ENTERPRISE AND CULTURE COMMITTEE

Tuesday 24 January 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE
2nd Meeting 2006, Session 2

CONVENER

*Alex Neil (Central Scotland) (SNP)

DEPUTY CONVENER

*Christine May (Central Fife) (Lab)

COMMITTEE MEMBERS

*Shiona Baird (North East Scotland) (Green)
*Richard Baker (North East Scotland) (Lab)
*Susan Deacon (Edinburgh East and Musselburgh) (Lab)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Karen Gillon (Clydesdale) (Lab)
*Michael Matheson (Central Scotland) (SNP)
Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD)

COMMITTEE SUBSTITUTES

Mark Ballard (Lothians) (Green)
Donald Gorrie (Central Scotland) (LD)
Fiona Hyslop (Lothians) (SNP)
Margaret Jamieson (Kilmarnock and Loudoun) (Lab)
Mr Brian Monteith (Mid Scotland and Fife) (Ind)

*attended

THE FOLLOWING ALSO ATTENDED:

Nicholas Grier (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Anne Bryce (Institute of Chartered Accountants of Scotland)
Dennis Canavan (Falkirk West) (Ind)
Bruce Cartwright (Institute of Chartered Accountants of Scotland)
Yvonne Gallacher (Money Advice Scotland)
Susan McPhee (Citizens Advice Scotland)
Irene Mungall (Money Advice Scotland)
Beccy Reilly (Citizens Advice Scotland)
James Thomson (Scottish Executive Enterprise, Transport and Lifelong Learning Department)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 6

Scottish Parliament

Enterprise and Culture Committee

Tuesday 24 January 2006

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

Subordinate Legislation

Fossil Fuel Levy (Scotland) Amendment Regulations 2005 (SSI 2005/641)

The Convener (Alex Neil): Welcome to the second meeting of the Enterprise and Culture Committee in 2006. I have received apologies from Jamie Stone. I ask everybody to switch off their mobile phones.

Agenda item 1 is subordinate legislation. James Thomson from the Scottish Executive is with us to discuss a negative instrument. He is a renewable energy policy officer.

James Thomson (Scottish Executive Enterprise, Transport and Lifelong Learning Department): That is correct.

The Convener: Will you take two minutes to give us the gist of the regulations?

James Thomson: The regulations are part of the overall changes that we are making to the administration of Scottish renewable obligation contracts. The committee may know that SRO contracts were a forerunner of the renewables obligation.

The overall changes that we are seeking to implement will allow the renewables output from SRO contracts to be sold to a neutral third party. Currently, the output is allowed to be sold only to Scottish Power and Scottish and Southern Energy. The regulations will allow the nominated person—the neutral third party—to administer fossil fuel levy payments in the same way that Scottish Power and Scottish and Southern Energy currently do.

The Convener: Thank you very much.

I should draw to members' attention the paper that has been circulated. The Subordinate Legislation Committee considered the regulations on 20 December 2005 and agreed that no points arose on them. Does any member have any questions to ask or comments to make?

Members: No.

The Convener: The regulations are subject to the negative resolution procedure, so we do not need to vote on them. We simply thank James Thomson very much. We will report back to the Parliament.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

14:04

The Convener: Item 2 is a briefing from our adviser, Nicholas Grier, on part 1 of the Bankruptcy and Diligence etc (Scotland) Bill. We first met Nicholas Grier last week. He has circulated two briefing papers to the committee.

I want to make a general comment. I think that we all regard the bill as probably the most technical bill that we have ever dealt with. Technical terms are greatly used in it. If members agree, we can have a lunchtime session with Nicholas Grier on the technical matters in it so that they can ask questions about issues with which they—even those who have been practitioners in the area—are perhaps not fully conversant. That will give us an opportunity to get more familiar with some of the technical terms in particular. We will get briefings from Nicholas anyway, but several members approached me to say that they would like a session that focused on technical terms. Is that agreeable?

Members *indicated agreement*.

Nicholas Grier (Adviser): Good afternoon. I hope that you all have the little notes that I have given you. I do not want to go on too long, but I would like to give you a brief outline of bankruptcy in Scotland, which is known as sequestration.

Bankruptcy is when someone's affairs and estate are taken from them. In effect, all a person's belongings, apart from the tools of their trade and things such as their bed and furniture, are taken off them and looked after by a trustee in sequestration—that is one of the ways, anyway. The trustee divides the estate among all the creditors. Typically, the creditors will get about 20p in the pound, if they are lucky.

As we know from last week's meeting, bankruptcy is not a particularly happy process. People who are bankrupt find life difficult. They cannot do various things. For example, they cannot hold certain jobs, stand for public office or be company directors. It is a considerable restraint on their future earning ability.

Someone can be made bankrupt in the various ways that I have outlined in my paper. It is possible for a creditor, who is someone to whom a debtor owes money, to put a person into bankruptcy. A trustee, under a protected trust deed, can put someone into bankruptcy and so can a creditor. Broadly speaking, if someone owes a creditor more than £1,500, the creditor can petition a court for an order putting the debtor into bankruptcy.

A trust deed, particularly a protected trust deed, is a special document whereby someone transfers all their assets into a trust run by a trustee, who looks after the assets. A person would normally put all their assets into a trust deed. Instead of the formal business of going to court and the carry-on that that requires, a trustee just looks after a debtor's affairs and pays their creditors. That is much more informal and discreet and it avoids some of the stigma of bankruptcy. We will talk about that further in future weeks.

A debtor can also choose to put themselves into bankruptcy, if they feel that that is necessary, but it is difficult to do so. They must owe at least £1,500 and must not have been sequestrated within the previous five years. That makes it difficult for bankrupts who may have had problems in the past and want to be bankrupted again in order to have a clean slate. Paragraph 4 of my paper indicates why it is difficult for debtors to petition for their own bankruptcy. Members will see that the Government some years ago decided that too much was being paid to insolvency practitioners to act as trustees. A large number of trustees had been appointed and the Government believed that that was not a good idea. One reason why people were allegedly making themselves bankrupt was because they did not want to have to pay the poll tax—I emphasise "allegedly".

Paragraph 4 also indicates that a debtor can petition for their own bankruptcy if they cannot pay their debts in the ordinary course of business. Of course, not all debtors have a business, so they cannot petition on that ground. The third reason debtors find it difficult to petition for bankruptcy is that they sometimes need the help of creditors, but creditors cannot always be bothered to petition for bankruptcy because it is too much hassle.

That covers many of the first points that I wanted to make. People can take a couple of other actions instead of petitioning for bankruptcy. As well as the protected trust deed, to which I referred, there is the unprotected trust deed, in which someone transfers some of their assets to a trust but not all of them. On an historical note, that is what Sir Walter Scott did. I am sure that members are aware that other methods can be used instead of bankruptcy, such as debt arrangement schemes. They all work reasonably well, but what most have in common is that they do not work well with people who have no income and no assets. Our legislation does not find it easy to deal with people in that position. However, we are not alone in that because the legislation of almost every other country finds it difficult to deal with that position—it is a common problem.

Paragraph 16 of my paper indicates what New Zealand is doing with people who have no income and no assets. In effect it involves writing off debts

and having a 12-month period of bankruptcy. That is new legislation and we are waiting to hear what New Zealand creditors in general think about it—probably not a lot. They are also beginning to discuss a similar process in England.

I move on to a separate but connected issue that clearly caused some concern at last week's meeting. Some people were talking about corporations and incorporating businesses. A person can run a business as a sole trader—on their own—or with some friends or family in a partnership. However, under both those arrangements, the person becomes personally liable for their business's debts. If things go wrong, it is the person running the business who is on the line.

Such a business is not an incorporated business. An incorporated business is a limited company, which has to be registered under the Companies Act 1985 and has to follow all the requirements of that act and the Insolvency Act 1986. The bill does not really touch on incorporations; it does not have anything to do with companies, so we do not particularly need to worry about that.

If someone is a sole trader or is in a partnership and it looks as though life might become difficult because they have a risky business, their most sensible action would be to incorporate. That is what any prudent businessman would do. There are inconveniences and expenses involved in incorporation, but it is clearly the most sensible thing to do.

It is not terribly common for sole traders to be running businesses. There are plenty of sole traders, of course, but they tend to be fairly small businesses. Anyone whose business is remotely risky or has the potential for things to go wrong is well advised to incorporate. You might be aware that it looks as though only about 10 per cent of the recent bankrupts in England were small businessmen—that is because small businessmen are all busy incorporating. We hope that the bill will help sole traders to the extent that it can, but most sensible businessmen will incorporate so that it will not be a problem.

However, there is a rider to that. If a businessman incorporates as a company, it is common that before a bank will lend the company money, it will say to the director, "If you want to borrow money, you must give a personal guarantee." Likewise, a landlord to a tenant limited company will say to the director, "If you want this tenancy, you must give a personal guarantee." The effect of that is that the businessman is still on the hook and could become bankrupt. If the businessman's company goes into liquidation and he still owes money to the bank or landlord, they will sequestrate him to get their money. That is a problem, but a prudent businessman can stop the company before things get any worse and thereby avoid the risk of bankruptcy.

That is probably all that I want to say about bankruptcy for the time being. I have other matters to talk about, but perhaps members will have one or two questions to ask.

The Convener: Why is the lower limit of debt set at £1,500? For how long has £1,500 been the magic figure?

Nicholas Grier: It has been that for at least 10 years. It can be put up from time to time, but that has not been done. There is also a degree of commonality with the English companies legislation. In England, someone can be made bankrupt for £750; up here it is £1,500. It is therefore easier to be made bankrupt in England at the moment, although it is likely that in England the figure will be changed. The people setting the limit had to think of a figure and that is what they chose.

The Convener: There is no logic to it.

Nicholas Grier: There probably was at the time, but inflation might well have eroded it.

Christine May (Central Fife) (Lab): I am very wary of displaying my ignorance, but I seek clarification. In paragraph 7 of your paper, under the heading "Debt arrangement schemes", the final sentence on the page says:

"This acts as a freeze on further diligence and ensures that creditors get paid something."

Could you define "diligence" in that context?

Nicholas Grier: That means that once someone has entered into a debt arrangement scheme the sheriff officers and messengers-at-arms will not turn up at their door and try to take away their goods, and will not go to their bank account and stop them from taking money out. It is a good thing.

Christine May: The definition of "diligence" is an order granted by the court that would allow someone to turn up at the door and do what you described.

Nicholas Grier: Generally speaking, yes, although there are other methods.

The Convener: Members have another paper about the issues that we are discussing today. Do you want to say anything about that?

14:15

Nicholas Grier: I thought that you would probably like to hear first what the witnesses have to say. In light of that, you might consider some of the points that I have set out.

The Convener: I will bring you in during our discussion on bankruptcy—you have licence to come in at any point. I have to make that clear for the record, for some reason. I should also draw to members' attention the Scottish Executive booklet "Dealing with Debt: finding your feet"—that is for midnight reading. It gives advice about dealing with debt. Are there any other questions for Nicholas Grier?

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I do not know whether this is the right time to ask this, so by all means tell me that we should explore the matter at a later date. Although you mentioned it today, last week we touched a little on the circumstances in which and the reasons why people may wish to be declared bankrupt. Will you elaborate a little on that? Conversely, will you elaborate on the reasons why someone may wish not to be declared bankrupt? Will you also tell us whether you know of any evidence that discusses the extent to which the threshold for bankruptcy can influence behaviour? By that I mean the behaviour of people going into business or behaviour with regard to the accumulation of personal debts. We touched on that in passing last week as well. It is almost a question about the psychology of bankruptcy, but it relates to the technicalities of our discussion.

Nicholas Grier: I hope that I got all those questions. I certainly got the second one about the problems that arise from being bankrupt, if I understood you correctly. If people are bankrupt, they are prohibited from doing certain things, such as holding public office or being a company director. You may recall last week's witnesses saying that such people may also have a major problem getting credit. It is not that they cannot get it, but it will be provided at a very high interest rate. They will probably not be able to get a credit card. Therefore the practical problem is that bankruptcy is extremely inconvenient. It does not preclude people from holding a job, but the security risk means that a bankrupt is not allowed to hold certain jobs. Notoriously, it is written into the terms of employment of those who work in the defence industry that if they are bankrupt, they must leave. It is considerably inconvenient.

It is difficult to know whether the threat of bankruptcy deters people from setting up businesses. I understand that the committee has been collecting some information about what makes entrepreneurs. By nature, they are more risk friendly than many and are more willing than more cautious souls to take the risk of living with the prospect of bankruptcy. I am sorry, but I did not pick up your first question.

Susan Deacon: You mentioned previously the reasons why someone would want to be declared bankrupt, so the first question was about that. You also gave the poll tax example, and I asked you to elaborate on that. However, there was also a second part to my last question. I asked whether you are aware of evidence on how the threat of bankruptcy may influence behaviour with regard to personal debt, as opposed to entrepreneurial activities. Perhaps our witnesses will also touch on that point.

Nicholas Grier: People might wish to be made bankrupt for the good reason that, if the process goes well, they can start with a clean slate. They can write off all their debts, somebody else will look after their affairs, the sheriff officers will stop coming to their door and the nasty, threatening recorded delivery letters will go away. From what I understand, that is an immense relief. People like the thought of being able to hand over all their problems to a trustee who is better at dealing with figures. You can imagine how that would make someone's life a great deal better. If the bill is passed, that sort of situation might be permitted. As I indicated, at the moment it is quite difficult for debtors to ask to be put into bankruptcy—they have to fulfil the minimum thresholds.

The evidence of how the threat of bankruptcy alarms people will vary from person to person. I have come across people who have been bankrupted several times. Bankruptcy holds no terrors for serial conmen and the like, whereas it would very much be a worry for those who are in jobs where bankruptcy would be a bar to employment. There are others who would simply prefer not to find themselves in that position. I do not think that one can give a categorical answer to your question, I am afraid.

The Convener: Thank you. That was very helpful.

For item 3, we have two panels of witnesses, the first of which comprises representatives of Citizens Advice Scotland and Money Advice Scotland. I welcome Susan McPhee and Beccy Reilly from Citizens Advice Scotland; and Yvonne Gallacher and Irene Mungall from Money Advice Scotland.

I take it that Susan McPhee and Yvonne Gallacher will give us some introductory remarks. I thank both organisations for the papers that have been circulated to the committee. I found the executive summary on the front of Citizens Advice Scotland's paper, with its key points, extremely helpful in drawing our attention to the issues that need to be addressed. That bullet-point executive summary was exceptionally helpful and might serve as a good guide for people who are submitting written evidence in future.

Susan McPhee (Citizens Advice Scotland): We did not prepare introductory remarks, but I will highlight the main points in our executive summary. We welcome many aspects of the

Bankruptcy and Diligence etc (Scotland) Bill, including some of the reforms to the law of diligence relating to the debt recovery mechanism and some of the bankruptcy reforms.

There are two key aspects missing from the part of the bill on bankruptcy. The first of those is provision to deal with clients who have no income and no assets; the second is reform of the debt arrangement scheme. I could elaborate on the diligence aspects, but I understand that we are not talking about those today. Is that right?

The Convener: Yes.

Susan McPhee: In that case, that is where I will leave it for the moment.

Yvonne Gallacher (Money Advice Scotland): Thank you very much for this opportunity to bring evidence to the Parliament. We share some of the concerns of Citizens Advice Scotland, particularly with regard to people with no income and no assets and to reforms of the debt arrangement scheme. We have serious concerns about land attachment, as we have made clear in our written evidence. Hopefully, we will get an opportunity to talk about that with the committee later. It exercises us quite a lot, in particular when relatively paltry sums of money are involved, that unsecured debts could become secured through land attachment. We are concerned about the impact of that on the economy and on society as a whole. We certainly hope that the Enterprise and Culture Committee will bring the evidence, particularly on land attachments, to the attention of other committees, for example the Communities Committee and one of the justice committees. The same could be said for the whole bill.

As I indicated, we have the same concerns as Citizens Advice Scotland. We need to be creative in our thinking as the bill goes through the Parliament. We should think about its impact on the debt arrangement scheme and about the consultation document on protected trust deeds that has been produced. The approach on the bill should be a lock, stock and barrel approach, and we should take care not to miss anything in the process.

Murdo Fraser (Mid Scotland and Fife) (Con): Before we get into the detail of your submissions, do you think that it is right to try to make it easier for debtors to petition for their own sequestration? There might be concerns about the impact on society of encouraging people to avoid their debts and about thrift and forward planning not being encouraged. Is that a good thing, as a matter of principle?

Susan McPhee: It depends on the client group. Our client group tends to consist of two streams. One contains people on a very low income, whose debts are debts of poverty. The other is a stream of clients whose income has changed because of a change in circumstances and who have accrued debts as a result. When they first took on a debt, they might have been able to afford it. Then, they might have lost their job, developed an illness or lost opportunities to work overtime, and that could have tripped them into debt.

The circumstances surrounding those clients who have debts of poverty might involve extremely high interest rates being applied to the credit that they have taken on. We regularly receive reports of people having to pay an interest rate of 185 per cent, despite the fact that benefits make up their only income. It is important for those clients to have a route out of the debt situation that they are in. Some clients in such circumstances will be in debt for ever and will never have even the benefit of a basic income on which to live. All that that will do is force them into more of a cycle of debt.

Yvonne Gallacher: I concur with all that has been said. Different people must have different remedies. Not everyone is the same. Consumers are not homogeneous and they have different problems. That is why I said that we must consider remedies and legislation that will match people's circumstances.

Murdo Fraser: In your experience of advising people who are in debt, do you encounter many serial bankrupts or do you tend to find that once people have been through the process, they make a fresh start?

Irene Mungall (Money Advice Scotland): I will answer that from my experience. I have worked in the advice service for more than 20 years and I have never had a serial bankrupt client.

Yvonne Gallacher: The national organisation's experience of what is happening at the coalface bears out what Irene Mungall said. Most people, if not all, ask for advice because they are serious about wanting to do something about their problems. In the main, they do not use the advice agencies as a way of getting off paying their debts.

Susan McPhee: I agree. People in most citizens advice bureaux say that clients want to pay their debts. Sometimes, that is the problem, because clients want to enter into an unrealistic voluntary arrangement. For example, they will want to pay debts over 20 or 25 years, which no one could sustain. If anything, the situation is the reverse—people want to pay.

The Convener: In the summary on bankruptcy in its submission, Citizens Advice Scotland proposes

"A link between sequestration proceedings and the debt arrangement scheme to include, where applicable, a deferment or sist"—

which I think is an adjournment—

"of sequestration proceedings pending approval of a debt payment programme".

Will you say a word or two more about that?

Susan McPhee: That relates to an issue from CABx about creditor petitions for bankruptcy. In an annex to the submission, we have given the committee the statistics on bankruptcy, which show that the numbers of creditor petitions are increasing. Our experience is that those creditors are in the main local authorities that are petitioning for council tax debt. A local authority will petition for sequestration because a client has some equity in their house. A debt payment programme might well be the best mechanism for paying council tax debt, but local authorities are not taking the time to consider that; they are simply going straight for sequestration. We want something to delay that, to allow a client to obtain advice on whether a debt payment programme would be the best way forward. That would save the client's house.

The Convener: It was mentioned last week that a hierarchy should be used before the final resort and that the final resort should not be used first. It was said that that should be built into the bill.

Susan McPhee: Yes. We would like that to happen, to ensure that clients have explored all options and that the option that they go for is the best for everybody.

Beccy Reilly (Citizens Advice Scotland): One problem with sequestration is that the defences to a creditor petition for sequestration are limited, so a debtor could face losing their home for a relatively small amount of debt, as Susan McPhee said, when a debt payment programme under the debt arrangement scheme would be far more appropriate. If a legislative mechanism allowed the sequestration process to be stayed to enable a formal application for a debt payment programme, when that was appropriate, that would provide security for debtors, for whom that route would be more appropriate.

The Convener: That would be coupled with the suggested improvements in the debt arrangement scheme.

Beccy Reilly: Absolutely.

The Convener: Paragraph 20 on page 12 of Citizens Advice Scotland's submission says, as Nicholas Grier mentioned in passing, that

"England and Wales are looking at introducing a new procedure to provide debt relief for people who are not able to access any of the available remedies".

Do you know more about what is being discussed down there?

Susan McPhee: Not really.

Beccy Reilly: I understand that the proposed system in England and Wales loosely follows the debt arrangement scheme in Scotland and will be facilitated by money advisers and the money advice sector.

The Convener: Are England and Wales more likely to copy us or could we learn from what they propose?

14:30

Nicholas Grier: They will copy us. The proposed English system is also more like the New Zealand one. As far as I understand the proposed system, they are talking about removing debt entirely.

The Convener: That is more radical.

Nicholas Grier: It is more radical than what we are doing.

The Convener: It would be helpful to get a briefing from either Nicholas Grier or an appropriate body on the idea that is being explored in New Zealand and in England and Wales. If such a provision is not built into the bill now, the chances of that happening in Scotland in the short term are not high. Now is the time to find out about good ideas from elsewhere and to consider whether we want to incorporate them into the bill.

Nicholas Grier: As far as I know, New Zealand and England are waiting to find out what creditors think about the idea. You can imagine that they may not feel the same about it.

The Convener: But it would be useful to get a briefing. Can you do that?

Nicholas Grier: Yes.

Susan McPhee: Scotland already has the working group on debt relief. That group has developed a system, but it is not mentioned in the bill.

The Convener: In your belief, that system should be incorporated in the bill. We take that point.

Money Advice Scotland makes the point in its submission that the bill makes no reference to the debt relief scheme. The submission also refers to the composition of the Scottish civil enforcement commission; we will ask some questions about that when we come to later sections of the bill.

Paragraph 2.1.4 of your submission, on section 23 of the bill, asks what level of proof will be required to demonstrate that the debt advice and information package has been given. What do you think that the level of proof should be?

Yvonne Gallacher: Some record should be kept to ensure that there is evidence that that has taken place and that the person has received the advice and information. Evidence shows that lots of debtors receive lots of communications that they never look at. The creditor may well have acted responsibly, done their duty and sent out the information, but how do they know that the debtor has received the information, has read it and will act on it? The main thing is for the debtor to act. In addition, the money advice sector must promote what it is doing much more widely and try to address some of the current issues.

The Convener: If we built in an early-intervention requirement, I presume that that would help to deal with the problem because it would involve a face-to-face consultation.

Yvonne Gallacher: Yes. Good record keeping should also be mentioned, so that the information that has been provided could be evidenced at a later date if need be.

Christine May: Given that creditors are often finance companies that are based quite far away from where the debtor lives, what could they do to improve the situation and make face-to-face or personal contact?

Yvonne Gallacher: That is a difficult question to answer.

Some creditors already have direct contact. The home credit industry has direct contact with its customers. It is no coincidence that the home credit industry and catalogue companies achieve quicker enforcement of their debts and do not have the same problems. That happens because they have direct contact with the individuals concerned.

A number of other issues arise. We mentioned the difficulties that people have once they are in debt; they receive lots of communications and can end up feeling unwell as a result. A balance needs to be struck between debt collection and assisting people to seek advice. Without that, there will just be more vociferous debt collection, which will be done on the doorstep.

Christine May: Money Advice Scotland makes the point that its representatives, as advocates for the individual, are prevented from arguing their case in court. Can you say more about that and what might be done to change the situation?

Yvonne Gallacher: Some of our members can go to court and represent clients; it depends on the level of debt for which the client is being pursued. However, many advisers are not permitted in the court. The convener mentioned learning lessons from other countries. Representation is allowed in other countries, such as England, which allows representation by a McKenzie friend. If a similar situation applied in Scotland, sheriffs would become more attuned to money advisers. The profession is showing that it can be professional, particularly through the new approved advisers, whose status is a demonstration of competence. However, we have some way to go before the ordinary man in the street can be represented by someone who knows what they are talking about, and who is not necessarily a lawyer.

The Convener: That seems a reasonable recommendation.

Christine May: I would like to hear from the sheriffs. It would be useful to hear why they might be opposed to the proposal.

The Convener: Okay—do you mean sheriffs as opposed to sheriff officers?

Christine May: Sheriffs; they were the subject of the discussion.

The Convener: Okay.

Nicholas Grier: The problem is not the sheriffs in particular. The rules of court, which preclude such representation, say that only a solicitor can represent somebody at certain courts. Someone does not have to have a solicitor at the lower courts, but they have to at other levels. Some rules of court might need to be changed to allow the representation that has been suggested.

The Convener: We should explore that. The point is reasonable.

Beccy Reilly: The bill could address the issue directly.

The Convener: Okay.

Susan McPhee: Part of the problem is that most creditors do not sue—they do not go to court—which means that our clients do not have access to bankruptcy.

Christine May: I would like to explore the issue further. Let us say that I run Joe Bloggs plc and I have outstanding debts from a couple of hundred people. I pursue those debts in my usual fashion, which is by writing letters—whether they are opened or not—that contain increasing levels of threat. After a while, I can argue to my accountant that the debts are irrecoverable; I can say that because we have had no contact from the client, the debt can be written off. Does that sort of practice go on? Is it not easier to do that, in accounting terms, than it is to actively put money into pursuing a debt?

Susan McPhee: Creditors tend to sell on the debt. Part of the problem for our clients is that they do not know which debt they are being pursued for. The creditor can sell on the debt or instruct different firms of debt collectors to pursue it. We

have had cases in which three or four firms of debt collectors were trying to collect the same debt.

Beccy Reilly: It is not common practice for creditors to write off debts, unless a high proportion of the debt is being paid in full and final settlement. Creditors do not write off debts simply because they see no chance of getting the money back. If someone cannot pay, the only way for them to escape their debts is by accessing debt relief through sequestration.

Christine May: So, a creditor would never write off a debt as irrecoverable.

Beccy Reilly: It is rare.

Susan McPhee: Local authorities, which undertake most formal debt collection, collect council tax debt by the mechanism of issuing a summary warrant; such cases do not go to court, therefore the issue of lay representation in court does not arise.

The Convener: The Citizens Advice Scotland submission refers to research that showed that

"for every £1 of monthly income, clients owed almost £22 of debt".

The chances of someone being able to pay that off are not high.

Susan McPhee: That is right. We also did a smaller bit of research into our clients who have no income and no assets and found that the two thirds of them whose only income came from benefits had debts of around £9,500. If someone's only income is benefits, they will never be able to repay that level of debt. When interest and charges are taken into account, the debt escalates constantly.

The Convener: The problem is that people come to you not when the problem arises, but when they have got into terrible debt.

Yvonne Gallacher: However, when the people who are just at the margin come forward for advice—those who are not in default and who have not missed a payment—creditors do not want to know, because our client is still making payments. Provided that our client is covering the interest on the debt—I am thinking of credit card debt, for example—the creditor will not even deal with them. That is a big issue for the people involved and the money advice agencies.

Christine May asked about debts being written off. We must not forget that the environment that we live in is very competitive, with its plethora of credit card and zero per cent balance transfer offers. There is not the same room for manoeuvre as there was in the past for debt write-off, and the situation will get worse as interest and inflation get higher.

Christine May: Could you expand on that a little? I am not sure that I quite followed what you said. Take me through it again slowly.

Yvonne Gallacher: At the moment, we live in a low-interest, low-inflation environment. Once inflation and interest go up, however, the amount that is owed in the economy will have to be brought in and people will start to be pursued vociferously for their debts. At the moment, we have low inflation and low interest, so far more products are available than ever before. This country outstrips anywhere else in Europe in terms of the number and type of products that are available. We also have zero per cent annual percentage rates and balance transfers.

The environment is competitive and companies are operating on very small margins of profit to get a slice of the cake. The smaller the margin of profit, the more vociferously companies will pursue those who are in debt. That is of concern to us.

The Convener: It sounds as though we need to deal with debt and the causes of debt, to coin a phrase.

Shiona Baird (North East Scotland) (Green): Money Advice Scotland's submission highlights

"the importance of understanding discharge from the bankruptcy -v- discharge of responsibility to keep making payments."

Can you elaborate on that? What would be required to get that message across?

Yvonne Gallacher: The witnesses who gave evidence last week also raised the issue of synchronising the discharge from bankruptcy with the period of one year. Everything needs to be transparent. Debtors may believe that the period of bankruptcy is for one year and that that is what they will get, but the bill does not do what it says on the tin—not if they have to pay beyond one year. Money Advice Scotland is not saying that debtors should not have to pay beyond a year; we are saying that debtors should understand at the time of a contract that they could be discharged from bankruptcy after a year but, equally, they could pay beyond the period of a year if they have the ability to do so.

Other than the penalties that we discussed earlier, what incentive does a debtor have to pay beyond a year if they believe that they will be discharged after a year?

The Convener: Two points arose last week. The first was whether the discharge period should be reduced from three years to one and the second was whether it should be synchronised with the repayment period. The witnesses from Citizens Advice Scotland said that they did not have a strong position on the length of the discharge period, but there was unanimous

agreement on the need to synchronise the discharge period with the repayment period.

Yvonne Gallacher: Yes, the two should be one.

The Convener: However, if we introduced synchronisation and reduced the discharge period to one year, we would be asking people to repay within one year rather than three.

Yvonne Gallacher: Money Advice Scotland is not necessarily saying that the period should be a year. Some people can pay for longer; for example, if someone can pay for three years, the discharge would be at the end of three years.

The Convener: So the one-year period should be a minimum rather than a standard.

Yvonne Gallacher: Yes.

Beccy Reilly: Citizens Advice Scotland's view is that the discharge period should be reduced to a year, but that payments should be synchronised with that period. First, that would give us parity with the English system. Secondly, the biggest benefit for debtors' post-sequestration rehabilitation is the release from making continuing payments. There are benefits to the type of restrictions that a bankrupt has to live with in a one-year discharge period. For our client base, one of the key benefits of being free from bankruptcy is the release from continuing payments. There would not be a significant benefit to clients and debtors who had gone through the bankruptcy process if the payment period were to be extended beyond the one-year discharge period.

The Convener: Two countries that reduced the discharge period—the USA and Australia—have since reversed the legislation. I am told that there has been a 75 per cent increase in the number of bankruptcies in England since the new legislation came into force. Therefore, the prima facie evidence from other countries that have gone through the process and reverted to having longer discharge periods suggests that getting the balance right between creditors and debtors is not as straightforward as it appears to be.

14:45

Beccy Reilly: It is probably not as straightforward as it appears to be, but there are issues to do with accessing bankruptcy. Reducing the discharge and repayment periods to one year would not necessarily incentivise bankruptcy, because serious disadvantages go with bankruptcy, as Nicholas Grier pointed out at the outset.

It is important to remember that it is possible, as the Scottish Executive's policy memorandum admits, to gather an estate in a one-year period. If there are significant assets, they will be realised and sold for the benefit of creditors. Much of our client base consists of people with low incomes or no disposable incomes and no assets. In that context, a continued period of payment would be of no benefit to creditors either.

The Convener: I will play devil's advocate. Suppose that we do as the bill suggests and reduce the discharge period to a year, and that we synchronise the repayment period so that it is also a year. The next time that a creditor lends money to someone, will they not be likely to tighten the terms, toughen up the rules, have more up-front charges and increase the interest rate because they will want to try to reduce their exposure? Will there not be a kickback that will make it more difficult or expensive for debtors to borrow money from creditors in the future?

Beccy Reilly: That is a good point. There is always that risk, but there is a counter-argument. The effect that you have outlined may be likely initially, but in the longer term there may be more responsible lending from lenders. There might be a positive kickback in that respect.

The Convener: But is it not the case that the people at the lower end are often the most exposed and that they will borrow money even if they must pay usurious rates?

Irene Mungall: They will be in that situation anyway. Anybody who lives in a deprived area must borrow using the most expensive form of credit. There is no choice. If the credit industry had to implement a bit of self-regulation with regard to whom it would lend money to, that might not be a bad thing. People who watch television at night see adverts that say that if they apply to a particular company for a loan, the loan could be agreed by the time that the adverts end. A lot of irresponsible lending goes on.

The Convener: Will the bill tackle irresponsible lending sufficiently well?

Susan McPhee: No.

Beccy Reilly: No.

Yvonne Gallacher: No.

Irene Mungall: No.

Nicholas Grier: It does not profess to do so.

The Convener: No, it does not. The matter is probably reserved, but that should not prevent us from commenting on it in our report if we think that action needs to be taken.

Susan McPhee: Unless the grounds for apparent insolvency are eased, debtors will still not be able to access bankruptcy easily. Even the bill's reducing the discharge period to one year will still not allow debtors to become bankrupt easily.

Indeed, from our experience, the majority of debtors do not want to become bankrupt even if they could do so.

The Convener: Okay.

Nicholas Grier: I would like to clarify something. Sometimes there is confusion between discharge of bankruptcy and discharge of responsibility. I understand that the English position under the Enterprise Act 2002 is that a person can be discharged from bankruptcy within a year, but that does not necessarily mean discharge of responsibility, which normally takes three years. The English are really getting at those bankrupts who are able to get a job and earn a reasonable living and not at the people with no income and no assets, who can probably be dealt with in a year. There is an argument about why the former should not pay their creditors, which is why the discharge of responsibility period continues to three years. It may not be my place to say this, but it would be unusual if the credit industry were to be markedly different on that matter on the two sides of the border. However, that must be decided. Synchronisation is not an absolutely clear-cut issue.

A further issue is that even though someone could have their bankruptcy discharged, there is a proposal to have bankruptcy restrictions orders, which are already used in England and can last for 15 years. The bill includes a proposal to have BROs in Scotland.

The Convener: Are they for serial bankrupts?

Nicholas Grier: They are for people who happen to have misbehaved, shall we say, in the period leading up to their bankruptcy or who have not been co-operative debtors once they have been bankrupted. For example, if someone had given their friends all their assets before they went bankrupt to avoid repaying their creditors, that would be held against them and they could have a bankruptcy restrictions order placed on them for up to 15 years. The bill mirrors the English legislation in that respect, which may or may not be a good thing.

The Convener: That is helpful.

Susan Deacon: I think that Susan McPhee said that she would say more about land attachments. The Citizens Advice Scotland submission says quite a bit about that, but—

The Convener: We are dealing with the issues in the bill in sections and we will discuss land attachments in a subsequent evidence session.

Susan Deacon: I beg your pardon. I thought that we were coming on to land attachments now, because it was said that we would deal with the issue later.

The Convener: It is clear from last week's meeting that land attachments will be a big issue, to which we will devote a fair amount of time.

I thank CAS and MAS for their written evidence, which was comprehensive and straightforward. Representatives of those organisations will be back with us when we deal with matters such as diligence and land attachments. Are there any final points that the witnesses would like to make? I know that Susan McPhee is itching to make a final point.

Susan McPhee: Earlier, Susan Deacon asked why people would want to go bankrupt. A significant issue for us is the fact that our clients suffer constant harassment by creditors. That harassment can cause illness and depression and can make some people suicidal. It does not take the form only of letters; we have reports of clients who are telephoned continually. If they work, they might be telephoned at work or be sent text messages. They are harassed continually. On average, our clients have about five different debts, so they can be pursued by different creditors all the time. There is no release from that. Unless they have access to sequestration, there is nothing that can stop it.

The Convener: Does Yvonne Gallacher have any final points?

Yvonne Gallacher: No. I simply echo what Susan McPhee has said. As has been mentioned, our biggest concern is the recycling of debt through debt collection. We look forward to giving evidence on the new Scottish civil enforcement commission.

Christine May: Susan McPhee's final point was interesting. If, instead of harassment, those telephone calls could offer advice and help, they might be more effective. The companies that make the calls are making contact, but to the wrong effect. Such calls only entrench people's defence mechanisms. If the companies concerned could somehow be persuaded to turn their approaches into something more supportive, they might get a better result.

The Convener: I thank the witnesses for their submissions and their oral evidence, both of which have been extremely helpful.

Our second panel is from the Institute of Chartered Accountants of Scotland. I welcome Anne Bryce, who is director of insolvency, and Bruce Cartwright, who is convener of the insolvency committee. Thank you for your written evidence, which received some publicity in *The Herald* yesterday.

Bruce Cartwright (Institute of Chartered Accountants of Scotland): It was not really a lake behind me and I was not fishing.

The Convener: It was not a bad photo, by the way.

Bruce Cartwright: I listened to the evidence of the first panel and I would probably agree with everything that those four ladies said—perhaps we should just sit aside. Seriously, we have a common mission. I disagree with what was said only on some minor technicalities.

The committee has received our submission but, as we represent a body of practitioners, I will outline some key practical issues. It is fair to say that the chestnut of how long the discharge period should be has probably taxed or vexed practitioners for a while now. If 20 of us were in a room, we would probably have 10 answers between us. There is no consensus per se. I will put my cards on the table. I am in favour of the one-year period, but I agree that synchronisation is pretty important. It does not make a lot of sense to me that the discharge period should be one year and the payment period should be three years. Other practitioners would say that a three-year period makes more sense, because it allows the creditor to ingather. However, for many people it is about bringing a lot of misery to an end and giving them an opportunity to restart. I think that that is more important.

I deal more with the 10 per cent of cases that involve businesses and partnerships going bust; I do not see a lot of personal bankruptcy cases, except in a business context. It is possible to have a one-year period—that is a political decision. This weekend the consultation on protected trust deed reform was published. If you decide in favour of a one-year period, the conclusion that there will be a fairly significant rise in the number of bankruptcies is unavoidable. Perhaps it is right that that should happen. It may mean that we are recording better the misery that is out there and allowing people to avoid it. The issue can be approached in two ways. This year the number of bankruptcies has increased from 3,000 to 5,000. If, as a result of shortening the discharge period, that figure increases to 10,000, we may just be recognising some of the misery that exists and allowing people to exit. There is no point in having false statistics that suggest that the figure is only 5,000, when another 5,000 people are caught in a trap. I take the view that the number will be what is right—full stop. We should not get carried away by statistics. However, synchronisation is really important.

I look at the stats from the States. I have not checked them recently, but I believe that one person in 200 in the States goes bankrupt. Here the figure is one in 800 or one in 1,000. If credit is available more easily, there will probably be a big rise in the numbers. Many practitioners will say that it is terrible if the numbers go up, but the misery is out there already. All that we would be doing is recording and dealing with it. Is that not more important? That was probably a political statement, rather than a factual one.

Synchronisation has not been introduced in England, but that is not necessarily right. We are keen to sort out the definition. As a practitioner, I would struggle to keep someone on the hook for three years, so that he continues to pay me, if he is off the hook in his mind and technically with me after a year. It seems slightly bizarre that someone who has more ability to pay should be on the hook for longer. I can argue the point all day with myself.

The causes of debt are more important than the issues with which the bill deals. I am frustrated by the way in which people are able to get into debt, although that is not a matter for us to debate today. There must be personal responsibility, but the causes of debt must be examined. Those causes, rather than the legislation, are the prime driver.

Anne Bryce (Institute of Chartered Accountants of Scotland): The bill gives us a great opportunity to look at the whole problem in a joined-up manner and to examine sequestrations, protected trust deeds and DAS together. We must get the problem sorted out for the next 20 years, for the sake of practitioners, debtors and the public. We have a great opportunity to consider all the issues together and to get the system right.

The Convener: Bruce Cartwright made the point that the bill will not achieve ministers' stated aim of encouraging an entrepreneurial culture in which people are willing to try it again. In my view, he is probably right. I was involved in enterprise development for 20 years, and I have never seen the bankruptcy system as a major deterrent to enterprise. Could the bill do something that it is not doing to encourage such an entrepreneurial culture?

Bruce Cartwright: My biggest frustration when I read that the aim is to deal with the entrepreneurial issue is that we are not really dealing with an entrepreneurial problem. From our members' stats, we are clear that 90 per cent of cases involve what we would call consumer debt. One could argue that things are being made easier for the 10 per cent of the 5,000 cases that involve businesses. The number is smaller, but it may still be right for us to address the issue. However, to be honest, most of the corporate cases involve limited companies and, therefore, liquidation. I could bore members silly about the number of ways in which it is possible to go into liquidation, to come back as a phoenix company and to be quietly ignored.

I do not think that the system is a major problem on the personal front—the issue that Nicholas

Grier raised. Anybody with a bit of nous is probably incorporated and will be subject to different legislation. They will be in the territory of liquidation and the question whether an official receiver should be appointed. That is another subject.

15:00

You asked how the bill could be improved. We are talking about only a small group of people, but the bill will help them because they will be able to come back from bankruptcy more quickly. I was not at last week's meeting, but I read the *Official Report* and I noted the former bankrupts' comments on their position. It seems to me that, if one has been bankrupt, it is difficult to come back. For example, they talked about their difficulty with opening bank accounts. I do not think that banks can be forced by legislation to give people bank accounts, although perhaps they can be—I do not know. However, the main thing that affects people who seek to come back from bankruptcy is other people's attitudes and they are not caught by the bill.

Murdo Fraser: I return to the point about the discharge period being reduced from three years to one year. The new legislation in England has been in force for a limited time. Have your members identified any trends south of the border as a result of the change?

Bruce Cartwright: There has already been a significant increase in the number of bankruptcies. I do not have the figure to hand, but I think that it has just passed 50,000 per year. I can get the information for you, but I think that there has been a rapid increase from, on average, about 30,000 bankruptcies per year to about 50,000 per year.

The Convener: I think that there has been a 75 per cent increase.

Murdo Fraser: In any event, there is a continuing increase in sequestrations north of the border. Could that increase be part of a wider trend?

Bruce Cartwright: It could be. In each of the past eight years or so there were about 3,000 to 3,200 sequestrations in Scotland. After nine months of 2005, there were 3,600, so we are probably on target for 5,000 sequestrations in 2005. There has been a 50 per cent increase with no change in legislation. I do not know whether that is due to people being more honest in dealing with things. I cannot explain the increase, except to say that consumer debt has increased immeasurably.

Murdo Fraser: That is interesting.

I have another question on the same matter. I presume that your members make money out of bankruptcies. On what basis do they charge fees?

Bruce Cartwright: It is probably best for Anne Bryce to answer that question, because she is closer to it, but they do so either on a timeline or through the Accountant in Bankruptcy.

Anne Bryce: The Accountant in Bankruptcy considers the fees, but in insolvency scenarios various fees also have to be approved by creditors committees. The creditors take an interest in and approve the insolvency practitioner's fee.

Murdo Fraser: If the discharge period is reduced from three years to one year, will that have an impact on the fees that your members charge?

Anne Bryce: I do not think so. I listened to the argument about that at last week's meeting. IPs will simply get new cases on a yearly basis, rather than on a three-yearly basis.

Bruce Cartwright: The key part of the work involves sorting out the assets, and that is done during the initial period.

Anne Bryce: The fee is front loaded.

Murdo Fraser: So there is not much work to be done in years two and three.

Bruce Cartwright: To be honest, I suppose that if someone is discharged after a year, but they make income contributions for three years, the IP will do the same work that they do in the current system. However, there will be a reduction in administration if the IP does not receive income contributions in the second and third years. The issue was raised by a bankrupt at last week's meeting, but it has not been raised by IPs. IPs are not worried that they will lose income. In fact, to be cynical, they will have more bankruptcies to deal with.

The Convener: For the record, we should say that an IP is an insolvency practitioner.

Shiona Baird: There seems to be an inherent unfairness in the bill. We heard that incorporated companies are not covered by the bill, but when an incorporated company goes into liquidation and discharges its workforce, its workers can become bankrupt, because they can no longer pay their debts, given that people work out their debts on the basis of their income. However, the owners of the company, having protected themselves, can retain their assets, such as their homes. I feel that we are missing something.

Bruce Cartwright: Nicholas Grier can brief you on this independently. We are into the territory of the corporate veil of a limited entity. Legislation provides that a limited company is recognised as a separate individual, for want of a better phrase.

Shiona Baird: The impact that such companies have on personal debt is not recognised.

Bruce Cartwright: On no income, no asset status for individuals, if an incorporated company had no assets, it probably would not even go into liquidation, but would disappear quietly. There would be no Government agency to deal with it in Scotland, whereas there would be in England. That is a major difference. If someone wanted to disappear quietly, having taken the money of a limited entity, they would have to ensure that no assets were left. No one would look after the case. There would be no directors disqualification. That is a major difference between us and England.

Anne Bryce: On directors' responsibilities, often they have to sign a personal guarantee for the bank to get funding to keep their company going. In many cases that we come across, all directors have signed on the line to get the funding for their company. They are responsible in many cases.

Bruce Cartwright: And they will have personal income tied up.

Nicholas Grier: The point that you raise was addressed by the UK Enterprise Act 2002. When a company gets into financial difficulties, a sum is set aside specifically for all the unsecured creditors, of which, commonly, the employees form the largest part. Unfortunately, that sum is only £600,000 at the very most; for a small company it can be as little as £10,000. However, it is a step in the direction that has been talked about. As Bruce Cartwright indicated, that is the way the cookie crumbles. With limited liability companies, somebody loses out. Quite often, throughout the world as well as in the UK, employees suffer. There is no easy answer to that.

The Convener: That is why we have limited liability companies.

Nicholas Grier: To promote enterprise.

Shiona Baird: There is no way that I can pursue the subject further. We have been at the receiving end of the situations that have been described, which seem grossly unfair. I was hoping that the bill would address that, but I see that it is unable to.

The Convener: I presume that companies limited by guarantee come into the same category as companies limited by liability.

Nicholas Grier: Yes. I did not want to get into all the finer points. All registered companies are limited companies; there are one or two other sorts of unlimited companies. If a company is registered, the Companies Acts apply, and it has its own separate personality. Partnerships are like groups of sole traders, and they can be made personally bankrupt, but a company cannot be made bankrupt.

The Convener: Unless the partnership is a new type of partnership that is incorporated.

Nicholas Grier: Which is a limited liability partnership. You can see why I did not want to get into that.

The Convener: Absolutely.

Christine May: I want to pursue further the point that Murdo Fraser made. You said that none of your members had come to you concerned that they would lose money. To turn that on its head, do your members anticipate that they will have access to greater opportunities, and therefore more money as a result of the bill?

Bruce Cartwright: The bill is not an opportunity for a revenue stream. It has to be joined up with the trust deeds and debt arrangement scheme. There is an overlap between the work of private businesses and partnerships and Government agencies.

There is no major concern about sequestration. There might be more sequestrations—more might be done by the Accountant in Bankruptcy. The trust deed consultation that came out on Friday causes more concern about where that market is going. Discussions around sequestration have been about the principles of society's view of bankruptcy rather than the self-interest of where we get our fee from. There has been no discussion around the fee, which might surprise you, given that we are a bunch of accountants.

Michael Matheson (Central Scotland) (SNP): I want to pick up on the debt arrangement scheme. You suggest in your evidence that there is little appetite for it so far. It would be helpful if you could expand on why that is the case.

Anne Bryce: We have observed that, since the system came into being at the end of November last year, fewer than 200 debt payment programmes have been taken up. Far fewer debt advisers than the Executive anticipated are being properly trained and are able to deal with debt payment programmes. The system has been a bit of a disappointment, given the money that was thrown into it to train money advisers—apparently, £5 million has been spent, and there is an on-going cost of £2 million to £3 million. It is an expensive beast.

Michael Matheson: Why has there been a limited uptake?

Anne Bryce: The scheme does not give the debtor or the money adviser much. In contrast to being relieved of his debts in a year, which is the situation in the current proposals, the debtor might have to pay the full amount of his debt—plus interest, perhaps—over 15 years. What would you do if you were a debtor with debt problems? There is a great chasm between the two options.

The money advisers have been trained, but they receive no fee from the scheme and have no

motivation to become involved in it. The process is supposed to be paperless, but administratively it is quite tricky. We do not have first-hand information about this—the previous witnesses do—but we are aware that the system is not working well.

Michael Matheson: In your submission, you suggested that, if the debt arrangement scheme was able to obtain debt write-off, that would basically be the same as a trust deed.

Anne Bryce: Or similar to that, yes.

Michael Matheson: However, you also have a problem with the fact that, unlike the situation with trust deeds, the work would be

"undertaken by unqualified and less regulated personnel".

Can you expand on what you mean by that?

Anne Bryce: In our body, to be an insolvency practitioner you have to be a chartered accountant first, and then get an insolvency permit. To do that, you have to sit difficult exams. You also have to get two levels of insurance. You have to get an enabling certificate for insurance—an enabling bond—and you have to insure every case. There is a raft of exams, money, insurance subscriptions and so on. Further, you are monitored by our institute monitors every two or three years to ensure that you are doing things properly. There is a lot of training and expense for IPs.

Michael Matheson: So should we just get rid of the debt arrangement scheme?

Anne Bryce: It is not for me to say that.

Michael Matheson: I am just asking for your opinion.

Bruce Cartwright: I think that it needs to be changed.

Anne Bryce: Yes. Obviously, it is not working as it is.

Bruce Cartwright: The evidence that it is hardly being used suggests that it is not working. If someone has a choice between paying their debt plus interest in full over a certain period and paying only a percentage, and there is no difference in the honourability of either option, it is not difficult to see what they will do. If someone can pay the debt over time, they will probably do so without going through any arrangement. However, the trust deed allows a more flexible exit.

The Convener: You say that the bill's proposal to allow non-Scottish advisers to handle debtors north of the border

"could open the floodgates in Scotland to unregulated debt consolidators".

Can you expand on that? What could we do to stop that—

Michael Matheson: Invasion.

Karen Gillon (Clydesdale) (Lab): That is one of your ideas, Michael.

15:15

Bruce Cartwright: It is awfully difficult not to come across as parochial when we talk about the situation, but it is important that local people deal with local problems, even if the simple objective is to raise assets and identify the right values of properties. Anne Bryce is quite a follower of the debt consolidation position. We have seen it in England and we see it creeping north. Is that fair?

Anne Bryce: That is fair. Usually, members of the trading standards profession are regulated by the trading standards body, but it does not have the set-up to monitor those other debt consolidators.

The Convener: I do not want to use the word cowboys, but do you suggest that that is what those people are? I see you nodding.

Bruce Cartwright: They might appear in a western—how about that?

Anne Bryce: Although some of them are cowboys, some are fine.

The Convener: My point is, should the bill include additional provision for regulation? These days, we are always being told that there is too much regulation, but is there a need for slightly more regulation in this area? Is that the job of the bill or of institutes such as yours?

Bruce Cartwright: I am not sure how one would legislate for that. The problem is that the institute could not regulate such operators, because it can regulate only its members; we are talking about people who are outside institute control. I am trying to think about how one would regulate them.

Anne Bryce: It is a trading standards problem—

Nicholas Grier: It is a consumer credit problem.

The Convener: Perhaps you could comment on—

Anne Bryce: We can comment on it, but not do anything about it.

The Convener: Okay, but you suggest that it is a worrying development.

I want to pick up on something that Michael Matheson asked about. You said that it seems as though the Executive wants to phase out trust deeds, and that it feels that the DAS is the way to go instead. That is despite the fact that the nearest equivalent to a trust deed in England—the individual voluntary arrangement—is being pushed hard by the Government down there as a more effective and cheaper remedy than anything else. Will you expand on that, please?

Bruce Cartwright: The situation has probably become a little clearer since we submitted our evidence, because the consultation on protected trust deed reform was published late on Friday.

The system has three tiers at the moment: sequestration, trust deeds and the DAS. Currently, the sequestration approach is to pull down the wall, sell the assets and realise a dividend from them. Trust deeds provide the middle ground of an informal arrangement with creditors. The DAS is a version of trust deeds, but it implies full repayment, so it is at the top end.

There has been a lot of debate in the past about the level of dividend that a trust deed should anticipate paying. The argument is that if it pays nothing, what is the point of it, except to absolve a creditor? ICAS has a strong view that every trust deed should pay a dividend. In fact, that is included in our self-regulation arrangements.

I understand from the proposals that were published on Friday that we are talking about a dividend of 20p to 30p. I do not have a problem with the logic of paying more than a sequestration, which averages roughly a 20p dividend at the moment.

Given that the DAS is dealt with separately, and if, at the top end, it means that people do not have to pay debt relief; and given that the consultation document suggests that only 10 per cent of trust deeds pay more than 30p, that leaves less than 10 per cent in the middle, and it is a small area. However, it is clear that there will be a lot more sequestrations and more onus on the Accountant in Bankruptcy, who undoubtedly will have to gear up. There is a question about the public purse as well. I can argue that two ways—if the assets are there anyway, they will fund part of the public purse, but I imagine that the Accountant in Bankruptcy will have to increase her staff significantly.

The Convener: Are you saying that the English system is better?

Bruce Cartwright: I am a bit puzzled about why the individual voluntary arrangement in England is proving increasingly popular and seems to work. I know from speaking to some of my English colleagues that creditors in England, and even what were formerly the Crown creditors who dealt with value-added tax and pay as you earn, seem to take more interest. I cannot put my finger on why that is the case. There seems to be a fair amount of apathy from creditors towards trust deeds in Scotland.

The Convener: That seems to emphasise the point that was made last week that we need to take evidence on how the English system works. It is clear that we could learn a lot from that.

Anne Bryce: The other point to make about IVAs in England is that they last for five years.

The Convener: And once they are finished, that is it.

Anne Bryce: Yes, that is it, and people can start again.

The Convener: You make the point that the bill is silent on four crucial topics, some of which we have discussed. Could you follow up your excellent submission with more on your views on those four topics? You have covered some of them, but I want to ensure that we cover them all and that we hear what you think the bill should be saying.

Bruce Cartwright: Probably the most significant topic—which has been discussed in the committee today and previously—is apparent insolvency. We agree with everything that we have heard. You asked, "Why £1,500?" No one can quite pin it down. It looks as if England said, "It sounds too high. We'll divide it by two." It seems odd that someone who is in the misery of debt cannot escape into bankruptcy because they cannot prove that they meet the requirements of apparent insolvency. Why that number? To be cynical, if I dialled the right phone number one weekend and left my phone off the hook, I would probably run up a bill of £1,500. There does not seem to be any logic to that figure.

The Convener: Can you suggest a logical position?

Bruce Cartwright: We could argue for a number, but we have had a debate with our members about other practical ways to define apparent insolvency, as opposed to a monetary definition.

Anne Bryce: At the moment, one of the most popular ways of defining apparent insolvency is if 14 days have expired after receiving a statutory demand for payment. You could, perhaps, relax that by having apparent insolvency kick in with just a summary warrant or a court action.

The Convener: And of course there is special significance in that figure, because under the land attachment scheme in the bill, when it becomes £1,501 one can, in theory, lose one's house.

Bruce Cartwright: Do you want me to cover the other three points?

The Convener: I was going to ask you whether you would give us that additional information in writing, if that is okay. Although we have covered the basics that we need to cover today, it is clear from the discussion that you have a lot more to say. It would be useful to get that in writing. You will no doubt be coming back to discuss diligence and other items—we can explore those in more detail.

Bruce Cartwright: That is not such a strong subject.

The Convener: There are no further questions, so I thank you for attending. Both the written and the oral evidence were extremely helpful.

I suggest a five-minute break. I do not know about members, but my head is becoming numb.

15:22

Meeting suspended.

15:31

On resuming—

The Convener: We will now discuss the issues that emerged from the previous evidence-taking session. Both today and last week, I was struck by the fact that there is almost unanimity on a number of points. There is absolute unanimity on synchronisation of the discharge period with the payment period. I cannot think of anyone who dissented from that last week or this week. There is general agreement that no one is overly concerned by the reduction of the discharge period from three years to one year. The matter does not seem to be particularly controversial either for the Institute of Chartered Accountants of Scotland or, at the other end of the scale, for Citizens Advice Scotland. Synchronising the two periods seems to be more important.

There is clearly consensus on some of the issues about which the bill is silent, such as the debt arrangement scheme. There are also concerns about the future of trust deeds. Nicholas Grier has been taking notes. There seems to be an emerging consensus on possible improvements that could be made to the bill.

Nicholas Grier: You are absolutely right, convener.

The Convener: Would you like to expand on any of the issues?

Nicholas Grier: Although there is a good deal of consensus, we must never forget that there is similar legislation in England. As I may have indicated before, it is obviously open to the Parliament to step out of line. However, we must be aware of the fact that, if we make it easier for either creditors or debtors, that may have a bearing on people's ability to get finance. If we make it considerably easier for debtors, lenders may ask themselves whether it is a good idea for them to lend to Scottish debtors. If the period for discharge of payments is reduced from three years to one year, lenders may consider not lending in Scotland to the same extent. That is a matter for them to decide.

There is a good deal of doubt about the issues that have been raised in respect of protected trust deeds. It may be necessary for us to ask the Executive to indicate what is so wrong with the protected trust deed as it stands that it needs the degree of regulation that has been suggested. The accountants seem to think that the current protected trust deed is not too bad. However, there is agreement that the debt arrangement scheme needs tweaking.

The Convener: The need for us to pick up on what has been happening in other countries—Australia, the US and New Zealand, in particular—and south of the border has been highlighted. I suggest that we ask the clerks, along with Nicholas Grier, to produce a small paper on how we should go about taking evidence on what is happening in England. The more I hear, the more I think we need to take into consideration some aspects of the English legislation. To whom should we be talking?

We are covering more than one element of the bill, so when we come to take evidence on what is happening south of the border we will need to take evidence that relates to all four elements. That may involve our making one or two trips down south to talk to people. It would be sensible for us to do that. Indeed, it would be daft for us not to take into consideration what is happening south of the border. That may involve visits, inviting people up to give evidence or, probably, a mixture of the two.

The evidence that we are hearing just now is geared towards the first element of the bill—bankruptcy—and we will have another two evidence sessions on it. Since there is so much information to absorb on each element, I suggest that we ask the Executive to come in and talk about each element as we consider it, rather than at the end. We might have a round-up of evidence at the end, but this element of the bill, as well as that on diligence, is chunky enough to justify asking for that. If we are going to do justice to the bill, that seems to be a sensible way to approach it. Let us ask the Executive whether that is okay.

Christine May: If you recall, the Executive briefed us on its approach to the bill and what it considered when drafting it. I distinctly remember feeling, at the end of that briefing, almost shell-shocked at the amount of information I was trying to absorb. If the Executive can come to the committee at the end of our evidence taking on each element of the bill, we will find it easier to see the links between the various elements. I also hope that our level of comprehension will increase to the extent that we will be able to ask sensible questions.

You mentioned several areas on which there is consensus, but there is another on which there is almost consensus: the intention that the bill should support entrepreneurship. That case has not necessarily been made yet. We would like to see whether the bill will do what it says it will.

There is not, however, consensus on money advisers and the scheme that has been arranged. And there is the issue of repaying the debt over 15 years or taking the option of getting out of it all in three. Some of that needs to be explored further.

The Convener: We are also dealing with a fairly dynamic situation. For example, the discussion paper that was published on Friday, which will clearly have some impact on the bill, has been mentioned. Perhaps we can ask Nicholas Grier to give us a summary of that paper as it might affect the bill, or what is not in the bill but evidence suggests should be. Although I did not read the paper over the weekend, it seems that there is enough in it for us to consider whether it will affect our deliberations.

Are there any other points?

Michael Matheson: The only other point is the work that is being done in New Zealand on people with no income and no assets. It would be helpful to get more detail about what is happening there when we are looking at international behaviour.

The Convener: And that south of the border.

Michael Matheson: Yes, you mentioned that.

Nicholas Grier: It seems to be very much under discussion. What I found out I got from websites. It might be that the point is still being discussed and that there is no final view, but it is still worth hearing about.

The Convener: Is everyone happy with that? Murdo, are we on track?

Murdo Fraser: I seem to have become the resident expert and I am not sure how qualified I am to take that mantle. I am sure that we are making excellent progress.

St Andrew's Day Bank Holiday (Scotland) Bill (External Research)

15:38

The Convener: I welcome Dennis Canavan. As always, please participate fully in the discussion, Dennis.

Dennis Canavan (Falkirk West) (Ind): Thank you.

The Convener: This is the follow-up to the committee's decision to commission some external research on the costs and benefits of a bank holiday. There are issues around the definitions of costs and benefits and bank holidays, but that is really for the consultants to decide.

As the committee agreed, we consulted the Executive officials who are handling the bill. They are in general agreement with the terms of reference. I have also spoken to Tom McCabe, the Minister for Finance and Public Service Reform, to ensure that he is happy with the way in which we are progressing. That was an informal discussion but he indicated that he was. His officials have obviously briefed him.

Given the sensitivity of this, it is important that we move forward on this piece of work with agreement between the committee and the Executive. That will be beneficial for future discussions and decisions on the bill.

We are suggesting—as is normal practice with external research—that once we have agreed the terms of reference, the project will be monitored by a steering committee of officials, so that politicians will be taken out of the management of the exercise. We suggest that at least one official from the Executive be involved in the steering group, and the Executive is happy—in fact, I would say keen—for that to happen. I suggest also that, given the fact that this is a member's bill, it would be useful to have someone from the non-Executive bills unit on the steering group. NEBU is responsible for drawing up or making any changes to the bill, the policy memorandum, and so on.

If Dennis Canavan would like to nominate somebody from his office to be on the steering committee, that would also be reasonable. We are trying to ensure that all parties—the Executive, the committee and the bill's promoter—move along together in this exercise.

We need to look at the social benefits and costs as well as the economic benefits and costs. Clearly, this is a social as well as an economic matter. That should be addressed, if the committee agrees.

With those comments, I open the discussion of the paper that has been circulated.

Dennis Canavan: Thank you for inviting me to address the committee, convener. I am grateful for the time that you and the committee are giving to this matter. I agree generally with the points that are made in the paper that has been circulated. Your comments suggest improvements to the paper in two main areas. First, you would seek to ensure that the research covered the social as well as the economic impacts of the bill; secondly, you suggest that the steering group membership be broadened slightly to give it a bit more balance.

The second sentence in paragraph 6 of the paper refers to an official of the Scottish Executive being on the steering group, but the next sentence talks about Executive "officials"—in the plural. I have no objection to the Executive being represented on the steering group—there might be advantages to that—but, bearing in mind the fact that the group will be discussing a member's bill, it would help to give the group a bit of balance if a representative from NEBU were included. I also suggest that Maureen Conner, my researcher, be on the steering group. She has probably done more research into this subject than anyone else in the Parliament and she would have a lot to contribute.

I have two other suggestions. First, the paper talks about comparisons with two or three other countries. I hope that that will not be two or three in the literal sense. I suggest four countries for comparison—the United States, Ireland, Australia and France—all of which have at least one national day and some of which have more than one. All of them are comparable in some way with Scotland.

Secondly, I have today e-mailed the committee a copy of a letter about my bill from Mr Martin Bell. I ask members of the committee to consider Mr Bell's letter. He is not Mr Bell the former MP; he is a different Mr Bell. His letter is a good read and would be informative for all members of the committee.

The Convener: I am sure that we can circulate that letter to committee members. I do not know what is in it.

15:45

Susan Deacon: I want to take us back a step. The research is based on the presumption that we are able to get Scotland to have a holiday on a given day; it does not address how we would ensure that businesses and schools would take a holiday. I would welcome your comments on that, convener.

The major themes of much of our discussion have been whether any legislation could translate into practical effect, given its limitations in bringing any of the options into play, and whether there are other ways in which the Parliament and/or the Executive could catalyse or facilitate discussions about further moves towards organisations observing St Andrew's day as a holiday. Those issues are outwith the scope of the research. Somebody who reads the options in the committee paper in isolation could be forgiven for thinking that it is within the gift of the Parliament to make each of those options happen—unless we expose the fact that that is not the case.

The Convener: Perhaps we should add clarification for the purposes of the consultants. One of the things to establish is whether, if St Andrew's day was designated a bank holiday, companies and individuals would take a holiday. On existing bank holidays, a lot of people do not take a holiday. I would have thought that that is one of the first things the consultants would have to determine. In my view, we also need consultants who have international offices and who can look at what happens elsewhere. The Irish, for example, generally take St Patrick's day as a holiday; other countries have a national day that is not a designated holiday, which is along the lines of what we have at present. The consultants would need to consider both approaches.

Christine May: Possibly. Susan Deacon and I have not discussed the matter, but we take broadly the same view. If we are to have the research done, it should consider the practical implementation issues. We should build that into the brief.

The Convener: Shall we agree to build that into the brief? We want to work with the Executive and with Dennis Canavan to take things forward on the basis of consensus, and that seems a reasonable point to make.

Michael Matheson: I am happy for the research to consider the economic and social benefits that may come from such a holiday or from the different scenarios that are outlined in the committee paper, but I would like to clarify that "social benefits" will include cultural benefits, which are an important aspect that should not be left out. I would like the research to consider the social and cultural benefits that could be gained from such a holiday.

Christine May: I would have stuck the cultural benefits in with the economic benefits, but there you go. Let us get them in.

The Convener: The more detail we include in the brief, the less scope there is for people coming back and saying that we did not look at this or that. Those suggestions from Susan Deacon and Michael Matheson seem fair and reasonable to me. Are they agreed, along with all the other points members have made?

Members *indicated agreement*.

Enterprise Agencies (Restructuring)

15:48

The Convener: Item 6 is consideration of the restructuring of the enterprise agencies. Last week, we had a well-presented briefing from Sir John Ward, Jack Perry and Lena Wilson—respectively the chair, chief executive and chief operating officer of Scottish Enterprise—on their proposals. I remind members that it was a confidential briefing and that, therefore, we are not at liberty to disclose the detail of what was presented to us. We must talk in generalities. A paper has been circulated to the committee.

My impression—members who were at the briefing can correct me if I am wrong, and I am sure they will—was that there was general agreement with the thrust of what was being proposed. There are obviously issues of detail that will need to be discussed, but the only issue of major concern was the proposal for the middle tier of the planning units. Separate planning units are proposed for the east and the west. A number of us felt that that would reinforce the east-west split, particularly the Glasgow-Edinburgh split, and that it would perhaps be better to have one planning unit that covered both, as well as one for the north and one for the south.

Having spoken to people about the proposal, I think that the consensus is that we should express concern about it, while saying that we understand that things need to be done according to a staged process and that we perhaps need to start with an east unit and a west unit, dealing first with the city region strategies for Edinburgh and Glasgow and then combining them, as was argued for by Jack Perry. Alternatively, we could go straight to one unit that covers the whole of that part of Scotland. I had a brief informal conversation with Jack Perry on the phone yesterday. He said that that view is not dissimilar to what was expressed during last week's board discussion. It might be shared generally.

Murdo Fraser: I am in a little difficulty here, because I do not know how constrained we are in discussing this matter. I am not entirely sure what is already in the public domain and what is not. I have some concerns, although I welcome—

The Convener: Basically, whatever leaks from Scottish Enterprise is in the public domain. There have been a few leaks.

Murdo Fraser: With respect to your humour, convener, it is a perfectly serious question. I have concerns about some of the detail of what has been proposed, but I do not know whether I am entitled to raise them in this meeting. Is it legitimate to raise concerns about some of that detail?

The Convener: We should raise our concerns, but without going too far into the detail. We did give an undertaking that the briefing was a private briefing.

Murdo Fraser: I have three concerns, and I do not think that any of them touch on anything that is desperately confidential.

The Convener: Does Susan Deacon have a problem with this?

Susan Deacon: Yes. I would like to raise this as a point of order that follows on from the concerns Murdo Fraser expressed.

Either the committee is taking a view on the matter or it is not. If we are, due process and good sense would suggest that we ought to have a fuller discussion in open forum. This feels very odd, and I cannot think of a precedent when we have been given a private briefing and have then been asked to take a position on its content.

The Convener: I remind members of what has been asked of us. Some staffing issues were discussed, and we were of course requested not to make that kind of information public. The general thrust of the reorganisation proposals has already been well discussed in the press. To be fair to Scottish Enterprise, it was a private briefing and there was a request that some of the more sensitive issues, for instance around staffing levels, should not be discussed in public.

Christine May: I quite accept that. Nevertheless, some issues have arisen that may or may not be dealt with in the final proposal from Scottish Enterprise and Highlands and Islands Enterprise. I am concerned that the committee should air those concerns, without necessarily suggesting that they will or will not be covered in the final document. We do not know about that. When we got the briefing, the document was not concluded. It was my intention to articulate those concerns during this meeting. You have already articulated one of them, but I have a couple of others, which I have raised not just during private meetings but in public statements. I would be happy to raise those concerns again.

The Convener: Let us not make a mountain out of a molehill. I was merely reminding members that one or two factual points were made in relation to staffing issues, for example, which, for obvious reasons, we were asked not to discuss publicly. I do not think that that should constrain us in any way from expressing our concerns or views, either positive or negative, on the proposed restructuring. I do not think that members should feel constrained in that way.

It is fair to make the point that there has been a lot of coverage on the subject, particularly in the Sunday newspapers. There has already been a lot of public discussion on the matter.

Murdo Fraser: Not all leaked by you, of course.

The Convener: I was not at liberty to leak it anyway, of course. I did not know about the matter until we received our presentation. Over to you, Murdo, before—

Murdo Fraser: I withdraw that outrageous remark, convener.

I agree with you on the general thrust of the approach that Scottish Enterprise has taken, and I welcome what has been said. There are three points I would like to make.

First, I share your concern about the structure that would divide the country into east and west regions. I am not convinced that that is the way to go, for reasons that you have already mentioned. We should develop as a single unit the central belt of Scotland—or, indeed, the triangular central belt up to Dundee.

Secondly, I am concerned about how the business sector will contribute to the new structure. At the moment, we have statutory boards for local enterprise companies, which are partly made up of representatives of the business community. When Scottish Enterprise was set up back in 1991, there was a major shift from what existed under the Scottish Development Agency. We had local boards with local business representatives, who had a direct input into decision making. I understand that although local advisory boards are proposed, the statutory local boards will go and the direct business input will be removed. I am concerned about that and about how the business community will tie in with decision making in the Scottish Enterprise network.

My third concern is—once again—about the structural review. If the LEC statutory boards are to be abolished, I am not sure why the structure of local offices needs to be retained. It was tied in with the boards. I accept that there may be more to come on that, but it seems odd to take away the external input on decision making but keep the internal structures of Scottish Enterprise otherwise intact.

The Convener: You may remember that I asked specifically why there will be 12 offices as opposed to 12 fully fledged statutory bodies. Why do we need 12 chief executives and 12 directors of business development? The reply was that that would be dealt with at the second stage; I think that was the wording that was used to describe the reorganisation. Like Murdo Fraser, I am concerned that the overhead will remain even though we will no longer have statutory boards.

Susan Deacon: I would like to record that I am unhappy with how the committee is dealing with this. The restructuring is critically important, which is why several of us made the effort to go to the briefing. It was incredibly helpful, although with one exception, which I will come to in a second. There was appropriate follow-up to the briefing, and I am not unhappy with how the paper that was circulated to us today on the restructuring of the enterprise agencies has presented a way forward. However, the convener has now made several comments about the Glasgow and Edinburgh planning unit, and other comments have been made. Some of what was said collectively at that private briefing session has become almost a matter of fact, although I have said that I do not recall some of those points. Do not get me wrong: I do not want to take up valuable committee time talking about what people did or did not say at a private briefing session; my point is procedural. If we have a discussion at a private and informal briefing, we have to be careful that none of us selectively takes and somewhat casually converts expressed views into formal points for the record.

The Convener: For the record, I apologise if I inadvertently misrepresented anyone else's views. People can take what I said as my view. I apologise for that; I certainly did not intend to put words into others' mouths.

Susan Deacon: Having logged that concern, I have only one point to make on the paper on the restructuring of the enterprise agencies.

Paragraph 4 discusses planning units in Edinburgh and Glasgow. I recall asking for clarification on that at the briefing meeting. The substance of the proposals did not concern me so much, but there was a handling and hearts and minds issue. At the very least there was clearly a problem with what that perceived east-west divide would mean.

I did not necessarily think that the proposed structure was wrong, but there was clearly a hearts and minds issue in that, for that proposal to proceed as the basis of enterprise operations in Scotland, a great deal more needed to be done to buy in, persuade and be seen to have persuaded those with an interest and a stake in the process. It was a perception issue.

The only other point that I will make in general terms—because I do not feel that going into detail is appropriate in the absence of discussion, having had as a precursor the presentation to which we were party—is that the attempt to adopt a more strategic approach to the operation of our enterprise effort is to be welcomed. I am sure that the committee will have opportunities formally and properly to engage in the detail and I look forward to doing that.

16:00

Shiona Baird: I will pick up on one point. Murdo Fraser referred to the triangle up to Dundee, but I understand that the triangle goes up to Aberdeen. [*Interruption.*] I think that the representatives talked about a triangle of Glasgow, Edinburgh and Aberdeen—perhaps that could be clarified. I am concerned that, in any restructuring, we do not lose sight of the fact that areas such as Aberdeen, Dundee and the south of Scotland should receive as much attention as the central belt. That is a question of emphasis. When it restructures, Scottish Enterprise must ensure that the more peripheral regions of its area receive equivalent attention.

Christine May: My comments may bear little relation to the briefing, but they concern deeply felt principles that I want to be applied to whatever is eventually produced. First, the structure should follow the purpose, so what an enterprise agency will do should be clearly defined before the most appropriate structure is considered.

Secondly, in relation to many matters, I have raised the role of the enterprise agencies in commenting on and helping to shape public policy in areas for which they do not necessarily have direct responsibility, such as transportation.

The Convener: That goes back to a question that Karen Gillon asked in Thurso.

Christine May: Yes.

My third point arises from the evidence that we received when we went to Finland, Sweden and Germany and is about how the relationship between the Government, academia and the business community is facilitated.

The connections between cities and their hinterlands and between metro regions and their hinterlands are important. I am an elected member not for a city but for an area that borders two city regions, so perhaps I see the issue in slightly sharper focus than others, but I know that I am not alone. That matter will have to be dealt with carefully. The structure will not necessarily make those connections a reality, unless the hearts and the minds are there.

Other issues are the level of local discretion that will remain, as opposed to bigger national projects and priorities, and how local issues might fit in with national priorities. As Murdo Fraser said, the role of the business community in whatever the new set-up looks like is as important locally as it is nationally.

The status of the people who staff any local facilities is another concern. An interesting phenomenon that I have observed over many years in people who negotiate to establish or expand businesses is that they like to feel that they are talking to an individual who is at least at their level of seniority. That is extremely important and I would like to see how it is reflected in the restructuring.

The structure has to take account of the importance of Glasgow and Edinburgh—indeed, all five cities—in driving the economy. However, that should not be done at the expense of areas such as the south of Scotland or the more peripheral areas of the Highlands. If the final proposal from both enterprise organisations manages to satisfy all my demands, I will be very pleased.

Karen Gillon: I am talking slightly in the dark, as I was unable to attend the briefing due to constituency commitments. I concur with much of what Christine May said and with the principles that she set out. Having read the briefing, I remain to be convinced that some of the changes will be in the interests of the constituency I represent. My constituents find themselves on the periphery of a Lanarkshire enterprise company and they could find themselves on the periphery of a much bigger organisation in a city region.

How the local enterprise company in my constituency involves the business community, local authorities and other stakeholders will be crucial. I would like more information before I take a formal position.

The Convener: I would like to add my own view—I stress that it is my own view.

First, the proposal to separate out, to an extent, Careers Scotland, seems sensible, because Careers Scotland never fitted naturally with Scottish Enterprise. The situation in the Highlands and Islands is different because of geography and because of how people operate up there. It appears that Careers Scotland is operating effectively as part of HIE, but Scottish Enterprise is right to distinguish Careers Scotland from the mainstream organisation of its economic function.

Christine May: If that is ultimately what is proposed.

The Convener: It was in the proposal that we saw last week. Christine May touched on the second point, although we have not discussed it in detail: the proposed reorganisation of Highlands and Islands Enterprise. The one Highland member of our committee who attended, Jamie Stone, indicated that he was satisfied with the general direction, but we need to speak to him before we respond to the HIE proposals. We want to make sure that the one Highland member of the committee has a say in our response.

Christine May: Are we perhaps straying into what was essentially a private discussion? Perhaps we should confine ourselves to general principles.

The Convener: Fine. We also have to respond to the HIE proposals. It is only fair that we consult Jamie Stone before we do that.

Like Karen Gillon, I am concerned about the proposal for an east and a west planning unit. It would be better if the whole lot were planned in one go. I am particularly concerned about areas such as Ayrshire, Dunbartonshire, and Lanarkshire, which are not part of the immediate metropolitan area of either Glasgow or Edinburgh. It will be important to ensure that the economic development of those areas is properly catered for.

I agree with all the points that Christine May raised about defining the role of the local offices and defining the number and status of staff. We must be sure that everybody is clear about what they are supposed to be delivering. That is essential. Sometimes, I am not sure that we all know what a city or region strategy is and what it is meant to deliver. Therefore, we need some definition.

I think that we should ask the clerks to draft a response to Scottish Enterprise and Highlands and Islands Enterprise. In the paper, I suggest that we circulate that response to all members of the committee because it concerns a sensitive matter that affects all our constituencies. We will try to get agreement before we formally send the response to Scottish Enterprise and Highlands and Islands Enterprise. Is that agreed?

Members *indicated agreement*.

The Convener: Stephen Imrie and the clerks have taken a note of the concerns that have been raised. My sense is that there were no contradictions or conflicts in our concerns. Is that reasonable? Nobody said anything that other people violently disagree with.

Richard Baker (North East Scotland) (Lab): I was not at the briefing because I was away on paternity leave, so I am working in the dark on the matter. I think that the most sensible thing for me to do is to read the information that is in the public domain and to speak to other members before I tie myself in to any decision.

The Convener: That is fair enough.

Shiona Baird: What is the timetable for Scottish Enterprise announcing the changes?

The Convener: It did not define the timetable at the meeting, but its general intention is to do that within the next couple of months. Ideally, we need to respond in the next week to 10 days.

We will circulate the draft to make sure everyone is happy with it.

Business Growth Inquiry

16:11

The Convener: We move on to item 7. The clerks are making progress with our draft report on our business growth inquiry. I hope that it will be circulated with the papers on Thursday. We will devote the whole of next week's meeting to discussion of the draft report.

Murdo Fraser: Unfortunately—or fortunately, depending on your point of view—I will not be here next week. There is probably limited value in my trying to find a substitute to come to the meeting, so I propose to read the draft, if I have time, and provide some written comments before the meeting.

Karen Gillon: I am in a similar position because I will be on Procedures Committee business. I intend to do something similar, if that is possible.

The Convener: Okay. As the clerk is pointing out, the draft report will probably not be agreed to at the first meeting at which we discuss it. If you supply your written comments, that will be helpful.

Our next meeting is next Tuesday at 2.

Meeting closed at 16:12.

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