SOCIAL JUSTICE COMMITTEE

Thursday 6 June 2002
(*Afternoon*)

Session 1

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SOCIAL JUSTICE COMMITTEE
10th Meeting 2002, Session 1

CONVENER

*Johann Lamont (Glasgow Pollok) (Lab)

DEPUTY CONVENER

*Mr Kenneth Gibson (Glasgow) (SNP)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)
*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
Linda Fabiani (Central Scotland) (SNP)
*Mrs Lyndsay McIntosh (Central Scotland) (Con)
*Karen Whitefield (Airdrie and Shotts) (Lab)

COMMITTEE SUBSTITUTE

Ms Sandra White (Glasgow) (SNP)

*attended

WITNESSES

Trevor Bailey (Dundee City Council)
James Bauld (Legal Services Agency Ltd)
David Dorward (Dundee City Council)
John Flanagan (Scottish Association of Law Centres)
Hugh Love (Society of Messengers-at-Arms and Sheriff Officers)
Councillor George Regan (Dundee City Council)
Angus McIntosh (Scottish Association of Law Centres)
Roderick Macpherson (Society of Messengers-at-Arms and Sheriff Officers)
Felix Mulholland (Legal Services Agency Ltd)

CLERK TO THE COMMITTEE

Jim Johnston

SENIOR ASSISTANT CLERK

Mary Dinsdale

ASSISTANT CLERK

Craig Harper

LOCATION

Committee Room 2

Scottish Parliament

Social Justice Committee

Thursday 6 June 2002

(*Afternoon*)

[THE CONVENER *opened the meeting at 14:01*]

Debt Arrangement and Attachment (Scotland) Bill: Stage 1

The Convener (Johann Lamont): Welcome to this meeting of the Social Justice Committee. I invite Robert Brown to declare an interest.

Robert Brown (Glasgow) (LD): I mention again my membership of the Law Society of Scotland and my consultancy with Ross Harper solicitors in Glasgow.

The Convener: Thank you. Linda Fabiani has sent apologies.

I welcome our witnesses, who will give us a local authority perspective on the Debt Arrangement and Attachment (Scotland) Bill. The Convention of Scottish Local Authorities, Glasgow City Council and South Lanarkshire Council were all invited to the meeting but were unable to attend, so we are grateful to our colleagues from Dundee City Council who are here today. I welcome Councillor George Regan, the convener of the finance committee; David Dorward, the director of finance; and Trevor Bailey, the revenues manager. I thank them for their attendance.

I will start with some general questions before offering committee members the opportunity to come in. If, at the end of the meeting, the witnesses feel that particular points have not been sufficiently clarified, we would be more than happy to receive a further written submission.

Before we consider particular parts of the bill, will the witnesses provide us with a general assessment of how the bill will impact on local authority practices for debt collection? Will there be an impact on the authority's ability to deliver money advice services?

Councillor George Regan (Dundee City Council): If I may, I would like to run through some brief notes. Dundee has high levels of deprivation and we appreciate the opportunity to give our views. Although we realise that the bill demonstrates the Executive's commitment to the provision of a workable alternative to poindings and warrant sales, Dundee City Council has operated the previous system in a humane and considerate manner.

In the six years of its existence, the council has never carried out a warrant sale or poinding for the recovery of personal debt, whether for council tax, poll tax or miscellaneous income. We acknowledge that the proposed enforcement procedure provides more protection for the debtor, but we feel that the council will not need to rely on that additional protection.

The proposed national debt arrangement scheme gives us cause for concern. We have always encouraged debtors who have difficulty in paying to arrive at arrangements with the council, taking due account of their circumstances and their ability to pay. At present, the council has more than 66,000 arrangements in operation for council tax and poll tax debt, and the system has been highly effective in collecting debt in an area of poverty.

Our fear is that a national debt arrangement scheme, although idealistic, will pose practical difficulties. We believe that such a scheme would be even more complicated than the Child Support Agency approach whereby all debt is pooled together. It would be more difficult for the authority to deal specifically with council debt. Under the current arrangements, we know that debtors have numerous creditors. If the debts were dealt with by a single agency, that agency would have difficulty in handling the variations of debt.

I believe that it would be difficult to know what to do with the existing arrangements if a new system with a single agency were to be introduced. The system of arbitration would probably be untenable. As members know, the benefits system is complex and tends to contribute to debt, in as much as people who have changing circumstances and are on benefits do not understand the system fully. It takes us between six months and a year to train someone to deal properly with benefits applications. People often end up in debt because of the complexity of the system and through being misinformed and misdirected. We feel that the proposed new system could be more complex and could lead to more debt.

Members will know that Dundee is in a peculiar situation regarding water charges, as it is in the North of Scotland Water Authority area and has experienced an increase in water charges in excess of 50 per cent over the past three years. Although allowances have been made for people on low incomes, far more debt has been created through people's inability to pay the charges. If all the debts were to be dealt with in one system by a single debt collection agency, that would lead to conflicts in the system that would confuse debtors and exacerbate the collection difficulties that local authorities face.

We are in the process of introducing a new system of support for people who have got themselves into debt. It involves constant reminders—home visits and so on—to encourage people to keep up their payments and not fall by the wayside. We feel that that will add to what is already a good system for dealing with debts in the city.

The Convener: Thanks very much. Does Mr Dorward want to add to that?

David Dorward (Dundee City Council): We were very pleased with the recent announcement of additional funding for money advice services and we are taking the opportunity to review money advice provision throughout the city. We are bringing together several agencies, including the citizens advice bureaux and the council's welfare rights officers. The council also has 12 liaison staff who visit people in their homes to give advice on benefits. As Councillor Regan said, the benefits system is complex and can contribute to debt through people not being aware that they are due benefits. We will certainly take the opportunity presented by the new funding to review the city's whole debt and money advice service. We welcome that innovation.

On debts and enforcement, we are concerned about one particular issue. According to section 4(2), the council cannot take enforcement action on any new or subsequent debts if the debtor

"has debts which are being paid under an approved debt payment programme".

We might be wrong, but our strict interpretation of that subsection is that, if the debtor were part of a programme lasting for three to five years, the council could take no action over current debt until that period ended. The debtor's current debt would then simply build up.

We are concerned about that stipulation, because the current procedure for council tax and poll tax debt—which accounts for 50 per cent of our outstanding debt—is based on individual arrangements with debtors. Such a procedure takes on board both a person's ability to pay and their other debts, which makes it a local and responsive way of managing the council's debts with the local population in Dundee. Our fear is that any national scheme will do away with that local element.

Moreover, the proposed arrangement seems very complicated. For a start, establishing one overall arrangement might mean having to contact many creditors, to whom the agency responsible will have to distribute the debtor's payments. As a director of finance, I am fearful that such a system will not stand up to the amount of debt and the number of creditors that might be involved. It will require a complex and comprehensive information technology system and individuals to operate it, which means that human nature will be involved. I am just not convinced that such a system will not create more of a problem than it is trying to solve.

The Convener: How do you enforce the current arrangements for council tax debts with someone who does not want to engage in the process? I assume that the procedure is entirely voluntary.

Trevor Bailey (Dundee City Council): Yes, it is. Arrangements are usually put in place because people who are trying to get out of a difficult position ask us or the sheriff officers to make an arrangement. If they fall down on that arrangement, we try first of all to take a fairly simple view. We contact them and try to get them back on the scheme. However, if they decide for some reason that they do not want to play ball with us, we have to consider stronger enforcement action.

The Convener: What would that involve?

Trevor Bailey: It might well involve earnings or bank account arrestments. It could even come down to sequestration and bankruptcy.

The Convener: So you feel that the bill's proposal is worse than the position we would be in if we did not offer any alternative.

Trevor Bailey: Our concern is the system's potential complexity. It has already been mentioned that more than 60,000 of our accounts involve some sort of arrangement; that figure would need to be multiplied for the whole of Scotland. If one agency has to handle all those accounts, the administration will just get bogged down and eventually grind to a halt. That would leave us in a worse position.

As usual, the devil will be in the detail. What will happen to our 66,000 on-going arrangements? People are obviously "happy" to make the payments but what will happen if they suddenly start running away to sign up to the new debt arrangement scheme? How long will it take before the new arrangements are set up? All our work will be subsumed into the new arrangement, and we could be worse off.

The Convener: Debtors might think it logical and positive to have a simple system in which they have one arrangement that deals with all their debts. However, you fear that you might not be high enough up the priority list of creditors who have to be paid off.

Trevor Bailey: It is difficult to argue against the ease of living that debtors will get from a single arrangement. We ask the committee to be mindful of the fact that local authorities are in a totally different position from commercial creditors. We cannot withdraw a service. We cannot stop providing credit. Each year, a debt will accrue for

rent, council tax or water and sewerage. Direct deductions from income support, which we are encouraged to make, do not cover water and sewerage liability, even taking into account the reduction scheme. Some people have an ever-increasing debt. You are absolutely right if we are talking about commercial debt, but from the point of view of a local authority, there is a grave danger that our financial position will diminish greatly.

14:15

The Convener: You consider the financial position to be more difficult under this proposal than with nothing—which is the alternative, because warrant sales and poindings will go. You are saying that not to put anything in the place of warrant sales and poindings is better than what is being suggested.

Trevor Bailey: We want the Scottish Executive to provide every means of collecting debt. It is up to each local authority to decide whether to use the diligences that are available. That is our council's view. We think that an administrative quagmire could easily occur under the debt arrangement scheme and so we could end up being worse off.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): From the evidence that you have given, it seems that Dundee City Council is operating a debt arrangement scheme, is it not? You say that you get advice from the CABx and welfare rights officers.

David Dorward: Yes. That follows on from the convener's point. We believe that the local debt arrangement scheme that the council has for its debtors is far more effective than a national debt arrangement scheme would be. The debtor can come into the local office, sit down with an officer and make an arrangement based on their situation. They can change the arrangement. We make the debt arrangement such that it is affordable for the debtor, so we are fairly confident that the arrangement will continue. If the person's circumstances change and the arrangement is no longer affordable, they can easily visit their local office and adjust it. I am not convinced that that would be the case with a national debt arrangement scheme. I feel less comfortable about the council's debts with a national debt arrangement scheme than with the local arrangement schemes that we have for our debts.

The Convener: But the distinction is not really between national and local schemes. Whether the scheme is local or national, the individual will make the arrangement locally with local advice people. Your concern is that the arrangement will not necessarily prioritise debt to the council. Somebody in Edinburgh will not decide everybody's debt arrangement schemes. The arrangements will be delivered locally. The problem for you might be that the arrangements would not prioritise local authority debts.

Councillor Regan: The number of arrangements that we have established indicates that a great number of people who are in debt are prepared to participate in the process. The fact that the arrangement to deal with a personal debt is made face to face and is based on local knowledge is an added advantage. I fear the remoteness of a national scheme not only for its impact on collection of the council's debt. There will be a natural fear among members of the public in dealing with such a remote and large agency. Many complex problems, such as securing benefits, already pressurise people in day-to-day life. I feel that it would be detrimental to debtors as well as to the council if the scheme were to become more distant and it was seen to be necessary to deal with a monolithic agency rather than deal with the problem face to face.

The Convener: I will ask a brief question, before we move on. We have heard that money for front-line money advice is being channelled to local authorities. Do you believe that the moneys that have been made available are sufficient for the task that you are being presented with? How do you see the local authority money advice service working with local agencies in the voluntary sector that have an interest in the matter?

David Dorward: The welfare rights team in Dundee City Council is in partnership with other agencies within the city to assess how we can make best use of that money. We welcome the money, which will make a difference to the provision of money advice in the city. However, I do not believe that the money is sufficient; it could have been more adequately targeted at areas that have a greater demand for money advice.

We are back to the issue of the distribution of funds among local authorities. I cannot recall the method of distribution in detail, but it did not seem to take much cognisance of the levels of poverty and deprivation in local authority areas. The money would have been better targeted and more effective if it had been focused on authorities that have the highest level of deprivation—ergo the highest level of debt. That would have been more useful and could have been done by giving a fixed sum to each authority with an element that was based on levels of poverty and deprivation. That would have been a more targeted approach.

The money was not sufficient and how it would be targeted at authorities was not adequately assessed. However, the money will make a difference. We in Dundee hope that we will have a decentralised welfare rights money advice service. People will not have to go the city centre to

receive the service, but will be able to access it in their local library. We are considering doing that on a peripatetic basis so that the service would be in different areas on different days.

We are preparing a report for the council on how we can most effectively use all available resources. The CABx, which are staffed mainly by volunteers, provide an excellent service that is much wider than a debt advice service. We want to ensure that we get the maximum benefit from our welfare rights officers, so we are looking at the situation holistically to get the best service for debtors from all agencies.

Karen Whitefield (Airdrie and Shotts) (Lab): I intended to concentrate on part 1 of the bill, which is about the arrangements. I think that we have covered most of that, but I want to clarify a particular point. Dundee City Council supports the concept of giving individuals the right to a debt arrangement scheme, but you are concerned about such a scheme being operated nationally. You support the idea of delivering the scheme locally, which is what you already do. Is that the case?

Councillor Regan: Yes. We currently have 66,000 debt arrangements. We obviously actively support allowing arrangements and giving people every support that we can to eliminate their debt. As you said, our main concern is that a single and more remote system would probably switch off the people who would welcome a debt arrangement. Our figures show that people welcome such arrangements. We feel that debt arrangements are best dealt with locally and we have concerns about arrangements being done nationally.

Karen Whitefield: So you would not necessarily have a difficulty with a national scheme that was operated at a local level, which I think is the intention of the bill. I just wanted to clarify that.

I will move on slightly and ask whether you think that aspect of the bill is likely to have an effect on the length and cost of the local authority's debt collection procedures.

Trevor Bailey: Our view is that the scheme would extend the length and cost of collection procedures. The consultation document, "Enforcement of Civil Obligations in Scotland", suggests that the scheme would cost between 9 and 15 per cent. Our 66,000 arrangements cover approximately £13.5 million. Therefore, a figure of 10 per cent would mean that the local authority would lose £1.5 million in income, which would presumably become a burden on the council tax payer. We have a fair idea about costs. I think that some of the arrangement schemes will be extended.

On your first point, priority must be given in debt arrangement schemes to debt to local authorities. Something must be worked out for what happens when people fall behind on debts that have not been included in the debt arrangement scheme. Will local authorities' hands be tied in such situations? Will further action prejudice the debt arrangement scheme? There are many issues to be considered. A creditor can stop giving credit, but local authorities cannot. Our debts will continue to increase. If local authorities are prevented from collecting debts because of the debt arrangement scheme, they will be in big financial difficulties.

Karen Whitefield: That leads nicely to my next question. You flagged up a concern about one aspect of the bill. Do you have concerns about other aspects of the bill, which you think must be considered?

Trevor Bailey: One point that we highlighted is that it seems that disputes will be passed to the sheriff courts to handle. We cannot guess how many disputes there will be, but we wonder whether that is the correct place for them. The sheriff courts might get bogged down. We have concerns about the administration of the appeals procedure.

We are also concerned that when debtors do not own up to having certain creditors, those creditors might find out six months later that they have been left out of the debt arrangement scheme. As the bill is drafted, such creditors have no way into the scheme and cannot take recovery action. Those matters are details, but they are additional fears to the ones that I mentioned earlier.

Mr Kenneth Gibson (Glasgow) (SNP): I have questions on part 2 of the bill, on attachment. The report of the working group on a replacement for poinding and warrant sale, which is entitled "Striking the Balance: a new approach to debt management", recommended that commercial and domestic cases should be treated differently. Do you agree?

Trevor Bailey: The short answer is yes. We welcome the additional protection that will be given to goods in dwelling-houses.

Mr Gibson: So you agree that the method of distinguishing such cases in the bill is correct.

Trevor Bailey: We agree that the sheriff should consider those cases.

Councillor Regan: We said that we had carried out no warrant sales or poindings, but that was true only of personal debt, not of commercial debt. Those two forms of debt are different and should be treated differently.

Mr Gibson: Will you comment on your experience of collecting commercial debts and on how the bill might affect the collection of such debts?

Councillor Regan: I will rely on Trevor Bailey's professional expertise for an answer to that.

Trevor Bailey: It is usual with debt collection for payment to be produced by the threat of an action rather than by the action itself. The perceived wisdom is that one should not threaten to do something unless one can do it. We have begun the process of warrant sales for commercial debt in a relatively small number of cases and we have had to carry out warrant sales in an even smaller number. People realised that we meant business, and that produced the money. For commercial debt, such measures work.

Mr Gibson: Do you welcome, or are you concerned about, other measures in sections 10 to 44, which is part 2 of the bill?

Trevor Bailey: I am not certain what comes under part 2.

Mr Gibson: It is the part on attachment.

Trevor Bailey: The service of a charge is mentioned, although I am not sure whether that is in the bill or in the consultation document. At present, local authorities do not have to serve a charge on debtors before they take diligence. We would be concerned that, with our volume of debtors, such a personal service would have high administrative costs. Other options are on the table and we ask that one of them be put in place.

I do not have any other comments to make about attachment.

Mr Gibson: One of your main concerns about the bill as a whole rather than the part that we are discussing is the adverse financial impact that it may have on local authorities. Given that there may be such an impact, would you expect any shortfall to be made up by the Executive?

Councillor Regan: I would like to answer that, if I may. I hope and expect that the Executive would make up any shortfall.

14:30

Robert Brown: I want to discuss exceptional attachment but, first, I want to make a general comment. The bill was introduced partly because of the need, in the Executive's view, for a new form of diligence to replace the warrant sale procedure against corporeal moveable property in domestic as well as commercial cases. The feeling was that if a sanction did not exist, there would be a loophole through which people would escape. Do the council representatives agree with that view? Would absence of a diligence lead to enforcement problems for you?

Trevor Bailey: In my opening remarks, I think that I said that our council believes that every opportunity to collect money and every diligence should be made available to it and that it should then have the right to decide what approach to take in each individual case.

Robert Brown: I will put my question in a slightly different way. If such a sanction were not available, would the council have problems in recovering council tax, rent and other imposts?

Trevor Bailey: The short answer is yes. There would be more difficulties because if there were no such sanction, the public would realise that it was not there and that there was one less avenue for the council to take if it so wished.

Robert Brown: I will move on to the exceptional attachment order. The intention is that the procedure should be exceptional, but it has been said that it would become the norm in certain situations. Is it necessary to have an exceptional attachment against articles that are kept in dwelling-houses? Do you share worries that the procedure will be used in too many cases?

Trevor Bailey: I could be wrong, but I understood from the bill that every time we wished to proceed with an attachment against something in a dwelling-house, we would have to go through that procedure.

Robert Brown: Yes—against something that is in the house.

Trevor Bailey: The council has said that it welcomes that as an additional protection to the debtor.

Robert Brown: Do you envisage that that procedure will be used by the councils in a significant number of cases or in not many cases, based on what you currently recover under poinding and warrant sales?

Trevor Bailey: Dundee City Council has not used the present warrant system, so one would anticipate very few cases under the new arrangements.

Robert Brown: The alternatives that are available to you in respect of enforceable diligences are arrestments and earnings arrestments in suitable instances. I take it that some use of those diligences is made in Dundee.

Trevor Bailey: Extensive use is made of them. We would argue for furtherance and more information having to come from employers and the Inland Revenue to allow us to use those approaches rather than others. We think that they are the most humane means.

Robert Brown: Are they the most effective diligences?

Trevor Bailey: Yes.

Robert Brown: Do you use bankruptcy proceedings?

Trevor Bailey: Yes. We make extensive use of bankruptcy sequestration.

Robert Brown: Is that procedure effective?

Trevor Bailey: Yes. It tends to produce the money.

Robert Brown: We are also concerned that the more provisions there are for the protection of the debtor and the more complicated they are, the more expensive procedures can become. Do you have similar concerns? Might procedures be lengthened as a result of the bill?

Trevor Bailey: We have said that costs and longer procedures are both concerns. Trying to get all creditors to agree or an agency to get everybody together will undoubtedly extend the length of procedures. Costs will go up. Where will those fall?

Robert Brown: Do you think that that puts any pressure on the council to try to reach the same point in advance of court proceedings? Is that helpful?

Trevor Bailey: Dundee City Council tries to make appropriate arrangements all the time. Many of those arrangements—not the majority, by any means—are prior to court action. The council feels strongly that if a debtor comes to us at any point—from the moment that they receive the bill right up to bankruptcy—with an arrangement that is reasonable in terms of their circumstances and the debt, the council will take that on. The council does not take recovery action unnecessarily.

Mrs Lyndsay McIntosh (Central Scotland) (Con): Before granting exceptional attachment orders, a sheriff would have to be fairly confident that they could achieve something from that. What is the current practice of local authorities in considering whether the use of a poinding and warrant sale is worth while?

Trevor Bailey: Most councils would consider exactly what is set out in the bill: how much is likely to be recovered compared to the costs and the debt. I would say that no council would carry out a poinding and warrant sale unless it was confident that a reasonable amount of both the costs and the debt—from memory it is 10 per cent of the debt and the costs—would be recovered. I can speak only for Dundee, but our officers would not propose a poinding and warrant sale just for the sake of it. There would have to be a reasonable chance of a return of both costs and debts. I think that most councils would consider it like that.

Mrs McIntosh: Would that continue?

Trevor Bailey: Undoubtedly.

The Convener: Those are all our questions. Are there any final points that you would like to clarify?

Councillor Regan: As we have said, we welcome the fact that debt has become an area of concern for the Scottish Executive. We are a city of high deprivation and debt is a feature of the complexity of the benefits system that we operate. We ask you to consider that. We have high water charges and the second highest council tax in Scotland. The impact of high deprivation on the people living in that area is much more significant than it is for someone who stays 50 or 100 miles away. The disparities in the system are detrimental to the population on a geographical basis.

The other problem is the disparity in water charges. Given time, and the fact that we have created a single water authority, those will level themselves out. However, to be fair to the people who are in that situation now, it is something that will be arrived at through time. There will be no sort of backdating. People in areas other than NOSWA's area will continually build up to that level. That means that, every day of every week, the people who are on the highest level now will continue to have to pay for that detriment. The complexity of the benefits system does not help people to keep out of debt. In fact, the complexity is such that it often leads them into it.

David Dorward: We are concerned about the complexity of the national debt arrangement scheme. Councillor Regan referred to the Child Support Agency and the difficulty it has in getting money from one parent to pay to the parent who is looking after the children. The national debt system will be far more complex than that. There will be many creditors attached to one debtor. I realise that, from a debtor's point of view, it is not an attractive proposal. From a creditor's point of view, our worry is that it becomes very complex for the organisation to operate and disburse the money back to the many creditors.

We are fearful that councils will not sit high up in the pecking order or will be equal with other creditors on the list, whereas through our own efforts and local arrangements, we try to ensure that debts are cleared as quickly as possible within the means of individual debtors. The arrangement scheme that we operate—there are 66,000 cases at once—is very expensive and our staff make a lot of effort to maintain those arrangements. I imagine that any national debt arrangement would have a much higher overhead to try and keep those arrangements in place and operating and disburse the money to the many creditors that would be applying to that scheme.

The Convener: With that, I thank you for attending. We are grateful that you were able to attend today. If, when you look at the report, you

feel that there is anything we have missed out and you want to draw it to our attention, we will be happy to hear from you.

14:39

Meeting suspended.

14:43

On resuming—

The Convener: I welcome some special guests who are with us this afternoon. They are women MPs from the Tanzania National Assembly, who are interested in seeing a bit of our business. I hope that they find our deliberations of some interest.

We move to the second panel, on the legal perspective; the witnesses represent a range of interests within the legal profession. I welcome Angus McIntosh from the Scottish Association of Law Centres; he is the principal solicitor with the Castlemilk Law Centre. John Flanagan is the secretary of Govan Law Centre. James Bauld is a solicitor from Legal Services Agency Ltd in Glasgow, and Felix Mulholland is the treasurer. We also have Hugh Love and Roderick Macpherson who are, I understand, past presidents of the Society of Messengers-at-Arms and Sheriff Officers.

I intend to go straight to questions. At the end of the process, if the witnesses feel that they have not been able to make some of their points, and if there is time, I will give them the opportunity to do so. Failing that, we would welcome written comments. I am keen that we move to the meat of our discussions through the questions that the committee wants to ask.

Does the bill help to strike an appropriate balance between debtor protection and effective debt collection procedures for creditors?

Roderick Macpherson (Society of Messengers-at-Arms and Sheriff Officers): As specialists in enforcement, we are anxious that Scotland should have an exemplary enforcement system that meets all the public's requirements on social justice issues. We look favourably upon the general principles of the bill as a way in which an appropriate balance can be found between the rights of creditors to be paid and of debtors to be protected from undue hardship.

Angus McIntosh (Scottish Association of Law Centres): Our position is that the introduction of a debt arrangement scheme is positive and progressive, and we welcome it.

We agree with the general thrust of the bill, but we have some problems with the details. With regard to the protection of the debtor as against the wishes of the creditor, we are concerned that the so-called exceptional arrestment order might not be exceptional enough and it might not be available to many people.

We are particularly concerned about people on low wages and benefits. Such people are unlikely to have substantial disposable income to pay off their debts. We envisage that many creditors will want to object to offers of perhaps £5 or £10 per week for debts that might be as much as £2,000 or £3,000. If that happens and creditors object to a debt arrangement scheme, we anticipate that, in many cases and as happens at the moment, sheriffs will not agree to refuse the consent of the creditor and will grant an open decree. That will simply allow for the diligence to proceed. That means that the attachment order will often be granted. We anticipate thousands of cases, as opposed to the tiny number that others have anticipated.

For those reasons, we do not believe that debtors are protected enough. It is optimistic to think that attachment orders will be exceptional, and we believe that they will often be the norm.

James Bauld (Legal Services Agency Ltd): Legal Services Agency Ltd is one of the constituent parts of the Scottish Association of Law Centres. We certainly welcome the bill. We think that it is a positive and progressive move, as Angus McIntosh said. The bill needs critical analysis and some intelligent amendment, but we believe that it will genuinely improve the position of debtors in Scotland.

The Convener: You will be aware that the Executive highlighted the importance of money advice in the approach that is introduced by the bill. What do you see as the appropriate role for money advisers, whether voluntary or otherwise, and is the bill likely to achieve that? There are issues around the process that has been identified.

Angus McIntosh: I had the opportunity to read the evidence that Alisdair McIntosh gave on 23 May. The anticipated increase in the number of money advisers was 75 for the country. That number seems low, especially when we consider that 23,000 poindings were carried out in 1999, according to the Scottish Law Commission. If we assume that each of those poindings was for a different debtor, 75 extra money advisers for 23,000 people who are in the worst of situations is nowhere near enough.

In addition, a difficulty arises with the role of the money adviser as envisaged by the bill. It is not clear that the money adviser is specifically for the interests of the debtor. Phrases such as "monitor the compliance" or "report to the Executive" are used. Such phrases are misguided and the bill

should be clear that money advisers should be acting in the debtors' interests.

James Bauld: I support the idea in the bill that the money adviser is the person whom the debtor approaches to set up the debt arrangement scheme. We are perfectly happy with the idea of a national debt arrangement scheme—we do not have a problem with that. We envisage a money adviser as an independent person who acts only on behalf of the debtor. The bill seems to foresee that the money adviser will not only act for the debtor, but will almost be a mediator between debtors and creditors and that there will be a compliance element to the money adviser's role. The bill envisages that the money adviser will have a monitoring function and will report to the Scottish ministers, or to whatever body is set up. We think that there should be a separate person to do that—a compliance officer, for example. The money adviser should be someone who acts only for the debtor and who provides advice only to the debtor. The money adviser should not be someone who acts for both parties.

Roderick Macpherson: Although we welcome the prospect of a national debt arrangement scheme, the technicalities of the money advice system go rather beyond the sphere of our professional expertise. The technical points that we want to raise relate to the fact that the enforcement officer must be certain that someone is known to be part of a debt arrangement scheme or is known to have left such a scheme. Our professional concerns would be met if there were a clear way of publishing such details.

Hugh Love (Society of Messengers-at-Arms and Sheriff Officers): We welcome the fact that the consultation document, "Enforcement of Civil Obligations in Scotland", recommends accreditation for money advisers. The situation concerning multiple debtors, for example, requires a money adviser who is of sufficient calibre to understand all aspects of debt advice and information.

The Convener: Are there any aspects of the bill that might be subject to challenge under the European convention on human rights?

James Bauld: I am perfectly happy to take on that question. The lack of legal aid in the bill would certainly be subject to challenge under ECHR. There are two aspects to that. The bill will deprive people of their possessions, which is automatically a breach of article 1 of protocol 1 of the convention, which allows for the protection of people's personal possessions. It is obviously possible to justify interference with that right.

Article 6 requires that in a dispute involving a person's civil rights and obligations, they are entitled to a fair and independent tribunal. A number of cases, such as Airey v Ireland, suggest that there should be some sort of equality of arms in the determination of such disputes. I think that the bill's lack of provision for legal representation would fall foul of article 6. I know that some provision is made—I have read the comments that Alisdair McIntosh made when he gave evidence to the committee. He said that a person should be able to be represented at the hearing on the exceptional attachment order by

"a person of their choice".—[*Official Report, Social Justice Committee*, 23 May 2002; c 2935.]

That person is to be not a lawyer, but a lay representative. Lay representatives are already allowed and can be utilised in a number of procedures in court, and the LSA's view is that there will not be a massive uptake of that option. In the policy memorandum, there is a suggestion that money advisers want to represent people in court. They can already do that in certain situations and we do not think that that will happen. Where is the evidence that money advisers want to represent people in court?

I do not have a problem with appropriate lay representation in certain areas, but the lack of legal aid and the fact that legal aid will be not allowed for hearings on the exceptional attachment order represent a problem in relation to ECHR.

Roderick Macpherson: The Scottish Law Commission's work on poindings and warrant sales showed that a properly regulated system against a debtor's corporeal moveable property is not in itself in any way contrary to the provisions of ECHR. The Law Commission's work raised the possibility that creditors, who also have rights, might have some claim under ECHR, if they were deprived of a legal mechanism for recovering their debts.

Angus McIntosh: I want to pick up on James Bauld's points about human rights. We do not think that the problems would be too difficult to remedy. Although legal aid will not be available, the Executive accepts that legal advice and assistance should be available. Plenty of advice procedures, where legal aid funds are made available to solicitors for certain court representations, can be slightly extended. This is an obvious example of where such measures could be used.

Karen Whitefield: I want to concentrate on part 1 of the bill and, in particular, the debt arrangement scheme. How will such a scheme impact on current debt collection practices? How will it affect the levels of debt recovery?

Angus McIntosh: We run our own debt recovery scheme in Castlemilk. The scheme is funded with lottery money and we work with the

local credit union and the Castlemilk Economic Development Agency. Under the scheme, a person can have their wages or benefits paid into a client's account. We then give the person advice on money and send off a certain percentage to particular creditors, giving the person the remainder. The scheme is helpful because, when creditors get that money, they tend not to take any further enforcement action. There is therefore a reduction in the amount of diligence.

The advantage of the bill is that it prohibits further diligence while debt arrangement schemes are in place. That is a positive step. However, as I said, the difficulty is that, although that is fine for people with substantial disposable income, if a person does not have sufficient disposable income to make meaningful and significant payments to creditors, they may not be able to get into the debt arrangement scheme in the first place.

John Flanagan (Scottish Association of Law Centres): The Scottish Association of Law Centres is concerned that the exceptional attachment order is not actually exceptional at all. The debt arrangement scheme is aimed at those with earnings or money to pay multiple debts—but what about poor people? As members will know, many people with multiple debts receive benefits or are on very low incomes. Under the bill, any creditor can easily overcome the "exceptional circumstances" or protections that are set out in section 47.

I can justify that statement. If a debtor is on short-term incapacity benefit and the council obtains a summary warrant for payment of £1,200, the debt arrangement scheme will not be accessible, because the debtor has a disposable income of only £3 a week. In addition, we do not know whether certain debts, such as council tax debts, will come under the scheme.

If the council wants its money back, it applies for an exceptional attachment order. The council shows the sheriff that it has written to the debtor several times for payment. The creditor has therefore taken reasonable steps to negotiate and so passes the first test. The debtor has no earnings or bank account, so the creditor passes the second test of attempting to execute an arrestment. The final test is whether the council can show that, in auctioning the debtor's non-essential assets, it can reasonably realise its chargeable expenses plus £50—which SALC believes would come to between £250 and £300. The answer to that question will be yes.

Instead of having 23,000 poindings in Scotland each year, as we do under the present system, we will see thousands of new warrants against people who are living in poverty. That is my concern.

Cathie Craigie: What would be your alternative?

John Flanagan: The limits are low and do not suit people with multiple debts who are on low income. That has to be addressed. The current system does not work.

Angus McIntosh: We want to reduce the number of warrant sales and the number of attachments as much as possible. I think that that is Parliament's intention as well. We are going in the same direction, but we must work out how to do it. We have some problems with the bill as it is just now, but we have some suggestions for it.

Hugh Love: May I make a comment at this stage? The debt arrangement scheme that is proposed in the bill is laudable. I hope that it is workable. Many of the informal schemes that I have seen put in place for debt arrangements break down frequently and at an early point in the scheme. It will be interesting to see what follow-up steps will be taken and what encouragement will be given to people to help them to stick to the scheme wherever possible. It will also be interesting to see the assistance that people will get from Money Advice Scotland and from other support arrangements that may be put in place. The suggestion that a debt arrangement scheme will solve the problem cannot be taken lightly.

15:00

We see the problem daily. That is because multiple debts are forwarded to us, principally from local authorities. If it were simple enough to draw a line and say that a debt arrangement scheme would solve a debtor's present difficulties, we would applaud that arrangement and say "Well done." However, more thought is needed, and procedures and systems require to be put in place. Assistance also needs to be given to people who have got themselves into debt and cannot get out of it.

The local authority witnesses spoke about people incurring other debts. We all experience that problem, but how do we stop it happening? Do we take people out of the system, or do we draw a line to prevent people from incurring further debt? Those questions have not yet been answered. No doubt the answers will come out in the debates that are to take place. I for one would be interested to see how we, as a nation, deal with the problem.

Angus McIntosh: I agree.

James Bauld: The vast majority of my work in my law centre is with people who have housing problems, the majority of which are rent arrears. That said, an increasing number of people are coming to see me with mortgage arrears—thanks

to the passing of Cathie Craigie's bill. [*Laughter.*] I am sorry, I should have said that the people who are coming to see me now with mortgage arrears have a defence, thanks to the passing of Cathie Craigie's bill.

The Convener: Which we welcome.

James Bauld: I listened with interest to the comments that were made by the witnesses from Dundee City Council, who said that most councils will come to a voluntary arrangement with people with rent arrears. Councils will accept fairly low amounts. My experience in Glasgow is that the Glasgow City Council will accept, without any great problem, £2, £3 or £4 per week towards a rent arrears debt that is in four figures. The difficulty with such arrangements is that most people in those situations have other debts. In Glasgow, people have the Provident debt, catalogue debt, shop card debt and so forth. Eventually, payments of £3 or £4 to rent arrears disappear. That is because the guy from the Provident comes and chaps on the door, says that he wants his tenner and a tenner goes to him. It is also for reasons such as people's kids needing new shoes.

I welcome the idea of having a national debt arrangement scheme, whereby one payment is made to a central point to be distributed throughout the whole debt. The comments from the Dundee City Council witnesses seemed to be based on the fact that they are getting their money at the moment but, if the scheme is introduced, they will drop down the list and not get it. However, that is the reality of life. The idea behind the bill is to protect people who are in debt not to give one creditor enforcement rights above other creditors. That is why the bill and the idea of a debt arrangement scheme are welcome.

Karen Whitefield: I agree. The only way that we will get people out of poverty and debt is by allowing them to work through their problems and by giving them the help and support that they need to do that. If we simply ensured that they were able to pay one or two of their debts, while at the same time not addressing their underlying problems, we would not solve the difficulties that people face.

How will the provisions in part 1 affect the length and cost of debt collection procedures?

Angus McIntosh: If nothing is in place at the moment, and that situation is replaced by a system in which a payment programme is set up over a period of time, that means that a new procedure will be put in place to establish the length of the debt collection period. That system will enable people to pay off debts over a period, which is good.

We need to consider the cost of the procedure. There are the costs of solictors' fees in raising actions and the costs of sheriff officers in exercising due diligence. We need to try to work out whether the new procedure will reduce or increase the costs that are involved. The Scottish Law Commission, in its paper on poindings and warrant sales, gave the cost of a full procedure as £250. If the procedure is similar and if more attachment sales take place, the costs will go up. If there are less, they will go down. We have to work out how we can ensure that there are less.

Felix Mulholland (Legal Services Agency Ltd): On the question of saving costs, it is clear to me that the debt arrangement scheme is good, provided that people work with it. In reality, however, people who get into debt bury their heads in the sand. They do not do anything until, suddenly, they have to appear in court, some sort of diligence is taken against them and the sheriff grants a decree. The sheriff can grant time to pay, but that will apply to only one debt. Someone who is in such a position will have multiple debts. They will not be able to go on the debt arrangement scheme. It is likely that the next creditor down the line will then raise an action, as will the next one. The actual cost of court will rise, and the cost to the debtor will keep increasing all the time.

Early in the bill, it seems that the sheriff hearing the initial case, which would deal with only one debt, would not have the ability or right to consider a debt arrangement scheme, which seems to be aimed at people with multiple debt. At that stage, the sheriff should have the opportunity to ask a few pertinent questions and direct the person towards the debt arrangement scheme if that seems to be appropriate. Doing things any other way will keep costing the court, and the debtor who is facing all the charges, money.

James Bauld: I want to pick up on the point about people having an ostrich mentality. I frequently hear from people only once they have had a visit from my colleagues at the end of the table—the messengers-at-arms and sheriff officers—or when they have received an eviction order. I do not know how the idea of people being given a debt advice and information package, which is provided for under the bill, will work. Will people read it? How will they deal with it? The ultimate sanction needs to be applied before a lot of people even think to pick up the phone or go somewhere to get advice.

A number of people whom I see have simply ignored debts and stuck the letters behind the clock on the mantelpiece, then waited until they get the summons or notice of eviction from the sheriff officers before they suddenly realise that the situation is serious.

The Convener: If enough was done to raise awareness and persuade people to engage in the

process in order to avoid having to appear in court, would that work? People put letters behind the clock because they fear that they will contain bad news, but the package offers people a potential way out. The scheme is currently voluntary, but, from my reading of it, the package would offer people a way out. If so, would they not be more likely to engage in the process?

James Bauld: I would certainly hope so, but it would require a massive publicity effort to tell people what their rights are. That is something that we are fairly bad at in this country: people do not know what their rights are or what the law is. That has to be addressed, possibly through the provision of extra money for money advisers, but there is a question over whether enough money is being provided for that. Dundee City Council said that the money is welcome but not enough—although you might say that that is what we would expect councils to say. I think that the current funding available is £3 million, which is less than £1 per head of population in Scotland. Is that enough? I do not know.

The Convener: The logic of the other position is that enforcement procedures are made really fierce, and people will be aware that they are really fierce. You are almost saying that the warrant sales mentality worked. That mentality has its downside, but the argument is that, if it is shown that the alternative to settling the debt is really bad, that will concentrate people's minds earlier. The Parliament has clearly taken a different view.

James Bauld: In passing the bill that is now on the statute book to get rid of warrant sales, Parliament has taken a view. Parliament is not bound by that view—it could, in its infinite wisdom, change its mind tomorrow if it wanted to and pass another bill.

The question whether warrant sales worked is a question that I am happy to let the politicians decide. No matter what the system is, a significant proportion of people will simply ignore their situation until it reaches a critical point. With the best will in the world, people would not come and see me when they have received the first letter from the council advising them that they have missed a month's rent. At that point, the problem can be sorted out. People come in when they are facing eviction the following Tuesday. I do not see how that situation can be stopped, although I would love for it to be stopped; that would be ideal.

Karen Whitefield: Surely part of the reason for that is that people fear what they do not know and their perception is often that, having got themselves into a situation as a result of difficulties, they are going to be thrown out. There is no guarantee that advertising and promoting the availability of advice will ensure that everyone takes it up at an early stage. However, we can try. It is not good enough to say that we are not going to do it because people will respond only when they get into the most difficult situations.

James Bauld: I am certainly not saying that the bill should not be passed. I think that it should be passed and that people should be encouraged to seek early advice from CABx, money advisers, law centres, solicitors, sheriff officers, MSPs and so on. However, no matter what legislation we pass, there will be a rump of people who will wear blinkers and pretend that the problem is not happening to them.

Hugh Love: I want to offer my support for what has been said, based on my daily practical experience. People tell us that they have received no information and that they have only just become aware of something happening because the truth is that people do not read things that they are given to read, even if, on the surface, it might appear to explain a situation. I am concerned about the fact that the consultative document talks about a bundle of documents. I fear that a bundle of documents that is sent out to a debtor will end up in the bucket. I mean no disrespect by that; I am saying merely that our practical experience is that people do not read things that they are sent.

As has been explained, the way to ensure that the debtors are made aware of the situation is by having a statutory requirement for everybody who plays a part in the procedure—whether it is us, our colleagues, solicitors, courts and so on—to repeat and repeat and repeat information to those who might want to take the advice. It is laudable that debtors be given an opportunity to seek advice at an early stage, but there must be a simple, straightforward, one-sheet document rather than a bundle of documents that will not be read.

Karen Whitefield: I would not dispute that. Most of those people do not even open the letters before they stick them behind the mantelpiece clock. If we simply send them another piece of information, they will not look at it. We have to find effective and innovative ways of communicating the advantages of this scheme to them.

Are there other aspects of part 1 of the bill about which you have concerns or that you particularly welcome? I note that the submission of the Scottish Association of Law Centres flags up concerns about the role of Scottish ministers in relation to this aspect of the bill.

Angus McIntosh: We think that disputes that arise should be decided judicially. As Mr Love said earlier, such schemes break down fairly quickly. Disputes will arise if one or two payments are missed or if someone goes on to benefit after losing their job and has to ask for a variation in the payments. The only provision for recourse to the

sheriff court appears to be to dispense with creditors' lack of consent to a debt arrangement scheme. However, we think that decisions will be required in many more instances.

The Executive seems to believe that the procedure will be simple and straightforward. However, for the reasons that I just mentioned, I do not think that it will be. If there has to be a decision about whether a debt arrangement programme continues or stops, someone has to sit in the middle between the debtor and the creditor and listen to the arguments on both sides. Someone has to make that decision, whether it is a debt tribunal that is set up by the Scottish Executive or whether it is the sheriff court. The bill is fairly silent on that issue and does not tell us how that will happen.

Our position is that the decision should be left with the sheriff court simply because that is where the responsibility lies already and it is used to dealing with issues of that type. If the Executive decides that it should set up another body that is fine, as long as representation is available, the interests of both parties are respected and there is a chance of a fair hearing to get a resolution.

Mrs McIntosh: I want to rewind to the point that Mr Love made about the bundles of correspondence and the advice package. Would sheriff officers be in a position to explain all that, rather than having people get the bundle of paperwork and stick it behind the clock? Would your job be completely different from the one that you have been portrayed as pursuing previously and might you be going through a makeover and a public relations exercise?

15:15

Hugh Love: How we go about our job is sometimes misunderstood.

Mrs McIntosh: Precisely, but you have the opportunity to correct that.

Hugh Love: In practice, despite what might be said, we make every effort, where possible, to try to give people explanations. It is easier for us to explain than it is for us to not explain. We will try to advise those people who will listen to us. Explaining the guidance will not be a new departure for us, because we are well used to explaining and giving advice.

We welcome the opportunity to play a part in distributing, whether through statutory notices or the service of a charge, something that can be appended or embodied in a schedule. It could be a statutory obligation that we must deliver debt advice to debtors. Where we see debtors face to face, we should give debt advice, where it is within our remit to so do. We would welcome that being incorporated into statute, because we give advice reasonably well at present, despite what might be said about us.

Mrs McIntosh: So we can look forward to having friendly sheriff officers.

Hugh Love: We would like to be portrayed as firm but polite.

Mr Gibson: I am tempted to go straight to Mr Bauld and ask for the intelligent amendments, but I shall ask the witnesses questions on part 2 of the bill. Attachment will be used in relation to the corporeal moveable property of a debtor. Does establishing ownership create difficulties for the enforcement measures that target such property, for example when the debtor denies ownership or a third party claims ownership?

Angus McIntosh: Establishing ownership will not create difficulties as the bill stands, because once an attachment order is granted, sheriff officers can immediately take away the property and sell it seven days later. That seems to me to be the biggest deficiency of the bill and the biggest difficulty, because it makes the system much harsher than it is at present.

"Striking the Balance: a new approach to debt management" is a positive and humane document and it says that we should find the least coercive debt enforcement system. It seems to me that, given the aspect of the bill that I have just mentioned, the system is much more coercive.

Under the Debtors (Scotland) Act 1987 the procedure, which is effectively two-stage, does not seem too bad. After a court order has been granted, a sheriff officer goes in and does a poinding, which is essentially an investigation to see what is there, and gives the debtor a poinding schedule, so that the debtor knows what can be sold. After that there is plenty scope for negotiation. Plenty protection is built into the act; the debtor has two weeks to make representations to the court to exclude an item of furniture for example. A third party who claims that an item that has been poinded does not belong to the debtor has until the order for the warrant sale has been granted, which might be months down the line, to go to court and ask for the item to be returned. Those protections are necessary and while they exist, there is plenty scope for negotiation.

To replace the two-stage procedure, where the poinding or attachment is separate from the articles' being removed, with a one-stage procedure in which the sheriff officers take the stuff away immediately and sell it seven days later is extremely coercive. That is the most important part of the bill to amend.

Roderick Macpherson: At the moment it is part of the officer's duty to make inquiries about the

ownership of the goods that he finds at the address. It is envisaged in the bill that that will remain part of the officer's official duty.

Naturally, we take cognisance of the point that has been raised, that proofs of third-party ownership and the like are not necessarily produced at the time that a poinding is carried out—that information is produced later. Parliament will therefore need to be mindful of what time factor is necessary to give debtors an opportunity to produce whatever documentary proof they may be able to unearth to substantiate claims relating to the ownership of the items. Our understanding is that the attachment process would be carried out, but that the goods would be left at the address and not removed until a notice of removal had been sent.

Nonetheless, we have misgivings about the provisions for the exceptional attachment orders, which seem to envisage the officer calling at the address and—as has been described—removing the items there and then without the valuation procedure that is currently gone through during a poinding and which is envisaged to be a feature of attachment. We therefore reiterate our concerns about debtors being given sufficient time to find documentation that relates to the ownership of assets.

Hugh Love: At present, the debtor also has the opportunity to redeem the goods. Although there is a provision to redeem in the draft bill, that would place the officer in an invidious position as to what value he would place on the goods that are redeemed. That part of the procedure needs to be re-examined. Our solicitor colleagues have made the point well and, in our statement to you, we have highlighted something with which we do not feel comfortable at the outset.

Mr Gibson: I notice that the statement to the committee from the Society of Messengers-at-Arms and Sheriff Officers states:

"We consider that the drafting of Section 46(2)(a), giving authorisation for the immediate removal of non-essential assets following attachment, would lead to unnecessary confrontation between the officers executing the attachment and the debtor. It would also be unworkable in practice."

Do you want to expand on that?

Hugh Love: In many situations in which an exceptional attachment was granted by the sheriff, the officer and creditor would not know exactly what was likely to be found on the premises, although they would have some idea. Therefore, the arrangement of, for example, transport and locksmiths might be unnecessary and would add unnecessarily to the cost. It could also be unfair to the debtor. For instance, more than one person may live in a debtor's household and they may not know about the situation. An officer who was not valuing would have to make a guesstimate of the value of an object and simply remove it from the premises there and then. From our experience, we know that that would make the situation worse between a debtor and an officer.

When we carry out a distraint or poinding of goods, we often have the opportunity to speak to the debtor. They are relieved that the effects are not being removed and that there is another opportunity to do something about it, whether through the redemption of the goods or—hopefully—an arrangement for settlement with the creditor. That opportunity would not be afforded under the proposed procedure, although redemption is. However, I do not know how we would redeem goods the value of which we do not have a clue about or on which we have not put a reserve price.

Mr Gibson: Thank you. Section 43 provides that legal aid is not available for proceedings under parts 2 or 3. The Executive has stated that that is because the procedures are designed to be understandable and accessible and because the bill allows lay representatives to assist debtors. We heard one or two comments about that earlier. Do you agree with the restriction on the availability on legal aid and the reasons that have been given for it? Or do you agree with the view that was expressed earlier, that legal aid should be made available?

James Bauld: I am happy to come back in on that. In his evidence to the committee, Alisdair McIntosh apparently said that the procedures—for the exceptional attachment orders, I presume—are designed to be simple, understandable and accessible. The cynical legal practitioner might say that that would be a world first. However, I am not a cynical legal practitioner.

Mr Gibson: For a second, I thought you were.

James Bauld: There could be some such procedures, obviously. To be blunt, the procedures are designed to be—well, the procedures have not been published yet, so I cannot tell you whether they are simple, understandable and accessible. I have already said that I do not think that the procedures meet the ECHR test. I think that legal aid could be simply done by allowing assistance by way of representation—ABWOR—which has been done.

Members might be aware that there was a challenge to the absence of legal aid for employment tribunals. When those tribunals were first set up they were designed to be simple, accessible, straightforward and less complicated than courts. However, employment tribunals and employment law are probably the most complicated area of law practised in Britain; it is an

absolutely specialist area. No one in their right mind would go into an employment tribunal without properly qualified representation. Certainly, no employer that I know of goes into an employment tribunal without the benefit of a solicitor.

I cannot envisage creditors using lay representatives to obtain an exceptional attachment order. In an equality situation, why should the debtor be left with that onus? I certainly think that section 43 of the bill requires intelligent amendment. That is one of the intelligent amendments that I would like to see.

Mr Gibson: Do other members of the panel want to comment on that?

Roderick Macpherson: As officers of court, we are keen for people to have the best possible advice. It is clear, however, that that there are cost implications and matters of public policy involved in that. That reaffirms points that you have heard all afternoon that in readjusting the balance between creditors and debtors there are clear cost implications that Parliament must consider.

Mr Gibson: Indeed. There is also the issue that what is understandable and accessible to one individual might not be to another. Are there other areas of part 2 of the bill that the panel are concerned about or, indeed, that are particularly welcome?

The Convener: Does anyone want to kick off?

Mr Gibson: Go on. Do not be shy.

Angus McIntosh: We raised a point in our submission about exceptional attachment orders and particularly about section 47.

Mr Gibson: That is in part 3.

Angus McIntosh: I am sorry.

The Convener: We will come on to part 3 in a minute.

Mr Gibson: We are trying to do this on a part-by-part basis for the ease of the Parliament.

James Bauld: There is another minor point. Section 41 sets out how the sums recovered by attachment will be ascribed. Sums recovered will first pay expenses and interest before they touch the deck. I do not know whether that is entirely in the wrong order. My fellow witnesses might disagree, but that might need consideration.

Hugh Love: That follows the present practice, which derives from schedule 5 to the Debtors (Scotland) Act 1987, whose intention was to eliminate the practice whereby prior to 1987—my fellow witnesses will correct me if am wrong—there was a system that fell into disrepute. Fortunately, the sheriff officers were absolved from that one. People were being resued because a decree was exhausted.

The thrust of the 1987 act was to avoid that situation occurring by a decree never becoming exhausted and the payments going first to the expenses involved in the diligence process, then to the court expenses and interest, then to the principal debt itself. The decree can be enforced at any time without the process having to be repeated. That might not be the whole story, but it is certainly my understanding of why we have the current situation. In practice, that probably works well, not for our benefit but for the benefit of the debtor.

The Convener: Are there any other points on part 2?

Roderick Macpherson: The general comment that our society would want to make about part 2 of the bill and the institution of a system of attachment is that that would give effect to the things that the Scottish Law Commission and the parliamentary working group have so clearly established. That is that all legal systems of which they are aware have a provision to make corporeal moveable property available to the lawful claims of creditors, subject to various degrees of debtor protection.

The balance that is to be found in how far the element of debtor protection goes is a proper matter for Parliament, but it is clear that there needs to be a system against a class of property, that is, corporeal moveables. I am glad to say that, as you will be aware, Scotland plays a prominent part, through the Society of Messengers-at-Arms and Sheriff Officers, in the International Association of Sheriff Officers and Judicial Officers. That organisation is representative of 56 countries, all of which have some form of system for the attachment of corporeal moveable property. If part 2 of the bill did not exist, Scotland would be isolated as the only country that did not have provision for that class of property to be attachable to satisfy a creditor's lawful debts. That is the general and most important point that our society can make about part 2 of the bill.

15:30

Robert Brown: For the avoidance of doubt, I would like Angus McIntosh to clarify that when he talked about the lack of a gap between the attachment stage and taking the assets away, he was referring only to exceptional attachment orders, under sections 46 and 47, and not to ordinary orders.

Angus McIntosh: Yes.

Robert Brown: The Society of Messengers-at-Arms and Sheriff Officers referred to the advantages of having a charge for payment in all

cases, including specifically council tax claims. There is some merit in that. Bearing in mind what has been said about the difficulty of getting debtors to do anything about the problem, would there be any merit in enhancing the charge for payment, perhaps by including requirements to give advice at that point, or other measures, beyond what is called for in the bill? I would be interested to know if the sheriff officers in particular think there is any merit in doing something at the charge-for-payment stage.

Roderick Macpherson: We feel particularly strongly about this, because in many ways having the sheriff officer on the doorstep affords an important opportunity in the enforcement process. As we have heard from other experts, the sheriff officer is the personal and official representative of the court. He is there not just to carry out lawful instructions, but to help people through the enforcement process.

The concern that we have brought to your attention is that an attachment could be carried out on a summary warrant without the requirement for prior notice of a charge. The service of a charge is an important step in putting the debtor on notice that enforcement can be carried out, and it gives him timely warning that he needs to put his affairs in order. It affords an important opportunity to establish payment arrangement terms if they can be entered into at that point. It also allows the officer to discover if the debt has been paid in the interim between the instructions being issued and the point at which the officer arrives on the doorstep. Those are three important reasons why a charge is needed.

The fourth reason why a charge is needed is illustrated by the specific situation of proceeding with an attachment on a summary warrant before a charge has been served. It is not always easy in practice to tell whether you are at a commercial premises or a dwelling-house. Reports by the Scottish Law Commission have gone into that in a lot of detail. They have examined the nuances, where certain parts of premises are used for business purposes, but other parts are residential. Clearly, the thrust of the bill is that the use of an attachment order in a dwelling-house should be an exceptional measure. It would be wrong if an exceptional measure—a special remedy of the system—became the daily food of the legal process.

Picture the scene where there is a question over whether there is mixed occupancy at premises, between business and residential. How is an officer to know that such a situation exists on the ground if he has not been to the address before? What other official business would he have to be at that address but to serve a charge?

As for your question whether the officer's visit to the address can be used helpfully and creatively to give a higher level of debtor protection, the answer is yes. The documentation that should be served when the charge is being served should not only inform the debtor that an attachment might be carried out at the address if the debt is not paid within 14 days, but should invite him to say whether he perceives any problem with his rights if an attachment is carried out at that address. What if the upper floor of the premises were being used as a residence? In such a case, it might be argued that the officer might not be entitled to proceed to carry out the attachment because the correct procedure would have been to apply for an exceptional attachment order. As officers, we are anxious not to be wrong-footed and to find ourselves at an address that we thought was a commercial address but is in fact a dwelling-house. Because of the variations in occupancy, we feel that the issue is very real and practical. Britain has one of the largest sections of population that work from home, and addresses on court documents that appear to be—and indeed are—places of business might also be dwellings. That is why it is difficult to establish the division between commercial and private debt.

Robert Brown: When the sheriff officers serve the charge at a house or commercial premises, do they simply stick it through the door or do they usually make contact with the debtor?

Roderick Macpherson: Every effort will be made to speak personally with and give advice to the debtor. That is the absolute objective of any court officer appearing at an address. However, if the debtor is not there, it is permissible by ordinary modes of citation to leave notice of the charge with someone else at the premises or to put it through the letterbox. It is important to remember that one of the officer's functions is to carry out diligent inquiries to ensure that he can give a full report of the situation on the ground to the instructing creditor. Clearly, whether an address is both a place of business and a dwelling should and would be established.

Robert Brown: I follow that. From their slightly different experience, do the other witnesses have any views on the potential for the charge to act as more of a lever point than it does at the moment?

James Bauld: The bill suggests that attachments and pursuance of summary warrants can be carried out without serving a charge. However, charges are important, because they represent the last stage at which people have the chance to bring something back to court through an appeal, a minute for recall or a procedure called reponing.

As Mr Macpherson said earlier, people pretend that they have never received their writ or say, "I didn't get the summons." When sheriff officers

serve a charge, sometimes it is the first time that people actually see what the charge is. As a result, serving the charge is important because it acts as a step before we start proceeding with the final diligence. It warns debtors that sheriff officers are about to take certain steps against them and that it is time for them to take some serious advice, if they have not done so already.

Angus McIntosh: It is also worth while taking this opportunity to modernise the text of the charge itself, because it is drafted in very arcane language and is all done by regulation. Sheriff officers usually serve people a dense paragraph of text, and most people do not have a clue what it means. It would improve matters if it were set out better.

Robert Brown: That is a valid point.

I want to turn to section 47, which some witnesses have said would lead to thousands of people being affected by new attachment or arrestment procedures. I challenge that view slightly because, under section 47(1)(c), the creditor has to satisfy the court that the sum gained from any such procedure would be worth the candle.

However, the practical problem is how one knows whether it would be worth the candle, and I would appreciate some guidance on how we could firm up the provision. For example, in an effort to increase the number of people who respond positively to a charge rather than simply lumbering them with it in their absence, would it be better to introduce an order that requires the debtor to come to court? Could we firm up those arrangements into some formal statement by the creditor about what they thought the debtor had? How can we ensure that the provision realistically reflects the situation on the ground?

Angus McIntosh: I am in favour of that sort of thing. Section 47 as it stands would make it quite easy for a creditor to establish that an exceptional attachment order should be granted. In relation to section 47(1)(a), in most cases creditors send letters to debtors and, as we heard, debtors often stick their heads in the sand, so creditors could get over that fairly easily. Subparagraph (b) would not apply to anyone without a job or substantial property and the threshold in subparagraph (c) is far too low. It would improve matters if there were ways in which debtors could challenge some of those provisions.

It has been suggested that there could be a higher threshold before an application for an attachment order could be made: if someone has a decree for £50 or £100, 10 per cent would be only £5 or £10. It is also a bad idea for an attachment order and removal to be carried out on spec. There should be some indication by the creditor that there are goods that can be attached before the sheriff officers go in. That would put greater onus on the creditor to establish that there are exceptional circumstances.

Robert Brown: Do you share the view of the sheriff officers that a separation between the attachment and the removal would be sensible?

Angus McIntosh: Yes. That is all in the Debtors (Scotland) Act 1987. If those provisions could be re-enacted with the change that the application for an attachment order should be granted before any action, that would be an improvement.

James Bauld: If I understand you correctly, Mr Brown, you are asking how the sheriff knows when he is about to grant the exceptional attachment order that there is reasonable prospect of finding stuff in the house, given that no one has gone to the house first.

Robert Brown: Yes.

James Bauld: There is provision in the bill for the sheriff, before making the attachment order, to order a visit to the debtor by someone to give them money advice or such other order as the sheriff thinks fit. Perhaps the sheriff would order someone to inspect the house and carry out a valuation. However, the idea that that assists the process, speeds it up and makes it simple, accessible and understandable is somewhat worrying.

The prospect of recovering 10 per cent of the debt due could mean a very low sum—even for a decree of £500 that would be only £50. One would have to assume that in the large majority of houses one would find some non-essential items that could be sold for £40 or £50. The sheriff might take the view that there is always a reasonable prospect of finding something that is not on the very long list of essential assets in almost every house in Scotland. The fact that the sheriff does not know that when making the order is a problem.

Robert Brown: Perhaps the sheriff officers can give us guidance relating to their practical experience.

Hugh Love: That is one of the reasons why we have suggested that a charge be served in relation to summary warrant. A charge is served in all other cases. One of the services that the officer provides is to give a report as he sees the situation at the time that the charge is served. Perhaps that can strike the balance—it is for the creditor too. In many cases, the officer can write the report before he arrives at a door, but in other circumstances he can take a helpful overview on what he has seen and heard and report back to the creditor or instructing agent for them to make a considered decision whether to instruct further inquiries before presenting the case to a sheriff.

We can provide a useful part in the process by reporting to the creditor what we see when we visit premises. That is why we have emphasised the need for a charge before any further enforcement of the decree.

Robert Brown: The Society of Messengers-at-Arms and Sheriff Officers offered to come back to us on the technical aspects of the bill. All the experts who have given evidence today have a lot to offer, particularly on some of the practical issues that we have been trying to get a handle on.

Hugh Love: We will raise a number of issues with you. For example, the bill contains provisions on attachment and on goods being sold at auction rooms, but it would not be appropriate to use those provisions on every occasion. Where goods are eventually exposed for sale should be at the discretion of the sheriff. Other provisions also need to be examined and further amplified. The society will submit our views on those matters before the deadline expires.

Cathie Craigie: We all agree that we want the bill to introduce a mechanism by which we can collect and recover debts from those who can pay and assist those who are poor and in difficulty. In cases in which debtors were able but unwilling to repay debts, how effective was the use of poinding and warrant sale? Is attachment likely to be an effective enforcement measure, or will it allow debtors to organise their affairs around it in order to avoid paying?

15:45

Roderick Macpherson: Our advice to the Justice and Home Affairs Committee, when it dealt with the Abolition of Poindings and Warrant Sales Bill, was that a system of enforcement against corporeal moveable property—whatever you may wish to call it—is absolutely necessary. The cases that you highlight, in which people have assets and could pay, but wilfully refuse to pay, present the clearest proof of the truth of the observation that the law must provide a mechanism that covers all categories of property in order to avoid a loophole in the law.

On our first reading of the bill, we welcome the system of attachment and the provisions for exceptional attachment orders because, in our view, the policy that all dwelling-houses should be exempt from enforcement was not right. The point that we want to stress is that different circumstances exist. In some circumstances, one may be dealing with a poor house, in which it is unlikely that there are assets of value beyond the list of exempt items. In another house, the debtor may keep the great part of his wealth, which may be considerable, in moveable property that is in his own hands.

Our case is that such a process could make the court system in Scotland debtor-proof, and we have called attention to the fact that that must be nonsense. In principle, we say that there must be a system of execution against corporeal moveable property. Our view is that the general principles of attachment and exceptional attachment orders hold out the prospect that the bill will be good and that we will be able to make it work. It has already been said that much will depend on the detail—getting the detail right is essential.

Angus McIntosh: There is an indication that the existing system works to an extent. The Scottish Law Commission's figures show that there are 23,000 poindings a year, but only around 300 non-commercial warrant sales, so something must be happening in between. It seems that a lot of people who can pay are paying. In addition, where people are simply too poor to pay, the creditors accept that and give up. The fact that there are only 300 warrant sales is quite a good thing, when one compares that to the amount of enforcement that is taking place.

Cathie Craigie: Does John Flanagan wish to comment?

John Flanagan: No.

Cathie Craigie: Will the witnesses comment on earnings arrestment as compared with poinding and warrant sale as an effective means of collecting debts?

Angus McIntosh: The existing system seems to be quite positive. When I advise clients who have a job, I tend to look at the amounts that could be taken off their wages. I explain the amount that they could expect to pay if an earnings arrestment were granted. Usually, the amount is around 10 or 12 per cent; it may be more than that for people who are on higher earnings. I explain that they could gauge their total offer to creditors on that amount, because that is the most that creditors would get if they arrested the client's earnings. We do not generally take a hard line or say that clients will not pay anything unless an earnings arrestment is granted. Instead, we encourage them to gauge the amount that they would have to pay if an arrestment were granted. That approach is quite helpful.

James Bauld: It was significant that the director of finance of Dundee City Council said that earnings arrestment was the most effective diligence that the council uses. It is clearly something that works. The amount that can be taken is governed by the Debtors (Scotland) Act 1987, under which there is a sliding scale based on people's earnings. Earnings arrestment is clearly effective.

Hugh Love: Since the 1987 act came into operation, creditors have adopted a policy that we

think is responsible. The figures in "Civil Judicial Statistics Scotland 1996-98", which were produced by the Scottish Office, reveal that earnings arrestment was the most significant diligence for recovery by creditors. There were more than 85,000 earnings arrestments in 1998 compared to 23,000 poindings and, for some reason, there were more earnings arrestments in 1997. The strategy that creditors adopted was not necessarily against corporeal movable property, but they took the responsible attitude that if the appropriate information was available, they would use earnings arrestment, bank arrestment or arrestment in execution as a first option.

Poinding has always been the last option. The bill seeks to ensure that it remains the last option, but the ultimate sanction will be there. The local authority witnesses mentioned the recovery process. As long as there is the possible use of the sanction of poinding, recovery will continue and be maintained. If the system is weakened, recovery will most certainly be upset and diluted.

Cathie Craigie: What impact will part 3 of the bill have on courts' work loads and what impact will the costs of collecting debt have on court resources?

James Bauld: That depends on how many orders are sought. If there are as many applications for exceptional attachment orders as there are for poinding and warrant sales, there will be more than 20,000 applications, which is a substantial impact on courts' work load. Sheriff clerks and sheriffs are already busy. The question is whether the courts have the resources to cope with that extra work load. I know from my practice, which is exclusively in the civil field, that delays are already a feature of court processes. There is a lack of court time and a lack of sheriffs to hear cases, which means that cases are adjourned or postponed because of a lack of resources. The extra work load is a matter that must be dealt with. The impact will depend on how exceptional the exceptional attachment order is.

Cathie Craigie: I have a round-robin question for all the witnesses. Are there any other aspects of part 3 that they want to highlight? I know that the Scottish Association of Law Centres raised some issues in its written submission. This is the time for the witnesses to make their case.

James Bauld: I am heartened by the comments of Mr Macpherson and Mr Love that the sheriff officers do not like the idea of taking goods away on the first visit. That idea worries us greatly. Both sides of the fence are unanimous. I hate to use the phrase "both sides of the fence" because I do not regard sheriff officers as enemies. It is heartening to hear that sheriff officers are also worried that they will have to go to homes and start removing goods. That provision must be amended and should not form part of the bill when it is enacted.

Roderick Macpherson: The valuing of goods, which fits in with our discussion, is an important aspect of the Scottish tradition of enforcement. In our discussion on debtor protection, we mentioned that the process of valuation gives a remarkable degree of debtor protection. It is a degree of debtor protection that does not exist in many other jurisdictions, where a principle operates that goods are taken under a court warrant and they are sold, and the amount for which they are sold is the amount that reduces the debt. In Scotland, the tradition has been that the officer or valuator puts a value on the items. It is enshrined in the 1987 act that the debtor will be given the credit for whichever is the higher, the sale price or the appraised value.

The system of valuing goods provides a clean-cut way for debtors to redeem their items by paying the fixed amount that is stated on the sheriff officer's schedule. It also guarantees that if the creditor chooses to put up the item for sale many months after the poinding has been carried out and the value of the item has dropped, the debtor will still be given the valuation in credit to his account. That is a strong element of debtor protection and an important part of the Scottish tradition.

James Bauld: I have a final comment about exceptional attachment orders—it is something that I included in our submission to the committee. We think that the exceptional attachment orders clause should be amended to include a requirement for a sheriff to refuse an exceptional attachment order if certain conditions are met. We are suggesting that if debtors are in receipt of one of three or four specified benefits, particularly income support or income-based jobseekers allowance, which shows that they are among the most disadvantaged and are at the lowest level of income, they should be protected from exceptional attachment orders. There should be an automatic requirement on the sheriff to refuse an exceptional attachment order if it could be shown that the person is in receipt of that level of income.

Cathie Craigie: I want to make a more general point. There have been many reports on the bill in the press, some of which are suggesting that it is just a con, that it is introducing poindings and warrant sales in another form, and that poor people in the community are still going to suffer and be humiliated by the processes contained in the bill. Do any of you have an opinion on that?

Felix Mulholland: Legal Services Agency Ltd would disassociate itself from some things that have been said publicly. We truly believe that the Parliament is making a real effort to humanise the whole process of debt collection. Apart from noting that the devil is in the detail, we strongly support

what the Parliament is trying to do.

Angus McIntosh: If there are only 300 warrant sales, that is quite a low number, but that is probably still 300 too many. The difficulty is in knowing what else to do in place of warrant sales.

As far as I can tell, there are only two things that you can do: you can allow the attachment of people's property or you can do what the Child Support Agency does and have a state-sponsored debt enforcement procedure that uses the Inland Revenue to find out what somebody is earning. The problem with the latter is that you could then fall foul of the Inland Revenue's public interest defence on confidentiality. The Inland Revenue gets information from people and it is in the public interest that people should be forthcoming as to what their income and means are. That information is kept highly confidential. There might be exceptions to that, but the only one that I know relates to the Child Support Agency, which has the power to find out from the Inland Revenue what someone's income is, so that it can get money and give it to the person who is looking after the kids.

Whatever you do, you have a difficult choice. Which method of debt enforcement you use has to be a political decision.

John Flanagan: The bill is a good improvement and we are moving in the right direction. However, I am concerned that the exceptional attachments are still a threat to the very poor. The people whom I come across daily would be at risk if warrant sales were to continue because the limits are low and it is easy to get across the hurdles. However, overall we are moving in the right direction.

The Convener: Do you agree that the key charge against the warrant sales system was that it was used against the poorest to persuade people with the capacity to pay their debt to pay it and that because the proposed system would oblige creditors to negotiate, the poorest would come out of the system?

If a properly resourced money advice system with representation could establish which people had nothing and ought not to be pursued, that would take out the can't-pays. In a sense, that is the reassurance in which we are interested. Will people who cannot pay their debts be separated from people who can pay but will not? You have made general comments on the bill. Does the bill have the capacity to make that distinction?

16:00

James Bauld: I do not know. If that is the intention behind the bill, it would be warmly welcomed and supported by everyone, but the proof of the pudding is in the eating. I do not think that anyone could say that what you describe will happen.

The Convener: The bill rewards the willingness of the creditor and the debtor to negotiate positively.

James Bauld: Debtors and creditors can negotiate at the moment. The difference is that the bill will create a discretionary, semi-compulsory scheme to bring them together. The question is whether that will meet the target of taking out of the equation people who genuinely cannot pay and of allowing enforcement against those who genuinely can pay. If that is the intention behind the bill and that is how the bill works, that will be superb and more than welcome.

Hugh Love: The bill strikes the balance for the creditor and the debtor. As we said in our submission to the Justice and Home Affairs Committee on the Abolition of Poindings and Warrant Sales Bill, a fair proportion of debtors do not pay voluntarily, so the enforcement process that is at the disposal of the creditor through the decree that is granted must give authority, eventually, to use the final sanction. The bill goes a long way towards achieving that.

If creditors use the bill reasonably and responsibly, we might reach the balance that the bill tries to achieve. The sanctions must be available, otherwise the people who do not pay voluntarily will not pay.

Angus McIntosh: I take an optimistic approach. If a debtor has a limited amount of money and a debt arrangement scheme is not suitable because they can afford only £5 or £10 a week towards fairly substantial debts, what does a creditor do? The creditor has two options: giving up and saying, "That money is lost. It's a bad debt that I will write off," or saying, "What else can I do to get my money?" That is the crux of the matter. The creditor must decide whether going ahead is financially worth while. If the risk of losing out in sheriff officers' expenses is worth it for the additional sums that are due from the debt, the creditor will go ahead. Only when the risk is high will a creditor say that sheriff officers' expenses are not worth it and decide not to go ahead. That is when the number of attachment orders and sales will reduce.

I have a further point that relates not to the specifics, but to the wider situation. The easiest way to reduce the number of poindings and warrant sales would be to extend the availability of council tax rebates. Every now and again, we are approached by a fairly substantial number—but not a flood—of people whose houses have been visited by sheriff officers who have served indications that they will poind goods for council tax. If someone is on income support or benefit,

council tax is not due. However, water and sewerage rates must be paid. Usually, a summary warrant is granted for that portion, which the sheriff officers chase up.

To reduce the number of poindings and warrant sales, or attachments or whatever we call them, we have only to increase the rebates and benefits that are available for water and sewerage rates. Of the 23,000 poindings that took place in 1999, 15,000 were for council tax. I do not have the exact figures, but I believe that a substantial proportion of those were for water and sewerage rates, not for council tax itself. If that problem were to be sorted out, the number of poindings would be reduced substantially.

Cathie Craigie: Obviously, the point of the bill is to assist poor people to pay their debts. I would hate the bill to cause difficulty for those who are on low incomes but who are able to take on credit and pay it off. I would hate anything to be introduced that would make it more difficult for those on low incomes to buy a new television, for example, in a high-street shop. Does the bill contain any measures that will make accessing credit more difficult for those on low incomes?

Angus McIntosh: That is difficult to say. If the debt arrangement schemes work, creditors will get more money and there will not be a problem. If creditors find that their bad debts increase, they will simply increase their interest rates and make it harder to get credit.

Having said that, the credit that a lot of those for whom law centres act access is from, for example, Provident Personal Credit and catalogues. Provident Personal Credit tends not to take court action anyway. It has bad debt provision and charges very high interest rates. That will not change much, even if the bill is enacted and not much changes otherwise. Those who use catalogues usually know a member of their family or a friend who is a catalogue agent. Catalogues depend on their agents to do much the same sort of thing as Provident Personal Credit does. The bill might not make much difference for a lot of people on benefit or on a low income.

Roderick Macpherson: The underlying premise of your question is exactly right. There is a strong connection between availability and affordability of credit on one hand and the existence of an effective court system for the recovery of debts on the other. The balance must be found so that creditors' rights and debtors' rights are respected.

The thrust of the Parliament's concerns has been towards those who are poorest, most vulnerable and least able to cope with being buffeted by a court system and finding it difficult to borrow. The convener's analysis is correct: the bill has the makings of being able to find a balance between the two sets of rights and between the availability of credit and an effective court system. However, the finding of that balance will depend on the detail that is put into the bill.

Cathie Craigie: Part 4 of the bill provides for the repeal of the Abolition of Poindings and Warrant Sales Act 2001. When we questioned the solicitors from the Scottish Executive, their line was that it was necessary to repeal the 2001 act and that, if we did not repeal it, it would only clutter up the statute book. Do you have any views on that?

James Bauld: That view is probably correct. If we are not going to bring the 2001 act into force and are going to pass another act to supersede it, we might as well de-clutter the statute book. I am sure that the lawyers who are giving evidence and on the committee agree that the statute book is cluttered enough. Perhaps we could do with getting rid of a few more pieces of statute. If the intention is that the bill should supersede the 2001 act, I see no reason why it should not repeal that act. I saw the comments from the Scottish Executive, which seemed perfectly straightforward and reasonable.

John Flanagan: Will the bill take effect and repeal the 2001 act immediately or will there be a two or three-month gap? It looks like the regulations to set up the new system might not be in place until January or February, two or three months after the act is repealed.

Cathie Craigie: You will need to ask a lawyer.

The Convener: I would think that the 2001 act could not be repealed until the bill was enacted. If the bill was not in place, warrant sales would have been abolished and there would be nothing in their place.

Angus McIntosh: The bill is due to come into force on 30 December 2002, which is the day before the 2001 act is due to come into force.

The Convener: We will not have lawyers arguing on the head of a pin about that. It is probably not the most crucial element of the bill. I was interested to know whether any other act had every been repealed in the same way since the Parliament came into being, but I have not had an answer to that yet.

Robert Brown: I can confirm, as I am qualified in law, that whole shelves full of statutes have been passed, most of which have probably fallen into disuse. I would find it helpful to have an idea of the cost that would be imposed on a particular debt by the different stages of the new process compared with the cost, right through to a warrant sale, under the old process. I do not have a handle on that. I know that those costs are not entirely comparable because of the minimum percentage that an attachment would have to raise, for

example. Perhaps the Society of Messengers-at-Arms and Sheriff Officers or somebody else could provide a comparison. Can any meaningful information about that be given to us? Do you follow my point?

James Bauld: My understanding is that sheriff officers' fees are regulated by acts of sederunt, which are acts passed by the Court of Session under delegated powers. Those acts state that sheriff officers are allowed to charge £X to serve a charge and £X to serve a writ. I presume that the same would be needed for serving an attachment or carrying out an exceptional attachment order. I do not know what the exact figures would be. That is a matter for the legislators.

Robert Brown: Perhaps the question should be different: has the Society of Messengers-at-Arms and Sheriff Officers had any discussions yet about levels of fees for the new procedures, or is it thought that they will be similar to the old procedures?

Hugh Love: We have not yet entered into any discussion with the Lord President's office, with which we currently deal on those matters. However, the society will have to consider it. The bill contains procedures that appear to be cut short. That will mean that the serving of certain notices or other applications may not be necessary, but that depends on what comes out in the rules and regulations.

An act of sederunt covers our fees. We have no idea how the bill might impact on the fees. We have no idea whether they will have to be adjusted or otherwise—we will have to wait and see.

The Convener: I thank the witnesses for attending and answering our questions. I should also have thanked them at the beginning for the written submissions that they provided. We look forward to any further written evidence that they might send to the committee.

Meeting closed at 16:12.

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