

# **SOCIAL JUSTICE COMMITTEE**

Wednesday 12 June 2002  
(*Morning*)

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2002.

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

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

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

---

# CONTENTS

Wednesday 12 June 2002

Col.

ITEMS IN PRIVATE.....	2985
DEBT ARRANGEMENT AND ATTACHMENT (SCOTLAND) BILL: STAGE 1 .....	2986
HOUSES IN MULTIPLE OCCUPATION (LICENSING).....	3028

---

## SOCIAL JUSTICE COMMITTEE

11<sup>th</sup> 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

### THE FOLLOWING ALSO ATTENDED:

Tommy Sheridan (Glasgow) (SSP)

### WITNESSES

Pauline Allan (Money Advice Scotland)

David Ancliffe (Institute of Credit Management)

Martyn Evans (Scottish Consumer Council)

Yvonne Gallacher (Money Advice Scotland)

Neil McLeod (Scottish Sheriff Court Users Group)

Susan McPhee (Citizens Advice Scotland)

Jim Melvin (Citizens Advice Scotland)

Irene Mungall (Scottish Sheriff Court Users Group)

Sarah O'Neill (Scottish Consumer Council)

Stephen Thomson (Institute of Credit Management)

### CLERK TO THE COMMITTEE

Jim Johnston

### SENIOR ASSISTANT CLERK

Mary Dinsdale

### ASSISTANT CLERK

Craig Harper

### LOCATION

Committee Room 1



## Scottish Parliament Social Justice Committee

Wednesday 12 June 2002

(Morning)

[THE DEPUTY CONVENER *opened the meeting at 10:01*]

### Items in Private

**The Deputy Convener (Mr Kenneth Gibson):** Good morning, everyone. Before we start the main agenda item, do committee members agree to take items 4 and 5 in private, given that they both relate to the consideration of draft responses?

**Members** *indicated agreement.*

**Mrs Lyndsay McIntosh (Central Scotland) (Con):** I think that we can indulge you, convener.

**The Deputy Convener:** Thank you, Lyndsay.

Does Robert Brown want to say something before we start?

**Robert Brown (Glasgow) (LD):** I declare an interest, given my membership of the Law Society of Scotland and my consultancy with Ross Harper solicitors.

**The Deputy Convener:** We have apologies from Linda Fabiani, who is unable to attend the meeting for personal reasons, and from the convener, Johann Lamont, who is expected to be here just before 11 o'clock.

## Debt Arrangement and Attachment (Scotland) Bill: Stage 1

**The Deputy Convener:** Today, we are taking further evidence on the Debt Arrangement and Attachment (Scotland) Bill. We have four witnesses on our first panel. I understand that Jim Melvin of Citizens Advice Scotland will arrive later. In the meantime, we will ask questions of Martyn Evans and Sarah O'Neill of the Scottish Consumer Council, and Susan McPhee of Citizens Advice Scotland. We usually ask witnesses to make a statement first, but given the time constraints today and the number of questions that we would like to ask, we will go straight to questions. Without further ado—and as usual—I will kick off from the chair with some general questions.

The Executive has highlighted the importance of money advice in the approach that is introduced by the bill, and has stated that funds for front-line money advice have already been channelled to local authorities, along with clear guidance on how those funds are to be used. What do you see as the appropriate role for money advisers, voluntary or otherwise?

**Susan McPhee (Citizens Advice Scotland):** Money advisers have an important role in the process. When debtors get advice, especially early on, it can make a significant difference. We see the role of money advisers as helping the debtor to resolve their debts. We do not see money advisers having a role in the monitoring of a debt arrangement scheme. It is important that the role of money advisers is kept independent and separate from any monitoring role.

**The Deputy Convener:** Is the level of investment in money advice likely to meet the demand?

**Susan McPhee:** That is a difficult question. Last year, we dealt with about 160,000 on-going and new debt cases, which is just the tip of the iceberg. Whenever we have a debt initiative, such as a debt awareness day or week, and it generates a lot of press, citizens advice bureaux get swamped with debtors who are not our normal client base. There is massive unmanageable debt out there, so it is difficult to say whether the investment would meet the demand.

**Martyn Evans (Scottish Consumer Council):** It is important that we split the process of debt collection into debt collection, independent advice and debt enforcement. One of our concerns is whether the £3 million is going into local authorities' debt collection processes or independent money advice. We would like the £3

million to go into independent advice. Of course, that advice could be offered within a local authority context. It is quite clear from the evidence that independent money advice makes a significant difference to people who are in debt and to the collection rates in the private and public sectors.

We raised in our submission the question whether £3 million will be enough. We do not have the evidence base to be able to say whether that is the case. The £3 million is a good start, however, and we are pleased about it, but we would like there to be regular reviews of whether it is enough.

**Susan McPhee:** The £3 million has not all been channelled into independent advice. We are trying to find out how much is going into the CABx, and we would like to give the committee a report on that situation at a later date.

We understand that the situation is varied and that some bureaux will get money while others will not. Of the ones that will get money, some will get very little. To add to that, about 13 of our bureaux have projects that receive funding from the Coalfields Regeneration Trust, most of which have full-time paid money advisers. The funding for those projects will end at the end of July. If some of the £3 million is not directed towards those projects, we will lose those paid money advisers.

**The Deputy Convener:** I presume that you do not believe that channelling the £3 million through local authorities, as has been proposed, is the best method.

**Susan McPhee:** We would have preferred the money to be ring fenced for independent money advice.

**The Deputy Convener:** Is that also the view of the Scottish Consumer Council?

**Martyn Evans:** We do not have a preference about how the money is channelled. I think that local authorities are an appropriate vehicle. However, we are concerned about the guidance that is given to local authorities and the transparency of the process. We have described the process of debt collection, independent advice and debt enforcement. Our concern is that the money will go into independent money advice and not trickle into debt collection, which needs increased investment as well.

**Robert Brown:** Against the background of where the money goes, I would like to get an idea of the percentage of the total advice that is given by the various advice agencies, such as local authority services, independent money advice and CABx.

**Susan McPhee:** Money advice accounts for about 10 per cent of our overall new debt statistics. Someone in one of the bureaux told me

that each local-authority-paid money adviser would take about 30 cases. Therefore, five such advisers would deal with 150 cases. The CABx have volunteer advisers, so we can take on many more cases than that.

**Jim Melvin (Citizens Advice Scotland):** Full-time paid money advisers who work for local authorities usually concentrate on serious multiple-debt cases, whereas workers in CABx deal with much more immediate crises and probably see a much wider range of clients with debt problems. The cases that are dealt with are not directly comparable.

**Robert Brown:** Does the Scottish Consumer Council have a perspective on that?

**Martyn Evans:** We do not have any evidence to give to you, but mapping exercises have been done about that question and I believe that you will be able to get more detail on that when you speak to Yvonne Gallacher, from Money Advice Scotland.

We would not want to set up any false distinction between various groups of independent money advice workers. There is a range of such workers, which Yvonne Gallacher will be able to tell you more about. We think of them as a group of people who have an independent relationship of trust with their clients. We will return to that issue when we talk about some of the proposals.

**Robert Brown:** I presume that there is a degree of trade-off between the extra costs of the schemes that are put in place and the conflict of interest that you mentioned between the advice mechanism and the monitoring and collection mechanism. Is that conflict of interest, which a number of organisations have identified, a real difficulty with practical consequences or is it a theoretical issue with no consequences on the ground?

**Martyn Evans:** It is difficult to answer that question because, at the moment, the issue is hypothetical. The trust that must exist between an individual client and his or her adviser is, as Robert Brown will know as a solicitor, important to the relationship during the coming and going of negotiations and the difficulties that that involves. Our concern is about not the functions themselves, but the fact that it will be possible for people to undertake reporting functions as well as the advisory function. That is not to say that information should not be passed from the independent adviser to the statutory scheme. We have no problem with that.

From the bill, it seems as if independent money advisers will be responsible not only to their client, but to a third party. That difficulty is not simply theoretical. It might raise practical difficulties, not necessarily for the client, but for independent

advisers who are willing to take on those roles. The question is whether there are independent money advisers who are willing to take on that dual role and whether the dual role is consistent with advisers' reasons for entering the profession.

**Susan McPhee:** There are potential ways around having to contact the client and get them back in if they fail to comply with what has been agreed. The difficulty lies in reporting the failure to comply to the external body. That could well compromise our independence and our role of advising clients and building up trust. It would be difficult for us to tell clients at the beginning that, if they failed to meet the agreement, we would have to tell a third party.

**Robert Brown:** Given the extent to which the debt problems involve council tax, is the role of the local authority as a debt adviser, in whatever format, a problem because of a conflict of interest?

**Susan McPhee:** That is for the authorities to answer. You are correct that, in council tax and rent arrears cases, authorities can both give money advice and be the creditors.

**Martyn Evans:** The evidence is that there need not be a conflict of interest. The long tradition of local authority welfare rights officers shows that they can be effective agents for their clients. Their effectiveness depends on which local authority department they work in and what managerial system is used. The evidence from the past is that welfare rights officers—who are the equivalent of money advisers—can act independently of their employers.

**Robert Brown:** Will you give us some thoughts on the non-use of existing protections and the potential non-use of the new protections by debtors? That is one of the underlying problems in the field. What are the main causes of that non-use and to what extent does the bill tackle them?

**Susan McPhee:** With time-to-pay orders, if a client has multiple debts, having time to pay one debt over a year to a year and a half—which is the length that sheriffs usually apply—will not help. CABx do not often challenge poindings because, at the poinding stage, we try to sort out the problem with the sheriff officers so that the matter does not proceed to a warrant sale. Bureaux usually do that effectively.

**Robert Brown:** Will the bill be of assistance in achieving a lower level of non-use of the protections by debtors?

**Sarah O'Neill (Scottish Consumer Council):** We hope so. As the Scottish Executive research shows, lack of awareness among debtors is a problem. Behind the bill is the plan to have more money advice for debtors at an earlier stage. We hope that that will help to raise awareness. The

consultation paper "Enforcement of Civil Obligations in Scotland" suggests that there should be a civil enforcement commission, the role of which would include raising awareness among debtors of the right to apply for time to pay and ensuring that debtors are given an application form for time to pay when they are served a charge. We hope that those measures will help, but that will depend on how the system is presented to people and whether they understand time to pay.

**Robert Brown:** Concerning council tax, a suggestion for a charge to be served before summary warrant enforcement procedure can go ahead has emerged in a number of proposals. Will that have a part to play in raising awareness, encouraging earlier action and making debtors realise the seriousness of their position?

**Sarah O'Neill:** The protections for debtors should be the same regardless of what type of decree the creditor has against them. We are clear that, in summary warrant cases, debtors should be given the same protections. They should be given the opportunity to apply for time to pay. They should also have a charge served on them. That is important.

A summary warrant arrives through the letterbox. Those who receive one do not necessarily realise what it is or how important it is. If no charge is served on them, the first that they might know about it is that further enforcement action is being taken against them. To serve a charge is important. It also means that that is the last stage at which the debtor has a chance to appeal against the case or ask for a recall of the decree.

10:15

**The Deputy Convener:** I welcome Jim Melvin of Citizens Advice Scotland and Tommy Sheridan MSP to the meeting.

**Mrs McIntosh:** I will move on to part 2 of the bill. Do you agree that commercial and domestic cases should be treated differently? Do you agree with the bill's method of distinguishing such cases, which is based on whether property is kept in a dwelling-house or somewhere else, such as in a hut or a garage?

**Susan McPhee:** Martyn Evans and I were part of the working group on a replacement for poinding and warrant sale, which produced "Striking the Balance: a new approach to debt management" and discussed that question. Most citizens advice bureaux clients are individual debtors. Citizens Advice Scotland had no evidence to support a different system for commercial debtors, so we were happy to have such a system.

**Martyn Evans:** The Scottish Consumer Council supports the distinction and thinks that it is workable.

**Mrs McIntosh:** On the costs of the attachment process for commercial and domestic cases, does the bill achieve a fair split of costs between creditor and debtor?

**Sarah O'Neill:** The Scottish Consumer Council wishes to comment on domestic cases only, because consumer interests are our concern. If the system works as it is intended to, the debtor should not have to pay any costs unless the case reaches attachment. The bill makes it clear that there are no costs for an application for an attachment under part 2 or an exceptional attachment order under part 3. If the system works as intended, debtors should have to pay in very few cases and such debtors will be those who can, but will not, pay.

**Mrs McIntosh:** Section 43 provides that legal aid will not be available for proceedings under part 2 or part 3. The Executive has stated that that is because the procedures are designed to be understandable and accessible—many people have doubts about that already—and because the bill allows for lay representatives to assist debtors. Do you agree with the restriction on the availability of legal aid and the reasons that have been given for it?

**Susan McPhee:** Legal representatives should be in a position to represent clients in such circumstances. They can do so at present in applications for time to pay and challenges to poindings. The issue is whether there are enough advisers to do that.

**Martyn Evans:** The Scottish Consumer Council takes a wider view on legal aid and the availability of other legal advice in Scotland. The community legal services working group is dealing with that at the moment. In principle, there is no reason to argue against legal aid being made available. It is a political decision about the available resources, which has been made for a variety of reasons.

Underlying the matter is the question: will adequate advice be available for people in such circumstances? That depends on whether an effective advice and information network, including legal aid, exists in Scotland. At the moment, no such network exists. The community legal services working group, which has reported already and will report to the Executive again, is seeking ways to improve that situation. Legal aid is not the only way to skin the cat when it comes to the availability of advice and information to individuals.

When we examined the issue, we decided that there was no reason why legal aid should not be made available. However, a cost is involved and there is a range of arguments about why that cost

should be incurred or not incurred. That is a decision for the politicians to make, not for a consumer organisation such as ours.

**Mrs McIntosh:** Apart from that reservation, are you a wee bit concerned about, or do you welcome, any other aspects in particular?

**Martyn Evans:** Are you asking about part 2?

**Mrs McIntosh:** Yes.

**Sarah O'Neill:** Section 10(4) provides that an attachment may be proceeded on the basis of a summary warrant without a charge to pay. We are concerned about that provision, which we mentioned previously. Other than that, part 2 relates to commercial debtors. That is why we concentrated on part 3 in our written evidence.

**Mrs McIntosh:** You are not the first witnesses to raise that point and we should examine it at some point.

**Karen Whitefield (Airdrie and Shotts) (Lab):** We took evidence last week from the advice centres. They raised concerns that exceptional attachment orders may not be as exceptional as is the intention behind the bill. What are the views of the panel on that point?

**Susan McPhee:** In our submission, we set out two scenarios in which our clients who cannot pay could end up, depending on how the debt arrangement scheme works. We included examples that were based on the proposals in the "Enforcement of Civil Obligations in Scotland" paper. However, if the debt arrangement schemes work out in the way that is shown in the examples, they will not help many of our clients. If clients are not being screened out and they cannot pay, their situation will be up to the discretion of the sheriff. Given our experience of time-to-pay orders, people who cannot pay may end up with exceptional attachment orders.

**Karen Whitefield:** If that is the case, how can we amend the bill to prevent that happening? Neither the Executive nor the drafting team intended that that situation would happen. I believe that they intended that those who show a willingness to pay should be assisted to do so.

**Susan McPhee:** The devil is in the detail. It all depends on how the debt arrangement schemes work out. We are worried about the principles of the debt arrangement schemes that are proposed in the consultation paper on the subject. We will respond to the consultation to set out how that could be changed. The difficulty with the bill is that the two provisions run in parallel. Unless the debt arrangement scheme is accessible to most people, they could well find themselves with exceptional attachment orders.

**Martyn Evans:** In principle, the idea of a



national scheme as a debt stopper is excellent. We support the principle of such a scheme, but we have set out our detailed concerns in our submission. We will also respond to the consultation paper. I support what Susan McPhee said about the debt arrangement scheme.

The committee has asked for our views on possible amendments. We want to know how people who are in debt will be protected after that process has been gone through. The protection is up to the discretion of sheriffs, who have a series of discretionary decisions to make about reasonableness and so forth. We are concerned that both hard and anecdotal evidence shows that sheriffs in different jurisdictions act quite differently. We suggest that sheriffs be given greater guidance on their discretion in those areas.

We also suggest that sheriffs should have to make an overriding decision about it being reasonable in all circumstances for them to grant an exceptional attachment order. The decision should be taken with regard to all areas and not only the three areas to which discretionary decisions apply at present. We base that suggestion on the current law in respect of eviction, in which sheriffs have a series of individual decisions to make, at the end of which they have to decide whether, given all the circumstances, it is reasonable to proceed with the eviction.

We expect that the new procedure will enable a significant weeding out of those who currently fall through the net for a variety of reasons including poor debt collection, inadequate money advice and competing claims from creditors. We hope that an effective debt arrangement scheme would pick up on all those areas. We also hope that people who are not picked up and who go to the sheriff court will find that sheriffs will use the significant discretion that the bill allows them to stop anything happening.

We propose greater guidance on the discretion that is available to sheriffs in order for a more consistent approach to be taken across the sheriffdoms of Scotland. We want the guidance to include the extra level of protection so that sheriffs have to take into account all the circumstances before it is reasonable for them to proceed to an exceptional attachment order.

**Karen Whitefield:** You have raised a good point. Before the sheriff can grant the exceptional attachment order, he has to be satisfied that reasonable steps have been taken. What do you consider the definition of reasonable steps in relation to attempts to negotiate such a settlement?

**Susan McPhee:** That question is difficult to

answer. We know from our clients that many of them simply cannot pay. They do not have the money, either because they have debts hanging over their heads or because they do not have the income. It seems very punitive to push them into a process that involves their moveable items. Everyone will have moveable items that could be covered by the bill.

**Jim Melvin:** When preparing for this meeting, I read some things that made me think of Citizens Advice Scotland clients and debt. It will depend on how the bill works out, but I feel that the majority of our clients will not be able to take advantage of the debt payment programmes in their present form. That is very worrying.

Another thing worries me. If we are to rely on the discretion of the courts, we will be putting vulnerable people through a traumatic process. They will find out only at the hearing what is likely to happen to them. It is therefore important that the debt assessment schemes are drawn as widely as possible to include as many of those people as possible. Those schemes will have to take into account people's ability to pay; most of my clients could not, over a reasonable period, repay all their debts. We will also have to consider the interest that is charged on debt. There are many reasons for widening the scope of the schemes as much as possible.

**Susan McPhee:** Even if we have the best will in the world, some people will still not take advice. No one will be representing them and they will still not be able to pay.

**Martyn Evans:** We would be concerned if the decision on what was reasonable affected only the debt enforcement process, and if the sheriff considered only the enforcement mechanisms that the creditor had gone through. At the beginning, we spoke about the three steps of debt collection—debt collection, money advice and debt enforcement. We think it reasonable that the creditor should go through reasonable debt collection mechanisms. Debt collection mechanisms—especially in the public authorities over the past 10 years—have been a great weakness. Not enough effort has been put into individualising the process and making it appropriate to individual clients and their difficulties. A definition of what is reasonable should take into account the steps that are reasonable in collecting debt. Too often, in the past, people have received anonymous letters and have not had the kind of individual support that some of them clearly need.

Our advice on the guidance that should be offered to sheriffs would be that they should consider whether the efforts at debt collection have been reasonable and, if the process has gone beyond that, whether appropriate

enforcement mechanisms have been used and whether money advice has been given. They can order a money advice visit.

**Sarah O'Neill:** The issue of sheriff discretion raises much wider issues, which we have been concerned about for a long time—for example, whether for such cases there should be specialist sheriffs who have had training in benefit and debt management. We have proposed that the debt arrangement scheme should encompass a debt tribunal, presided over by a lay adjudicator—preferably someone with experience in money advice and debt advice. Sheriffs deal with so many different types of case that they cannot be expected to know about everything in detail.

**Karen Whitefield:** We have spoken about people who have got themselves into situations where they genuinely cannot afford to pay off their debts. However, some people run up debts, can afford to pay them off, but choose not to do so. Last week, the Scottish Association of Law Centres suggested to us that poindings and warrant sales can be quite successful in getting people to pay their debts. Do you agree? Is an attachment likely to be an effective enforcement measure to ensure that people who can afford to pay their debts do so?

**Susan McPhee:** Clients who come to CABx are people who cannot afford to pay their debts—that is why they come.

Poindings—especially the threat of poindings—were a very effective way of making people pay. Poindings were used mainly in the collection of council tax, but ordinary creditors normally used the threat of poindings. That threat would elicit payment, but at a cost to the clients, who could not pay other debts. Creditors were able to get special preference by harassing people and forcing them to pay. We fear that exceptional harassment orders—I mean exceptional attachment orders—would have the same effect.

**The Deputy Convener:** That was a Freudian slip.

**Susan McPhee:** We worry that exceptional attachment orders will be used as a threat to force people to pay when they cannot.

10:30

**Martyn Evans:** The report “Striking the Balance” clearly rejected the argument that poindings should be retained because they are an effective spur to payment. It is important that negotiations should be moved to a higher level. As Susan McPhee said, the effectiveness of the threat of a poinding comes at significant cost. Such threats involve harassment of the debtor and intrusion into their lives. Because debtors lack negotiating

power, they often agree to repay their debts at an unrealistic rate, so the cycle of indebtedness continues and becomes worse. The poindings process adds to people's debt.

I am absolutely certain that it is right to eliminate the spur-to-payment element in poindings. The situations that I have described involved a completely inappropriate use of debt enforcement as a chief method of debt collection. We regard the distinction between debt enforcement and debt collection as important. Although we support the bill in principle, it contains no provisions that would prevent the kind of harassment that may occur if someone threatens an action of last resort without the authority of the court. Citizens Advice Scotland has done significant work on that issue. We have suggested legislation on creditor harassment to deal with situations in which someone threatens a debtor with an exceptional attachment order. Such orders are in the gift not of creditors, but of the court. There are many problems with poindings and warrant sales, but the problem with which we were most concerned in our evidence was the use of the threat of poindings by creditors against debtors.

**Karen Whitefield:** Some people have suggested that the measures outlined in the bill are nothing more than poindings and warrant sales under another name. Do you agree or disagree with that suggestion?

**Martyn Evans:** We disagree with it. We set out the steps that should be taken before an exceptional attachment order is granted, as that is an action of last resort. The provisions of the bill cannot be described as poindings and warrant sales under another name, because of the significant protections that the bill contains. Only sheriffs will have the discretion to initiate an action of last resort.

I have identified six additional protections that are contained in the bill. The bill adheres to the principles that money advisers have been advocating for years. They have stressed the importance of intervening early, providing the right advice, equalising negotiating power, having effective court interventions where possible, having debt-stop arrangements and not adding costs to people who cannot pay. It is not necessary to intrude into people's lives. The bill will make a significant difference and it is not reasonable to say that its provisions amount to poindings and warrant sales under another name.

**Susan McPhee:** The bill contains good provisions, but the devil is in the detail. The debt arrangement schemes are absolutely crucial. It will help if the issues that we have raised in our submission are addressed. If they are not and most of our clients cannot access the debt arrangement schemes, it is difficult to see how

those people will be protected. They will get more advice than they have ever had before, which we welcome. However, the important issue is the advice that can be given. Unless the debt arrangement schemes work, the solutions that we will be able to offer clients will be limited.

**Karen Whitefield:** So there is a need to provide advice and support.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** My question relates to part 3 of the bill and exceptional attachment orders. The bill proposes a last-resort diligence scheme against movable property. If the scheme were not included in the bill, would that affect consumers' ability to access credit? I am thinking particularly of people on lower incomes, who may end up getting credit from street corner loan sharks because they cannot get it from high street stores and lenders.

**Martyn Evans:** It is difficult to make that direct connection. Currently, 7 million people in the UK are excluded from credit because of their credit history—there is already significant exclusion from ordinary rates of credit. In principle, if the risk to the lender is higher, there may be a higher cost of credit or more restrictive access to it. A range of people in Scotland and the UK are already excluded from access to reasonably priced credit. They already pay extortionate rates legally. That is because those who are lending the money put in place significant and costly collection mechanisms, such as weekly collections, and lend small amounts of money.

The evidence shows that poindings and warrant sales were not used by that kind of lender. Local authorities were significant users of poindings and warrant sales. The creditors who lend to what they see as high-risk, low-income families in Scotland add the cost of lending and debt collection into their lending rates. I am sorry, but I am giving a rather convoluted answer. I am saying that we cannot easily say that, if the scheme were not included in the bill, the cost of credit would go up. Of course, in principle we could say that—as we do in our evidence—but I would not want to hang much on it, because people are already working round what is a rather complicated issue. Seven million people are already excluded from ordinary forms of credit in the UK. That is an extraordinary number of people.

**Jim Melvin:** I concur with that. From our experience of working locally, we know that most of the commercial operations that lend to people who are on low incomes and in poverty bypass the existing legal framework. The scheme will not make a substantial difference to them. It is important that money advice workers encourage their clients to become involved with credit unions and other kinds of low-cost saving and borrowing. That should be worked into the debt arrangement

settlements.

**Susan McPhee:** We know from our bureaux that doorstep lenders have never had to threaten poindings. The threat is that they will not lend to the person again—that is the most efficient way of making sure that the people pay up. Our clients often pay doorstep lenders above anybody else—they know that they need to have access to that line of credit, as it is the only one that they have.

**Cathie Craigie:** Can you comment on the effectiveness of arrestment or earnings arrestment? Can you compare its effectiveness with that of poindings and warrant sales?

**Susan McPhee:** The experience of our bureaux is that earnings arrestment is the most preferable of all the diligences, because it is a staggered payment. Unfortunately, a lot of our clients are unwaged, so the options for them are bank arrestments or poindings, which are the harshest form of diligence.

**Jim Melvin:** There is evidence that earnings arrestment rates are high and can cause hardship to some of our clients. If earnings arrestments are imposed in isolation, they can cause disorder to clients' other arrangements and can mean that those who are prompt enough to be first in the queue for payments are privileged. There are problems with earnings arrestments.

**Martyn Evans:** I agree that creditors seem to be using earnings arrestment much more than they used to, which is welcome. However, earnings arrestments are another form of debt enforcement and reflect a failure of the debt collection mechanism. That failure often arises in the negotiations between creditor and debtor and is the result of the fact that the two do not have equal power. The demands are too high for the individual debtor to meet, because they have other creditors. The great advantage of the bill is that it recognises multiple debt and proposes a diligence stopper for people in multiple debt. Until now, those people have been hit with demands from many different creditors.

I will answer your question specifically. Earnings arrestments are evidently more effective and creditors use them much more now than they used to, but they can be applied only to people who have earnings.

**Cathie Craigie:** Are the organisations concerned about anything else in part 3 of the bill?

**Susan McPhee:** I have other issues with the bill in general, but not with part 3 in particular.

**The Deputy Convener:** I thank members for their questions. We still have some time, so before I invite committee members back in, I invite Mr Tommy Sheridan to ask questions.

**Tommy Sheridan (Glasgow) (SSP):** Thank you. I will concentrate on the exceptional attachment order. Is it the position of Citizens Advice Scotland that, although other parts of the bill need to be strengthened and clarified, particularly in relation to whether debt arrangement is compulsory for creditors, there is no need for the exceptional attachment order to be included in the bill? Is it your position that the bill would be strengthened if that measure were removed from it?

**Susan McPhee:** We have always opposed the exceptional attachment order and poindings and warrant sales. We opposed the exceptional attachment order in our work on "Striking the Balance" and that is still our position.

**Tommy Sheridan:** Do you base your evidence on a trawl of your bureaux or on the views of a management team? How did you arrive at your position?

**Susan McPhee:** Every month we collect evidence from our bureaux, which feed in examples of cases that highlight particular social policy issues. We collate all that and analyse what we get. In addition, we run focus groups. In this case, we have run debt focus groups, which consist of up to 15 money advisers. We discuss with them various issues, including the bill and the diligence paper, and base our conclusions on those discussions and on the evidence that we receive every month from the bureaux.

**Tommy Sheridan:** Would it be accurate to suggest that Citizens Advice Scotland is the largest agency that deals with debt problems in Scotland?

**Susan McPhee:** Yes, we certainly think that we are.

**Tommy Sheridan:** My next question is for the Scottish Consumer Council. You have heard Citizens Advice Scotland suggest that the exceptional attachment order is not required and that it could undermine some of the stronger parts of the bill. What is your position on that?

**Martyn Evans:** Our organisation was involved in considering the "Striking the Balance" report. We accepted the arguments that there should be a last-resort diligence. We sincerely hope that it is not required, although we accepted the arguments that without it there might be unintended consequences, particularly for public services and debt collection. We would prefer the exceptional attachment order not to be used; the intention of the bill is that it will not be used. We accept the argument in "Striking the Balance" that the bill should include a last-resort diligence.

**Tommy Sheridan:** The evidence is that a substantial number of debtors in Scotland will not

be able to pay off their debts in three to five years. They would be excluded from the debt arrangement scheme.

**Martyn Evans:** We are concerned about how the debt arrangement scheme might work. I agree that the point that you raise might be a weakness in the bill—if it is not addressed, there might be significant problems further down the line, which will mean that the bill has failed in its intention. As we said in the consultation, we would like changes in the detail in the bill that brings people into any form of final action; those people are excluded on the basis that they cannot repay within three to five years. If the bill had that effect, that would be bad.

**Tommy Sheridan:** So it would be reasonable to suggest that the very poorest people might be subject to the orders and that the orders might not be exceptional.

**Martyn Evans:** If people were to end up in the cannot-pay category, the bill would not have achieved its objective. The objective of the bill, as we read it, is to ensure by all the upstream measures that people do not get into the cannot-pay category. If the bill fails in that intention, it will have failed to achieve its objectives.

**Tommy Sheridan:** My last question is on the continuation of summary warrant procedure. That situation has been highlighted by the Scottish Consumer Council in particular. It seems inconsistent to allow sheriffs discretion over whether to allow an exceptional attachment order in individual debtor cases while providing for a summary warrant procedure. Block summary warrants can be issued under that procedure, which means that thousands of presentations can be made without any individual examination. Given that summary warrants take away individual discretion, should the bill include a section on the removal of summary warrants for dealing with debts?

**Susan McPhee:** We would like some changes on summary warrants. We have made evidence reports on problems with council tax collection and those case examples show how the summary warrant procedure has resulted in people being given virtually no warning of bank arrestments for debts that are 10 years old. We would welcome provisions to change that situation.

10:45

**Sarah O'Neill:** As I may already have said, debtors should have exactly the same protection in summary warrant cases as they have in other cases. I do not know whether the bill is the correct place to deal with that, because the issue is much wider. Summary warrants are used not only for council tax, but for other taxes, such as those

charged by central Government. Our view is that the continued existence of summary warrants needs to be reviewed. There are definite human rights implications. For example, why do local authority creditors have the privileged position of being able to apply for summary warrants, which are not available to other creditors?

**Tommy Sheridan:** Where would be the best place in the bill to deal with summary warrants?

**Sarah O'Neill:** I am not sure. Although the issue is wider than the scope of the bill, we raised it because it particularly impacts on the bill. We would like summary warrants to be reviewed urgently. We have pursued the issue for some time because we believe that there are serious human rights concerns. With summary warrants, debtors are not given the same protection and do not have the same chance to argue their case in court. Such warrants also mean that creditors do not need to put in as much work to prove their case.

**Martyn Evans:** I draw the committee's attention to the recommendations on summary warrants in "Striking the Balance", which discusses the impact of the use of summary warrants in poindings and warrant sales. We would like the issue to be pursued. It is not really within our competence to say how and where that should be done, but we raised the issue in our evidence because the matter is serious. I believe that the special privilege is under challenge because of how it has been exercised in the past. How such a privilege should be given or withheld will be a matter for debate.

**The Deputy Convener:** The Executive hopes to introduce regulations on the debt arrangement scheme soon after the bill is enacted, but that will depend on responses to the consultation. The bill as a whole contains provisions that give protection to debtors and creditors. How will that balance of provisions be affected if the debt arrangement scheme is not fully operational when the rest of the bill is brought into force?

**Martyn Evans:** It is absolutely critical that the debt arrangement scheme is in place. The debt arrangement scheme will be the diligence stopper, which will equalise the negotiating power between creditor and debtor. In the past, those who were in debt were pulled in all sorts of directions by multiple creditors. Bringing the creditors together is an important mechanism to stop the processes that flow from diligence. Our written evidence states that it is essential that the debt arrangement scheme is in place; if it is not, the key protection for debtors will not be available.

**Susan McPhee:** We support that. Obviously, however, whether the lack of the scheme makes any difference will depend on the nature of the

final scheme. If the scheme is developed in the way that is suggested in the consultation paper, it will make no difference to our clients. It all depends on whether the issues that we have raised are addressed.

**Robert Brown:** One detail that needs to be clarified is the business of the three to five years within which debt must be repaid. I think that the need to have a prospect of repayment within a reasonable period is mentioned in the consultation, but it is not mentioned in the bill. We need some clarification on that. Do you agree that sorting that out and providing poorer debtors with access to the debt arrangement scheme is a crucial part of the whole operation?

**Susan McPhee:** The important issue is not simply the length of time but whether composition of debts will be allowed and whether interest is frozen. The way in which those things are combined will be what makes the bill effective or ineffective.

We have grave concerns about the need for creditor consent, which the bill also provides for. From our experience and our workable arrangements, we know that there is much implicit as opposed to explicit consent, as people simply do not respond. The fact that one must obtain the majority of explicit creditor consent is a real issue.

**Robert Brown:** So there might be the potential for non-response to mean consent.

**Susan McPhee:** Yes.

**Robert Brown:** How important are the composition of debt—writing off debts on a percentage payment, rather like a sequestration—and what Citizens Advice Scotland mentioned about freezing interest as possible remedies under the debt arrangement scheme?

**Jim Melvin:** Many of my clients would take many years to pay off their debts at a rate that they can afford where there is no foreseeable prospect of their incomes changing. They are among the most vulnerable clients. They include people in their 50s and 60s whose working life has, in effect, come to an end, but who still have a burden of credit debt. As was said, if that issue is not addressed, the whole scheme will not work properly.

**Martyn Evans:** We have said that, if the national statutory debt arrangement scheme does not act as a diligence stopper and has a series of significant loopholes, all that follows in the bill will be flawed. The national statutory debt arrangement scheme must give real protection to people in real circumstances—I mean those who are on low incomes or benefit income, those who have multiple debts and those who have debts in the council sector or the private sector. It must

recognise the inequality of their negotiating power, which has been the failure in the past. Such people have been unable to negotiate effectively with a range of creditors to come to a reasonable arrangement to pay off debts.

A debt may take a long time to be paid off. The view is that it is preferable for a debtor to take a long time to pay off a debt rather than for intrusive action to be taken that increases their indebtedness. The bill stands on the quality of the national debt arrangement scheme. We will give more detailed responses to the consultation paper on that and, I hope, improve the process.

**Robert Brown:** Do you support Citizens Advice Scotland's suggestion about a composition arrangement and a freezing-of-interest arrangement?

**Martyn Evans:** Freezing interest must be an option, but it is difficult to say that there must be a requirement to freeze interest. That depends on the size of the debt and how long it has existed. That issue is not of primary concern to us, although we believe that, without such a power, the debtor and the creditor will not negotiate on equal terms. A third party must be able to say that it is unreasonable to collect the whole debt over a certain period of time and that the debt must be collected over another period of time at a certain rate. There must be discretion on the period of repayment and possibly on freezing interest.

We are concerned about how repayment is structured and the statutory limited period—three to five years—over which debt must be repaid. Our evidence is that people on very low incomes have significant debts. If a debt cannot be repaid, what would happen to the scheme as a diligence stopper? Would the debt be written off—which would be preferable for some people—or not?

**Robert Brown:** From the point of view of the debt collection system, which is the other side of the coin, what effects would the debt arrangement schemes have on the levels of debt collection? For example, would having a composition arrangement with an end in sight improve levels of debt collection?

**Susan McPhee:** That depends on where the end in sight is. Some of our informal arrangements can involve people agreeing to pay off debts for 20 to 25 years, which is like a life sentence for some of them. One wonders whether they can sustain such repayments. It is inevitable that they will need to borrow during that period. If the end in sight is reasonable—we suggested five years in our proposed scheme—we think that debt collection will improve.

**Martyn Evans:** Negotiating under the shadow of a national scheme will mean that debt collection will have to become smarter. That will be a great

improvement. Under the shadow of a third party deciding how the debt will be repaid, there will be more reasonable arrangements and greater efforts in debt collection. We think that that would be a significant spur to better, smarter and more debtor-friendly debt collection schemes.

**The Deputy Convener:** The committee has no further questions, but members of the panel are free to make any final comments before we wind up this part of the meeting.

**Susan McPhee:** The bill contains good provisions and proposals that could work and make a significant difference to debtors. However, the devil is in the detail.

**The Deputy Convener:** I thank all the witnesses for attending and for their excellent answers. I now suspend the meeting for five minutes.

10:54

*Meeting suspended.*

11:02

*On resuming—*

**The Convener (Johann Lamont):** I thank Kenny Gibson for chairing the first part of today's meeting. I trust that there is no truth in the rumour that I have been deposed in my absence and Kenny Gibson is making a bid for total power.

I welcome Senator Christopher Lakeman and Senator Corrie Stein, from Jersey, who are sitting in the public gallery. I hope that they find our deliberations of interest.

I welcome the witnesses on debt management. We are joined by Yvonne Gallacher and Pauline Allan from Money Advice Scotland; David Ancliffe and Stephen Thomson from the Institute of Credit Management; and Neil McLeod and Irene Mungall from the Scottish sheriff court users group. We will move straight to questions, but if the witnesses feel that there are points that they were unable to make during questioning, I will allow them to make them later on.

In its report, "Striking the Balance", the working group on a replacement for poinding and warrant sale highlighted the problems of multiple overindebtedness. Will you comment on the scale of the problem?

**Yvonne Gallacher (Money Advice Scotland):** Everyone in money advice knows that there is a dreadful problem, although we do not know the exact extent of it. Research has been done on a UK basis to highlight the level of overindebtedness, but most of us know that there is a hidden problem. We can count only the people who come for advice. Many people out there have a problem but either have not recognised it or are

too frightened to come forward. I am sorry, but I cannot give a definitive answer to the question. There are statistics on the number of cases that the various advice agencies deal with.

**Stephen Thomson (Institute of Credit Management):** In my experience, an individual who has a debt problem will not have one debt—they will have multiple debts. Debt is usually a symptom rather than a cause.

**Pauline Allan (Money Advice Scotland):** I have statistics from colleagues in Citizens Advice Scotland. Although I am here to represent Money Advice Scotland, I am also a practitioner in a local authority and I can say that my local authority deals with far more than 30 new cases per year, contrary to evidence that was given this morning. I can speak only about my local authority, the figures for which are in front of me. In the year ending March 2002, our local authority, which has four full-time debt advisers, took on 731 new cases—that is 197 new cases per adviser—and we are currently dealing with about 2,500 live cases. That means that each adviser deals with approximately 600 live debt cases. If one adds that to the CAS statistics and those gathered by other members of Money Advice Scotland and other agencies, it is clear that a large number of people are in multiple debt.

**Yvonne Gallacher:** We conducted research in 2000, which we published in our report "Money Advice Services in Scotland—A time to reflect". In the course of our research, we learned that statistics are not kept in the same way across the board. Although some agencies have similar statistics to those highlighted by Pauline Allan, we found that many agencies do not keep statistics or, if they do, they are not comparable with others. We are not comparing apples with pears. Different levels of advice are given in the different agencies. There are generalist advisers who offer general advice, money advisers who work in the context of general advice and some specialist money advisers. The recent announcement of £3 million is to address money advice resources.

**The Convener:** Are you in favour of the general approach set out in the bill for a national statutory debt arrangement scheme?

**Pauline Allan:** Yes, we are in favour of that, but the scheme needs to be tightened up. Other witnesses have said that the three to five-year period will not help some of their clients. I am sure that that is true for us as well as for agencies other than those linked to citizens advice bureaux. About 70 per cent of the clients who come to us for debt advice would not benefit from the scheme as it is currently set out.

**Yvonne Gallacher:** We support the general principle, but the scheme needs tightening up in

particular areas. There were comments earlier about interest and the length of the scheme. I have spoken to colleagues in England, where the scheme has been running for quite some time, and their view is that the scheme works extremely well for those people who can access it, but many people cannot use it because of the limits that have been set—the limit in England is £5,000. The limits will be fundamental to the future success of any debt administration scheme.

We have talked about debt administration schemes and a repayment programme, but what debtors value is the ability to make only one payment. That is crucial. We have seen that in evidence from other organisations. If someone in debt can make one payment—assuming that they are not running negative balances—we find that they can sustain their debts manageably.

Money Advice Scotland has done a lot of work behind the scenes, lobbying for mechanisms to allow payment distribution. Bank charges and post office charges have inhibited people and have even prohibited some payments being made. If the mechanisms are in place, if the amount set under people's debt arrangement is manageable and if the arrangement applies to people's circumstances, the scheme will probably help. However, some aspects of the proposal require to be scrutinised further if it is to work as intended.

**David Ancliffe (Institute of Credit Management):** The Institute of Credit Management fully supports the principles of the bill. Concerns have been raised this morning and in previous evidence that need to be addressed. We have covered those in our written submission.

We need to ensure that people have full access to information at an early stage, that they understand their rights and that they are supported. It is important to secure the agreement and support of creditors and to work in partnership with the money advice sector. Creditors and debtors need complete confidence in the system and in the distribution mechanism. I will return to further concerns on that later on.

Broadly speaking, the institute is very supportive of the principles of the bill.

**Neil McLeod (Scottish Sheriff Court Users Group):** The Scottish sheriff court users group very much welcomes the bill's focus on multiple debt. The underlying fault in the current system is that the vast majority of debtors will have more than one debt, but the system is focused on protections and enforcement for one debt. The current time-to-pay provisions under the Debtors (Scotland) Act 1987 deal with only one debt at a time. That has been a major stumbling block and accounts for the low take-up of time-to-pay applications.

In 1999, the Scottish Office's central research unit published its "Evaluation of the Debtors (Scotland) Act 1987", which I think showed that about 80 per cent of debtors did nothing in response to the summons issued to them.

The introduction of a scheme that focuses on multiple debts will go some way towards overcoming that problem. The fact that the time-to-pay protection focuses on only one debt at a time is a major reason why debtors do not take up that protection. The other reason is—as our colleagues mentioned earlier—that if the problem reaches court, there is wild inconsistency in sheriffs' interpretation. There is much use of discretion in sheriffs' decisions whether to grant time to pay. For most of them, the rule of thumb is that they will grant time to pay if the debt will be paid in one year or two years at the most.

That is a potential problem for the proposed debt arrangement scheme. If short time scales for repayment are introduced, the obstacles that exist in the current system will not be properly overcome. We welcome the proposals for the debt arrangement scheme but, as almost everybody else has said, a heck of a lot of discussion still has to take place about how it would operate. A lot of problems need to be overcome before it can operate successfully and filter out those who cannot afford to pay their debt, to protect them from the proposed attachment orders.

**The Convener:** How will the debt arrangement scheme affect current debt collection practices? How might it affect the management of debt?

**Yvonne Gallacher:** That remains to be seen. Its impact will change as people get used to the system. We should bear in mind the fact that, although the bill will, if passed, become legislation in Scotland, many of the creditors that will use the legislation for enforcement are based in England. It will take them time to get their heads round what the differences are.

I would have thought that the scheme will give rise to an accelerated debt collection procedure. Creditors will be aware that people have different choices and that one payment will be made, which will allow the money to be routed to the various creditors concerned. At the minute, the system contains conjoined arrestment orders, which are used very infrequently.

People's ability to pay is of course fundamental, and the arrestment tables under the 1987 act need to be examined. They do not take account of individual circumstances. That is fundamental to the debt administration scheme and its effectiveness.

**David Ancliffe:** I agree entirely with what Yvonne Gallacher has just said. We believe that the scheme will accelerate and improve the debt

collection process as creditors, not only in Scotland, but in England, get used to the system and begin to use negotiation with debtors and money advisers more than they have in the past. It is good credit management—if I can use those words—for a creditor to negotiate with their debtors and to treat them as customers. The process takes us down that line within a structured debt collection procedure.

11:15

**Mr Kenneth Gibson (Glasgow) (SNP):** Which local authority was Pauline Allan referring to earlier?

**Pauline Allan:** City of Edinburgh Council.

**Mr Gibson:** Thank you.

The Executive is still consulting on significant details of the debt arrangement scheme. Are there any provisions in the bill that cause concern or that are particularly welcome?

**Yvonne Gallacher:** I do not want to rehearse what has been said. The issues about interest and the duration of the debt arrangement scheme need to be reconsidered, as they are fundamental. The bill must ensure that people can have trust in the system. That is essential and takes us back to a point that was made earlier, about the position of money advisers in the system. Where do they sit in it? Will they be separate from the courts system? Will people be able to trust them if they are going to wear two hats? Those issues need to be flagged up and taken into account.

**David Ancliffe:** I agree entirely with that. It is central to the position of creditors that they have total trust in the money advisers in the debt arrangement scheme. It will be quite difficult for those in the money advice sector to maintain their independence from their clients while they try to assist them, through partnership with all the other third parties that are involved. That needs to be worked through more fully.

**Pauline Allan:** I reiterate what someone said this morning about creditors' consent. It has been proven, through working with creditors, that if someone is waiting for a creditor to agree to something, it is unlikely that they will get that agreement. With protected trust deeds, if the creditor does not agree to the proposal, it is understood that they have agreed to it. That should perhaps be considered, instead of seeking creditors' agreement.

Another issue is whether there is interim protection for debtors while they wait for the debt arrangement scheme to be set up. We have no idea how long that will take—it could be two or three weeks or it could be months. In the meantime, what protection is there for the debtor?



The creditor might jump in and take other action while the debtor is waiting. Interim protection for the debtor might be considered.

**Irene Mungall (Scottish Sheriff Court Users Group):** I strongly support that idea. It is necessary for some form of interim protection to be put in place. I believe strongly that it is essential to separate the role of money advisers from that of monitoring the process after it has been agreed. Money advisers must remain independent and be able to offer the best options to their clients. If they got involved in monitoring, the situation would be impossible—especially in the voluntary sector and citizens advice bureaux.

**Mr Gibson:** I acknowledge what Yvonne Gallacher said about not rehearsing arguments, but it is important for us to weigh up the strength of feeling and the arguments of a variety of witnesses when we prepare our report.

I ask the panel to comment on the aspects of the debt arrangement scheme that still have to be finalised, following the consultation exercise. Does the consultation document contain any proposals that cause you concern, or do you welcome them?

**David Ancliffe:** We agree with some of the comments that were made this morning and with the comments that Yvonne Gallacher just made about how we treat interest and the length of the debt. We are concerned about the way in which advice and information are made available, how the funding is produced and whether it is ring fenced, and whether it goes towards a debt arrangement scheme or a debt collection scheme.

**Pauline Allan:** We hope that deductions from earnings would be very much a last resort in the debt arrangement scheme and would not be mandatory. The bill does not suggest that that would be mandatory, but the consultation document suggests that it might be. That might discriminate against people with certain jobs, such as police, bus drivers and people who handle cash. If the debt arrangement scheme was set up with a mandatory earnings arrestment, that could be detrimental to their employment. We are not sure whether we will use the existing Debtors (Scotland) Act 1987 schedule for the arrestment figures, or whether new figures will be set out. That is something else that we would like to be examined.

**Stephen Thomson:** I agree with Pauline Allan. I would like to think that the debt arrangement scheme will try to be as fully inclusive and flexible as possible, because no two debtors' circumstances are exactly the same and we need the flexibility to be able to manage such situations. That is what we do in the commercial world; we take a commercial decision and use whatever is available. We do not always go down the road of

litigation, because it is not often practicable and does not often achieve the desired solution.

**Neil McLeod:** I reiterate the concerns that have been expressed about the role of summary warrants. It is vital that council tax collection under the summary warrant procedure is included in the debt arrangement scheme. Otherwise, I would have real concerns about how it will work, as we know that local authority and other tax debts are a major problem for those in multiple debt. If they were not included, that would certainly hamper how well the system worked.

Everything that has been said about freezing interest is also important, as is the question of exactly how compulsory it will be for creditors to get involved in the system. We are balancing the rights of debtors and of creditors but, if we still had a system whereby one creditor could upset the apple cart by refusing to accept a repayment that was offered, all the problems with the current system would continue. That must be examined carefully.

**David Ancliffe:** The Institute of Credit Management supports the concerns that have been expressed about summary warrants. We made a recommendation through the working group that the summary warrant system should be reconsidered. It is probably true to say that the summary warrant system is why we are here today. It requires serious review if we are to go forward.

**Yvonne Gallacher:** I want to return to a comment that was made in earlier evidence. I believe that if we do not sort the summary warrant problems, we will not have sorted the situation at all. The fundamental issues relate to the lack of representation in summary warrant procedure, the lack of time-to-pay orders and charges for payments. Collectively, those factors amount to something that is quite different for debt enforcement than for ordinary decrees. That must be sorted before we can examine the effectiveness of other things.

The other things that we have in place will help, but if we want a package that will address the issues, summary warrants must underpin the whole thing.

**Cathie Craigie:** Yvonne Gallacher mentioned how important it is to some debtors to have a single payment arrangement and how beneficial that could be. Previous evidence that we have heard backs that up.

My next question is who will be able to make use of the debt payment programmes under the proposed scheme? What debts will the scheme cover? We are perhaps repeating some of the points that have been made, but what specific improvements should be included to make the

debt arrangement scheme more effective?

**Yvonne Gallacher:** As Neil McLeod said in relation to council tax debts and so on, all the debts that people have that need to be satisfied should be included. They should be taken collectively. There is an issue about how to define multiple debts, because someone could owe one creditor several different debts. We have to examine that as well.

All types of debt that come under the aegis of consumer debt should be covered, including council tax. We fully appreciate the difficulties when there is local and central taxation, but at the end of the day, council tax is still a debt for a debtor and still has to be paid along with other debts. The difficulties for debtors are to do with preferred creditors, which was raised in previous evidence.

I return to the point about payment distribution. Perhaps I did not clarify what I was saying. I was talking about things like PayPoint facilities in shops, where people can make payments.

**Cathie Craigie:** If somebody is on a low income and they have debts and they do not have access to a checking account, they have to pay their bills by post with a postal order, which adds to the debt.

**Yvonne Gallacher:** Absolutely, and it means that sometimes the debt does not get paid. If someone has five catalogue debts and it costs £1 to pay each at the post office counter, that is £5 less that gets paid towards their debt. That is a fundamental problem.

**David Ancliffe:** We agree entirely. All debts need to be encompassed in the debt arrangement scheme for it to work and to have the support of creditors.

**Cathie Craigie:** I know that it is early days, that there is a lot to read in the bill, and that there is the consultation exercise to respond to, but have you given any thought to how a debtor might obtain approval for a debt payment programme?

**Neil McLeod:** No.

**Irene Mungall:** No.

**Yvonne Gallacher:** Any approved debt arrangement must go back to the client's ability to pay. That is fundamental. A point was made earlier about the longevity of programmes. People need to see a way out. Debt arrangement schemes will provide another choice. We are always banging the drum for choice for consumers. For some people, the scheme will be another option. It will mean that they will not necessarily have to go down the bankruptcy route or protected trust deed route. The scheme will have to be fashioned in a way that takes account

of the debtor's ability to pay, not just as an individual, but as a member of a household.

I return to arrestment tables. The arrestment is exactly the same regardless of whether you are a single person, a couple or a single parent with five children. It depends on the amount that is owed. That is unfair. It should be based on ability to pay. Legislation elsewhere in Europe takes account of debtor circumstances—for example, Sweden examines household economics and ability to pay, based on family units—so there is evidence from elsewhere that we can examine.

**Neil McLeod:** I agree with everything that Yvonne Gallacher said. Ability to pay must underpin the workings of a debt arrangement scheme. Ideally, we should formalise the agreements that are made informally through CABx and other advice agencies every day of the week. If we can formalise those, so that one creditor cannot upset the apple cart, that will be a breakthrough.

As has been mentioned in evidence this morning, in thinking about how a debt arrangement scheme can work effectively, consideration should be given to debt adjudicators overseeing the process, rather than sheriffs, who have a legal background rather than a money advice or welfare rights background. Debt adjudicators have experience and knowledge of how people get into debt situations and they know what a reasonable offer is.

To discuss the matter outwith the sheriff court would be a fundamental breakthrough. The experience of the sheriff court users group is that sheriffs' decisions tend to be inconsistent. Furthermore, people are intimidated by the idea of discussing their debt in a court environment and that is a contributing factor in people not attending court. It would be another breakthrough to overcome that.

**David Ancliffe:** We fully support the route suggested by Neil McLeod.

**Irene Mungall:** It must be realised that people tend to panic at the idea of going to court. That is when the head goes in the sand and the letters go in the drawer. People are late in seeking advice; sometimes they do so only 24 hours before they are due in court. That makes it more difficult to help them. Sometimes people do not turn up for court at all. To take debt arrangement schemes outwith the court environment would be a good move forward.

11:30

**Karen Whitefield:** The bill proposes that if exceptional attachment orders are to be granted, the sheriff must be satisfied that the creditor has

taken every reasonable step to have the debt settled. What would you consider to be reasonable? What should the sheriff consider? In earlier evidence, the Scottish Consumer Council made a good suggestion about the need for training for sheriffs to ensure that there are basic standards throughout Scotland. What is your view on the training of sheriffs?

**David Ancliffe:** I agree that guidelines for sheriffs should be consistent throughout Scotland. Of course, we have gone from that earlier comment about training to the idea of taking debt consideration out of the Scottish court system and using an independent tribunal.

On the question of what are reasonable steps, the creditor must consider all reasonable alternatives before asking for an attachment order. The creditor must negotiate with the debtor at an early stage. With the debt arrangement scheme in place, the creditor must play a full part in negotiating with and assisting Money Advice Scotland. Frankly, if a creditor does not take those reasonable steps and arrives in court looking for a charge, the sheriff will be justified in deciding that the creditor has not taken reasonable action. The Institute of Credit Management's philosophy is that creditors should use best practice, which means that they should negotiate and engage with their customers at an early stage.

**Yvonne Gallacher:** I agree. Money Advice Scotland has been raising the issue of training for some time. We spoke at a seminar last year that was run by the sheriff court users group. A sheriff who was present at the seminar said that he would welcome training on the issues with which Money Advice Scotland deals. It is a fundamental point that everyone, no matter what part of the process they are involved with, needs to be trained and competent. We would be happy to help with such training, if that would address some of the issues.

Guidelines are fundamental. More information needs to be available about the state benefits that people live on. For example, we produce pocket benefit guides every year for the credit industry and our members so that the credit industry can make better-informed decisions about people's indebtedness. That is not rocket science. Those kinds of things help. We need to consider having training packages for sheriffs and others who are involved in the process.

**Neil McLeod:** I agree with everything that has been said about the need for training for sheriffs. That is fundamental for the system to work. The problem is not only that the rules are interpreted differently in different sheriffdoms or sheriff courts, but that within each sheriff court there is a luck-of-the-draw approach. A particular debt arrangement might be accepted by a sheriff one day, but the next day, with a different sheriff, it is another story.

It is not good legislation to give sheriffs more discretion because that will allow the current situation to continue. The ideal would be to have a debt adjudication scheme that is overseen by an adjudicator rather than a sheriff.

Yvonne Gallacher has said that Money Advice Scotland would love to be involved in training if sheriffs still have a role. Furthermore, the Scottish sheriff court users group would try to get round the table with the sheriffs and find out how best to proceed with such training.

**Karen Whitefield:** I will ask you the same question that I have asked other witnesses this morning. There has been considerable media interest in the bill; indeed, it has been suggested that its measures are nothing more than poidings and warrant sales by another name. I am interested to find out whether you agree with that suggestion.

**David Ancliffe:** I will reiterate what the Scottish Consumer Council said this morning. The working group thought and debated long and hard about whether there should be a sanction of last resort, and concluded that the upstream safeguards and the extra benefits and negotiations that we have included will take the majority of people out of that situation. In the end, the working party felt that some last resort should be open to creditors and the institute supports that position.

**Irene Mungall:** I do not support that position. The poorest in our society will be served with attachment orders. As roughly 10 per cent of the debt owed will be raised from the sale of goods, what will happen to the other 90 per cent? Will people be pursued for that amount? I do not think a sanction of last resort provides an answer. If all the processes have been worked through and the debtors have no money to pay off the debt, we should simply draw a line at that point.

**David Ancliffe:** I do not disagree with that last comment. If it is demonstrated that there is no money to pay the debt, there is no point in serving an attachment order. However, if it can be demonstrated that an attachment order would be successful in recovering a reasonable percentage of the debt and the creditor can establish to the court that they have taken every other action and advice, the option should still be available.

**Karen Whitefield:** Should a distinction be drawn between those who can pay but refuse to and those who genuinely cannot afford to pay but are forced to?

**David Ancliffe:** Perhaps I should qualify my comments. I think that most of the discussion this morning has centred on consumer debt. Obviously, we take a slightly different view in relation to commercial debt, as the "Striking the Balance" report acknowledges. As the report

broadly points out, a distinction should definitely be drawn between those who cannot pay and those who will not pay.

**Pauline Allan:** If the exceptional attachment order is retained, we also have concerns about the fact that the proposed process for poinding some goods is one stage shorter than the previous process. As a result, it is worse than the old poindings and warrant sales. For example, goods can be taken away immediately and only seven days have been allowed for the person or a third party to have the item removed. That increases the threat. At the moment, people who are threatened with a poinding or warrant sale are frightened by the prospect of a sheriff officer taking their goods there and then. At least we are able to tell them that the sheriff officer will not do that and that there are other stages in the process. The bill removes a stage in the process, which means that it would be difficult for a third party to have time to show interest. If a debtor does not point out at the time that an item has been bought under a hire purchase agreement, there are only seven days to deal with that problem. If we retain the exceptional attachment order, we will need to consider other protections.

**Karen Whitefield:** So you are suggesting that, if the provision remains in the bill, we will need amendments to ensure that the measure is not so draconian and that we protect those who genuinely do not have the ability to pay.

**Pauline Allan:** Yes.

**David Ancliffe:** We agree entirely with that. One of our major concerns is that the process will be accelerated at that point and that some of the protection that existed previously will be taken away. That needs to be reviewed.

**Stephen Thomson:** Previously, the sheriff's officer not only poinded the goods but assessed the situation of the debtor and that assessment was fed back into the system. It is important to point out that that will not happen under the proposed system.

**Neil McLeod:** I agree that the dangers of the new diligence are similar to those of poinding and warrant sales. As long as that diligence is available, it can be used as a spur to payment. That is the catchphrase that has been used in the past couple of years, but I think that it amounts to a coercion into payment that, as Irene Mungall said, will be used against the poorest in society. As the representatives of Citizens Advice Scotland said, there is a danger that, even with the protections that are in place, the poorest of its clients could still end up with an attachment order against them. Concerns have been raised about the technicalities of carrying out that order and there is still a notable problem with sheriff's

officers. There will be a shorter cut to the diligence than existed under the poinding-and-sale system, which will put an even greater pressure on sheriff's officers when valuing the goods in the house. That is a problem with the poinding-and-sale system that could continue to be a problem under the new proposals.

**Yvonne Gallacher:** Money Advice Scotland is opposed to poindings and warrant sales in principle but recognises that, if people can pay but are unwilling to pay, there should be mechanisms to ensure that they pay.

We would contend that the proposals are not a rose by another name. Mechanisms in the legislation provide debtor protections but, as we said, other things have to be considered if the system is to be as robust as Parliament and the rest of us want it to be. There must be mechanisms relating to the ability to pay all of the debts that we have discussed today.

**Karen Whitefield:** Although I believe that the vast majority of people who end up in debt do not do so intentionally, I am aware that there are people who intentionally run up debts that they have no intention of paying off, even though they might have the ability to pay.

What would happen if the legislation did not contain a mechanism, such as the exceptional attachment order, by which action could be taken with regard to such people? Would people, particularly those in poorer communities, have difficulty getting credit?

**Yvonne Gallacher:** As previous witnesses said, many people in the poorer communities do not use high-street banks and a lot of them do not have bank accounts. They use home credit and catalogues. The issue with regard to those debtors is different from the issue with regard to debtors who run up big bills with no intention of paying the money back. However, it is important to remember that the enforcement system contains other options, such as sequestration, that can be used as punitive measures for those people.

It is also important to remember that, as was stressed earlier, we are talking about the exceptional attachment order proposal not because of consumer debt but because of council tax debt and the collection of local taxation. We have heard evidence from various councils about how they collect their debts. If they have good corporate debt-recovery systems that are separate from the money advice structures, that can help.

We welcome the setting up of the commission to examine the various aspects of debt enforcement.

**Irene Mungall:** I come from a rural community and it has been my experience that people in my area want to pay their debts. They would rather

make a small contribution each week than not pay the debt at all. It has not been my experience that people are sitting at home with a Mercedes in the driveway, perfectly able to pay their debts but refusing to.

**David Ancliffe:** I agree that it may not be the norm, but there are cases where people can pay their debts but will not pay them—we encounter such cases every day of the week. As Yvonne Gallacher said, there is another option for creditors, which is sequestration. The working group considered sequestration, but considered that it was a far more draconian measure and would enable creditors to enter people's houses anyway. Under sequestration there is no list of items that cannot be attached—everything can be taken.

11:45

**Cathie Craigie:** I asked a similar question this morning on the ability to get credit if the bill does not include any form of attachment. The Scottish Consumer Council told me that some 7 million people across the UK cannot access credit and so borrow money from doorstep lenders. I am concerned that if we do not have some form of attachment in the bill, lenders will be reluctant to lend to people who are on low incomes although not necessarily in debt, if they want to buy a television on the high street, for example. Others have expressed that concern, too.

Leaving aside those who cannot get credit, will the people on the margins fall into the trap where they have to pay much higher interest to doorstep lenders and the boys at the end of street?

**Neil McLeod:** By and large, consumer creditors do not use poinding and warrant sale or the threat of it. I do not think that the risk would be any higher if there were no provision in the bill for attachment. It would not have a knock-on effect on the availability of credit to the groups about which you are concerned.

**Stephen Thomson:** I have just spoken to some of the larger catalogue companies. They do not see that there is any more significant risk under the new bill. It will not affect people's ability to get credit.

**Irene Mungall:** The credit companies are much more ambitious—they are keen to give credit. There is a lot of irresponsible lending. I do not think that not having an attachment order will make any difference to credit companies offering people credit and pushing them to borrow more to pay off the debt that they bring with them.

**Stephen Thomson:** I hope that where there had been irresponsible lending, the sheriff would take a long-term view and not pursue the debtor, particularly if they had nothing at all. If a company

lends, it makes a choice and takes a risk. If the debtor does not have the capability to pay, that is the risk the lender runs. The sheriff should have the discretion to say that he will not pursue a case with an exceptional attachment order. That would leave the lender to decide what to do in the circumstances and sequestration might be their only route. If sheriffs have that discretion it would prevent poinding in cases where someone was truly indebted, not capable of paying their debts and in need of advice.

**David Ancliffe:** We hope that the principles in the bill will encourage more responsible lending.

**Yvonne Gallacher:** The committee is probably aware that the Consumer Credit Act 1974 is being reviewed and many of those issues have been raised. Money Advice Scotland has been involved in the group that has shadowed the task force on that. Marketing and advertising of credit is a real problem for many people. The credit industry says that the mechanisms kick in when it comes to credit scoring and that people who are already overindebted should not get access to more debt. However, as we know, of the people whom Cathie Craigie is talking about, many will never go through a credit-scoring process. Their ability to borrow will be based on whether the neighbour knows them or perhaps because they have a good working relationship with someone.

It remains to be seen what change the bill and any amendment to the Consumer Credit Act 1974 might bring about. For many of the vulnerable in our society, those provisions will probably have no effect on the cost of credit, because they pay dearly as it is.

**Robert Brown:** I would like to get a handle on the practical, day-to-day problems that will emerge in operating the arrangements. In particular, how would the moneys due under a debt payment programme be collected and distributed to creditors? What is the mechanism likely to be?

**Yvonne Gallacher:** I expect that it would be along the lines of using PayPoint Collection or the Paylink Trust Ltd as a distributor. Those companies would operate central collection and have mechanisms and suitable software to allow distribution to creditors. I have already mentioned evidence that, where such mechanisms are in place, debtors tend to keep to the programmes because some follow-up is involved.

**Robert Brown:** That is a bit like the Prudential man calling at the door. It is an automatic mechanism that the debtor is used to operating.

**Yvonne Gallacher:** Yes, but it would be by way of debtors making a single payment perhaps through a PayPoint terminal, which would go into a central collection from where it would be distributed.

Some credit unions have local payment facilities that seem to work very well. People have their benefits paid into them, and their debts and other commitments are paid off from that. That makes paying debts off easy. People are used to it. As it is routine, it becomes part of their everyday life.

Whatever mechanisms are in place must mirror how individuals operate their finances. If they operate them on a weekly basis, the mechanism must also operate weekly. It is no use to give people monthly payment arrangements if their wages are paid fortnightly or weekly.

**Robert Brown:** Somebody gave the example of the administrative charge for a postal order. Is there likely to be any charge for the administration of the mechanism?

**Yvonne Gallacher:** I expect that the levy would be on the credit industry. Some of the mechanisms that exist at the moment charge between 9 per cent and 15 per cent. Whatever payment comes from the debtor will go in full towards their account, but the creditor will have to withstand what is termed a fair contribution towards recovering the debt because, although the creditor might have to pay that levy, it saves them money on debt collection.

**Robert Brown:** Do any other witnesses have views on that?

**Irene Mungall:** I support that entirely. It is important that a levy on the credit industry should support the process of recovering the debt.

**Robert Brown:** Section 7(2)(k) will give the Scottish Executive the power to make regulations about

"the priority in which debts are to be paid under a debt payment programme".

That raises the issue of council tax and any other preferred or prior debts and the distinction—if there is any—between past debts and current obligations, such as future council tax payments. Should particular creditors—such as the local authorities in the case of council tax—or existing payments of certain kinds under continuing arrangements take priority and how might such priority be operated sensibly?

**Irene Mungall:** The money advice sector has been operating such a system for a considerable period and it works successfully. There are priority debts: we must keep somebody's roof over their head and if the local taxes must be paid, they must be paid. The credit that people have for goods is secondary to that. It is important that we keep the family unit together. We have operated that system for years, so there is no reason why such a system could not be implemented.

**Robert Brown:** Is not there an implication for creditors' consent, if they will not get anything out

of the payment? If the payment all goes towards council tax, presumably creditors will not be particularly inclined to agree to the payment arrangement?

**Irene Mungall:** There is no reason why the arrangement cannot be made on a pro rata basis.

**Robert Brown:** Would 50 per cent of the payment go towards the prior debts and 50 per cent to other debts, for example?

**Irene Mungall:** That could be done.

**Robert Brown:** Do you have any evidence of how that might operate?

**Yvonne Gallacher:** Irene Mungall's point is essential. The system has been working for a long time. We have to remember that, unlike consumer debts or credit, council tax is an on-going debt, as are utility charges. Council tax is not like a credit card; we cannot just agree to end it and pay what we owe, albeit with interest added on. If people fall behind with council tax, it is a continuum, which is what gets people caught up in the cycle. People do not have a choice; council tax is imposed on them. It is not like choosing to have a credit card or going to the Provident. Council tax is something that happens to people and any programme that is set up must take account of that. We are not just talking about the fact that arrears have to be paid, which would be the clear priority if the enforcement route was gone down; the programme must include an amount that will enable people as far as possible to make their council tax payments.

**Robert Brown:** Does the institute have a view on that?

**David Ancliffe:** I agree fully with what Yvonne Gallacher just said about council tax and the fact that it is an on-going debt. We have to consider that people on low incomes are being expected to pay £2, £3, or £4 a week to try to resolve a council tax debt or water and sewerage debt, which does not attract a rebate. Next year, another £500,000, £600,000 or £700,000 will be placed on top of that. It seems to us that the situation is incongruous. Why are we forcing people to pay council tax if they cannot afford to do so?

**Robert Brown:** That is a slighter broader issue.

**David Ancliffe:** On the allocation of funds, I agree entirely with the points that the other witnesses have made about the priority of keeping a roof over people's heads. We would like local authorities to take a much more holistic view of their debt collection process. They have corporate debts as well as consumer debts. The Institute of Credit Management would like to ensure that local authorities follow the correct debt procedures before we stick up our hands and say that they can have priority.

**Robert Brown:** As has been said before, the other aspect is that the debt arrangement scheme acts as a debt stopper. However, a new arrangement must be put in place to advise new creditors about the scheme. There are powers for ministers to provide a register of debt payment programmes. Do the witnesses have views on how best that might be done? It will involve some sort of routine check for everybody that has a decree and wants to conduct an arrestment of earnings.

**David Ancliffe:** I read the *Official Report* of last week's meeting and I think that somebody then brought up the idea of a central register. It is absolutely essential to the future success of the scheme that new creditors find it in place. How it will operate is a question of detail and we have not formed a view on that yet.

**Robert Brown:** The final question that I want to ask echoes CAS's suggestion that the composition of debt and freezing of interest should be among the aspects that are considered in relation to the debt arrangement scheme. Do the witnesses go along with that or do they have reservations about it? What are the pros and cons of that suggestion?

**Stephen Thomson:** I support the suggestion, because we do not want to make a debt any bigger than it is. If people are struggling to pay their debt, adding interest to it will only add to the problem; it will not get rid of it.

**Pauline Allan:** I agree with that. There must be freezing of interest and perhaps composition of debt. We have some examples. At the moment, a client who pays £260 a month for a debt of £23,986 would take 7.69 years to pay it off. Adding interest at 1 per cent would take the payment time to 11.67 years. If a composition offer were allowed over three years, the creditor would recover 39 per cent of the amount that was owed, and if a composition offer were allowed over five years, 65 per cent of the debt would be recovered. The freezing of interest, a composition offer or both—it depends on what is best for the client—should be considered.

12:00

**Mrs McIntosh:** I am interested in the possibility of a debtor running up new debts while repaying existing debts under a debt payment programme and in how that would be addressed. Irene Mungall talked about irresponsible lending. I hope that people will examine the written evidence that we have taken and the oral evidence that we have heard over days and weeks. It is almost as if every time the sun shines, someone gives you an umbrella, but when it is raining, no one is around to help you out. How do people who have debts that they are incapable of paying manage? How do they access other sources of funds in the

future? What are their prospects?

**Yvonne Gallacher:** For many such people, the future will not be terribly bright, but one hopes that the building up of credit unions will offer people some support. For someone who is overindebted and has a debt arrangement scheme, a balance is involved. Creditors may note that people who belong to a credit union save before they borrow, so they are caught in quite a difficult situation.

I do not have the answers. The situation is difficult. On the one hand, putting in place a debt arrangement scheme may help somebody, but on the other hand, that person might need support just to survive. Illegal money lending comes to mind. Credit unions have the real role, by providing a balance between people saving and borrowing. Credit unions can meet a need that is perhaps not being met. We all acknowledge that, despite all the current work, there are not enough credit unions, and they are all going through difficult times to bring themselves up to scratch with regard to the requirements of the regulator, the Financial Services Authority.

**Irene Mungall:** Credit unions in rural settings do not have the community size that is required to sustain a credit union, so that can be difficult.

People's lives change. Often, people are in debt because of a change in circumstances such as the loss of a job or illness. Circumstances can change back again. Allowing for a two to three-year repayment period is important, because it gives people hope—they can see the light at the end of the tunnel. They can emerge from the situation and pick up their lives again.

**Mrs McIntosh:** I had experience of that when I sat on the bench and heard from people who were trying to make arrangements to pay their court debts. People entered agreements to pay debts that they had not a hope in Hades of paying, but circumstances could change. They could return later and make decent payments that did not continue ad infinitum. Changed circumstances allow some people to pay, but some cannot.

**David Ancliffe:** Somebody's entry into a debt arrangement scheme shows that they are a responsible person who wants to clear their debts. We would aim to support them through that period and perhaps at the end of that period, when their circumstances change. We could say, "You were in that situation and you struggled to pay your debts, but you are in a better situation now, so we will support you."

**Yvonne Gallacher:** We have talked a lot about upstream information and advice. For many people that must be on-going. It should not stop just because they have gone into bankruptcy or a debt arrangement scheme. Advice on income maximisation makes the difference for the people

who come for money advice. As Irene Mungall said, circumstances change. One day people may not be entitled to council tax rebate, but the next day they might be, because their circumstances have changed. One day people may be fit and healthy; the next day they may not. That is why information and advice on income maximisation and welfare rights—the holistic approach that we take towards people's overindebtedness—must be continuous. People should be able to opt in and out of it, as and when they require it.

**Mr Gibson:** Is not it the case that some creditors are extremely irresponsible and have no interest in people ever paying off their debts? The other week, I was offered a credit card with a £10,000 credit limit and an interest rate of 0 per cent, scheduled to rise to around 16.9 per cent after six months. The repayment that I was offered on that debt was £5 a month plus interest. If I were to borrow £10,000 and pay it back at £5 a month, it would take me more than 160 years to pay off the debt. Unless I discovered the elixir of youth, I would never be able to pay it off.

**Mrs McIntosh:** That will not happen.

**Mr Gibson:** I know—although some people say that I have already discovered it.

Does not the industry need to get a grip and start to lend money responsibly? Who knows how circumstances could change? Next year I could be out of a job. If I had taken up the offer of the £10,000 loan, I would then be in very serious circumstances. What is the industry doing to stop such irresponsible behaviour?

**David Ancliffe:** I am delighted to say that the Institute of Credit Management does not incorporate the banking or credit card industry, which is represented on the money advice liaison group. The Institute of Credit Management shares the concerns that the member has expressed about irresponsible lending. Every day, I receive two or three letters offering me credit cards. I am tired of seeing so many adverts, particularly on satellite television, encouraging people to take out loans, regardless of whether county court judgments have been issued against them or whether they are self-employed, employed or unemployed. The industry needs to consider that issue urgently. I do not disagree with the point that Mr Gibson makes.

**Tommy Sheridan:** Karen Whitefield said that critics of aspects of the bill believe that it provides for poindings and warrant sales under another name, but it is the provisions relating to exceptional attachment orders that people have criticised as being poindings and warrant sales under another name. That criticism has been repeated at today's meeting.

I was struck by the fact that witnesses have

unanimously taken the view that exceptional attachment orders as currently proposed could be worse than poindings and warrant sales. I was particularly struck by Pauline Allan's statement that they posed a bigger threat than poindings and warrant sales. Why do you think that exceptional attachment orders could be worse than poindings and warrant sales?

**Pauline Allan:** They could be worse because the period for the removal of goods is shorter. It might even make things more difficult for a creditor in a HP agreement.

If a creditor is applying for an exceptional attachment order, the sheriff needs to consider how he has tried to recover his money and why those methods have failed. Earnings or other arrestments may not have been successful because debtors are on benefit, rather than because they refuse to pay.

We welcome the fact that one or two types of goods—particularly items of sentimental value—have been added to the list of those that cannot be attached. However, a debtor who is on benefits is unlikely to have goods that could be attached under an exceptional attachment order, so the move is unnecessary.

**David Ancliffe:** I will qualify that. The Institute of Credit Management does not believe that the exceptional attachment order is worse than poindings and warrant sales, but we have concerns, which I expressed earlier, about the acceleration in relation to sheriffs' ability to take goods. Stephen Thomson will correct me if I am wrong, but I think that the Debtors (Scotland) Act 1987 contained all sorts of protections that will not exist under the bill.

**Tommy Sheridan:** That is why I thought that Stephen Thomson was saying that the new measures are worse. You seem to be contradicting what he said.

**Stephen Thomson:** I think the acceleration is wrong, but I understand why the Executive has made the decision. The Executive has worked on the premise that debtors are not co-operative. The acceleration was the end result or the last throw of the dice. Shortening the time scale will not allow for the time that is required for HP agreements to be produced. Goods that are of benefit to the individual might be taken, which is not a good idea. Such goods should be left in the home and secured, although they should be attached. The sheriff should decide whether the goods should be taken. The exceptional attachment order should be exceptional, not the norm.

**Neil McLeod:** I agree with what has been said. Pauline Allan's example shows exactly what the problem with the attachment order is, which is that it can be used against people who are on benefit.



As I have said, the increased discretionary role for the sheriff in the system is a problem. There are problems with the checklist that the sheriff will have to go through before granting permission for the attachment order and with the subjective element of the sheriff officer's evaluation of the goods, which, as has been outlined, is increased under the new system.

**Tommy Sheridan:** Given that obvious weakness in the proposed legislation, I ask the witnesses to reflect on the phrase that at least a couple of them have used, that the bill requires some tightening up. Pauline Allan said that 70 per cent of her clients would be excluded from the debt arrangement scheme under the bill as drafted, which is consistent with the evidence of Citizens Advice Scotland, which claimed that more than 70 per cent of its clients would also be excluded. Given that evidence, do the witnesses agree that, rather than the legislation requiring to be tightened up, it requires fundamental review before it will be fit to realise what we are all after, which is a nationally recognised, humane, workable and efficient debt arrangement scheme?

**Neil McLeod:** It is difficult to comment on exactly how much tightening up the bill needs because there is so little detail on the debt arrangement scheme. That is the bill's fundamental flaw. We are being asked to comment on concrete proposals for the coercive part of the system and on vague proposals for the protective part of the system, most of which will be included in the consultation, which will be produced later. We all have different ideas about what a debt arrangement scheme could and should involve. It might well take longer than the time scale that is laid out in the bill for us to reach a consensus on the best way to proceed.

**Yvonne Gallacher:** I agree with Neil McLeod. We have the bill before us, but the consultation, which will involve a much wider review, is still to come. Matters would have been far easier if the order had been reversed. However, I realise that that is the way that we must work.

It is difficult for us to make judgments on how things will work. Tommy Sheridan asked whether we thought that the bill needed a radical review rather than merely tightening up. I think that a lot of the essential ingredients are there. Some are missing, and we have highlighted the fact that some of the provisions accelerate the current process and that the bill could be improved if it contained something in the way of buffers.

We have not talked much about lay representation. The fact that people know that lay representation is available and can access it is a key driver. People will not feel that they have to put away all the papers that they get in a drawer—people can access information about where they

can get help. There is evidence that, in cases in which people did something about their situation, they got a good result. We know that from our own research.

12:15

**David Ancliffe:** I think that a witness said at last week's committee meeting that the bill requires "some intelligent amendment". We would agree with that. We cannot comment on the detail because, as Neil McLeod pointed out, the consultation paper is almost following behind the bill. The broad basis is there; the detail of the bill just requires to be flushed out.

**Tommy Sheridan:** What would be the witnesses' opinion if the exceptional attachment order provisions were removed from the bill? Some of you have suggested that that would not have a fundamental effect on the availability of credit to those who currently seek it. Would the removal of the exceptional attachment order lead to a fatal flaw in the bill? Is the exceptional attachment order essential to the bill? Do you think, as Citizens Advice Scotland has suggested, that it is not necessary for the proposed scheme to work?

**Irene Mungall:** Two issues have not been identified. One is the distinction between consumer credit and commercial credit. I think that they should be separated.

I can speak only about consumer credit, but I think that the exceptional attachment order should be removed from the bill. I have no doubt about that. I can see the argument for commercial credit being covered by such orders, where companies have various assets that could pay off debts, but I do not think that it would affect the bill drastically if the exceptional attachment order were removed for consumer credit. People will already have gone through a process and will have reached the end of the road by the time things reach that stage.

**David Ancliffe:** I was going to make the same qualification as Irene Mungall: we are talking about consumer credit rather than commercial credit. One of the problems is the existence of a grey area. It is quite easy to recognise a commercial organisation operating from commercial premises and to take the required action to recover the debt from the people concerned. However, there is also a whole stratum of people who operate businesses from their dwelling-house. We could cause ourselves severe problems if creditors perceive that they do not have a sanction of last resort in cases involving that type of debtor—albeit that sequestration is out there, like some draconian sword. We should ensure that commercial creditors who operate from their dwelling-house have the maximum safeguards

and protections that the bill suggests for consumer debtors.

**Pauline Allan:** I can understand the reasons for having exceptional attachment orders for business debt, but I cannot see the reason for its remaining in place for domestic debt.

**The Convener:** That was a useful and productive session. I thank the witnesses for their attendance. If you have further points to expand on, we would be more than happy to hear from you.

12:18

*Meeting suspended.*

12:20

*On resuming—*

## **Houses in Multiple Occupation (Licensing)**

**The Convener:** Item 3 concerns our dear friends, houses in multiple occupation. The Scottish Executive has now issued its consultation on possible changes to exemptions for the licensing of HMO schemes. We have been asked to consider our approach. One option is to seek written evidence, which means that we would have to consider which organisations we wished to consult. We should note that the closing date for responses is the end of July and we would need to consider our draft response at the first meeting after the summer recess. Are people content with that?

**Members indicated agreement.**

**The Convener:** Do we agree to consult the organisations on the list with which we have been provided? The organisations are: local authorities, the Abbeyfield Society for Scotland, Scottish Women's Aid, Shelter Scotland, the Chartered Institute of Housing in Scotland, the Convention of Scottish Local Authorities, the National Union of Students, the University of Glasgow, the Scottish Association of Landlords, the Property Managers Association of Scotland and the private sector housing forum.

**Members indicated agreement.**

**The Convener:** We now move into private session, as items 4 and 5 both involve consideration of draft responses.

12:21

*Meeting continued in private until 12:34.*

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

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

**Monday 24 June 2002**

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

#### PRICES AND SUBSCRIPTION RATES

##### DAILY EDITIONS

*Single copies: £5*

*Meetings of the Parliament annual subscriptions: £350.00*

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

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

*Single copies: £3.75*

*Special issue price: £5*

*Annual subscriptions: £150.00*

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

*Single copies: £3.75*

*Annual subscriptions: £150.00*

Standing orders will be accepted at the Document Supply Centre.

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

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

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

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

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

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

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

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

**Accredited Agents**  
(see Yellow Pages)

and through good booksellers