

# **SOCIAL INCLUSION, HOUSING AND VOLUNTARY SECTOR COMMITTEE**

Wednesday 4 October 2000  
(*Morning*)

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2000.

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

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

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

---

## CONTENTS

Wednesday 4 October 2000

Col.

HOUSING BILLS.....	1450
CIVIC GOVERNMENT (SCOTLAND) ACT 1982 (LICENSING OF HOUSES IN MULTIPLE OCCUPATION) ORDER 2000.....	1494

---

### **SOCIAL INCLUSION, HOUSING AND VOLUNTARY SECTOR COMMITTEE** **31<sup>st</sup> Meeting 2000, Session 1**

#### **CONVENER**

\*Ms Margaret Curran (Glasgow Baillieston) (Lab)

#### **DEPUTY CONVENER**

\*Fiona Hyslop (Lothians) (SNP)

#### **COMMITTEE MEMBERS**

\*Bill Aitken (Glasgow) (Con)

\*Robert Brown (Glasgow) (LD)

\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

\*Mr John McAllion (Dundee East) (Lab)

\*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**

Jackie Baillie (Deputy Minister for Communities)

Richard Grant (Scottish Executive Development Department)

Fiona Hoyle (Council of Mortgage Lenders)

Kate Marshall (Bank of Scotland)

Frank McAveety (Deputy Minister for Local Government)

David Smith (Dunfermline Building Society)

Mike Smith (Northern Rock plc)

#### **CLERK TO THE COMMITTEE**

Lee Bridges

#### **SENIOR ASSISTANT CLERK**

Mary Dinsdale

#### **ASSISTANT CLERK**

Rodger Evans

#### **LOCATION**

Committee Room 2



## Scottish Parliament

### Social Inclusion, Housing and Voluntary Sector Committee

Wednesday 4 October 2000

(Morning)

[THE CONVENER opened the meeting at 09:36]

**The Convener (Ms Margaret Curran):** I would like to make a start, as we have a great deal to get through this morning. Technically, the meeting is in public session at the moment. Before we move into private session—which is routine these days—I would like to pay tribute to Alex Neil, who has now moved on to greater things.

**Bill Aitken (Glasgow) (Con):** Different things.

**The Convener:** We expect that very shortly he will be convener of the Enterprise and Lifelong Learning Committee. He has been appointed to the committee by a motion of the Parliament. I would like to put on record our thanks to Alex Neil for his contribution to the work of the committee. In the early days of the committee, Alex was extremely supportive and helped me to manage the technicalities of procedure. I wish him well on the Enterprise and Lifelong Learning Committee. [Applause.]

**Mr John McAllion (Dundee East) (Lab):** Members indicated agreement.

**The Convener:** Has the official report got that?

Do members agree that item 3, questions for witnesses, and item 6, on the Communities against Poverty recommendations, be taken in private?

**Members indicated agreement.**

**The Convener:** Do members also agree that the items at the committee's next meeting on stage 1 reports for members' bills and the draft report on the inquiry into drug misuse in deprived communities be taken in private? That would mean that the entire meeting next week would be in private.

**Members indicated agreement.**

**Lee Bridges (Clerk):** It is the meeting after the recess.

**The Convener:** It is just as well that the clerk is here.

09:38

*Meeting continued in private.*

09:47

*Meeting continued in public.*

## Housing Bills

**The Convener:** I welcome our witnesses to this morning's meeting. Thank you for your attendance and for your written submission, which was extremely helpful. I imagine that you have been following our evidence taking on the Family Homes and Homelessness (Scotland) Bill, the Mortgage Rights (Scotland) Bill and the proposed Executive housing bill. As I am sure you are aware, we will be asking you questions.

**Robert Brown (Glasgow) (LD):** On a point of order. I declare my consultancy with Ross Harper & Murphy and membership of the Law Society, for what they are worth in this context.

**The Convener:** I ask Fiona Hoyle to introduce her team and to give a brief presentation. We will then explore some issues with our witnesses.

**Fiona Hoyle (Council of Mortgage Lenders):** I thank the committee for asking us to give evidence on the two members' bills that have been introduced by Cathie Craigie and Robert Brown. We welcome the opportunity to speak to the committee about the two bills, as they propose fundamental changes to mortgage possession procedure that are of direct interest to mortgage lenders.

I will start with some introductions. My colleagues are David Smith, chief executive of the Dunfermline Building Society; Mike Smith, assistant director of mortgage operations at Northern Rock; and Kate Marshall, solicitor with the Bank of Scotland. I am Fiona Hoyle, lawyer at the Council of Mortgage Lenders.

The Council of Mortgage Lenders is the trade body for the residential lending sector. Our members include banks, building societies and other mortgage lenders. Together we represent 98 per cent of the UK mortgage market. CML Scotland is the devolved component of the trade association, representing lenders active in the Scottish mortgage market. Our primary focus is as first mortgage lenders. One of the questions that we can touch on later is whether the committee will hear representations from the secondary mortgage market.

Since the publication of the two members' bills, we have had a number of useful and constructive meetings with Cathie Craigie and with Robert Brown. The CML is keen to work with the Scottish Parliament to establish a framework that takes into account the interests not only of the borrower, but of the mortgage lender.

Mortgage lenders are committed to assisting borrowers who experience financial difficulties. We do not want to take people's homes away from them. The decision to take possession is not taken lightly. Possession is very much an action of last resort when attempts to reach alternative payment arrangements with the borrower have been unsuccessful.

Under the industry's mortgage code—I have a copy here; I am not sure whether the committee has had sight of it—lenders are required to consider cases of financial difficulty sympathetically and positively. I believe that members have received a copy of the CML's statement of practice on the handling of arrears and possessions, which sets out how lenders seek to help borrowers experiencing financial difficulties. Usually, that is done by speaking to the borrower and developing a plan to deal with the difficulties and to stabilise the arrears situation.

If lenders work with borrowers who experience short-term difficulties, not all cases need lead to possession. There will be cases where possession is the only option. In such circumstances, we believe that there should be a framework that represents the rights of lenders as well as of borrowers.

We believe the framework for possession should incorporate six key features. First, the framework should take account of the borrower's circumstances and the reasons for default. Secondly, it should take account of the action that lenders have already taken. As I said, lenders consider possession to be an action of last resort. What payments have been agreed with the borrower? Were they reasonable? Did the borrower adhere to them? If not, why not?

Thirdly, the court should take into account the circumstances of only the borrower and their immediate family or authorised tenants. The bills under consideration go much further than that and could allow any other person residing in the property to challenge the possession. Fourthly, we believe that the framework should encourage the borrower to participate in proceedings, not to encourage spurious defences, but to ensure that the opportunity to be included in the proceedings is clear from the outset. Fifthly, the court should be adequately resourced to allow cases to be heard quickly and without delay.

Finally, from our experience in England and Wales, we believe that there should be consistency in decision making. Under the bills, sheriffs will be afforded broad discretion to consider possession actions. We would like to avoid a situation in which individual sheriff courts reach very different decisions on cases that have similar circumstances.

Those are our initial points. We circulated two briefing papers prepared by the CML. I understand that committee members have received them.

**The Convener:** Yes, thank you. They were useful. I will kick off with a few general questions, some of which are based on your papers. You made it clear that the number of reposessions is very small—I think you said 0.3 per cent. Is that right?

**Fiona Hoyle:** Yes.

**The Convener:** You also said that mortgage lenders engage in a number of steps before the critical point is reached and that sympathy is demonstrated to people who are in trouble. What happens before people reach the point of repossession? How is sympathy demonstrated? How many people get into bother? Can you give us a flavour of that?

**Mike Smith (Northern Rock plc):** You need to go back some years to a couple of key events, which marked a watershed in the way in which lenders deal with borrowers who have mortgage repayment difficulties.

The first was the miners' strike of 1984-85, when many debt problems were concentrated in small pockets in England, Scotland and Wales. Lenders were left with few choices other than to enter into constructive dialogue with their borrowers. It is fair to say that before then, rather than managing their borrowers' problems, lenders processed their cases; once a trigger point was reached of two or three payments not being received, they moved straight into a process of action leading ultimately to eviction.

The miners' strike brought lenders close to their communities and allowed us to take a different view of managing debt on a longer-term basis. The arrangements into which we entered in 1984-85 with families that experienced problems allowed us to take a more strategic, longer-term view of payment problems. We tried to stabilise problems and make payment arrangements after the miners' strike finished. We then nursed accounts back into manageable order.

Particular circumstances prevailed at that time. It would be fair to admit that lenders took a commercial as well as a compassionate view of life. In managing mortgage repayment problems, one can act commercially while offering a high level of compassion. The miners' strike was the first opportunity for us to do that. In particular, those of us who are from the north-east of England have had wide experience of the problems that have occurred in varying degrees in different industries in the past 20 years—some industries have disappeared and others have come on stream.

We dealt with the miners' problems by restructuring borrowers' accounts and setting them off again after the strike on the basis of what borrowers could afford. That was the alternative to taking possession of, for instance, the whole village of Ashington. What would we do with it? It would not be commercially viable to do that.

The next big watershed, which engulfed most of the country, was the property recession of 1990-91. You will probably appreciate that when events affect the south of England, action seems to be taken very quickly. The property recession brought into the fray all those lenders that were not affected by the miners' strike, and a second round of initiatives took place. Again, lenders took the view that, as there was considerable unemployment, a severe recession and a reduction in house prices, they had to mix commercial factors with compassion and take a long-term view of debt. Lenders were prepared to reschedule.

We now move quickly when a problem emerges. First, we speak to the customer—we write to them as well. We employ counsellors who talk to people in their houses.

**The Convener:** Your submission says that you charge for home visits.

**Mike Smith:** Yes.

**The Convener:** So that is not exactly compassion.

**Mike Smith:** It is compassion tinged with realism. The purpose of visits is to get to the bottom of the situation. Lenders are commercial organisations, which have to make a profit. There are certain things that they can do, such as employing staff and using telephone and other systems to facilitate communication with people, but there is a cost to taking the further step of visiting people in their homes. However, that is a worthwhile cost.

10:00

**The Convener:** I would like to explore that further. Are you saying that lenders are sympathetic to industrial action and will not necessarily move to repossession when borrowers are engaged in industrial action?

**Mike Smith:** I am not saying that. I am saying that those were clear examples of things that had happened. Lenders considered their commercial position and their position within their local communities. I could not say that they were supportive of industrial action—they neither condoned nor condemned it—but they worked within that context.

**The Convener:** I am not suggesting that lenders

would take a view on whatever industrial action was being engaged in. However, when a borrower is engaged in industrial action, you will consider their financial circumstances sympathetically.

**Mike Smith:** Yes. That is one of many circumstances that we would view sympathetically.

**The Convener:** Do you think that, in the boom of the 1990s—which most of us remember well—one of the difficulties was that lenders lent money too readily? Was there a looseness in the market, which meant that lenders did not assist properly people who were entering into debt?

**Mike Smith:** That depends on how customers were managed. We are in the business of lending money; if people want to borrow money, we will lend it. However, the criteria for lending money are always dependent on whether we can get it back if either the property market or the employment market goes against us. I am aware of no circumstances in which we overstepped the mark and pushed money on to borrowers who were unable when they applied for their loans to pay it back.

**The Convener:** So the horror stories that I have heard about people borrowing beyond their salaries are apocryphal.

**Mike Smith:** If you are asking me about the secure lending sector—mainstream mortgage lending—I would have to say that it did not happen. However, as Fiona Hoyle said, we are aware that there are other lenders in the market. You would have to speak to them about that.

**The Convener:** We will return to that issue later. Can you give us an idea of who gets into trouble? Who comes to your door to talk to you? What is the background of those people and what are the general trends?

**Mike Smith:** They are wide and varied. Anybody could be in that position. The vast majority of situations that local authorities face are due to the breakdown of personal relationships, and that is also a major factor in mortgage repossession activity.

**The Convener:** Is low income a factor as well?

**Mike Smith:** Changes in circumstances are certainly a factor. What causes relationships to break down? Is it the relationship itself or is it circumstances that emerge, such as unemployment?

**The Convener:** I do not doubt that the breakdown of relationships is a factor, but it is not the only factor.

**Mike Smith:** Yes, there are other factors. Unemployment is a factor but, generally speaking, the labour market is in a much more reasonable shape than it has been, and unemployment is not

the overriding factor in mortgage repayment problems.

**The Convener:** Do you have evidence to show that people who bought their house from the council get into difficulties?

**Mike Smith:** Our analysis shows that there may have been difficulties with the second-time resale value of some ex-council houses. That is a factor, but not an overwhelming factor. The vast majority of people who exercised their right to buy have benefited from that, although there are bound to be problematic situations—we can all think of examples.

One of the issues that lenders considered in the context of the right to buy was which properties they could lend on. There are certain circumstances in which lenders were not willing to lend—in the case of some high-rise flats, for instance. Lenders lend on two criteria: the personal covenant of the borrower and the security of the property. In circumstances in which the security of the property could be affected by factors outside the control of the individual applicant, lenders would be less willing to lend.

**The Convener:** I have the horrible job of always trying to push things on, I am afraid. I know that members may want to pick up some of those points, but I would like to move on to talk briefly about the legislation. What is your general view on introducing legislation in this field? I take the specific points that you make about the bills, but do you feel that perhaps we should not legislate in this area at all?

**Fiona Hoyle:** The CML understands the differences that arise in the Scottish system, in which the sheriff is afforded no discretion at all. We can understand why the two members' bills have been brought in to introduce that element of discretion; we do not object to that. Our main concern is to ensure that the framework that is drawn up, which is not represented in the bills as they are currently drafted, should take into account the action that has already been taken. Mike Smith has outlined the sort of things that lenders do to help borrowers before even thinking about possession. The cases that come before the courts are the cases in which no other action can be taken. We want to ensure that both sides are taken into account and that the sheriff can make a decision from an informed position.

**The Convener:** If the bills were passed, what would be the difference between the situation in Scotland and the situation in England?

**Fiona Hoyle:** One of the big problems that we have in England and Wales is that there is such broad discretion. As I said, we find that different district judges reach very different decisions in cases with similar circumstances. That can lead to

cases being adjourned time and again. There are lessons to be learned from that. Borrowers sometimes just turn up on the day, without going through the formal defence procedures, and suddenly say that their circumstances have changed. Cases are then adjourned and payment arrangements are put in position but are not adhered to, and the cases come back to court. We hope that the Scottish framework would take those experiences on board.

**The Convener:** I am sure that members will want to ask more detailed questions about that.

**Mr McAllion:** I would like to explore the extent to which, under the mortgage code, sympathy for the financial difficulties of the borrowers motivates the mortgage market. The banks, building societies and other mortgage lenders are not charitable institutions; they are in business for profit to make money out of the borrowers.

**Mike Smith:** I do not think that there can be any doubt about that. That is where we get our income from.

**Mr McAllion:** You gave an example of what happened in Ashington village during the miners' strike. There was no profit in taking over the houses of those miners, because you could not have sold them anyway, could you?

**Mike Smith:** That is absolutely right, as I said.

**Mr McAllion:** Profit was probably the main motivation for not possessing those houses.

**Mike Smith:** That is your view. My view is that not only did we take a commercial view of the circumstances, but we wanted to ensure that we stood by people in our own communities. It would have been difficult to switch from being part of the community to standing outside it and doing something to it. Please bear in mind the fact that the people who work for mortgage organisations live in the communities in which they operate. You may say that that does not matter, as employees are guided by their board of directors. I think that your view may be tinged with cynicism arising from the fact that banks report huge profits.

**Mr McAllion:** I am never cynical about capitalism, I can assure you.

**Mike Smith:** All I am saying is that there may be a little more to it than you think.

**Mr McAllion:** Perhaps, but I find it difficult to believe that the chief executive of the Bank of Scotland lives in a mining village in the north-east of England.

That aside, you gave two examples—Ashington village during the 1984-85 miners' strike and the later property recession, when the value of housing was cut dramatically. The hard-nosed commercial reality is that it was not in the interest



of the lenders to repossess the houses. In those specific circumstances, you may have been sympathetic to the borrowers. Does that become the template for the treatment of all borrowers at all times, even when prices are rising? Do you show all borrowers the sympathy that you showed to the miners in those particular circumstances?

**Mike Smith:** In the management of people's personal problems, the answer to your question is yes.

**Mr McAllion:** In the paying-off of their debts, is the answer yes?

**Mike Smith:** Paying off their debts? Yes. At the end of the day, that is what we are going to do.

**Mr McAllion:** Especially to yourselves?

**Mike Smith:** They owe the money to us anyway. Who else would they pay them to?

**Mr McAllion:** I find it hard to believe that there are all these soft-hearted, sentimental people running mortgages and banks, who put the interests of the working class before the profits of the people who put them in position.

**Mike Smith:** I did not say that. I said that there was a commercial reality—

**Mr McAllion:** You chose some rather odd examples to explain how mortgage companies work in Britain. There are repossessions and people are put out of their houses—they are made homeless. Is it the view of the Council of Mortgage Lenders that the law should try to prevent that wherever possible?

**Fiona Hoyle:** We have touched on the mortgage code, which sets out how we seek to help people with financial difficulties. However, there will be cases where borrowers do not have the income, and despite the help of the lender to try to clear arrears or stabilise the possession, the mortgage is not being met. In those cases, one could argue that it is not in the best interests of the borrower to continue that situation indefinitely, because the debt continues to accrue during that time and the borrower is ultimately responsible for that. In some cases, borrowers come to us and hand in their keys because they know that their prospects are not good and the arrears are mounting up. Those people want to crystallise the situation because they want to get their lives together and they may become borrowers again in the future.

**Mr McAllion:** Are you saying that you repossess the borrower's house and throw them out of it in their best interests?

**The Convener:** We must move on. I would love to let John McAllion continue, but we must turn to the detail of the bills.

**Cathie Craigie (Cumbernauld and Kilsyth)**

**(Lab):** Before we move on, I would like to say, as a very proud daughter of a miner, I am glad that the miners' strike caused the mortgage industry to look a wee bit more sympathetically on the plight of the miners who were borrowers. Perhaps it was as a result of that situation that the CML had to consider the realities and produced the mortgage code. If the code works in practice, it will help many people stay in their homes.

In 1984 and 1985, you were considering the realities of the situation. In her introduction, Fiona Hoyle indicated support for the change in legislation to allow courts to take account of individual circumstances. Are you acknowledging that, in the light of a changing market in 2000, the practices that the lending community has operated for many years must change?

**Fiona Hoyle:** We are not saying that our practice must change. However, we are saying that we do not have strong objections to the proposals, as long as the points that I outlined in my introduction are taken into account. The sheriff should be able to examine such cases and make a fair and informed decision based on all the action that has been taken so far. We are discussing an action of last resort. CML members undertake a lot of work to help those borrowers. If sheriffs are to be afforded an element of discretion, we must ensure that all interests are taken into account so that all decisions are fair.

**Cathie Craigie:** Does the CML think that there have been cases in which a property has been repossessed where, had all the circumstances been taken into account, the person could have been saved the indignity of repossession?

**Fiona Hoyle:** Are you asking—

**Cathie Craigie:** Are you aware of repossessions that have gone ahead where the repossession would have been stopped had an independent person examined all the circumstances?

**Fiona Hoyle:** That is a difficult question to answer, as we maintain that possession is an action of last resort. You would need to conduct a survey to identify cases that have gone through already. If that discretion had been available in the set framework that we have been discussing, a different position might have been adopted.

Because possession is an action of last resort, we hope that a sheriff would take on board all the action that we would have taken to help the borrower already. An important element that is missing from both bills is that neither gives any recognition to the action that has been taken by the lender.

10:15

**Cathie Craigie:** The tenants in a property are usually the innocent parties and are the most vulnerable as a case passes through court and a possession is granted—they are not the mortgage holder.

You suggested earlier that we should take into account only the borrower, their immediate family or an approved tenant. I am sure that CML members who work in the real world know that many people hold mortgages but do not advise their lender that the property is being let. People are legally obliged to advise their mortgage lender about many matters, but they do not do so. How should we protect the unwitting victims?

**Fiona Hoyle:** The CML's position is that we do not want the bill to allow the daughter's boyfriend, for example, or anyone who lives in a property but who is not immediate family to challenge an action for possession.

We can envisage situations in which the borrower recognises that they will not be able to meet the mortgage repayments and a possession case follows. That situation would be dragged out for longer because other people in the property, who may not be immediate family or authorised tenants, would be able to challenge the possession. They would not be in a position to agree payment arrangements on behalf of the borrower with the sheriff.

We are aware that in England and Wales problems arise with unauthorised tenants. The court procedure was changed so that what is known as the "Dear occupier" letter is sent to all properties that are subject to possession proceedings. That puts tenants on notice that action is being taken.

On top of that and as set out in the statement of practice, lenders recognise that unauthorised tenants need time to find alternative accommodation. The framework in England and Wales seems to have worked well in practice, but we want to avoid situations in which third parties—not immediate family members or authorised tenants where the lender has consented to that letting—are able to challenge possession proceedings. We want both bills to seek to restrict the category of people who can challenge those proceedings.

**The Convener:** I will have to hurry you, Cathie.

**Cathie Craigie:** Do you acknowledge that the Mortgage Rights (Scotland) Bill does not allow the tenant to challenge the courts? My bill allows the courts the opportunity to suspend the possession order, in order to allow the tenant time to find alternative accommodation. That period could be a month or two—it would depend on the rented

accommodation market in a particular area.

**Fiona Hoyle:** We recognise that distinction, and your example would comfort mortgage lenders if it involved only a month. However, in some parts of the country, there is very low availability of alternative accommodation in the private rented sector. Given the sheriff's broad discretion, such cases tend to be adjourned for six months or longer. That brings us back to my earlier point that the borrower continually has to pay his mortgage repayments during that period. The need to allow someone else, who is not immediate family, time to find alternative accommodation has to be balanced against the fact that any borrower in financial difficulties still has to meet the payments.

**The Convener:** I call Mike Watson, to be followed by Robert Brown, but I remind members that we are already running short of time.

**Mike Watson (Glasgow Cathcart) (Lab):** John McAllion referred to your comments on the miners' strike. Was the mortgage code drawn up after that period?

**Mike Smith:** Yes, a significantly long time after that.

**Mike Watson:** Exactly when?

**Fiona Hoyle:** The mortgage code has been in position for about three years. It is a voluntary code for Council of Mortgage Lenders members—as I mentioned, we represent 98 per cent of the market—but it is independently monitored by the Mortgage Code Compliance Board. It covers not only the 126 mortgage lenders, but 44,000 mortgage intermediaries, who introduce 50 per cent of mortgage business. It has a broad remit.

**Mike Watson:** Could you explain the term "mortgage intermediaries"?

**Fiona Hoyle:** When people seek to take out a mortgage, some go direct to the mortgage lender, through branches or by telephone or the internet; others might visit independent mortgage brokers, independent financial advisers and estate agents. They might all be mortgage intermediaries who act as the middle person between the borrower and the mortgage lender. They would be required to comply with the code.

**Mike Watson:** Required?

**Fiona Hoyle:** Yes. Mortgage intermediaries would be required to comply with the up-front elements of the mortgage code, including the provision of information. The financial difficulties that we are discussing would rest with the mortgage lender with whom the borrower ultimately took out their mortgage.

**Mike Watson:** I am interested in the Mortgage Code Compliance Board. In your evidence, you say that it is independent. Who sits on that board?

**Fiona Hoyle:** It is a separate, established company. There is a broad range of people on the board, including representatives of mortgage lenders, the consumer lobby and the money lobby—I am trying to think who else.

**Mike Watson:** Are citizens advice bureaux represented on the board?

**Fiona Hoyle:** I am not sure whether CABs are represented, but one of the main consumer advice groups is on the board.

**Mike Watson:** But representatives of CML are on the board.

**Fiona Hoyle:** We have a seat on the board.

**Mike Watson:** You say that the board is independent—it is not. You may not have a majority, but there are CML members on that compliance board.

**Fiona Hoyle:** There is one CML representative on it.

**Mike Watson:** How is the Mortgage Code Compliance Board funded? What resources does it have?

**Fiona Hoyle:** It is funded by mortgage lenders and by the mortgage intermediary market people who are members of the board.

**Mike Watson:** Is it a UK board? You spoke of CML having a devolved Scottish organisation. Does the Mortgage Code Compliance Board have a similar arrangement?

**Fiona Hoyle:** The Mortgage Code Compliance Board is a UK-wide organisation. CML Scotland is the devolved component of CML; there is no separate Scottish compliance board.

**Mike Watson:** If the board is a UK organisation, would not it be helpful if the legislation were more similar across the UK than is currently the case?

**Fiona Hoyle:** Which—

**Mike Watson:** In terms of repossessions and so on; in terms of the two members' bills.

**Fiona Hoyle:** The Mortgage Code Compliance Board only monitors whether people are complying with the mortgage code. It does not get involved in actual legal proceedings and the framework for that. The code deals with the time before someone takes possession, and with the action that would be taken to help the borrower at that stage.

**Mike Watson:** If I, as an individual borrower, wanted to complain about my lender, could I take a complaint to the board?

**Fiona Hoyle:** First, you would bring your complaint to the lender's internal complaints scheme. If that was a bank, you could then take it

to the banking ombudsman; if it was a building society, you could take it to the building societies ombudsman; if it was another lender or an intermediary, you could take it to a third, separate, independent arbitration scheme. The Mortgage Code Compliance Board does not deal with complaints that come directly from borrowers; it monitors compliance with the mortgage code.

**Robert Brown:** I wonder whether you have read the evidence that we received from the Edinburgh sheriff court project on the slightly different subject of rent evictions. It was suggested that a high percentage of the people who went to court because of rent problems could have their situations salvaged with proper advice from the in-court service.

**Fiona Hoyle:** We have not seen that evidence.

**Robert Brown:** That is an example of a situation for which local authorities have good procedures, yet, despite that, much more could apparently be done for a lot of the people who go to court. Whatever the level of sympathy—and John McAllion touched on this—at the management level of individual mortgage companies, it does not always have an effect in practice in individual cases.

**David Smith (Dunfermline Building Society):** I do not know whether we have evidence of that, although there might be some anecdotal evidence. However, the underlying rationale behind every mortgage lender's decision is not to have repossessions, because they represent a fundamental and very costly failure. As we have said before, the obvious thing that one tries to do is to ensure that—as far as possible—people repay what they have borrowed.

**Robert Brown:** Do you not often get into situations where—and this is a bit like the mobilisation of the Russian army—once the process is started and notices are sent out, it is difficult to stop? In my experience, I have found it difficult to get through to lawyers or to the institutions that are dealing with cases, difficult to get people to return calls, and difficult to get people to take an active interest, once the procedure has reached that stage.

**David Smith:** That might indeed be true in a certain number of cases, but I would suggest that, in most cases, the contrary is true. People are constantly looking for ways to salvage such situations, which are in nobody's interests.

**Robert Brown:** Are not most court procedures, in effect, matters of last resort, in which you are trying to deal with people who have fallen through the net because of a problem that has not been picked up by your procedures? Perhaps you have had someone dealing with that who has been a bit less than sympathetic.

**David Smith:** The difficulty about all this, of course, is that we are human. There may well be examples where human frailty or whatever has allowed something to happen that, on reflection, might have been better not to happen. I will keep saying to you that the responsible lenders are certainly not going to be looking to repossess.

**Robert Brown:** I would like to follow up on a different point that relates to what Fiona Hoyle touched on earlier. I understood from what was said that you did not like generalised discretion and that you wanted to have some arrangements for checking people's track records—for example, what efforts had been made to pay or to make arrangements to pay, and how many of those arrangements had been broken. Would it be fair to say that the addition of such a condition—making the courts take track records into account—would go a long way towards taking on board your particular complaints?

**David Smith:** That is probably right. We are saying that we certainly do not object to the concept of some review body—and if that means a sheriff, that would be appropriate—being able to consider the circumstances. We think that a sheriff should be able to consider all the circumstances and take all factors into account before coming to a view. We certainly do not want unfettered discretion—although I am mindful that it is difficult to fetter a court and its decision-making powers. Nevertheless, certain safeguards can be provided in statute. If the sheriff is obliged to consider everything, that at least provides the safeguards that we would seek from the lenders' perspective.

**Robert Brown:** Would it be fair to say that the speed of the court procedure is quite important? If court hearings can take place within a few weeks of things kicking off, and if reasonably speedy decisions can be taken, would that be important for you?

**David Smith:** That would be useful. In the interests of both lender and borrower, it would be helpful to have a reasonably speedy solution—provided that it was an appropriate decision, and not one that was merely governed by speed.

There is some evidence that in England suspension orders are made almost automatically without all the circumstances having been taken into account. We would be anxious to avoid that.

10:30

**Robert Brown:** You will be aware that in the Family Homes and Homelessness (Scotland) Bill there is a provision requiring the sheriff to make orders for payment of some sort to keep things ticking over. In your view, is that likely to help?

**David Smith:** It seems helpful.

**Fiona Hoyle:** That would have to be coupled with looking at what has already happened. There is no point in making a payment order if the experience to date is that several payment orders have been made that have not been met, without looking at why the borrower has been unable to meet them. If that is discounted and another order is made, that might not be in the best interests of all the parties.

**Mr Lloyd Quinan (West of Scotland) (SNP):** Do you believe that both bills present lenders with a greater risk?

**David Smith:** Potentially, yes.

**Mr Quinan:** Will you expand on that and give us any evidence that supports that view?

**David Smith:** It is reasonably straightforward. For every loan of any nature, there is a price. When one is pricing the risks, if one knows what is certain, one can price for it. If one does not know what is certain, it becomes a little more difficult. Most lenders would be keen to see a removal of the uncertainties, and that is the main thrust of our argument. If a sheriff is to be involved, we would like to see some constraints put on his unfettered discretion, to reduce the uncertainties and to make it easier to price the risk. That is also more satisfactory from a borrower's point of view.

**Mr Quinan:** Will you expand on what you mean by uncertainties?

**David Smith:** Let me return to what I said about suspension orders in England. If circuit judges are giving almost unlimited extensions of time, that increases the uncertainty for the lender about when the loan might be repaid. We want to try to reduce that uncertainty.

**Mr Quinan:** Is there clear evidence from England that lenders are facing greater risks?

**David Smith:** There is some evidence—

**Mr Quinan:** Could the committee be sent that evidence?

**David Smith:** I think so.

**Mr Quinan:** Do you believe that both bills will have an impact on the viability of lenders' businesses? What is that impact likely to be—what are the potential additional costs?

**David Smith:** I return to the point that I made a moment ago, that if as much uncertainty as possible is removed, it makes it easier to price the risk. To put it the opposite way, if one increases the uncertainty and potential costs, one makes it more difficult to price things appropriately. It might even reach the stage—although it would be an extreme situation—where a lender might decline to lend.

**Mr Quinan:** That has been suggested. Again you refer to uncertainty and, in the same sentence, to costs. Can you indicate what the relationship between the uncertainties and the costs is—what are the costs; what are the uncertainties?

**David Smith:** For example, if one of the bills became law—and we support the concept of involving a sheriff—and a sheriff with unfettered discretion allowed a case to drag on endlessly, for whatever reason, the costs would rise because there would be an unsatisfactory situation in the lending department where the loan remained outstanding, with interest running up and additional administrative costs. It is much more expensive to administer such a situation than to administer a loan that is performing well.

**Kate Marshall (Bank of Scotland):** It is not just the administrative costs. When the debt continues to rack up, quite often the property may be deteriorating because the debtor's financial circumstances are such that they cannot afford to maintain it. If the situation continues for a considerable time, we may find that repossession goes ahead and that there is a shortfall. That would be a bad debt on the lender's books, which would affect all other borrowers.

**Mr Quinan:** Do mortgage lenders have indemnity? Would that be an additional cost? Correct me if I am wrong, but I assume that you are insured for loss.

**Mike Smith:** Yes, lenders are insured in the main. Generally speaking, lenders no longer pass that cost on to individuals. That was the case in the past, but it is not the case now.

**Mr Quinan:** Is there a direct relationship between the insurance premium that you as a lender pay and the number of repossessions?

**Mike Smith:** There is.

**Mr Quinan:** Will you give us evidence of that?

**Mike Smith:** I am sure that we can provide you with some information.

**Mr Quinan:** That would begin to give us an idea of the levels of cost and uncertainty to which you refer.

**Bill Aitken:** We have heard persuasive evidence from you that you seek repossession as a last resort. At the same time, we have heard that there are about 1,200 cases of repossession per annum. There is an inconsistency there, because you are in business to lend money, not to repossess houses. Is the inconsistency the fact that secondary lenders are the main repossessors of property?

**David Smith:** In Scotland, there has always been an element of repossession. The Scottish

economy has never been as buoyant as that elsewhere. We did not have a housing boom in the late 1980s, leading to a housing recession in the early 1990s. Scotland escaped that because we did not have the boom-bust cycle.

However, we have always had problems with repayment. The transition in Scotland's economy from a heavy industrial manufacturing base to service-based industry has produced many casualties. I am sure that members will know well—much better than I do—what that is about. There has always been a knock-on effect on the mortgage books. We acknowledge that. Catastrophic failure of a debt cannot be prevented. If someone suddenly becomes unemployed and there is no other employment, what else can they do?

**Bill Aitken:** The problem does not seem to be with Northern Rock or Dunfermline Building Society, but with bucket shop money services incorporated, which is prepared to lend on a secondary basis. Will you comment on that?

**Fiona Hoyle:** I do not have any figures for the extent to which such lenders take possession. We can find that out for you or the committee could take evidence from the secondary mortgage market. We are primarily first mortgage lenders; there will be some cases where the secondary market may seek to take possession first.

**Bill Aitken:** The committee may, in time, seek that evidence. However, it would be helpful in the interval if you could provide us with that information. Do you know whether those secondary lenders subscribe to the mortgage code?

**Fiona Hoyle:** Unless they are CML members, no.

**Fiona Hyslop (Lothians) (SNP):** You have four main concerns about the proposals. I would like to concentrate on two: the increased costs that you are suggesting and the points about the financial memorandum. On the increased costs, as 99.7 per cent of your business is not necessarily directly affected by the proposals, we are just talking about the margins of your business—the 0.3 per cent—are we not?

You say that concerns about costs are forcing lenders into considering tighter underwriting criteria. With the greatest respect, it is not your societies that would bear any burden in underwriting criteria; it is probably the customers—the 99.7 per cent, whose rates you would increase to cover those uncertainties and risks. Is that the case?

**David Smith:** If we take the 0.3 per cent, those are the absolute failures—the repossessions. Repossession is a last resort; you should not

assume that there are not lots of other cases that we have been nursing through.

**Fiona Hyslop:** How many of those are there, as a percentage?

**David Smith:** It varies from lender to lender.

**Fiona Hyslop:** Can you give some examples?

**Fiona Hoyle:** At the end of last year, about 57,000 borrowers were three to six months in arrears with their repayments. However, the figure falls to about 29,000 for those who are 12 months or more in arrears. That reinforces our earlier point—if we help borrowers in the earliest stages of arrears by making contact with them when they miss their first monthly payment, we can ensure that they do not follow through to repossession.

**Fiona Hyslop:** If one is reassured that the lenders' previous action will be taken into account, and by the restrictions on the immediate family having recourse to the courts, as Cathie Craigie suggested, the matter comes down to cost risks. If the mortgage holders in the rest of Scotland were prepared to carry the burden of risk to help that very small number of people—which, through family breakdown or other circumstances, could include any of us—is it reasonable to assume that the margins will be met?

**David Smith:** We are not arguing against the proposal that there should be change in legislation. However, the thrust of our evidence has been that, if there has to be a change, it should be made on a considered basis.

**Fiona Hyslop:** You said that the bill's financial memorandum is probably inaccurate. I assume that you believe that there will be increased legal aid costs, because more time will be spent in court. Will you expand on why you think the memorandum is inaccurate?

**Fiona Hoyle:** The financial memorandum seems to imply that there would not be a significant increase in court costs and that, to a certain extent, borrowers would have equity in their property to cover all costs when the property was, ultimately, sold. As Kate Marshall said, borrowers who are in financial difficulties do not have the income to keep their properties in good repair. As a result, if a property is sold for a sum that is lower than the outstanding mortgage debt, the borrower still walks away with a shortfall debt.

**Fiona Hyslop:** There are very few mortgage rescue packages about. In my constituency, Weslo Housing Management operates a limited package. Does the CML generally support such packages throughout Scotland and will the CML review its underwriting and loans decisions to encourage them in the future?

**Fiona Hoyle:** The only comparable experience

of such packages was during the previous recession which, as David Smith highlighted, was not as acute in Scotland as it was in other parts of the UK. Although lenders are supportive of and have operated mortgage rescue schemes, the most popular form of mortgage rescue has been lender forbearance, where lenders have been prepared to accept reduced payments from borrowers who are in financial difficulties to stabilise their position. In the past, some schemes that turned home owners into tenants have not necessarily been popular because those people wanted to remain home owners.

**Fiona Hyslop:** We should bear it in mind that the Executive's housing bill will soon be introduced. The committee will be interested to hear the witnesses' views on any regulations on lending that might be included in that bill.

**The Convener:** I am sorry for rushing everyone so drastically this morning. I thank the witnesses for their extremely useful evidence. We might be in touch later about some statistics.

I thank members for being so disciplined during that session—we are running only 15 minutes over time.

I thank the minister and I apologise for keeping him waiting. I will let Mr McAveety catch his breath while I do the usual introductions. I am sorry to have pushed forward so ruthlessly. I apologise again for keeping the minister waiting, but the committee has a lot to get through.

I ask Mr McAveety to introduce his team and give a brief introduction. We will then ask questions.

10:45

**The Deputy Minister for Local Government (Mr Frank McAveety):** I congratulate John McAllion on his choice of tie. He rushed past me to go to the tie shop as I made my way up from Waverley station this morning.

**The Convener:** Thank you, Frank—but I am trying to keep the meeting focused.

**Mr McAveety:** Three officials from Executive departments are here: Linda Rosborough from the development department, and Richard Grant and Catriona Graham from the housing division.

I thank the committee for giving the Executive a chance to respond to the two members' bills. The earlier discussion will influence much of what the committee is about to say.

On the communities team, Wendy Alexander will attend the committee in the near future to discuss the broader aspects of the proposed housing bill, which have been touched on by discussion of Cathie Craigie and Robert Brown's bills. More

detailed information will be given then.

I will address the Executive's consideration of the two members' bills. As members know, the Executive supports Cathie Craigie's bill—the Mortgage Rights (Scotland) Bill. We have provided memorandums in response to both bills, which committee members will have seen. I will outline the Executive's view on those matters.

As members have heard, homelessness will be one of the Executive's key challenges during the next few years. Applications for assistance from local authorities for homelessness that results from mortgage defaults have increased during the past few years; 600 of those applications have been identified as being in priority need.

As we heard, repossession is a personal tragedy for everybody who is involved. In addition to financial concerns, it is a personal tragedy for families and individuals.

We recognise the role that the CML plays in adherence to the mortgage code. Those lenders voluntarily enter into agreement with the debtor. That contribution is vital in dealing with the circumstances that emerge through economic or social disadvantage. We commend the lenders that have engaged in that process to good effect.

However, as I am sure was discussed earlier, some lenders do not work with debtors, or the communication link between debtors and some lenders has been weak. The Mortgage Rights (Scotland) Bill gives people a safety net in legislation to ensure that proper steps are taken in every case, and that an independent party will determine the terms of the arrangement. That is why we welcome much of what is in Cathie Craigie's bill.

That protection is provided in English legislation and research there has shown that the courts have suspended almost 60 per cent of repossession orders that have been applied for by creditors; three quarters of the debtors subsequently maintained their payments—that is the fundamental objective.

There is widespread support for the principle behind Cathie Craigie's bill. I will concentrate on three points of detail, which are approached differently by the two members' bills. I will elaborate on the distinctions between them.

The first key distinction relates to when a debtor can apply to the courts. The second relates to the issues that the court should take into account when considering a debtor's circumstances. The final distinction relates to how the bills fit into the wider homelessness legislation, which is being developed through the homelessness task force, and the legislation that we will bring forward in the housing bill.

On the issue of when debtors can apply, it is not clear in Robert Brown's bill—the Family Homes and Homelessness (Scotland) Bill—when a debtor could apply to the courts. The bill appears to restrict applications to section 24 proceedings; in other words, when a possession order is being dealt with by the courts.

As the Law Society of Scotland outlined to the committee last week, a creditor can pursue possession of a property in several ways. First, the creditor can issue a calling-up notice, which requires the debtor to repay the whole sum that was borrowed and any interest within two months. Secondly, the creditor can issue a notice of default, which requires the debtor to remedy the default within one month. Thirdly, the creditor can apply to the court for a warrant under section 24 of the Conveyancing and Feudal Reform (Scotland) Act 1970 to obtain the right to sell the property to pay off the outstanding debt. Finally—and I had to double-check the history of this—the creditor can apply to the court under section 5 of the Heritable Securities (Scotland) Act 1894 to eject a debtor when the debtor is in arrears, but still occupies the property.

In the Executive's opinion, Cathie Craigie's bill takes full account of those routes and allows the debtor to apply to the court at any stage of the process. As soon as a debtor receives a calling-up notice, they can apply to the courts for time to repay the debt or arrears. That would allow them to keep their property or it would allow them and others who stay at the property to find alternative accommodation. That provides some flexibility.

Under the Family Homes and Homelessness (Scotland) Bill, the debtor can apply once the creditor has applied to the courts. In the Executive's opinion, that would mean that unscrupulous lenders could circumvent the legislation requirements by following another route.

The second issue that I want to cover is what the courts should take into account when considering the circumstances of the debtor. In our opinion, the Mortgage Rights (Scotland) Bill leaves the courts considerable flexibility to ensure that the court is not prohibited from taking into account any circumstances that have not been preconsidered in the bill.

We support Cathie Craigie's approach, which we hope to complement with court guidance to advise sheriffs on the sorts of issues that they might wish to consider. While we agree that the courts should have the power to take a debtor's personal circumstances into account, we are not convinced about the merits of requiring courts to ensure that the debtor has a reasonable opportunity to obtain legal and housing advice, which Robert Brown's bill proposes.

The Executive agrees that everyone should have access to debt advice. That is why we have supported the national debt line. However, the proposal in Robert Brown's bill could result in the courts suspending an order because such advice had not been obtained. On balance, we believe that that would create an unfair requirement on lenders. We are trying to strike a balance between the needs of the debtor and the needs of the lender.

Jackie Baillie has been pursuing homelessness legislation as part of the Executive's priorities. As we know, the homelessness task force has undertaken a wide-ranging review, which has involved representatives from many key organisations, such as Shelter Scotland, the Scottish Council for Single Homeless, local authorities and others from health and social work. The task force produced its first interim report in April 2000—that will shape much of what will be in the proposed housing bill, which will come before the committee at a later date. The task force is also examining the issue of homelessness and the causes of homelessness in a structured way.

We believe that the members' bills will influence the legislation—such as the proposed housing bill—that will come before the Parliament. There is some overlap. The four task force recommendations also overlap with the members' bills that we are discussing. The recommendations deal with giving local authorities additional duties with regard to homelessness; strengthening the legal rights of homeless people; ensuring that homeless people are not disadvantaged by the transfer of local authority housing stock; and making new arrangements to monitor and regulate local authorities' homelessness functions.

Those recommendations have been developed in consultation with a wide range of interested groups, some of which are on the task force. We consider that the recommendations, as they have been incorporated in the Executive's proposals for the housing bill, will provide significant improvements in the rights of the homeless and a significant increase in local authorities' duties towards homeless people. We have developed proposals that will ensure that any registered social landlords are fully engaged with local authorities in the delivery of their homelessness responsibilities.

I have tried to be as brief as possible and have touched on only some of the issues. We are happy to explore other issues through questions, but I hope that I have given the committee a broad perception of where the Executive stands on the two bills.

**The Convener:** Thank you, minister. That was useful—you touched on a number of issues that the committee will want to explore.

Homelessness is the Executive's flagship policy and the committee has spent much time dealing with it. However, we are presented with evidence that shows that homelessness figures are going up and that the problem is getting worse. Why?

**The Deputy Minister for Communities (Jackie Baillie):** In 1998-99, the number of applications was about 45,000. That is a substantial increase on the situation 10 years ago. We are mindful of that. The underlying trend for the past few quarters has indicated that that increase is slowing down. We do not know why that has happened and it is too early to use it as a sign of success.

However, we must put down a health warning about the statistics that we have for homelessness applications. I stress the word applications, because it is not merely a case of measuring a household that applies under the homeless persons legislation. We are measuring the number of applications. There is much evidence that suggests that some people apply more than once. In Glasgow, people may apply as many as 13 times in the same year under the homeless persons legislation. However, we accept that the statistics broadly approximate the number of homeless people.

We could point to a number of reasons for that, including the rise in reporting of domestic abuse and the rise in family breakdowns. We know and are beginning to understand the pressure points—they occur, for example, when people leave institutions such as prison and when young people who have been looked after leave care. Drug misuse also leads to increasingly chaotic behaviour, which makes it increasingly difficult to sustain a tenancy. There are a number of underlying and extremely complex factors at play. It is not enough simply to deal with the bricks and mortar. We need to understand the underlying causes and to tackle them. We must also provide the bricks and mortar. We felt that, by establishing the homelessness task force, we were recognising that the Government was not expert in all areas. We wanted to bring the experts round the table—organisations such as Shelter, the Convention of Scottish Local Authorities and the Scottish Council for Single Homeless. Those organisations have the interests of the homeless at heart and have experience that we can bring to bear in trying to solve the problem.

**The Convener:** There is a great deal in that answer that we will explore with the minister another day. Unfortunately, we need to focus on the members' bills. Mortgage repossessions are part of the analysis that the minister gave. Many people have drugs problems in their family or suffer from family breakdown. To what extent do mortgage repossessions explain homelessness?



**Jackie Baillie:** They are part of the explanation. The figures, which we rely on the CML to provide us with, show that in 1999 the CML applied for 6,000 possession orders. Of those, 3,000 were granted. The homelessness statistics for the same period indicate that 1,200 people presented themselves to local authorities as homeless, stating that the reason was repossession that resulted from mortgage arrears. Of those 1,200, 600 were accepted as being in priority need. They feature in the overall homelessness statistics.

**The Convener:** I would like to unpick that a bit, following on from a point that Cathie Craigie made about tenants who are in arrears. The evidence that we heard on that troubled me. Cathie Craigie used the word victims. How many tenants end up in the homelessness statistics? I refer to tenants who end up homeless because somebody else's house is repossessed.

**Jackie Baillie:** We do not collect statistics on that group. Undoubtedly, some tenants will be made homeless for that reason. From time to time, we hear of cases in which a tenant is unaware that their landlord's property is being repossessed. The Mortgage Rights (Scotland) Bill proposes that notice should be given to a variety of people, including the occupier of the property, who might be a tenant. We think that that would be supremely helpful. Such notice would refer people to the rights that tenants already have under the Housing (Scotland) Act 1987 and the Housing (Scotland) Act 1988. Currently, they would not be referred to those rights. The bill would provide them with a degree of protection. This is not about making provision for tenants, but about making them aware of the protection that exists.

**The Convener:** If you know that there is a problem of mortgage repossessions and we have a big public commitment to dealing with homelessness, why has the Executive not done anything about it? Why was it left out of the proposals for the housing bill?

**Jackie Baillie:** Members will see our detailed proposals for the housing bill in due course.

**The Convener:** We are waiting for them.

**Jackie Baillie:** The reason why we left that out is very clear—the housing bill is concerned with the provision, financing and regulation of the social housing sector. When the members' bills came forward, we were aware that in practical terms it would be quicker to deal with the issues separately. The Mortgage Rights (Scotland) Bill deals specifically with the technicalities of conveyancing, in which I am not expert, and seeks not to amend but to sit alongside the existing Conveyancing and Feudal Reform (Scotland) Act 1970.

Robert Brown's bill—the Family Homes and

Homelessness (Scotland) Bill—goes much further. It seeks to deal not only with conveyancing, but with some of the key issues that the homelessness task force has been developing, which are included in the proposed housing bill. Indeed, in some cases, the proposed housing bill will go further than Robert Brown's bill.

11:00

**The Convener:** I am sure that the committee will explore that.

I have a final question. We have heard much evidence from various people about the overlap between the bills. There is a lot of energy and action in housing. Would not it be appropriate for the Executive to incorporate the best bits of the members' bills in a more coherent bill?

**Jackie Baillie:** As you know, convener, we tried to do that early on and entered into discussions with the promoters of the members' bills. We came to the view that the principle—in terms of mortgage rights—behind Robert Brown's bill was sound, but we disagreed with some key areas of detail, which Frank McAveety outlined in his opening statement. We were quite happy to provide assistance with the Mortgage Rights (Scotland) Bill, because it meets exactly the principles that we want to take forward, in that it recognises that we need to give debtors time to pay, to resolve debts or to find alternative accommodation. As good as the Council of Mortgage Lenders is at following its mortgage code, we felt that discretion should be provided to sheriffs as well.

The Family Homes and Homelessness (Scotland) Bill is much wider. In our view, the Mortgage Rights (Scotland) Bill would be passed more quickly than the proposed housing bill—that is crucial for people who face mortgage arrears and possession orders as we speak.

There is much in Robert Brown's bill with which we have sympathy, but we are firmly of the view that the proposed housing bill will contain—and go further than—a number of the provisions of the Family Homes and Homelessness (Scotland) Bill. We would prefer that bill to be considered alongside the proposed housing bill.

**Karen Whitefield (Airdrie and Shotts) (Lab):** You have outlined your support for Cathie Craigie's bill. Will you tell the committee some of the specific reasons why you do not support Robert Brown's bill? Are there any measures contained in Robert's bill that might be problematic or unhelpful in the light of the proposed housing bill?

**Jackie Baillie:** Have you got half an hour?

**The Convener:** No.

**Jackie Baillie:** No, I did not think so. It is a matter of detail. I will go over some of what my colleague, Frank McAveety, said. A key issue is when debtors can apply to the courts. A second key issue is what the courts are able to take into consideration. Thirdly, there is the Executive's wider work on homelessness legislation. On the first issue, it is unclear from Robert Brown's bill whether a debtor could apply to the court at any stage. Applications appear to be restricted to section 24 proceedings, which creates a loophole that could allow an unscrupulous mortgage lender—there might be one or two who are not members of the Council of Mortgage Lenders—to circumvent the legislation.

The second issue is consideration of debtors' circumstances. I am sure that we could debate that. Once one starts to list such circumstances, no matter how good the list is, certain issues will end up being excluded. People who experience mortgage repossession are individuals and each individual's circumstances will be different—we favour an approach that allows consideration of all the circumstances. That, coupled with training and awareness raising, will give sheriffs the opportunity to consider much more widely. That would also provide the balance that I believe the Council of Mortgage Lenders wants, because naturally one would want to examine what has happened in the past, how many times a repossession order has been issued and how many times there has been a failure to pay.

The Executive is also slightly concerned about debt advice. Although it is admirable to mention debt advice in a bill, we must recognise that that does not mean that it really exists on the ground. There are numerous advice agencies in urban Scotland, such as law centres, citizens advice bureaux, Shelter Scotland and other housing advice agencies. In rural areas, however, such agencies are thin on the ground. The Executive wants to move forward in that area and we are holding discussions with Citizens Advice Scotland and Money Advice Scotland about the national debt line. We are equally keen to look at and learn from mortgage rescue schemes about how to stop people getting into such debt in the first place. We shall also discuss community legal services throughout Scotland.

There is a pattern to what the Executive is doing and we are trying to pull together all the strands to ensure that there is adequate provision, but that will take time. It will also take resources, and that is something that the homelessness task force has considered in relation to the new duty on local authorities to provide advice and information to people who present themselves as homeless. The package offers advice, information and temporary accommodation for people who are unintentionally homeless. We are mindful of the need to ensure

that that happens and we must therefore ensure that additional resources are available. That has been a feature of discussion in the spending review, although I know that members would not expect me to make any announcements now.

That covers mortgage rights. I would be happy to go on at length about homelessness, but perhaps I should shut up now.

**Karen Whitefield:** My next question concerns the proposals in Robert Brown's bill on people's right to debt advice. I would be interested to hear where the Executive's review of such services is going. You are absolutely right to say that citizens advice bureaux do a great job, but I know that CABx in rural areas are experiencing great difficulties because they cannot provide the required level of service. Should we consider better provision of such services across Scotland, similar to our consideration of CVS Scotland's service provision? Is it appropriate for the provision of debt advice to be included in Robert Brown's bill, or is there another means of doing that? Should we consider specific legislation in future to address those concerns?

**Jackie Baillie:** My key point is that the solution is not legislative. Legislation can say that we want people to have access to X, Y and Z, but the practicalities on the ground are incredibly different, as you have said. We need to ensure that that provision exists, and that requires action by the Executive, working with others, particularly in the voluntary sector, who have a lead role to play.

We are mapping current provision—where it exists, and of what type. We are keen to ensure that we fill the gaps so that services are accessible to everybody. We want services to operate to similar standards throughout the country, because the quality of advice is critical. Citizens Advice Scotland is attempting to badge what it does and to ensure quality standards, and that is most welcome.

We must ensure that people can access specialist advice. For example, Shelter Scotland works closely with Citizens Advice Scotland to provide specialist homelessness advice to bureaux. The national debt line is being progressed by our officials and by officials in London, as there is a national interest. We are considering pilot areas, one of which may well be in Scotland, but the details have yet to be finalised. The national debt line does not operate in place of local provision. Rather, it provides instant access—impersonally, as people sometimes find it easier to pick up the phone than to talk to someone face to face—to initial help and a referral.

**Karen Whitefield:** Do you believe that the introduction of a single social tenancy, as outlined

in the Executive's proposals, will answer some of the concerns in Robert Brown's bill, which attempts to address the relationship between eviction and secure tenancy?

**Jackie Baillie:** Yes. The provisions in Robert Brown's bill will be overtaken by the introduction of the proposed housing bill and the single social tenancy, especially in relation to assured tenants. We feel that we have already covered those aspects.

**Mike Watson:** Advice services are crucial in this context. I noted what you said about the national debt line and the review of services in Scotland—that is especially important in rural areas. What are your views on new initiatives such as the Edinburgh in-court advisory service and the ring fencing of resources for advice services? Shelter is concerned that no such resources are being set aside. I realise that you cannot commit yourself to saying what new money might become available, but the principle of ring-fencing resources for support services is important.

**Jackie Baillie:** The Edinburgh in-court service and similar projects have much to commend them, as they operate on the principle of demystifying the system and making it more accessible. I see them having a wider application, especially in cases of domestic abuse, and I know that my colleagues in the justice department are considering the matter. A number of pilots have recently been extended, the detail of which I am not altogether clear about, but on which I can write to you.

Ring fencing is a much wider issue, and is probably being discussed elsewhere. There is always tension over how much is ring-fenced and over the way in which the democratic legitimacy of local government should be recognised when it is reasonable for it to set its own priorities for spending its funding. I am not an eternal optimist, but the legislation in the proposed housing bill will make it clear that a local authority's homelessness function will not be discharged until somebody who is unintentionally homeless is provided with two things: the right to temporary accommodation that is suitable for their needs and the right to advice and information. Both those rights need to be provided before that function is discharged. By placing that requirement on local authorities, we will direct the way in which they resource that service in a more helpful way.

**Mike Watson:** Ring fencing is a sensitive issue. The committee heard evidence from Citizens Advice Scotland, which is always up against it financially, local citizens advice bureaux and other organisations in members' constituencies, which have been lobbying to ensure that they can provide continuity of service. The same is true of local law centres. That is crucial.

On a related but slightly different point, I noticed that the Minister for Communities replied on Friday to a written question from Donald Gorrie, on the subject of enabling people to apply for the full benefits to which they are entitled. Not surprisingly, the minister replied that that is a reserved issue. However, she went on to say that UK ministers will continue to work with the Scottish Executive to determine how best to tackle such issues. Although benefits are a reserved issue, ensuring that people have maximum access to everything to which they are entitled is very much an issue for the Scottish Executive, as it impacts on everything that we are discussing today.

**Jackie Baillie:** I agree that we should seek to maximise people's incomes if we are serious about tackling poverty and disadvantage in our communities. We have held discussions with our colleagues at Westminster on how we can work together effectively to ensure that that happens. Proposals are being developed nationally to ensure that income is maximised among particular groups, such as elderly people. Also, local authority welfare rights officers run many valuable benefit take-up campaigns in co-operation with the voluntary sector.

Our social inclusion partnerships are keen to make sure that that issue is dealt with, as maximising income from whatever source is critical. People must know what they are entitled to and how they can claim it without experiencing any undue bureaucratic nightmare.

11:15

**Mr McAllion:** I think Jackie Baillie said that the Executive supports the Mortgage Rights (Scotland) Bill because it meets the principles that the Executive wishes to promote. The bill allows the court to suspend the effect of a calling-up notice for five years. The committee has heard evidence that that period is too long, and that it should be reduced to two years, with the borrower having the right to apply subsequently for another two years.

**Jackie Baillie:** We support Cathie Craigie's proposal. The devil is in the detail: the period for which a calling-up notice can be suspended is up to five years. That allows the circumstances of the debtor to be taken fully into account. On the other hand, the Family Homes and Homelessness (Scotland) Bill sets a period of not less than two years. There may be circumstances that could be resolved quickly. If a situation has become particularly bad because somebody has adopted the ostrich position and has stuck their head in the sand so that they do not know the scale of their problems, it may be to their benefit if their case is dealt with quickly. A small minority of cases will be like that. The five-year suspension period gives

people the opportunity to re-establish themselves. The cost of homelessness to an individual and to society is very high, so I would prefer the longer time period.

**Richard Grant (Scottish Executive Development Department):** Five years is the maximum period for a calling-up notice. According to our reading of the Mortgage Rights (Scotland) Bill, the sheriff is allowed to suspend the exercise of the creditor's rights for such period as he thinks fit. That period could be longer than five years in some cases, but calling-up notices expire after five years.

**Mr McAllion:** I think Frank McAveety said that another reason for the Executive's support for Cathie Craigie's bill was the flexibility that it gave the sheriff. You may have been here when the Council of Mortgage Lenders made it clear that it did not support that flexibility. In fact, it wanted to fetter the discretion of the sheriff and gave six different qualifications that it would place on the discretion of the sheriff. What is the Executive's view of the evidence that the Council of Mortgage Lenders gave this morning?

**Jackie Baillie:** We need to take a balanced view of the needs of borrowers and lenders. It is the role of the sheriff to take into account all the circumstances of the individual case that is before him or her. We are keen not to restrict at the outset the list of circumstances that a sheriff can take into account, as such a list would exclude circumstances that we had not considered because they are peculiar to an individual. However, in raising the awareness of sheriffs, and providing training and guidance, we will indicate the broad areas that they should consider, although those areas will not be exclusive.

**Mr McAllion:** It is refreshing to hear that a Labour minister is against listism. What is the Executive view on where the balance should lie between protecting the lender and the debtor? Is the Council of Mortgage Lenders' code plus Cathie Craigie's bill enough?

**Jackie Baillie:** When one considers that the CML and its mortgage code covers about 98 per cent of the lending market, it is clear that we are talking about a small percentage of the market that is possibly unscrupulous—I use the term carefully—or about those people who have adopted the ostrich position and who will not recognise that there is a problem no matter what one does. The percentage in question is quite small.

The Council of Mortgage Lenders and the majority of its members take seriously their responsibilities under the mortgage code. I accept that, as the CML said, there is an element of human nature and that they might not always get it

right, so it is appropriate to have safety nets. It would be incorrect not to allow the introduction of Cathie Craigie's bill, which would allow sheriffs to take all the circumstances into consideration on a statutory basis, rather than informally. We should take the code of guidance and the bill together.

**Mr McAllion:** Should the code of guidance be voluntary or statutory?

**Jackie Baillie:** The voluntary code has worked reasonably well. We are putting in a safety net—that is what Cathie Craigie's bill achieves—to pick up cases where the code of guidance has not been applied properly.

**Mr McAllion:** What impact do you think the Mortgage Rights (Scotland) Bill will have in reducing the proportion of households that are made homeless as a result of mortgage repossession? This morning you gave some figures relating to 1999: there were 3,000 repossessions and 1,222 applications to be considered as homeless, of which only 600 were classified as being in priority need. Which figure represents the number of people being made homeless by repossessions—3,000 or 1,222?

**Jackie Baillie:** According to the homelessness statistics—the way that that is measured under the current system—the figure is 600. However, given that 3,000 repossessions have taken place, we must find out what has happened to people. Do they end up sleeping in housing that they share with family and friends? It is the figure of 3,000 that we are seeking to address.

Where such discretion operates in England, about 60 out of every 100 cases are suspended, giving people time to pay. About 75 per cent of those suspended cases do not result in repossession. That suggests how the legislation might work.

**Mr McAllion:** Is there a need for further research on that?

**Jackie Baillie:** There is always a need for further research to identify precise demands and effects. At this stage, we are fairly confident of the English figures, although we could certainly do some modelling for Scotland.

**Richard Grant:** We asked the University of Glasgow to do a scoping study on further research on the subject. That produced four proposals: adding to the Scottish household survey; researching lenders' policies in Scotland; talking to interested parties, and carrying out case study interviews. We have been considering those proposals carefully. I am not persuaded that adding to the Scottish household survey, which would give us just 300 or 400 people in arrears after two years and who were not necessarily subject to repossession actions, would be the best

way forward. I have asked the researchers in our department to investigate a methodology to pick up on court statistics and follow on from people who have been subject to repossession proceedings.

The short answer is yes. Further research is necessary to augment the knowledge that we gain from the CML and court statistics. We do not fully understand the situation.

**Mr McAllion:** It would be wrong for the Council of Mortgage Lenders to provide statistics on the subject, particularly in light of the evidence that we heard this morning.

**The Convener:** Yes.

**Fiona Hyslop:** I take it that there is still a need for the proposed legislation, despite the mortgage code and the steps that banks already take.

Do you think that the legislation might provide an incentive for people to default earlier?

**Jackie Baillie:** The CML suggested to us that that might be the case. It was also suggested to us that lenders might decide to pursue a possession order much earlier. On the other hand, we have received evidence that suggests that some mortgage lenders use the current practice of applying for a possession order almost as a warning shot across a borrower's bows.

While defaulting earlier might be an unintended consequence, we think that, on balance, it will be a minor consequence.

We were heartened by what the CML said today: subject to all its qualifications, it supports the principle of enabling a sheriff to take account of all circumstances.

**Fiona Hyslop:** Homelessness was one of the CML's concerns, particularly in relation to someone other than the borrower being able to plead potential homelessness to avoid repossession. The CML's concern was that incentives are not placed on local authorities to rehouse the defaulting borrower or other members of the borrower's household. It struck me that that concern was voiced in isolation from the housing bill's proposals. What provisions do you expect the housing bill to contain to cover that situation?

**Jackie Baillie:** We are making specific provisions in the housing bill in relation to homelessness legislation. Those provisions use the opportunity presented by the housing bill to fix a number of problems with, for example, the right to temporary accommodation, the right to advice and information, the right to go on a list and a basic package of rights for hostel dwellers. The housing bill will include a variety of bits and pieces.

While the housing bill will not make specific

provisions for people who have gone through a mortgage repossession, the homelessness task force is considering closely what we can do to prevent repossessions occurring in the first place. We are mindful of the fact that the cost, both to the individual and to society, of making someone homeless is much greater than the cost of trying to resolve that individual's debt situation. That is why we are pushing for and considering a number of schemes, such as the mortgage rescue scheme, whereby someone can convert from holding a mortgage to paying a social rent.

**Fiona Hyslop:** I suggest that we would expect the housing bill to include provisions that will deal with the position of tenants of defaulting borrowers.

It rings a bit hollow to hear that you are keen for Cathie Craigie's bill to go through because that would be quicker than including the provisions in the housing bill. I am bearing in mind the fact that ministers had notice that the provisions in Cathie Craigie's bill could have been included in the Abolition of Feudal Tenure (Scotland) etc Act 2000, when we addressed the Conveyancing and Feudal Reform (Scotland) Act 1970.

On the management of bills, I was a bit concerned to hear that one of the reasons why you did not want to incorporate Cathie Craigie's bill in the proposals for the housing bill was that you want the latter to be a social housing bill. Is that the case? Does that mean that the housing bill will not include provisions for the private sector, including improvement grants and so on? Can we expect just a social housing bill or will it contain other provisions?

**Jackie Baillie:** The housing bill is predominantly about social housing. There is a huge amount of work to be done on private sector housing, which we want to pursue in a considered manner. You will find that the advantage of having a Scottish Parliament is that we do not have to cram everything into one bill—we can take our time and get it right. The predominant focus and drive behind the housing bill is social housing. There will be provisions on the example that you cited of improvement and repair grants. We intend to provide the same focus for the private housing market as well.

**Fiona Hyslop:** You said, and I quote, that you were "happy to provide assistance" to Cathie Craigie's bill. Did any of the people who are at this table assist with drafting the bill? What kind of assistance was provided?

**Jackie Baillie:** We provided drafting assistance. The people who are sitting at the table are Executive officials who work in policy divisions. While advice would have been provided, I do not think that anyone who is at the table was involved

in providing that advice.

**Fiona Hyslop:** Was that assistance provided to Robert Brown when he was developing his bill?

**Jackie Baillie:** No. At the beginning, we discussed with Robert Brown our desire to see certain elements in his bill but not others. That was because those other elements pre-empted the work of the homelessness task force and, in certain respects, did not go far enough. Robert Brown can confirm the discussion. We did not arrive at a conclusion that was satisfactory to both parties.

**Fiona Hyslop:** Members' bills are a big issue, not least for members of this committee. The Parliament is short of draftsmen's time, and we understand that the Executive has the first call on the draftsmen. What are the criteria for the Executive providing drafting support to back benchers for members' bills in general?

11:30

**Jackie Baillie:** There are no set criteria. If it is in the Executive's interests to progress the aim of a member's bill, or if the bill is helpful to the Executive's policy, we would engage in a discussion with the member about the nature of the bill and about whether the Executive could help, subject to our being satisfied with the detail of the proposal.

For example, let us take current discussions with the Justice and Home Affairs Committee and the progress being made by Maureen Macmillan on a domestic abuse bill. We have been working closely with her because we think it in the interests of the Executive, of the Parliament as a whole and of that committee to try to co-operate where we can.

At this stage, because our resources are tight and because, as Fiona Hyslop rightly pointed out, there is a shortage of drafting resources, we are unable to provide those resources for what would be a much longer and more complex bill than Cathie Craigie's Mortgage Rights (Scotland) Bill. However, we are keen to provide policy advice and to work closely with members so that, where possible, barriers are broken down and obstacles are removed. Where we can be helpful, we certainly will be.

**Fiona Hyslop:** I take it that drafting support will be available to members who do not belong to the Executive parties.

**Jackie Baillie:** If we feel that the policy behind a member's bill is one that we would choose to pursue ourselves, it would seem silly not to take it forward. We would naturally engage in a dialogue with the member. I never specified which party they should belong to—a back bencher is a back

bencher.

**Fiona Hyslop:** Other members of our committee will be very interested to hear that.

**Jackie Baillie:** We engaged in a discussion with Robert Brown on this point. You should also be aware that the Scottish Parliament is engaging draftsmen for its own purposes.

**The Convener:** I was wanting to clarify that: the point that Fiona Hyslop is pursuing has been raised at the Parliamentary Bureau.

**Cathie Craigie:** On that point, it is not unusual for members' bills to get support from the Executive, or from the Government, and for the member to get assistance with drafting—this may be the second or third case in the Scottish Parliament. I can assure the committee that I checked this out carefully before I accepted help. Catriona Graham, who is at the meeting today, offered me legal guidance and took me through the legal maze. I thank her for that assistance.

**Bill Aitken:** I am sure that we are all relieved to hear that we are considered equal with regard to drafting, although I suspect that some are more equal than others.

**Mr McAveety:** You should speak to the Russian army officers about that.

**Bill Aitken:** Returning to the issue before us, I am a little concerned about how the law may evolve. As you are aware, minister, law evolves largely on the basis of case law and appeal decisions. The test of reasonableness will obviously have to apply. A sheriff in Wick may have a more robust view about what is reasonable than a sheriff in Stranraer, for example. Are you satisfied that the appeals procedure in the Mortgage Rights (Scotland) Bill will be adequate to ensure that a volume of case law is built up over time? Are you also satisfied that the bill complies with the European convention on human rights?

**Jackie Baillie:** On members' bills, you need to have a good idea in the first place, Bill, but we are always happy to talk to you. You are right to point out that there may be inconsistencies—that is the nature of our justice system. We are confident that sufficient case law will be built up and will cover such eventualities. However, I restate that it is our intention to ensure that awareness raising, training and guidance are provided for sheriffs. An obligation to consider all circumstances rather than just a list will provide a more flexible tool, which will strike a balance between the lender and the borrower.

The Executive's view—and that of the homelessness task force—is that there are three strands to appeals: internal appeals, which are covered by the local authorities' code of guidance on homelessness; the local authority ombudsman;

and judicial review. We are placing a requirement on local authorities to produce a new strategy to prevent and tackle homelessness, part of which will concern internal review procedures. The new Executive agency will monitor the implementation of those internal procedures—something that is not done currently.

In England, where people have access to the courts, the process is not quicker. The evidence suggests that tenants and homeless people continue to access local authority ombudsmen because they provide a much quicker, more effective and more efficient route. Recently, Shelter successfully complained to the local government ombudsman about the actions of South Lanarkshire Council in respect of a homeless couple.

There will be safeguards. The Convention of Scottish Local Authorities did not want a bureaucratic, cumbersome system—which this could become—and we were mindful of the need to ensure that the interlocking bits were right and worked effectively, as we believe our proposals will. The role of the ombudsman and the process of judicial review are ECHR compliant.

**Mr Quinan:** In view of the fact that the homelessness task force decided against recommending an appeals system for homelessness decisions in the Family Homes and Homelessness (Scotland) Bill, can you give the committee any background information on its decision and the Executive's view on appeals?

**Jackie Baillie:** It is not true that the homelessness task force did not recommend an appeal; it has said that there are three different elements to the appeals system. There is the internal appeals mechanism that all local authorities will be expected to have and there is the new Executive agency, which will monitor the implementation of a local authority's overall homelessness strategy. People also have access to local authority ombudsmen. I forget the percentage but, of the cases taken on by those ombudsmen, the overwhelming majority relate to housing allocations and homeless applications. The bill also contains safeguards to ensure access to a judicial review of a council's decision-making process through the interlocking mechanisms without the introduction to the sheriff courts of a cumbersome, bureaucratic system that involves more lawyers.

**Mr Quinan:** You are saying that there are three structures, but the suggestion from many people was for a single, independent appeals structure. Do you have an opinion on that?

**Jackie Baillie:** Yes. Our system is more robust—

**Mr Quinan:** Than an independent appeals

system?

**Jackie Baillie:** The local government ombudsman is independent and takes a fresh view of all decisions. The first stage of appeal involves an internal appeals mechanism, as the ideal is to get the problem sorted out locally. The homeless person continues to be homeless, so the quicker that a problem can be resolved, the better.

**Mr Quinan:** There are questions, concerning the system—

**Jackie Baillie:** Absolutely. Please allow me to finish. The Executive agency is not the second phase of the process, but has a clear role in monitoring the implementation of that internal appeals system. We will undertake quality checks, review cases and examine standards. However, any individual who is not satisfied can go directly to the local government ombudsman—in fact, they can do so from the outset—who will fairly quickly reach a decision because of the nature of the cases. Finally, there is the process of judicial review, which, as I have said, Shelter has used extremely well.

**Mr Quinan:** If a right of appeal were likely to be introduced, what would be the Executive's preferred method?

**Jackie Baillie:** I have already said that both the Executive and the homelessness task force preferred an approach that put a new duty on local authorities to provide a strategy, which would take account of more than the housing function. Such a strategy will also involve social work and education—because we need to go much deeper to resolve homelessness—and will include an internal appeals process, with a mechanism to ensure that the process is robust. Furthermore, people have access to the local government ombudsman and judicial review. I have outlined several times the homelessness task force's proposals and what the Executive has taken on board from those proposals.

**Mr Quinan:** You referred to the guidance that the Executive will provide for sheriffs and suggested that, at this stage, it will be ECHR compliant. How much work has been done on the guidance?

**Jackie Baillie:** I am not aware of the details of the guidance. However, sheriffs are offered guidance training and awareness raising as part of their training. As sheriffs do not all come from the same background, they should be aware of the different circumstances that people can encounter.

**Mr Quinan:** The key point is that you said that the guidance was ECHR compliant.

**Jackie Baillie:** No, I did not. We must keep two issues in mind. On the one hand, there is the

guidance for sheriffs in relation to the provisions of the Mortgage Rights (Scotland) Bill. However, if you are asking about the role of the courts in relation to homelessness, we are talking about a judicial review, which—as far as the appeals process goes—is considered to be ECHR compliant.

The guidance for sheriffs on Cathie Craigie's Mortgage Rights (Scotland) Bill is entirely different. We recognise the very valid point that sheriffs come from different backgrounds and perhaps have not experienced the wide variety of circumstances that people might encounter.

**Mr Quinan:** I am talking specifically about ECHR.

**Jackie Baillie:** I am trying to deal with the issue of guidance that you asked about. There were two separate issues. I have dealt with the guidance and with the issue of ECHR in the context of judicial review.

**Mr Quinan:** Will the guidance to sheriffs about Cathie Craigie's bill be ECHR compliant?

**Jackie Baillie:** We will ensure that any processes concerning guidance training or awareness raising will be ECHR compliant. These days, we cannot introduce legislation that is not ECHR compliant.

**Mr Quinan:** I am aware of that. However, what stage are you at in preparing that guidance?

**The Convener:** Richard Grant has indicated that he wants to come in on that question.

**Richard Grant:** As far as the guidance is concerned, we and our colleagues in courts group would try to ensure that sheriffs were aware of the background to and objectives behind the legislation. We would not want to fetter the discretion of sheriffs. Provided that the legislation is also ECHR compliant, such guidance will not cause any problems with ECHR compliance. Our draftsmen have advised us that it is and, indeed, the fact that the Presiding Officer has accepted the bill for introduction also supports that view.

**Mr Quinan:** What are the broader budgetary implications for Cathie Craigie's bill in relation to sheriff training?

11:45

**Jackie Baillie:** The work on the financial memorandum indicates that the cost will be predominantly in legal aid. The figure that we have given in the memorandum we submitted to the committee is £0.3 million. We recognise that there will be additional costs for training sheriffs. Training programmes are funded centrally by the justice department and the training would be slotted into that.

**Mr Quinan:** So the money would come from the justice department's budget.

**Jackie Baillie:** Yes.

**Mr Quinan:** So if we want that information we would have to speak to the justice department.

**Jackie Baillie:** Or I could write to you about it.

**Mr Quinan:** I think that we would all want that information.

**Jackie Baillie:** I apologise; I will write to the convener.

**Robert Brown:** I welcome some of what the minister has said about training and advice agencies and the work of the homelessness task force, which to some extent goes beyond the arena of the legislation. I have some difficulty with what she said on ECHR compliance, however. Involving ombudsmen is fine—we would all welcome the easy resolution of issues. However, ECHR compliance is also about having an external, independent appeals mechanism. The lack of a detailed appeal procedure, with the only recourse being the long-stop of a judicial review on the procedures rather than on the substance, raises questions about compliance. Will the minister lay before the committee the analysis that was done for her department on the pros and cons of the issue? We only have a simple statement that the bill is ECHR compliant; we do not have the reasoning behind it. This is a crucial question and we need all the information.

**Jackie Baillie:** I am happy to provide that detailed analysis. I do not think that the statement is simple; we have gone into ECHR compliance in some detail and we are assured of the independence of the local government ombudsman—from the authority making the decision, for example—and, indeed, of the judicial review process.

**Robert Brown:** I was struck that, although you were critical about the proposal in my bill for advice agency involvement before people are evicted, you encouraged the idea of having much more advice after eviction. I am not against advice at that stage, but it seems odd that, at the point at which something can be done to prevent the major problem arising, you are saying that you do not really want advice to be part of the arrangements. Will you elaborate on your reasoning?

**Jackie Baillie:** This is not about the timing of advice; it is about the availability of advice. In a rural area, many of the provisions that you list would not be available. We felt that it was one thing to want there to be advice and another to ensure that it was available. A situation could arise where somebody who was unscrupulous could say that they had not been able to access advice. What does the sheriff then do? That could be used



as a mechanism for delay. However, we are not against the principle of the provision of advice, which is why we are taking measures to improve the advice network across Scotland.

**Robert Brown:** That seems to be an instance of a small, exceptional situation being used as the basis of a criticism of the general rule that we are trying to establish.

I do not understand why it is being suggested that neither of the bills will give a general discretion. Both talk about looking at all the circumstances and they both list two or three examples—there is no difference between the bills in that regard. Do you accept that when these matters come to court there is an issue about directing the attention of the sheriffs, lawyers and advisers to the central discretionary areas without excluding other matters that may arise in the individual's situation?

**Jackie Baillie:** The issue is whether that is done in the legislation or in the guidance. If it is done in the legislation, the danger is that people are directed to consider only the specific circumstances that have been outlined, whether or not they are couched in a more general opening statement. It is human nature to focus on whether this thing or that thing has been done. If we require people to consider all the circumstances—not only of the debtor but of the lender—a balanced view starts to emerge. In that way, we do not exclude what may be very individual circumstances to the person concerned, which cannot otherwise be accounted for.

Section 2(2) of the Mortgage Rights (Scotland) Bill represents a good approach. It not only takes on board the view of the Council of Mortgage Lenders but, because the full circumstances of the debtor are considered, gives the bill a wider scope. You are right that this is an issue about how we direct the courts. Our view is that that should not be done through the legislation—which would be exclusive—but through the training, the awareness raising and the guidance.

**Robert Brown:** With respect, my point is that in both bills, especially in section 2(2) of the Mortgage Rights (Scotland) Bill, there is a generalised discretion. However, there is also a list of specific matters. Section 2(2)(b) refers to

“the applicant's ability to fulfil within a reasonable period the obligations under the standard security”.

That is a very specific obligation. In fact, because the bill refers to fulfilling the obligations, it might exclude a situation where a separated spouse or partner with children in the house was being allowed to pay the interest on the mortgage.

The point is that a list has been put forward. As a simple person in this regard, I do not understand

where you see the distinction between the general and the specific circumstances. Is it not the case that both bills have a general statement and that both contain specific details of the specific matters that have to be considered?

**Jackie Baillie:** To an extent, you have a point. However, being a simple person as well, I preferred the phrasing in Cathie Craigie's bill because I felt that it was more all-encompassing. The provision on advice in your bill caused us some difficulties, although, to be fair, it was part of the section dealing with the sheriff's discretion.

**Robert Brown:** Will you accept that what we are really arguing about is not so much the general statement in both bills, but precisely what goes in the “particular regard to” bit?

**The Convener:** Minister, if you do not mind, I will let Cathie Craigie in to clarify the point. I will let you respond.

**Cathie Craigie:** Robert, I accept that the general principles are included, but, with respect to you as a lawyer and to the rest of the legal profession, the difference is between a lawyer considering the distinction and a layperson considering it. In drawing up the bill, I resisted the argument that you are suggesting.

**The Convener:** We had been very good until we got to this.

**Jackie Baillie:** I confess that I am not a lawyer but a layperson in such matters. We had particular concern about one of the conditions, which centred on the provision of advice. Placing such a requirement in the bill does not mean that it reflects the reality of the advice on the ground. We are not far apart on this, which is why our view was that there is considerable merit in the Mortgage Rights (Scotland) Bill—I am sure that you would agree with that, Robert. We recognised that the scope of the Family Homes and Homelessness (Scotland) Bill was much wider and covered issues of tenancy and homelessness. Our view, therefore, was that we could consider the detail of the housing bill alongside it; decisions are deferred, therefore.

**Robert Brown:** I want to take up two other points. One relates to what I describe as the cross-cutting aspect of homelessness, which we all accept. One of the purposes of the Family Homes and Homelessness (Scotland) Bill was to apply a similar and, if possible, identical code of guidance to the courts in eviction and repossession cases. By splitting those things and dealing with one in one bill and one in another, that opportunity will be lost. Does the Executive accept that it is valid to approach the problem of evictions and repossessions from the point of view of the social objective? Will you take on board the concerns that I express, no doubt inadequately, in

my bill?

**Jackie Baillie:** I accept the principle that the process by which we deal with evictions and repossessions should be driven forward by the underlying social issues. We are happy to consider that in the context of the housing bill.

**Robert Brown:** I would also like to raise with you the issue of a housing court, as opposed to a housing tribunal. That was the subject of consultation in the first housing bill paper that was issued but it does not appear in the second one. It was accepted that there was a need to make changes in the efficiency, speed and sensitivity with which the courts deal with issues of this sort. It was also accepted that what was being consulted on was the mechanism for doing that—by improving sheriff court procedures or by instituting a separate tribunal procedure. Can you give us guidance on where the Executive now stands on that issue?

**Jackie Baillie:** I can. We consulted on the issue of housing tribunals in the context of our consultation document "Housing and Anti-Social Behaviour: The Way Ahead". We considered the idea in the terms that Robert Brown has outlined, but at this stage—and we are still considering the responses to the consultation—there is not overwhelming support for it. Indeed, we are underwhelmed by the amount of interest.

**Robert Brown:** In what?

**Jackie Baillie:** In housing tribunals and housing courts. Richard Grant can elaborate.

**Richard Grant:** To get chapter and verse on the provisions in the Family Homes and Homelessness (Scotland) Bill that relate to court procedure, you would need to take evidence from officials in the justice department. However, we have spoken to them about the three specific provisions in the bill.

One relates to summary procedure. The justice department advises us that summary procedures are available for most of the cases that you envisage and does not feel that there is a need to go further.

The second relates to lay representation. It is the policy of the justice department to move towards comprehensive community legal support rather than to extend lay representation. That is why it is supporting the Edinburgh service to which we referred earlier.

The third set of provisions relates to interim accommodation orders. The interim accommodation order provisions that are set out in Robert Brown's bill kick in only once there is an appeal to the sheriff. In other circumstances, the person is still in the house, so there is no need for interim accommodation.

That was the justice department's initial reaction to those provisions. I am not sure whether Robert Brown is suggesting that his proposals amount to a housing court that differs in some way from a housing tribunal, or whether there is another proposition for a housing court.

**Robert Brown:** That is an important issue. The committee has heard a considerable amount of evidence about the need for speed in cases of this sort. By that, people mean that there should not be long-defended proofs on who was responsible for the anti-social behaviour and how much the rent or mortgage arrears are. Instead we should focus on whether there are rent or mortgage arrears and, if so, find a solution to that problem. I was trying, rightly or wrongly, to identify a proposal for an interim hearing that would dispose of most of these cases and would not proceed to a full-blown proof, with all the expense and panoply that that involves.

Leaving aside my bill for the moment, I had understood that in the consultation paper on anti-social behaviour to which you referred the Executive had committed itself to making changes and improvements in the way in which housing cases are dealt with by the court. Sheriff court training would be part of that overhaul, but it would also extend to procedure, speed, efficiency and resources.

**Jackie Baillie:** We indicated to you only the general feel that we have for what is coming through in the consultation. We committed ourselves to the consultation on the basis that we wanted to get the views of practitioners on what would help to improve access to anti-social behaviour orders and do some of the things that you have outlined. We will review the positive and negative suggestions that we receive with justice officials, who have lead responsibility in this area. I cannot say precisely in what direction we will progress issues.

12:00

**The Convener:** That is the end of our questions, but I would like to ask when the housing bill will be introduced.

**Jackie Baillie:** Very soon at a committee near you.

We have committed ourselves to introducing the housing bill this year. That was announced by the First Minister and confirmed by the Minister for Communities. The committee will be the first to hear when it is introduced.

**The Convener:** So "soon" means?

**Jackie Baillie:** Soon.

**The Convener:** We are expecting the bill this year.

**Jackie Baillie:** Yes.

**The Convener:** I thank you for your close interaction with us, minister, which has been extremely helpful. No doubt we will meet again. Forgive my rudeness, but I will plough on with committee business.

## **Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000**

**The Convener:** Members will have received documents on the Civic Government (Scotland) Act 1982 (Licensing of Houses in Multiple Occupation) Order 2000. The committee recommended in May that the order be approved. As members can see, the Abbeyfield Society for Scotland Ltd has expressed concern about the implications of the order for social housing providers. You will also see that the clerks recommend that the committee request further information from the Scottish Executive, Scottish Homes and local authorities on the implications of the regulatory regime for which the legislation provides.

**Mike Watson:** We should support the recommendations, which are a measured and appropriate response to Ian Bruce's letter on behalf of the Abbeyfield Society for Scotland. The fact that this order was approved illustrates the shortcomings in the statutory instrument process. What we were shown in May looked very reasonable and we nodded it through. Issues are thrown up by the fact that often we are given short notice and, as other committees have pointed out, sometimes we receive inadequate information to support our decisions on statutory instruments. I welcome the fact that we have caught this order, but the committee should be aware that there are broader issues.

**The Convener:** We will pursue those issues.

**Karen Whitefield:** The Abbeyfield Society's concerns are legitimate and understandable. The Abbeyfield house in my constituency contacted me about this. I understand that when housing legislation impacted on Abbeyfield in the past, an additional circular was usually issued by the Scottish Office and then the Scottish Executive exempting Abbeyfield, or taking into account its particular circumstances. I wrote to Wendy Alexander for clarification on this at the end of last week. The clerk is right to recommend that we write to the Scottish Executive for further information because it is likely to have considered the unique benefits of Abbeyfield when it introduced this statutory instrument.

**Robert Brown:** I support what Mike Watson said about the deficiencies of the procedures. Like him, I took a certain interest in this instrument when it was approved and held a number of meetings about it. We received some background information, including the suggestion that the charge for licences would be £100 or £200, which seemed modest and would cover the costs

involved.

I have now been told that Glasgow City Council charges something like £1,700 per flat for licences. A landlord told me that, so I have written to check the details. I suppose that the council judges that it might have to take cases to court and may incur all sorts of other costs. If the charges are as high as I have been told they are, we are entering into the realm of serious deterrents to people letting houses, which is an important general issue. My information will have to be checked, but I think that other issues are emerging in the background.

The committee should raise the procedural issue that certain statutory instruments should be examined in more detail and that there should be more opportunity for people to give evidence on them.

**Bill Aitken:** This has not been one of our happier efforts, frankly. I could see why the order was being introduced. It came before Parliament against a background of certain events involving completely unsatisfactory bed-sit accommodation which, in at least one instance in Glasgow, was connected to a tragic event. That led members of the committee to believe that the order was necessary. The problem is that the issue was not explored in sufficient depth. Subsequently, it has come out that some of the measures that are proposed are draconian, to say the least. They are certainly over the top in a number of respects. The costs that Robert Brown mentioned are the same as were indicated to me in Glasgow and I think that the costs in Edinburgh are about the same.

The committee may recall that, when I asked the Scottish Council for Single Homeless about the matter a few weeks ago, it said that there was no particular problem with regard to loss of accommodation. However, it is clear to me that if nothing is done, we will lose the sort of housing tenure that we are talking about. That could have serious consequences, particularly in areas with universities.

**Mr McAllion:** How are the statutory instruments notified to the public before they come to this committee? In the House of Commons, they are published about 90 days before they will be considered. Are they available on the internet for interested parties? Does the Parliament have information on its website about when this committee will consider them? Does it invite people to contact the committee before we consider the statutory instruments so that we can be informed of objections to them?

**Lee Bridges:** We have approximately 40 days after a statutory instrument has been given to us. At the moment, it is hit or miss whether we are informed that one is on its way. We usually find

out, but only through informal channels. I will have to check what happens before an instrument becomes parliamentary—obviously, it is nothing to do with us until then.

**Mr McAllion:** Are the public informed that an order is coming to this committee?

**Lee Bridges:** I will check.

**The Convener:** We have to deal with the specific issue. Everybody wants to follow the recommendations from the clerk, that is clear. When we have done that, however, we should take some time to consider how we should deal with statutory instruments. The issue has been raised in the conveners liaison group and at the Parliamentary Bureau. It would be useful to work out best practice and raise concerns, as we are certainly going to get more statutory instruments to deal with.

**Robert Brown:** Would it be useful to ask the Executive about the cost element, in relation to what was said in the financial memorandum?

**The Convener:** That has already been agreed.

**Lee Bridges:** If anyone has specific examples that we can use in our correspondence with the Executive, it would be useful if we could have them by next week.

**The Convener:** Do I take it that the clerk's recommendations are agreeable to the committee?

**Members indicated agreement.**

**The Convener:** We now move into private session.

12:08

*Meeting continued in private until 12:33.*

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

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

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

The deadline for corrections to this edition is:

**Wednesday 18 October 2000**

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

#### PRICES AND SUBSCRIPTION RATES

##### DAILY EDITIONS

*Single copies: £5*

*Meetings of the Parliament annual subscriptions: £500*

BOUND VOLUMES OF DEBATES are issued periodically during the session.

*Single copies: £70*

Standing orders will be accepted at the Document Supply Centre.

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

*Single copies: £3.75*

*Special issue price: £5*

*Annual subscriptions: £150.00*

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

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

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

**The Stationery Office Bookshops at:**  
123 Kingsway, London WC2B 6PQ  
Tel 020 7242 6393 Fax 020 7242 6394  
68-69 Bull Street, Birmingham B4 6AD  
Tel 0121 236 9696 Fax 0121 236 9699  
33 Wine Street, Bristol BS1 2BQ  
Tel 01179 264306 Fax 01179 294515  
9-21 Princess Street, Manchester M60 8AS  
Tel 0161 834 7201 Fax 0161 833 0634  
16 Arthur Street, Belfast BT1 4GD  
Tel 028 9023 8451 Fax 028 9023 5401  
The Stationery Office Oriol Bookshop,  
18-19 High Street, Cardiff CF1 2BZ  
Tel 029 2039 5548 Fax 029 2038 4347

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

**Telephone orders and inquiries**  
**0870 606 5566**

**Fax orders**  
**0870 606 5588**

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

[sp.info@scottish.parliament.uk](mailto:sp.info@scottish.parliament.uk)

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

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers