the sum involved and the ability of the person to pay. That would take matters away from the sheriff officers.

Mr McAllion: According to the evidence given to the Justice and Home Affairs Committee and the evidence that this committee took from the Lothian Anti-Poverty Alliance, sheriff officers demand lump sums. That is how they implement summary warrants. The poor are being driven into the hands of creditors to get the sheriff officers off their backs. It is an inhumane and cruel system of getting people to pay debts. There are alternatives.

Frank McConnell: I cannot say more than I have said already. There may be a difficulty with the summary warrant procedure, which denies a poor person the opportunity to come to a sensible arrangement. However, I understand—I will not put it more strongly than that, as I am not directly involved—that there are service level arrangements between, for example, local authorities and sheriff officers. That means that sheriff officers who act on behalf of any local authority in Scotland are tightly controlled. If they depart from what was agreed with the local authority, even on things like the text of letters, they could lose their contract with the local authority. Local authorities therefore have a role in ensuring that the kind of thing that has been mentioned does not happen.

Mr McAllion: It does happen and Mr Mike Dailly, who is directly involved in the procedures, tells a very different story from the one that you tell.

Frank McConnell: I do not deny that that particular case may well have taken place.

Mr McAllion: You inferred to the committee that every European Union country has a means of attaching moveables. Are those systems the same as poindings and warrant sales, or are you talking about sequestration, which is also available to the courts in Scotland?

Frank McConnell: It may be that this is something that needs to be researched by the Scottish Law Commission, but my understanding is that there is a system of attachment of moveables; not sequestration, but restrainment of goods.

Mr McAllion: Are poindings and warrant sales used in other European Union countries?

Michael Clancy: Perhaps I can help. Paragraph 2.67 of the Scottish Law Commission's report, which was published yesterday, states:

"All the 41 other legal systems in Europe and the Commonwealth which we have so far been able to examine, however briefly, make available to unsecured creditors a system of attachment and sale of moveable property analogous to poinding and sale. Aspects of these are reviewed in the Appendix hereto."

Mr McAllion: Before you go on, do all 41 of those countries give warrant officers the right to come to somebody's door, use forced entry, even when only under-16s are present, and poind goods?

Michael Clancy: It happens in some other countries.

Mr McAllion: In which countries does that happen?

Michael Clancy: Paragraph 2.68 of the report goes on to say:

"Several systems allow forcible entry into the debtor's dwelling or other premises."

Norway and Sweden are given as examples.

Mr McAllion: Do the other 39 countries allow it?

Michael Clancy: That evidence is not available in the report, so I cannot say whether or not that is the case.

Mr McAllion: I infer from your evidence that 39 countries do not allow it and that two do. I suggest that we should be on the side of the 39, not of the two.

Michael Clancy: That may be the view that the Parliament comes to.

Mr McAllion: I hope so.

Frank McConnell: That relates only to forcible entry. We pointed out that one of the protections introduced under the Debtors (Scotland) Act 1987 is the fact that forcible entry cannot be made if children under the age of 16 are present, which is something that Mr McAllion mentioned. Another protection that was introduced is that a section 18 notice—I think that is what it is called—must be served before entry can be forced. That gives the defendant an opportunity to challenge the notice.

Fiona Hyslop: It is clear that the majority of cases involve local authorities, so our main focus must be on local authority pursuance. If we are to take the international perspective into account, we must define "analogous". Analogous could mean anything. In your view, what does analogous mean in this case?

Warrant sales are based on fear. We talk about forceful entry, for example, which is deemed to be so bad that children under the age of 16 should not be present. Have the fine minds of the Law Society been put to creative use to think up a civilised alternative to the fear of warrant sales?

Frank Johnstone (Law Society of Scotland): The Law Society welcomes the opportunity to give evidence today and is obliged that those promoting the bill have given us the opportunity to participate in a review of the law in this area. I do not consider that the purpose of poindings or warrant sales is to create fear. Distress may be caused as a consequence of them, but poindings and warrant sales are seen as a remedy.

Poindings and warrant sales are used by a number of institutions and individuals. Their use is not confined only to financial institutions to recover payment of sums due. They may also be used by a man or wife following a divorce to recover payments of aliment or by an employee who has been wrongfully dismissed whose employer has been found against, to recover payments that are rightly due to them. I speak as convener of the consumer law committee when I say that we are genuinely concerned to ensure that such individuals are not deprived of a remedy, which would be the case if the bill were passed.

The other question was whether we have thought of how to alleviate what could be perceived as the distressing consequences. That is a difficult question. Any measure to enforce payment of a sum that is due will inevitably cause distress. We need to seek a balance between the rights of creditors and the need to ensure that those rights are not enforced to the prejudice and undue distress of the debtor.

One of the points that arose from Mr McConnell's earlier comments applies particularly to the enforcement of summary warrants, in which instance a debtor has no statutory right to apply for a time-to-pay direction or a time-to-pay order. Where it exists, that right is important for a party. However, creating that right is only the first step, as is frequently the case in consumer law. The law should ensure that the consumer is aware of those rights, and that he has the support and advice that will allow him to translate that right into a remedy. I want to make that point forcefully. The right of a debtor to apply for a time-to-pay direction, on the granting of a decree, or a time-to-pay order, following the execution of a charge, is meaningless unless support and advice are given to a debtor to translate that right into a remedy. The remedy is a time-to-pay direction or a time-to-pay order, which will prevent the consequent steps of a poinding and warrant sale being carried out.

I feel—and this point is made in my committee's comments on this bill—that there should be a greater focus on rights to pay by instalments,

which apply when a judgment or decree is being enforced. A time-to-pay arrangement might ameliorate the perceived consequences of the current enforcement regime, particularly in relation to summary warrants.

10:30

Fiona Hyslop: Again, we return to the point that so many poindings and warrant sales are pursued by local authorities when no arrangements have been made for the time to pay. That is a matter of deep concern.

I want to pursue the point that the sheriff officer must withdraw if any children under the age of 16 are present. We have received evidence from people who have told their children not to answer the door, in case it was the sheriff officer. Any parent knows that their children might go in and out of the house—the children might not be in the house at the time, but they might return at any moment. From the diligence committee's perspective, you represent the pursuants, rather than the clients. Are your clients aware that they might have to take action that could be extremely distressing to young children? Will you make your clients aware of that?

Frank McConnell: Yes. That fact must be recognised and addressed. Such action constitutes an invasion of privacy, although, paradoxically, a poinding and warrant sale is a private transaction, in the sense that it takes place within the home. Earnings arrestments or ordinary arrestments necessarily involve third parties. If an earnings arrestment is lodged with a local garage where the defender is a mechanic, the whole village will know that he has an earnings arrestment against his wages. That is necessarily distressing, and breaches his privacy. Paradoxically, a poinding and warrant sale, unlike pre-1987 action, is relatively private.

Fiona Hyslop: The arrestment of wages does not affect children: that is the issue.

Frank McConnell: No, it does not affect children.

Fiona Hyslop: Apart from suffering the consequences of a lack of money, children are not involved in the process. That is an important point.

Frank McConnell: I recognise that that is a difficulty.

Robert Brown: I want to address two or three different issues. You have identified reasonably clearly the predominance of the council when there is enforcement. Are there statistics to show that there has been a change in the use of that diligence? I am thinking back to the poll tax campaign and to similar circumstances. Has there been a change in the number of diligences that are carried out by councils, following the difficulties that were experienced at the time of the poll tax?

Michael Clancy: That question should be addressed to councils rather than to us.

Robert Brown: You have no specific statistics on that issue?

Frank McConnell: The Law Commission's report seemed to indicate that there was a filter-down system, and that creditors were anxious not to proceed to the final resort. Every effort was made to reach some kind of accommodation before that step was taken.

Practically, creditors must consider the expense of legal proceedings—not just of diligences, but of the actual court proceedings. There is no point in incurring those costs unless there is some possibility of a return. It is as simple as that—it acts as a further brake on the taking of action.

Robert Brown: I want to ask about the technical aspect of proceeding to warrant sales. One of the criticisms that is made of warrant sales concerns the relative disproportion of the legal and sheriff officer's costs compared with the value of the surviving debt and its recovery. Do you have any information on the extent to which sheriffs would refuse warrants for sales because of the disproportionality of expenses?

Frank McConnell: There is provision in the Debtors (Scotland) Act 1987, even when there is no challenge to the application to sell poinded effects. The sheriff can, off his own bat, read the papers and refuse to grant a warrant. I cannot speak for Frank Johnstone, but my experience is that sheriffs adopt that role—if they consider that the granting of a warrant sale would lead to an injustice, or would be unjustifiable, they will not grant it.

Robert Brown: I would like to pursue two other lines of inquiry. The first concerns the distinction that underlies some of the discussion about the "cannot pay/can pay" debate. Although some people try to avoid their debts, others are prevented from dealing with their debts by financial circumstances. Have you any feel for the balance between those two positions? Would it be advantageous to extend considerably the advice and guidance mechanisms that are available, such as the experiment that is on-going at Edinburgh sheriff court? Are there ways in which such mechanisms could be brought to bear more effectively on the warrant sale part of the procedure?

Frank Johnstone: There is a difficulty in trying to identify and distinguish someone who cannot pay from someone who will not pay. If that were easy to do, the system of enforcement would be much more effective and efficient. Until that is the

case, measures must be taken to allow a remedy to people who are entitled to redress. If there was adequate funding, a greater role could be played by citizens advice bureaux and organisations such as Money Advice Scotland, which advises debtors.

The in-house sheriff court scheme in Edinburgh was perceived as a positive measure. There have been moves to extend the operation of that scheme. The sheriff officers are most effective when they can give advice on the remedies that are available to individuals and debtors. Unfortunately—as we would concede, in relation to the use of summary warrants—a debtor does not have the access to the remedy of a statutory entitlement to apply to pay by instalments the sum that is due.

Robert Brown: When poinding schedules are served on defenders, is any guidance or advice on approaching citizens advice bureaux, Money Advice centres and the like given to them to help sort out their financial affairs? Is anything positive done to try to advise them of their rights at that point?

Frank McConnell: On all documentation that is served, there is a reference to the citizens advice bureau solicitor, but the information goes beyond that. Under the Debtors (Scotland) Act 1987, the sheriff officer is under obligation to advise orally defenders of their rights to redeem goods, and of their right to challenge whether they should be poinded. In addition, a written statement of those rights is given. Frank Johnstone's point was that perhaps that is not enough. Perhaps there should be something beyond that, which would encourage people to challenge poindings, or to discuss them in a forum in which the matter could be resolved through counselling.

Frank Johnstone: Under agreements that are regulated by the Consumer Credit Act 1974, information is given to individual debtors and borrowers concerning their rights according to that act. Where a default occurs under a debt that is regulated by the Consumer Credit Act, the creditor must serve a default notice that must expire before he is entitled to take any steps. The default notice advises a debtor to take advice from a citizens advice bureau or a trading standards officer. Similar advice is given to debtors in the termination letters, which, under the Consumer Credit Act, must be served.

I hope that I have already highlighted the difficulty of translating those rights into an effective remedy—that is at the core of the subject and it is an issue in which we have great interest.

Robert Brown: So far, we have concentrated on the admitted problems at the council end. However, your paper also deals with divorce, where people are trying to recover aliment or a capital sum. The paper also refers to small traders. Can you comment on the problems that the abolition of the remedy might cause for people in those situations?

Frank Johnstone: A small trader being owed money for whatever reason—perhaps he was supplied with defective goods or someone has failed to pay him—can be a source of acute financial concern to his whole family. As I commented earlier, it is inevitable, in any system of enforcement, that distress will be caused to those people who are being compelled to do something that they do not want to do—that is, pay money that they owe. If there is no remedy, the party that is due that money will suffer significant distress.

The Law Society is concerned with ensuring that there is a balance between those interests and that an equitable remedy is available, which is not too harsh or unduly onerous. In many cases, it becomes an extremely personal issue—people want to see their rights translated into a remedy that will procure payment.

Robert Brown: What about my other point, on divorce?

Frank McConnell: A practical example of the need for a remedy is where someone loses their job, is successful at an employment tribunal, and obtains an order. His employer, however, might be a self-employed plumber who lives in rented accommodation, runs his business on overdraft and whose only assets are moveable ones such as stock. There is a need for a remedy for the person who obtains an order in such circumstances—such cases are happening all over the country. Similarly, the divorced wife trying to recover a capital sum or aliment from her ex-husband needs a remedy.

The Convener: Do poindings and warrant sales help in those problematic areas?

Frank McConnell: They are sanctions—remedies—and ways in which one can enforce the right to payment of a capital sum. One might not choose to exercise that remedy, but the fact that it is there might facilitate payment.

Alex Neil: I have several questions. I refer you to paragraph 4.2 of your submission, in which you state that

"the rights of the poor and vulnerable in our society have absolute protection".

What is your definition of poor and vulnerable?

Frank McConnell: I would define those who are unemployed, have dependants and who have absolutely no ability to make any payment as poor and vulnerable.

Alex Neil: Based on that definition, what

percentage of the poindings—the 50,000 or so cases referred to paragraph 4.3—relate to people who are poor and vulnerable?

Frank McConnell: I could not give you an answer to that—I do not have access to that figure.

Alex Neil: If you do not have access to that figure, how can you state that

"the rights of the poor and vulnerable in our society have absolute protection"?

Frank McConnell: The figures that we obtained from a certain amount of research indicated that, in relation to attempts to poind, the majority of people arranged to pay a weekly sum. Paradoxically, the very poor—those on benefits—have no way out in relation to local authority debt, because money is directly debited from their benefit. Such people lose £2.55 from their benefit payment to pay local authority tax. The very poor and vulnerable do not have a choice—they lose that money, which is a significant proportion of their income, from their benefit.

Alex Neil: Are you saying that the Law Society does not have the statistical evidence to back up the statement that

"the rights of the poor and vulnerable in our society have absolute protection"?

Frank McConnell: No. It was an opinion based on the workings of the Debtors (Scotland) Act 1987.

Alex Neil: So that opinion is based on a total lack of evidence?

10:45

Frank McConnell: No. We took an objective view of the raft of debtor protection measures that have been enacted by the Debtors (Scotland) Act 1987 and concluded that they provide the protection to which we referred in our paper.

Alex Neil: Is it a subjective view rather than an objective one?

Frank McConnell: We would say that it is an objective view.

Alex Neil: How can it be objective if there is no evidence to back it up? You are a lawyer—what would you think if I went into a courtroom with no evidence and said to the judge, "I have an opinion, but I can't prove it, m'lud"? You are telling me that you have no evidence to back up your statement.

Frank McConnell: We are saying that the nature and extent of the debtor protection measures in the Debtors (Scotland) Act 1987 provide adequate protection for the poor and vulnerable in our society.

Alex Neil: I will make two points on that. First, the statistical research that others have done shows that 75 per cent of people whose goods are poinded would come under any reasonable definition of poor and vulnerable. If you accept that, how can you state that

"the rights of the poor and vulnerable in our society have absolute protection"?

Frank McConnell: I have answered that.

Alex Neil: I do not think that you have.

Frank McConnell: You may not agree with the answer that I gave, but I have given it.

Alex Neil: Secondly, you seem to be trying to make the point that the poor and vulnerable are protected because the threat of poinding causes them to settle their debt.

Frank McConnell: No. They may not settle their debt—they may come to an arrangement to repay it in a sensible way.

Alex Neil: Have you thought about how that arrangement is funded? Have you read the evidence that we received on 17 November? It is clear from that anecdotal and statistical evidence that, to meet the arrangement, many of those people, 75 per cent of whom are poor and vulnerable, get into another form of debt, usually with some kind of money lender. How can you say that that is protection for the poor and vulnerable?

Frank McConnell: I read the evidence, but I have no personal knowledge of what you describe, or of the incidence of such borrowing. I have no idea.

Alex Neil: That is precisely my point. You have no idea and no evidence, yet you submit written evidence that states twice that

"judged objectively the measure has worked in practice protecting, as it does, the poor and the vulnerable".

On page 1 of your submission you say that it is objective, yet you now admit that the statement on page 3 is subjective and that there is no evidence.

Frank McConnell: I have answered you as well as I can.

Alex Neil: I conclude from that that the Law Society has no evidence that the poor and vulnerable are protected.

Frank McConnell: Presumably, you will be hearing evidence from creditors and other interested parties who will be able to provide you with the evidence that you require. The Law Society takes a neutral view on law reform.

Alex Neil: My question relates to your evidence. Your submission stated that

"the rights of the poor and vulnerable in our society have absolute protection".

You are telling me that the Law Society has no evidence to substantiate that statement.

Frank McConnell: That statement was based on the protection measures in the Debtors (Scotland) Act 1987, which prevented precisely the kind of action that is complained of in the bill.

Alex Neil: It is obvious that you cannot substantiate that statement. Does the Law Society care about the social consequences of poindings and warrant sales?

Frank Johnstone: The Law Society is very concerned that there should be an adequate remedy and accepts that, in a number of instances, a remedy must, inevitably, cause some distress. The remedy must ensure that the distress that is caused is not unreasonable and does not constitute harassment.

We cannot comment on other evidence that this committee has received on particular instances of hardship—it was undoubtedly distressing to read those accounts. The Debtors (Scotland) Act 1987 enshrines a right on the part of a debtor to apply for a time-to-pay direction or order. The difficulty is that the fact that the rights and obligations of those enforcing decrees are abused does not mean that the act fails—if somebody breaks the speed limit, it does not mean that the speed limit is wrong.

I am genuinely concerned that people should have assistance, particularly in distressing situations where a poinding or warrant sale is about to take place; they should have it explained to them where that right exists—it does not exist in relation to summary warrant. Where it does exist, people have the right to pay by instalments, and should not be pressured into borrowing funds that they cannot afford to repay. That is deplorable.

Alex Neil: The abuse of procedures and powers by sheriff officers is obvious from the evidence that we have received so far, as well as from our postbags. Can you tell me—anecdotally or statistically—how many times in the past two years any sheriff officer in Scotland has been reprimanded or disciplined for unlawful behaviour in terms of the abuse of procedures or powers?

Frank McConnell: The Debtors (Scotland) Act 1987 makes provision for a disciplinary framework under which sheriff officers have to work. I understand that they are responsible to the sheriff principal. Complaints are made to the sheriff principal, who has power to remit them to a solicitor to investigate fully and then to take action.

The Law Society does not have particular figures but, anecdotally, I know of one case in Grampian and the Highlands and Islands that went to the Court of Session; a sheriff officer was suspended by the lord ordinary for a disciplinary problem. The sheriff principal also has the power to suspend the commission of a sheriff officer for all time or for a period. People complain about sheriff officers, and investigations take place. As far as I know, sheriff officers are aware that their actions are subject to the supervision of the sheriff principal.

Alex Neil: I think that we all know that the occasions on which action is taken are few and far between. In effect, there is a bully-boys' charter and sheriff officers regularly act like bully-boys. They deliberately instil fear in people. It is clear from the evidence of our meeting on 17 November—some of that is anecdotal but the problem is widespread—that a significant number of sheriff officers act in breach of the procedures and powers, although they are not reported for it.

Frank McConnell: There are two relevant matters: the supervision of the sheriff principal; and the position of the local authority, which is much involved in this area, as it employs sheriff officers and has the right to take action against them if it considers that unjustifiable tactics have been utilised.

Frank Johnstone: Following on from that important point, we need to make a distinction between the rights and obligations that are enshrined in the Debtors (Scotland) Act 1987 and the way in which the procedures created by that act may be applied. Certainly, any solicitor advising a responsible creditor would have nothing to do with a sheriff officer who acted improperly or who brought undue pressure to bear, outwith the terms of the act. In my experience, the act has not been a bully-boys' charter. On the contrary, the act provides a framework that seeks to create an equitable balance between the rights of creditors and debtors.

If there is an issue as to how sheriff officers implement the procedures that were put in place by the Debtors (Scotland) Act 1987, it should be examined carefully and scrutinised. My understanding of the way in which this act operates and is enforced by sheriff officers is that bully-boy tactics are not used.

Karen Whitefield (Airdrie and Shotts) (Lab): Your submission states that the bill is piecemeal and somewhat ill-conceived. What are your views on the introduction of an amendment that would enshrine the substance of the bill—the abolition of poindings and warrant sales—but make a distinction between personal and domestic debt? Should we pursue that idea? Do you feel that the existing legislation is acceptable or that we could improve the legislation, for example by extending the definition of goods that cannot be removed?

I would like to know about your perception of creditors. Your submission states that the abolition of poinding and warrant sales will lead to,

"alternative and questionable methods of collection never previously tolerated in Scotland but known to exist in other jurisdictions".

How can the Law Society know what creditors are thinking? Are you saying that that is a threat, and that, because of it, we should not make a change that is morally right?

Frank Johnstone: We welcome the opportunity of a review to ensure that the Debtors (Scotland) 1987 services properly the requirements of creditors, whether they are financial institutions or individuals seeking to enforce aliment payments or findings in their favour against employers following unfair dismissal. The law is there to serve society.

In the consumer law paper, we have suggested that, if the remedy of poinding and warrant sales is removed, informal and completely uncontrolled collection techniques could replace it. We suggest that that is a possibility because we are concerned about it. I have no further comment on that.

Karen Whitefield: Where is your evidence for that? Have you spoken to creditors? Have they made representations to you, or is it just your perception?

Frank Johnstone: It is certainly a perception that arises from my experience—I advise a number of parties on how to procure payment of sums that are due to them—and from my understanding of human nature when money is due to a person and there is no legal measure to get it. The law is there to ensure that inappropriate recovery techniques are not applied. That should be the function of the Debtors (Scotland) Act 1987.

Michael Clancy: That was one reason why the act was brought in. A commission examined diligence and amended the law as it was before 1987 because the law was found wanting. The fact that a law was passed in 1987 does not mean that it is appropriate for 1999 or 2000, however. Circumstances change and society changes.

On your point about unjustified enforcement techniques, it used to be completely justified to sell property at the house of the debtor; nowadays, that is an unjustified enforcement technique because the law was changed in 1987. One can perceive an evolution of the law in tandem with changes in society. I think that Frank Johnstone is trying to show that the Debtors (Scotland) Act 1987 is not perfect—it can be improved.

Karen Whitefield: We must consider the issue of poindings and warrant sales. Are they failing our poor and vulnerable people? We should examine the effects of abolition to see whether abolition would improve the quality of such people's lives. We also need to examine the legislation, which should protect not only creditors but those who get themselves into unfortunate situations.

11:00

Michael Clancy: That is the issue of balance that we talked about. You asked whether there was evidence of unjustified enforcement techniques. I service the consumer law committee; the Sunday before that committee looked at the subject that we are talking about—before Mr Sheridan's bill was published—an article was published in *The Sunday Times* magazine about people called Blair. One of the people called Blair lived in Possilpark in Glasgow and explained to the reporter how getting money from "the loan man" was a feature of her life. I might be maligning the loan man, but I am not sure that he would be gentle in the recovery of that loan. I cannot say whether the story was true, but if the report was anything to go by, it could be the case that some people try to recover debts without regard to the law.

Karen Whitefield: That should not be used as an excuse for not making a morally right change to the law. Perhaps we need to examine measures such as developing credit unions, something about which I feel passionate and on which I have a lodged a motion in the Parliament.

Frank McConnell: Our position is that we think that, in some circumstances, the remedy is justifiable.

Mr Lloyd Quinan (West of Scotland) (SNP): I want to direct my questions to Mr Clancy. In section 5 of your evidence, you state:

"With regard to sequestrations, experience shows that in general debtors are no longer concerned by the threat of sequestration and indeed in some instances encourage us to pursue that line as it is perceived by them as a way of writing off their debts and starting again."

What statistical evidence do you have for that?

Michael Clancy: It is not a question of statistical evidence.

Mr Quinan: Yes it is; that is what I am asking you about.

Michael Clancy: The theory behind sequestration is that it provides people with the opportunity to start with a clean slate—

Mr Quinan: I apologise for interrupting, Mr Clancy, but you say in your submission that

"experience shows that in general debtors are no longer concerned by the threat of sequestration"

On what statistical information was that statement based?

Frank McConnell: Could I just say that, under the previous legislation—

Mr Quinan: I am asking Mr Clancy.

Michael Clancy: I did not write the paragraph that you are talking about. Mr McConnell did.

Frank McConnell: What was behind that was that there was provision—

Mr Quinan: Mr McConnell, the question is straightforward. What statistical evidence do you have to support that statement?

Frank McConnell: We followed on from the legislation—

Mr Quinan: Mr McConnell—

The Convener: Lloyd, please let Mr McConnell answer.

Frank McConnell: I will try to answer your question, Mr Quinan.

Under the previous legislation, accountants were in a position to apply to the court for sequestration. The Government picked up the tab for the cost of the procedure and there was an explosion of applications for sequestration. I do not have the financial statistics that you are asking for, but we can get them for you. The power to make applications to the court in the period in which easy sequestration was allowed was used by large firms of accountants who built up good practices on it.

Mr Quinan: So the statement is unsubstantiated and is based purely on your experience. I would very much like to see the statistics, if you would supply them. You said that, in your experience, sheriffs frequently refuse to grant warrants. What is the basis for that statement?

Frank McConnell: The basis is purely anecdotal. I have personal experience of it.

Mr Quinan: Given that you represent the Law Society of Scotland, I would have expected that your statements would be backed up by statistics.

Frank McConnell: We all know the difficulty of collating such information. It is expensive to do.

Mr Quinan: The Scottish Office central research unit did a rather good job of it.

Mr Johnstone, you implied that the use of poinding and warrant sale did not constitute the use of threat by creditors. However, a paper from the central research unit, "Legal Studies Research Findings No. 11", states:

"Poindings and sales appear to be effective in as much as they could be used successfully as threats to elicit payment. However, where the threat was unsuccessful, creditors were of the view that the diligence itself was only effective in certain circumstances, particularly against commercial debtors."

What comment would you make about that statement?

Frank McConnell: I am sorry if I have not expressed myself clearly, but I think that there is an element of threat in any enforcement. There is a threat that a debtor can be sued, be charged, be arrested or have their belongings poinded. At any stage, enforcement is necessary only because the debtor has not volunteered to make payments.

Mr Quinan: Another statement from the Scottish Office central research unit says:

"Although poindings had been used in a number of cases, actual warrant sales were rare. There was in fact a degree of reluctance to instruct this diligence, particularly the final stage, and some who had been unaware that this course of action had been taken to enforce their decree were unhappy that the diligence had been used."

In reality, creditors make use of the threat element and do not carry the process through. That can be proved statistically.

Frank Johnstone: You are referring to the Scottish Office document; I am not. A threat is involved in a number of the stages. A creditor does not want to pursue a poinding or a warrant sale; they want to be paid as soon as possible. They do not want to incur legal expense.

Mr Quinan: So Alex Neil was correct to say that this means of debt recovery uses bully-boy tactics. It threatens debtors, a fact that is borne out by the statistics. It is a means of bullying people, principally the poor and vulnerable.

I suggest that, in the broader sense, warrant sales are an inefficient means by which to recover debt. Another statement from the Scottish Office central research unit says:

"Overall, warrant sales instructed against private individuals recovered 22% of the total outstanding debt . . . However, no sale recovered the outstanding debt and 82% made no contribution to the original debt and only partly paid off the expenses of the case."

Effectively, then, poindings and warrant sales do nothing but keep sheriff officers in business.

Frank Johnstone: I reject your suggestion that it is a bully-boy measure. The Debtors (Scotland) Act 1987 does not constitute a bully-boy charter. It is not perfect and aspects of it should be reviewed. Any system of enforcement that seeks to transfer an asset from one party who does not want that to happen to a party that is entitled to receive it is coercive.

There would be no need for legal proceedings if payment could be procured voluntarily, which does not mean that the methods used have been unlawful or intimidatory. However, they are part of the due process of law as approved by Parliament. Although that does not mean to say that this Parliament could not focus on or improve certain procedures, I reject the suggestion that the 1987 act is a bully-boy's charter. It is coercive, but it is not founded on a system of threats.

Mr Quinan: Mr Johnstone, everything that you have said is predicated on your reference to

people who do not wish to pay their debts. Do you accept that, in relation to the 22 per cent of outstanding debt that warrant sales recover, the system is intimidatory for people who wish to pay their debts but are unable to? Do you accept that the system is based on threat and the use of threat?

Frank Johnstone: That might to be examined, particularly with regard to summary warrants. The threat might be more coercive than otherwise where poinding and a warrant sale have been threatened and where the affected party does not have a legal right to pay by instalments. In normal circumstances, the party might say, "I cannot pay this amount and as of right under sections 1 and 5 of the Debtors (Scotland) Act 1987 I am entitled to make payment of only such instalments as I can afford, even if that is only £1 a week." People need to be empowered and know their rights; however, such a right does not apply to summary warrants.

Mr Keith Raffan (Mid Scotland and Fife) (LD): You quote the Scottish Law Commission's statement that

"the protracted process of debt recovery acts as a kind of filter".

That seems to be a defence of the current situation. However, does not the fact that this is a protracted process cause distress?

Frank Johnstone: The procedure is coercive, as many forms of judicial procedure are. It is coercive to put someone in prison who has committed a serious assault. However, that does not mean that that person should not go to prison.

Mr Raffan: I have been listening carefully to your comments, Mr Johnstone, and you have used phrases such as "undue distress" and "unreasonable distress". How would you define those phrases?

Frank Johnstone: It is as hard to define those terms as it is to distinguish between a "can't pay" and a "won't pay". If we knew the answer to that question, life would be a lot easier and our system of enforcement would be more efficient for the creditor and fairer for the debtor.

This is a difficult question. Vulnerable and poor people should be protected. A number of protections are built into the Debtors (Scotland) Act 1987. However, that does not mean that the legislation is perfect and should not be reviewed.

Mr Raffan: Do you accept that the law's responsibility or duty—whichever phrase you care to use—is not just to ensure debt recovery but to minimise distress?

Frank Johnstone: Any legal system, while recognising the rights of a creditor, must also recognise that the method of enforcement must be reasonable and humane and must not cause undue or unreasonable distress. There is a very real argument that the Debtors (Scotland) Act 1987 seeks to achieve that in a number of areas.

Mr Raffan: The act seeks to do that, but has it achieved it?

Frank Johnstone: In some areas, perhaps not. That is why I welcome the Scottish Law Commission inquiry into poindings and warrant sales, which was announced yesterday.

Mr Raffan: You have touched on a number of possible improvements, such as instalments and time to pay, and have mentioned citizens advice bureaux and Money Advice Scotland. What we need is a more effective mediation framework involving those organisations to make the process more humane and civilised and to reduce undue distress.

Frank Johnstone: I genuinely welcome that comment. Any system of enforcement must involve an equitable balance. If we were to replace the Debtors (Scotland) Act 1987 and create new rights, the meaningful test would be the translation of those rights into a remedy for a creditor who is due money and a debtor who owes money to ensure that a debtor's individual rights are not abused through harassment or intimidation. We need to create a balanced system. It is not sufficient to create new rights if people do not have access to good, meaningful and local advice. Such advice does not need to come from lawyers. Very competent trading standards officers, citizens advice bureau staff and money advisers are more than capable of dealing with those issues. A system of rights without the ability to translate such rights into a remedy is meaningless—it is only window-dressing.

Mr Raffan: The third paragraph in section 5 of your submission says:

"No distinction is drawn in the Bill between commercial and consumer debts. Though it is our submission that it would be inequitable to have such a distinction and probably difficult to categorise".

Why would it be inequitable?

Frank McConnell: It is perhaps difficult to categorise commercial and—

Mr Raffan: I did not ask about that; I will come to that question in a minute. Why would it be inequitable to have a distinction between commercial and consumer debts?

11:15

Frank McConnell: When we discussed the matter, it seemed difficult to distinguish between commercial and consumer debts.

Mr Raffan: I thought that it would be easy to

distinguish between the two.

Frank McConnell: We wondered about that; the matter is worthy of discussion.

Mr Raffan: Well, let us discuss it now.

Frank McConnell: For example, an employee might take his employer to a tribunal and receive an award. If that employer is self-employed in the commercial arena and has an overdraft, we felt that effective action should be taken against him, if necessary, to recover that award. However, in certain circumstances, that might involve going to his home. That example might raise difficulties of categorisation. We might be wrong, but the matter concerned us.

Mr Raffan: The issue could be blurred.

Frank McConnell: Blurred is probably a better word.

Mr Raffan: Recently, we had a debate in Parliament about the importance of encouraging the growth of small businesses in Scotland. We do not have enough of them. Do you have any statistical evidence on the impact of the bill on small businesses?

Frank McConnell: We were concerned that, in certain circumstances, the bill might encourage a culture of non-payment, which might impact on small businesses. Frank Johnstone mentioned the self-employed joiner with a wife and two children. If he is not paid for a £2,000 or £3,000 contract, that has a huge impact on him and his family. That was behind Frank's point about finding an equitable balance between various parties while maintaining and enhancing debtor protection measures. The Law Society of Scotland would agree with that approach. We are not saying that the 1987 act is cast in stone, is perfect and should never be changed. Such legislation should always be under review and the Law Society is not averse to that process.

Mr Raffan: I have one final point. On page 4 of your submission, you mention a culture of non-payment. You make a blanket charge about the present culture of non-payment and then quote a Convention of Scottish Local Authorities document written by Henry McLeish and Keith Geddes. However, that quotation does not mention a present culture of non-payment; it talks about

"a residual problem in some areas of a culture of non-payment of local taxes".

Do you have any evidence for this so-called present culture of non-payment? The quote mentions difficulties in the early 1990s and makes it clear that such a culture now exists only in residual pockets. You are making it into a blanket situation.

Frank McConnell: We are saying that it is a concern and that there is a possibility that it could develop.

Mr Raffan: You did not say that it was a concern—your document says:

"in combating the present culture of non-payment."

Frank McConnell: Perhaps—

Mr Raffan: Hang on a second. I just want to get this straight. A problem that we have had with this document is that—like some of our worst newspapers—it is a mixture of fact and opinion. I want to find out which is which. We do not want to get like the tabloids, or even like *The Scotsman*.

By using the phrase "the present culture of non-payment" you make a blanket charge, suggesting that such a culture is widespread. The quotation you use to back that charge up does not back it up.

Frank McConnell: Perhaps it was inelegantly phrased, but—

Mr Raffan: Inaccurately phrased would be a better description.

Frank McConnell: This paper was produced at little or no notice. I do not know how long the consultation period was, but the paper had to be put together very quickly. That is not an excuse, but we had little or no time to meet as committees to discuss this before putting forward papers. We knew that the papers would be challenged, but we thought that they would form the basis of a discussion of our concerns.

Mr Raffan: I understand that you were under pressure to meet deadlines but, in retrospect, do you regret that you did not take a more positive line? You say that the present situation should be reviewed. Do you regret not proposing more positive recommendations on how to improve the situation?

Frank McConnell: This is a very new situation for us. We are still finding our way with the Scottish Parliament and how it works and with what the Law Society's role could be in these matters. Today has been an interesting experience for us—[*Laughter.*]—but we will come away having learnt from it.

We want to open up a debate. Not for a moment do we say that we have wisdom on our side. We have some experience in these matters, but not for a moment do we say that we are right in everything we submit. The world might be better if there were fewer black and white propositions and a recognition that there are grey areas that are open for discussion and debate in a reasoned way.

Bill Aitken (Glasgow) (Con): Mr Johnstone, you will appreciate that our requirement at this

stage is to look at this matter with no preconceived ideas and in a comparatively detached manner. That said, it would clearly be a unanimously held view round this table that we do not want to see people falling into the hands of illegal money lenders. That is a failure of the current system. To repeat your very delicate and appropriate phrase, "inappropriate recovery techniques" might be used. That being the case, does the Law Society feel that there should be a beefing up of the Consumer Protection Act 1987 and the Debtors (Scotland) Act 1987?

I appreciate that you dealt with this earlier, but there should be a strengthening of the counselling process under both of those pieces of legislation so that when someone takes on a debt, they are aware of the consequences of any failure to fulfil the terms of that debt. There should also be a clear indication, when a notice is served under the Debtors (Scotland) Act 1987, that people have the opportunity to apply to pay by instalments.

Frank Johnstone: There are a number of interesting points there. The first related to extortionate credit agreements, or loan sharking. Extortionate credit agreements are dealt with by sections 137 to 140 of the Consumer Credit Act 1974. Those sections are generally perceived as not having provided adequate protection for vulnerable people who have entered into credit agreements that are deemed to be excessive. The Office of Fair Trading is carrying out a review of those sections with a view to having a more meaningful remedy that will allow any such agreements to be rendered void or unenforceable.

There is a move away from the concept of extortionate credit agreements which, for a number of reasons, were very difficult to define, towards unjust credit transactions. That may assist consumers. Until consumers have meaningful advice on their rights, there will be difficulties. Some steps can be taken by giving "wealth warnings" when agreements are entered into. There must be an obligation on the creditor to take steps to appraise what indebtedness will mean for the borrower, in terms of interest, expenses and repayments; and there must be an equal obligation on the borrower to take reasonable steps to ascertain those things for himself. Advice should be made available in clear and intelligible language.

If I have not dealt with any of your points, please remind me of them and I will be happy to do so.

Bill Aitken: Do you feel that the Debtors (Scotland) Act 1987 should be strengthened by making it a requirement that anyone who faces the difficult situation of being in debt and is rapidly reaching the end of the road should be made more fully aware of their right to pay by instalments?

Frank Johnstone: That is a common-sense argument and a good case could be made for it. The difficulty that arises is that being aware of rights is only one step in the process; having access to somebody who will guide you through the courts and who will make the application is also part of the process.

Irrespective of where the rights to pay by instalments arise—whether under section 129 of the Consumer Credit Act 1974 or section 1 or section 5 of the Debtors (Scotland) Act 1987—I agree that the debtor should be advised that he has those rights.

Bill Aitken: One thing that is emerging clearly from the evidence that we are hearing is that the vast majority of difficulties with debts involve debts to local authorities. Does the Law Society have a view on whether local authorities should be required, when they obtain a decree, to allow payment by instalments? At the moment, when the decree is granted, there is a 10 per cent surcharge and the individual has to come up with the money in its entirety. That can be fairly traumatic.

The Law Society may not have a view.

Frank Johnstone: It would be difficult for me, at this stage, to express precisely the Law Society's current view on that.

I am, however, happy to make some general comments. I think that there is an argument that a review should take place. A summary warrant does not arise from a court decree; there is an administrative process that allows a local authority to obtain a warrant. It is clear from the evidence that has been given—some of which has been extremely distressing—that issues need to be addressed concerning enforcement following a summary warrant being obtained.

I would be ill-advised to prejudge what a review might find; but I could certainly be persuaded that there are issues in the Debtors (Scotland) Act 1987 to be addressed and reviewed in relation to the enforcement of summary warrants.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Many of the questions that I wanted to ask have already been asked, so I will not repeat them.

From the evidence that the committee has heard and read, I do not think that it can be argued that poindings and warrant sales are a successful way of collecting debt. I say that because the evidence seems to show that they recover very little. A small percentage is recovered, but the people involved have all the stress and worry that go with them.

Regarding sequestration, you mentioned in your document that you felt that a culture was created in which accountants exploited the Bankruptcy (Scotland) Act 1985. The fact that accountants

received fees meant that they were using it as a way to make money. The Law Society's diligence committee is opposed to the bill. I think that most of us agree that poindings and warrant sales are not a very successful way to recover debt because they recover such a small percentage.

Do you think that perhaps the opposition coming from your committee and presumably your members therein is because the only people who seem to make money out of poindings and warrant sales are the sheriff officers and the lawyers who are involved? Am I wrong to come to that conclusion? Could you comment on that?

11:30

The Convener: You are getting a hard time today, are you not?

Frank Johnstone: I would not necessarily accept that poindings and warrant sales are an inefficient way of recovering money, although they are inefficient when one seeks to recover money from people who simply do not have it, such as the poor and vulnerable. That is why the safeguards in the Debtors (Scotland) Act 1987 exist.

In some circumstances, for example when a party has assets—whether a car, a valuable painting or an ornament—that can be poinded and sold, it can be an effective and efficient remedy. It is a remedy that is used not only by financial institutions but, in relation to some of the warrants, by local authorities. However, I would like to emphasise my genuine concern that if this bill were to be passed, a number of individuals would be deprived of an effective remedy.

Examples I have used before include an employee who has been wrongfully dismissed and a husband or wife seeking aliment; no remedy is currently open to such people. That does not mean that this should not be reviewed; it is very likely, given the evidence that I have seen and that has been laid before this committee, that there are issues that prompt a review of certain aspects of the Debtors (Scotland) Act 1987. Such a review might be useful, because it is inefficient to use poindings and warrant sales against an individual who simply cannot pay.

Part of the difficulty may result from a lack of knowledge about the individual's circumstances. Again, the evidence shows that when an individual is in financial difficulties, they can be reluctant to try to communicate with their creditors. That may be another area where money advisers and trading standards officers can help.

Cathie Craigie: Do you have any information about the percentage of the debt that is recovered in the case of small businesses in which one partner is undergoing a divorce settlement? You cited a small business that was owed £2,000. What kind of percentage are you recovering?

Frank Johnstone: I am sorry, but I do not have those figures with me. Poindings and warrant sales can be effective in a commercial context. A restaurant would not wish to have its movable tables or its stock-in-trade poinded. Very frequently, the mere threat of that taking place is sufficient to lead to payment. However, I do not have the detail that you would wish.

Cathie Craigie: Would you be able to get hold of that information for the committee?

Frank Johnstone: The Law Society would have difficulty doing that, but I hope that that kind of information might come to light as a result of the Scottish Law Commission's inquiries.

Mike Watson (Glasgow Cathcart) (Lab): Most of the points have been covered, but I want to raise two particular issues, one of which has been touched on.

In your submission, you make the point:

"The effectiveness of our system of issuing court degrees with an automatic warrant for poinding to proceed after the expiry of a charge . . . should not be judged by the poindings that are carried out; but by those which are not needed."

That underpins your whole argument, which is that it is the threat that is effective rather than the number of poindings, or indeed warrant sales, that are carried out. I want to relate that to a comment that you made in paragraph 5.2 of your submission, which has already been referred to by Karen Whitefield. You said that

"alternative and questionable methods of collection never previously tolerated in Scotland but known to exist in other jurisdictions could become more widespread."

We can use our imagination on what those methods of collection might be. Given that they are known to exist in other jurisdictions, could you outline what they are because, presumably, they are legal? That is my interpretation of what you are referring to in paragraph 5.2. If that is not the case, will you elucidate?

Frank McConnell: It is essentially anecdotal evidence, which related to certain practices in London that we came across in Scotland. The important procedure was within a judicial framework and supervised by the courts. There was a system whereby people were threatened, sometimes with violence, to make payment. We raised the concern about alternative forms of recovery.

Mike Watson: Threatening violence is clearly not legal.

Frank McConnell: It is illegal.

Mike Watson: You mentioned other

jurisdictions, such as England. Is that the extent of the evidence?

Frank McConnell: Yes.

Mike Watson: I am a bit concerned that when one scratches the surface of a number of aspects of your submission, they prove to be anecdotal. You say that you are on a learning curve, but a number of people round the table are feeling that a submission to the committee should be more soundly based. I hope that that will be the case in future, because most people would say that the Law Society of Scotland speaks with an authoritative voice. We regard you as being an authority on legal matters. It is not terribly helpful to find that some aspects of your submission are anecdotal or based on your impressions.

Frank McConnell: Sometimes the point was simply to flag up various concerns. I accept your criticism; some of that was almost inevitable. I recall that we met on the Thursday and that the submission had to be in on the Friday. We were given an extension of one day and eventually got the submission in on the Monday. It was that kind of—

Mike Watson: In fairness, Mr McConnell, to refer the Westminster experience, the Law Society of Scotland is well known for giving authoritative briefings on all aspects of proposed changes in the law. I cannot imagine that you had just a few days' notice to prepare. I am concerned that the Law Society must have been looking at the proposal, as Mr Sheridan introduced his bill in September. I do not want to labour the point, but I would be interested to have some elucidation. It seems that there is not as much backing as there might have been.

My second point concerns the European convention on human rights. The Justice and Home Affairs Committee has heard evidence that the convention does not apply in regard to existing legislation, such as the Debtors (Scotland) Act 1987. If I remember correctly, it applies only to legislation that has been through the Scottish Parliament or has in some way flowed from actions of the Scottish Executive.

Eventually, this bill is likely to receive royal assent and become law. When that happens, is it your impression that the European convention on human rights will provide some remedy to an individual in terms of rights associated with property? I am not asking any one of you in particular, but Mr Clancy talked about 41 European countries that have some form of arrestment or threat to allow attachment to moveables. If that is the case, presumably the convention already applies in those countries. While I accept that you may not be experts in European law in each of those countries, are you aware of examples whereby that convention has been used to prevent the attachment of moveables, in terms of the rights of property?

Michael Clancy: No. The convention will apply to this legislation if it is passed by the Parliament. Under section 29 of the Scotland Act 1998, the Parliament can legislate only within certain specified constraints, one of which is that it must comply with the ECHR. The convention has been capable of being used since the UK signed up to it in 1967 and challenges in relation to issues around the issue of poindings and warrant sales could have gone before the United Nations Commission of Human Rights and the European Court of Human Rights in Strasbourg. What makes a difference is that under section 29, if an act of the Scottish Parliament contravenes the convention, it is not law. That is the phraseology used in the Act.

Some aspects of the convention concern the right to peaceable enjoyment of possessions. The Scottish Law Commission goes into that in some depth. In the time allowed, it may be appropriate to direct the committee to the provisions of the SLC's discussion paper, which was published yesterday. Paragraphs 269 to 275 cover the right to peaceable enjoyment of possessions, the right to respect for private life, family and home, and the right to a fair and public hearing. There are ECHR implications, and I refer members to the SLC document for a full summary of the provisions that apply.

Mike Watson: The convention does not cover only European countries; its scope is broader than that. Given that it has been in existence for some time, are you aware of any cases in which similar actions against people who have not paid debts have been challenged under the convention?

Michael Clancy: The commission's document examines a few cases. The first is James and Others v United Kingdom in 1996. The second is Gasus Dosier und Fordertechnik GmbH v the Netherlands in 1995. The third is K v Sweden, which was an application to the European Commission. There are cases that have been considered, and—

Mike Watson: I am familiar with those cases, Mr Clancy. [*Laughter.*]

Michael Clancy: I know that your reading is extensive, Mr Watson, and I would not be surprised if you were more aware of those cases, and better able to pronounce some of the names, than I am.

Mike Watson: I hope that the *Official Report* will record the laughter at that point. Thank you.

The Convener: Thank you, Mr Clancy. We will read your document because we will consider this

matter in some depth.

I have one more question before I draw matters to a conclusion and give the committee five minutes to review the situation. You seem to recognise that poindings and warrant sales may not be appropriate for people who are particularly impoverished. Nevertheless, some people who have means evade their debts and there must be a remedy that allows creditors to pursue them. I am sure that a lot of impoverished people agree with that.

The advice agencies that you have mentioned have given evidence to this committee. They seem to favour the bill. They said that other means, such as the arrestment of wages, are more acceptable ways of pursuing people who have means. In most cases, people have access to their means but, if people are trying to avoid settling a divorce case, for example, or are malevolently not paying debts that they are capable of paying, it should be possible to get access to their assets without recourse to this legislation. Is that the case?

Frank Johnstone: Sequestration liberates assets globally for all creditors, rather than for one creditor. Is that what you meant?

The Convener: We have talked a lot about the advice agencies and your evidence has suggested that they have a constructive role to play. The Lothian Anti-Poverty Alliance and other agencies say that they do not find poindings and warrant sales at all helpful in assisting people. As an alternative for people who have means, they have suggested that the arrestment of wages and bank accounts would be much more helpful in ensuring that those who deliberately and malevolently avoid debt pay their debts.

Frank McConnell: A simple example is the case of a man who was employed offshore by a Norwegian company and whose wages could not be arrested because the obligation to pay those wages arose in a different jurisdiction. He had no bank account but he had a very expensive car, and his wife wanted to enforce an award. As Frank Johnstone said, abolishing poindings and warrant sales might be throwing out the baby with the bath water in cases such as that one. There are circumstances in which that remedy is justifiable, but it must be used in a way that protects the poor and vulnerable.

Mr Quinan: Will the *Official Report* of this meeting show that the Law Society of Scotland is opposed to this bill?

The Convener: I understand that any submission to the committee becomes part of the public record.

Frank Johnstone: I would like to clarify a point. You sought to elicit the view that we considered warrant sales to be inappropriate. I qualify that by saying that they are inappropriate in certain situations. In other situations they can be entirely appropriate and give a meaningful remedy to a person who deserves that remedy. Undoubtedly there are circumstances in which their use is inappropriate. The Debtors (Scotland) Act 1987 seeks to qualify a creditor's right and to control how that right is enforced in relation to debts. It may not do a perfect job, but it tries to strike a balance. We accept that there are areas, particularly in relation to summary warrants and poindings and warrant sales, in which the Debtors (Scotland) Act 1987 ought properly and usefully to be reviewed.

Robert Brown: Today's discussion has identified a number of areas in which the legislation could be improved. Would the witnesses welcome the opportunity to come back to the committee with more precise details? Summary warrants and advice agencies have been discussed, but we might want to hear more about those issues.

11:45

The Convener: That would be extremely helpful. The Law Society of Scotland is free to make a further submission, but I recommend that the committee collect its views and write to you requesting a further written submission, rather than oral evidence. If you think that there are points that we have missed in today's discussion, you can submit further evidence.

We now move to a five-minute discussion about how to tackle the next stage of our deliberations. You are welcome to stay, but I can understand that you may want to have a break. I thank you formally for your evidence and the exchange of views. It has helped our consideration of the bill and, although some members were robust in their questioning, witnesses should not take it personally.

Michael Clancy: Thank you, convener. It has been a great pleasure to be here.

The Convener: I am sure that you will be back.

Frank McConnell: We hope you will invite us back.

Alex Neil: We were talking about intimidation—we found you quite intimidating.

The Convener: We are very inclusive.

I will continue with the meeting. There has been a request for a short comfort break but, before we move on, can we collate the information we have received? For the next five minutes, we will discuss how to progress this issue.

Given the number of points that emerged this

morning, it would be helpful to draw together a short paper from today's discussions and to circulate that informally to members by e-mail. We will need to ask for more evidence, as it has emerged that we need clarification about some of the statistics. We also need facts about the systems in other countries, about summary warrants and about the review process. I would like a bit more detail to clarify that.

Alex Neil: Could Martin Verity circulate a copy of the report that the Law Commission produced yesterday?

Robert Brown: There are overlap issues with reserved powers. For example, can we touch on the Inland Revenue's powers? I would like guidance and clarification on that point.

The Convener: That matter will arise also when we talk about the presentation from the Department of Social Security.

Mr McAllion: I am concerned about yesterday's announcement that a massive discussion paper is to be published and that there is to be an inquiry into poindings and warrant sales that are covered by the Debtors (Scotland) Act 1987. It seems to me that that action has all the hallmarks of an attempt to undermine and postpone this bill. The committee should be aware of that and keep its focus on poindings and warrant sales and whether they can be justified in law—that is all that this bill is about. We should be aware that other forces are trying to delay the bill getting on to the statute book.

The Convener: Okay. We will ensure that that report is circulated.

Cathie Craigie: From the evidence that we heard last week from people who had been threatened with warrant sales and the evidence that we heard today, I do not think that we know enough about the guidelines that sheriff officers have to follow. The Law Society suggests that poor and vulnerable people will not be targeted, which is a clear contradiction of the evidence that we heard last week. Will we take evidence from the Society of Messengers-at-Arms and Sheriff-Officers?

The Convener: No, it will give evidence to the Justice and Home Affairs Committee.

Alex Neil: While that organisation may be going to the Justice and Home Affairs Committee, Cathie makes a valid point. As a member of this committee, I would like the opportunity to question the sheriff officers and the messengers-at-arms, as they call themselves. We have rightly agreed that we will not ask any organisation to give evidence to more than one committee, but it would be useful if Martin Verity would circulate the dates of when those organisations will give evidence to other committees. With the agreement and permission of the other two conveners who are involved, we would get the opportunity to ask questions at their meetings.

The Convener: That is agreed already. The only reason that is not done is the clash of times and the committees' work loads. We have a clear invitation to the Justice and Home Affairs Committee's meeting—we can participate in it.

To follow on from that point, an issue arose about how many complaints had been made to the sheriff principal. We could formally inquire what those complaints were and how many there were.

Fiona Hyslop: Karen Whitefield asked about the impact of the bill on commercial debts, but we may be a wee bit light on the commercial aspects of the bill. If we want a rounded view of the bill, we should get more evidence on the credit aspects of commercial debt.

Mr Raffan: We seem to come back regularly to the example of the self-employed plumber, in terms of commercial debts. We need more evidence on that aspect of the bill, as I am not convinced that it is impossible to draw a distinction between the two types of debt.

I know that the oral evidence sessions have been divided up so that we hear from witnesses who are for the bill and from those who are against it, so that there is a balance. Convener, are you sure that that is happening?

The Convener: Yes.

Mr Raffan: It is?

The Convener: Yes. I will think about that again, but I think so.

Mr Raffan: Roseanna Cunningham said the way in which the oral evidence sessions were divided up among the committees would enable us to get a balance of views between people who are clearly against the bill and those who are clearly in favour of it.

The Convener: That is why the Law Society was at our committee—otherwise we were going to hear evidence from people who support the bill, such as the agencies that would naturally fall within our remit, while the Justice and Home Affairs Committee would have heard the other witnesses. We wanted to get a balance so that it did not appear that one committee supported the bill and another committee opposed it. We thought that that approach would be particularly unhelpful. Our negotiations were quite straightforward; there were no problems.

Cathie Craigie: Can we try to break down the statistical information on whether poindings and warrant sales are a successful means of collecting debt? We know that a local authority does not

recover the outstanding debt by those means, but can we collate information about how private individuals use them?

The Convener: The research staff have provided some information on that point.

Can I ask Martin Verity to pursue those points? Martin, would you draw up a draft paper on the issues that emerged this morning and circulate it to members by e-mail? We can then amend it as appropriate and it will be a briefing for our next session on the bill. Are there any further points, or can I draw this section of the meeting to a close?

Alex Neil: Will we have a separate discussion on the evidence from the Department of Social Security?

The Convener: I was going to raise the question of when to invite the DSS under future business.

Alex Neil: Okay. The other big issue is who will give that evidence.

The Convener: We will discuss that under future business.

Alex Neil: Because this is a policy issue, we must ensure that ministers give that evidence, rather than junior officials.

The Convener: We will have that debate—Martin has been pursuing that issue and has some information on it.

We will have a quick break for a couple of minutes and then we will move on to the item on housing.

11:53

Meeting suspended.

11:59

On resuming—

The Convener: Mike Watson said that it would be okay to start without him, so I think we will. We are now officially unsuspended and back in operation.

Housing Stock Transfer

The Convener: We agreed last week that we would consider further the evidence that we heard on housing stock transfer. A number of issues that we need to progress emerged from that evidence. I ask for general, quick views about that evidence and for further questions.

I have a number of points on which I would like further clarification. I was concerned about some of the evidence that the tenants gave us about the lack of consultation and involvement in transfers. I appreciate that some of the stock transfers are in the early stages, so models for the consultation process could yet be developed. Comments that we make about consultation could be quite opportune—we need to encourage people to use more sophisticated mechanisms for consultation, as tenants should be more involved in the process.

I mentioned previously that I would like more factual evidence from tenants' organisations about their views and, in particular, about consultation. I felt that some of the evidence was impressionistic and anecdotal—similar, in some ways, to issues that were raised earlier today, which were terribly anecdotal and not sufficiently substantive. I do not want to dismiss evidence on that basis; I would rather give witnesses the chance to come back to us with more substantive evidence.

Bill Aitken: The tenants were fairly clear that there had been a lack of consultation. It is difficult to see how that could be anecdotal as, after all, they are the tenants. We would be better to get clarification from the witnesses from Glasgow City Council. From experience, I am aware that there was some consultation—for example, information was circulated to all tenants at one stage. However, it is for Glasgow City Council to justify its standpoint on that matter. If tenants say that there is a lack of consultation, we should accept that that is the case.

The Convener: With all due respect, Bill, that is not what I meant—I am not questioning their conclusions. I am sure that that was their experience. However, which areas was the Scottish Tenants Organisation referring to? What consultation exercises had been undertaken? Did it prefer some methods to others?

Bill Aitken: That is fine.

Mr McAllion: Both you and Bill are right, convener. By speaking to some of the trade unions that have been involved, we have learned since the last meeting that the original proposal for Glasgow—the option 2, single stock transfer proposal with which we are all familiar—is being re-examined.

The new steering group to advise the Scottish Executive has been established, but it has neither tenant nor trade union representatives, which is cause for concern. Perhaps we could write to the Minister for Communities to ask her to give us evidence about the steering group—who is on it, why they are on it and why there are no tenant or trade union representatives. I would also like to ask her why new consultants have been appointed. It appears that Ernst and Young has been appointed to carry out another feasibility study—perhaps on another model altogether—into

the transfer of Glasgow's housing stock. Perhaps we could ask for access to the reports that Ernst and Young provides to the steering group. People with whom I have spoken, particularly in Glasgow, are concerned that the ball game is changing midstream and that no one has been told exactly what is happening.

Cathie Craigie: During last week's meeting, I think I said that I had been involved with tenants' organisations for a long time. Initiatives succeed only when tenants really want change—whether it is a transfer to a housing association or whatever. I was concerned that the evidence appeared to indicate that tenants were locked out and not involved in the process.

I would be concerned if the committee considered only the Glasgow situation. I thought that we were clear that we are considering stock transfer as a principle and that, if we changed the way in which the consultation process operates in order to involve tenants more, the committee would have succeeded. However, there is a procedure for consulting tenants, which one of the tenants highlighted—I have forgotten the name of the booklet that describes it. The evidence that we heard last week was that tenants were not being allowed that consultation and involvement.

It is not the role of this committee to scrutinise in detail what is happening in Glasgow. We can address the issue in the wider sense, but tenants will make their decision and elected representatives on Glasgow City Council will make a decision in the light of tenants' wishes. Our role is not to get involved too deeply in the Glasgow issue. We must address the issue on a Scotland-wide basis and we should take evidence from a broad cross-section of the people who are involved throughout Scotland.

Alex Neil: I agree. The other night, I was in East Renfrewshire. Tenants there were making similar complaints about the lack of participation in the process. We must take on board the fact that we are talking about the process throughout Scotland. There will be variations, but one of the jobs of this committee is to ensure that the process is democratic, open and accountable throughout Scotland. Cathie Craigie is right; we must not confine ourselves to Glasgow. We must look at the urban and rural pictures, because those are different situations.

The issue goes further than exclusion of tenants from the process. The feedback given to the committee, and that given elsewhere, seems to indicate that tenants feel that stock transfer is being imposed on them and that it almost does not matter what their views are because some kind of stock transfer will be imposed on them. They feel that the only debate is about what kind of stock transfer it will be.

Regarding Glasgow, there are concerns about how the Minister for Communities can be impartial as chair of the steering group. Like John McAllion, I think that we are getting to the stage when we need to bring the minister to the committee—probably towards the end of January—to question her extensively.

The Convener: That is timetabled for the end of January or the beginning of February.

Cathie Craigie: Did the minister say in evidence to this committee, or is it known from the press, that—although she is involved with the group in Glasgow—she is not sitting on the committee that will make decisions?

The Convener: There was a parliamentary answer about that.

Fiona Hyslop: I raised a question about whether there was a conflict of interest. Wendy Alexander replied that there would be and that another minister would make decisions about Glasgow. However, that does not resolve what happens to the other new housing partnership bids in the rest of Scotland. In a personal capacity, I am writing to Wendy Alexander on that issue, but I am happy to share the response with the committee.

The Convener: That is generous of you. Thank you, Fiona.

Mr Raffan: I am concerned about our methodology, which is highlighted by this inquiry. We have started taking briefings without having a clear objective for the inquiry. We have taken oral evidence without having a special adviser and when there has not always been written evidence. We should try to lay down our procedure so that we can proceed with the inquiry in a regular, methodical way.

First, we should decide on an inquiry and its objectives. Secondly, we should decide whether we want a special adviser. Thirdly, we should invite written submissions. Fourthly, the special adviser should recommend which of the providers of written submissions should be invited to give oral evidence, and we should discuss that recommendation because our view may differ from that of the special adviser. We should then proceed to take oral evidence.

My worry is that we seem to drawing a distinction, which I do not understand completely, between hearing briefings from people and taking oral evidence. We need to clarify our methodology and get into a regular way of doing things for each inquiry, otherwise we are liable to end up taking evidence from people on a particular issue without a clear idea of what we are about. That would not increase the credibility or reputation of the committee.

Fiona Hyslop: May I come in on that point?

When he put his paper forward, John McAllion was clear that the aspects of stock transfer that we should look at were housing finance and tenant participation, and whether the latter represented community empowerment. Those are discrete topics, and we have had evidence on them. John also proposed that we look at an urban area—which would be Glasgow, because it would be remiss of us not to examine the biggest landlord in western Europe—and rural areas.

I suggest that we contact the seven authorities that are furthest down the line with stock transfer, and the tenants associations in those areas, to find out what their experiences are. With regard to John's recommendations, we can take oral evidence from Glasgow—which would be essential—and, perhaps, from a rural area as well.

From the evidence that we have heard, the only other matter that we may wish to hear more about is lenders. We may also wish to hear from trade union staff. If we are to be useful in this debate, there will be a time—probably early in the new year—when we will have to be prepared to bring our thoughts together and make some comments, because stock transfers will be a moveable feast. Stock transfers are changing and developing as they progress. If the committee is to provide a useful service, we have to decide at what point in the process we can most usefully share the evidence that we have in the form of recommendations and reports.

The Convener: I will clarify Keith's point, because there is concern that we set ourselves courses of action that we keep changing. The committee decided to appoint a reporter on housing issues who, properly, has liaised with other members and interests and drawn up a phased programme of work, which we need to consider.

Our view is that this is not a formal inquiry—in terms of the parliamentary definition of an inquiry—but the taking of evidence relating to current circumstances in housing. That is appropriate in the meantime, but it does not mean that we will not review the matter at a later stage. When the issue of housing transfers is so fluid, tying ourselves down to a formal inquiry is not necessarily appropriate. That does not stop the committee having a special adviser, which issue we will address later in the meeting.

For the record, there is a difference between briefing sessions and evidence sessions. Most of us are now aware of that. We have agreed to have a number of informal briefing sessions to bring us up to speed on some issues. The briefings are informal because they are given by the Scottish Parliament information centre. As I understand it, the committee can take evidence that is not part of an inquiry if it decides that it wishes to investigate a particular issue.

John McAllion's report recommended that we initiate an investigation into housing stock transfers. We should continue as John proposes—amending our investigation as issues develop—and then, perhaps, consider a formal inquiry, if that is appropriate. I am keen not to change that approach, because we are trying to stick to a work programme.

Mr Raffan: I am not asking you to change it, but we do tend to make our procedures on the hoof.

The Convener: I do not think that that is fair, Keith.

Mr Raffan: Okay, but it would be helpful to learn from this situation. I am not asking for anything to be changed. I am trying to be constructive. We have a rapporteur, and I agree with that. For future inquires we must be absolutely clear about our objectives from the start. If we are to have a special adviser it will be helpful not to bring him in after we have started taking oral evidence. He should be brought in at the beginning. We can learn from that.

I am concerned about the so-called distinction—which is pretty blurry—between briefings and evidence sessions. We can certainly have evidence sessions without producing a report, and that has been done before, but I am concerned that we tend to embark on oral evidence sessions and then bring in a special adviser. That is not the best way to proceed and I am just making that point with regard to what happens in future.

Robert Brown: I have some sympathy with what Keith said, because we must be careful to maintain focus. I agree with Cathie Craigie: it is not our job to look into the precise details of all the arrangements for housing stock transfer in Scotland. We should be examining the criteria that we are trying to apply. Having said that, the stock transfer in Glasgow is such a major proposal that we must go into it in a bit more detail. In the evidence that we took previously, for example, I was struck by the business of spending £17,500 per house. Clearly, we need more detailed information about the financial and structural viability of what has been proposed.

Following the evidence of the housing association witnesses last week, I confess that I was left with severe doubts about the way in which the stock transfer was going ahead. Members may not be aware of it, but the Glasgow and West of Scotland Forum of Housing Associations produced a minority report on the Glasgow stock transfer proposition at an earlier stage. I know that things have moved on a bit since then, but the forum or the adviser might be asked to consider the criticisms in more detail, to determine whether criteria such as financial viability and consultation

can be applied by the committee. Glasgow is a good example, in many ways, because of the sheer size of the project.

The Convener: It would be helpful to consider the criteria.

Mr McAllion: I think that we are being wise after the event. Nobody suggested that we appoint a special adviser at the beginning because nobody knew that we had the budget to do that. The only thing that we could do was start the investigation ourselves. A special adviser would be of great assistance and would help to focus the direction of the investigation.

12:15

However, we should not prejudge what we want to find out. We want to find out the truth, and the truth might not be what we would like to hear. We should listen to the evidence and base our conclusions on that evidence, rather than on preconceived ideas that we may have about stock transfers or anything else. The programme changes from week to week.

After last week's meeting, I noted the need for a minimum of four further briefing sessions. The first would involve Glasgow City Council. All members will accept that the council must be involved, as Glasgow's is the most important stock transfer. The minister's reputation will stand or fall on whether the Glasgow stock transfer goes through. It is very important that we hear from that council. At the same time, we could invite Dumfries and Galloway Council as a rural council. However, Fiona now seems to be suggesting that we invite all seven local authorities.

Fiona Hyslop: Not for oral evidence. We could ask for written submissions.

Mr McAllion: So, we can have a meeting with Glasgow City Council and Dumfries and Galloway Council.

We need to speak to the funders. Glasgow City Council has been speaking to the Council of Mortgage Lenders. That might be the most appropriate body by which to be briefed, as it speaks for financial institutions. We should find out its views, and about what housing benefit changes might imply for the right-to-buy housing associations—in other words, how such changes might affect the decision to invest money in housing. The unions must be consulted. As well as the joint unions that represent Glasgow City Council, the Scottish Trades Union Congress could be invited to give a broader view. The minister could then be invited.

The problem is that our work schedule in January does not include any evidence sessions on housing, and we are meeting the minister at the end of January. That is not the right way to go about things. We should take further evidence before we see the minister. We should work into the programme the four briefing sessions, plus any other sessions that members might suggest today.

Robert Brown: How quickly will we be able to get the adviser in place? We would like to have the benefit of the adviser's input into a lot of this stuff, preferably before hearing the evidence.

The Convener: We could do that in January. That will require an approach to the Parliamentary Bureau—or should that be to the Scottish Parliament Corporate Body?

Martin Verity: Those items are on the agenda, but I do not know the time scale that would be involved. The committee needs the agreement of the Parliamentary Bureau. It can submit an instruction to the Scottish Parliament Corporate Body, which then contracts with an adviser and makes arrangements for an adviser to be appointed. I do not know how long that will take.

Robert Brown: Why is the matter referred to the bureau?

Martin Verity: That is what is laid down in standing orders.

Mr McAllion: There is only one more meeting before Christmas.

Alex Neil: Have we prepared a job description?

The Convener: We will come to that later.

John McAllion's suggestions are helpful. The criteria could come from the special adviser, and could evolve as we learn new things. They would give us some form of benchmarking.

Some tenants who have been involved in successful stock transfers, and are positive about that experience, have moved from council housing into housing associations. However, those housing associations play a quite different role in regenerating communities. It is worth exploring housing in a social inclusion context. If there are arguments for stock transfer, that different role is one of the most powerful.

Fiona Hyslop: I thought that we agreed originally to examine finance. You are absolutely right, but we should focus on the financial impact of stock transfer and tenant participation.

The Convener: With respect, Fiona, the social inclusion context is at the heart of tenant participation.

Karen Whitefield: As well as taking evidence from tenants who are currently involved in stock transfers, we must gather evidence from people who have been involved in stock transfer in the past. We must find out from them whether they are

unhappy about that and whether it has worked or not. We will not otherwise get a balanced view. We must keep our direction, but we must also ensure that we receive balanced evidence so that we can produce fair recommendations.

Fiona Hyslop: We might not be comparing like with like. There is a world of difference between traditional small-scale transfers and the wholesale transfers that are currently on the cards.

The Convener: A part of the evidence with which I had difficulty was the notion that community housing associations are private sector organisations. That principle strikes at the heart of our investigation. Having spoken to people in the area that I represent, it is clear that they would not substantiate that view. I would like to explore that notion.

Mr McAllion: The West of Scotland Forum of Housing Associations was meant to do that. That was the evidence that it was supposed to give, because it represents all the bodies that have successfully transferred stock. If you want to address that, it would have to be in a separate session, convener.

The Convener: That could be added to the list, and we could see how it would fit into the timetable. Perhaps John McAllion could liaise with Martin Verity on that.

Alex Neil: On the one hand, we are stuck for time on the housing issue, but we probably have a little more time for warrant sales.

The Convener: I do not want to go back to that.

Alex Neil: It is a fact of life. We have only one more set of oral evidence to take on warrant sales. There may be some scope for rejigging the timetable in January.

Mr McAllion: There is a timetable for stock transfers; Glasgow is a big one, which is scheduled for November 2000. It will be difficult to change the minister's bill once it has been published and it will probably contain elements that will make stock transfers inevitable. We need to get something done on that before the Executive decides on the bill.

The Convener: Do we know the timetable for that? Is it early spring? You are keeping an eye on them, are you not, Fiona?

Fiona Hyslop: The minister told the committee that she thought that the bill was supposed to be published during the first six months of the year, although it would probably be later in those six months. We should be reaching our conclusions by March or April.

Mr McAllion: We want to be out of this by Easter.

Bill Aitken: A ministerial statement is being made next week—perhaps housing stock transfer is its subject.

The Convener: Let us not get bogged down in timetable issues—that is where this committee always goes off the rails. John McAllion should liaise with Martin Verity to come up with a sensible working timetable that is in line with the views that have been expressed today. Can you manage that, John?

Mr McAllion: Yes.

The Convener: We are now going into private session to discuss the appointment of individuals.

12:22

Meeting continued in private until 12:37.

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