ENTERPRISE AND CULTURE COMMITTEE

Tuesday 7 February 2006

Session 2

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CONTENTS

Tuesday 7 February 2006

ENTERPRISE AND CULTURE COMMITTEE
†4th 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:

Rob Beattie (Committee of Scottish Clearing Bankers)
Sarah Fleming (Law Society of Scotland)
Rachel M Grant (Law Society of Scotland)
Alistair Hamilton (Law Society of Scotland)
Karina McTeague (Committee of Scottish Clearing Bankers)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 4

† 3rd Meeting 2006, Session 2—held in private.

Scottish Parliament

Enterprise and Culture Committee

Tuesday 7 February 2006

[THE CONVENER *opened the meeting at 14:03*]

Bankruptcy and Diligence (Scotland) Bill: Stage 1

The Convener (Alex Neil): I welcome everyone to the fourth meeting in 2006 of the Enterprise and Culture Committee. We have received no apologies. I ask everyone to switch off their mobile phones.

Nicholas Grier will give us a briefing for item 1.

Nicholas Grier (Adviser): As members are aware, the Law Society of Scotland and the Committee of Scottish Clearing Bankers are going to be with us today. No doubt members have had a look at those organisations' various observations.

At the risk of putting words into their mouths, I point out that quite a lot of the Law Society's observations are technical and have been accepted by the Executive. Many of its points were fairly abstruse and had to do with oversights in drafting and so on. It is not very likely that the Executive will be concerned about what the Law Society has submitted, but I have highlighted one or two issues, including legal aid and obtaining advice about bankruptcy from lawyers.

The Committee of Scottish Clearing Bankers has considered the policy issues much more. One has to remember that the CSCB does not speak only for the banks, but for creditors generally. In the course of our discussions, we have spent a lot of time examining the proposed legislation from the point of view of the debtor because it is quite debtor friendly, but the CSCB has considered it from the point of view of creditors who are also, after all, a substantial part of the electorate whose views must be considered.

One of the points that the CSCB made was that if we change the legislation so that it becomes more debtor friendly, that will come at a cost. Higher interest rates will ultimately be borne by everyone else. No doubt the CSCB will speak about that point. It also has various views on the different forms of debt relief for people with no income and no assets and it will want to make observations on those.

I will move on from there; I do not propose to take very long over this briefing.

Under the heading "Other information", I understand that the Executive is still working on various different types of insolvency and debt relief. It proposes what we might call a cascade of different types of insolvency or debt relief with sequestration at the top, debt arrangement schemes at the bottom and protected trust deeds in the middle. The Executive does not have all the final details, but it proposes to let us have them shortly. Some matters will fall into place once all that is sorted out. A debtor will be able to go on to a website and see all the different options, along with the advantages and disadvantages of each. The proposals are not yet available, but I think that they will be useful.

The Executive is also discussing the English and New Zealand 12-month debt relief schemes that I talked about last week. Apparently, the English have taken the idea from New Zealand; a working party here is considering a 12-month debt relief scheme that will be similar to the English one, but it has not yet come forward with proposals.

The Executive is also examining the problem of apparent insolvency, which makes it difficult for debtors to apply for their own bankruptcy. The Executive is aware that that is not an easy nut to crack, but it is working on it. We must expect to hear more from the Executive.

On other observations, one of the things that the bill might well do in the greater scheme of things is encourage more responsible lending, but it might also restrict the money supply, which will make it harder for people to get credit. That is not necessarily a bad thing. On the other hand, one likely effect of the bill is that many more people will go bankrupt, which will mean that many people will not pay their bills, so creditors will suffer. We need to consider that. I do not know whether the committee will hear witnesses from small businesses, which will suffer if—as is anticipated—there is a massive increase in bankruptcy.

The committee might also be interested to know that the country that has had the most liberal bankruptcy laws in the world—the United States—has just recently started to restrict the liberality of its laws because it found that people were abusing the system. If we make the legislation too debtor friendly, we will probably all have to be here again in a few years to make it more creditor friendly. Such is life.

That is all I wish to say. If anyone wants to ask questions, I will do my best to answer.

The Convener: That was helpful. Some figures on the English bankruptcy rate have come out in the past few days; it might be useful to get them from the Scottish Parliament information centre. We have been looking at the English experience,

which seems to suggest that there has been a substantial increase in the number of bankruptcies.

Nicholas Grier: Yes—that was all over the Sunday papers. That is what we must anticipate here, along with the possible cost to the public purse of running all the extra bankruptcies through the Accountant in Bankruptcy.

The Convener: Are there any questions to ask or points to make on what Nicholas Grier has said? A paper was circulated, and an additional paper has also been provided for this afternoon.

Christine May (Central Fife) (Lab): The point about small businesses was well made. It would be useful to hear evidence from the Federation of Small Businesses or some other umbrella body.

The Convener: Is that agreed?

Members *indicated agreement.*

The Convener: Moving on, we have two panels of witnesses. From the Law Society of Scotland, I welcome the convener of the diligence committee, Alistair Hamilton; Rachel Grant, of the insolvency solicitors' committee; and Sarah Fleming, who is the head of international relations. Members have been circulated with written evidence. Who will take the lead?

Sarah Fleming (Law Society of Scotland): On behalf of the Law Society of Scotland, we are delighted to have been invited to give evidence on the bankruptcy aspects of the bill.

I am tasked with dealing with the bill on behalf of the Law Society. Alistair Hamilton is a past president of the society and has been involved in bankruptcy reform since the Scottish Law Commission first started to examine it in the 1980s. Rachel Grant is a member of the Law Society's insolvency solicitors' committee. She has worked in that area for 16 years and heads the insolvency team at Semple Fraser solicitors. She is also an accredited expert in insolvency law.

I am not sure whether you would like us to make an introductory statement. As your adviser has mentioned, our points are slightly technical, so it may assist the committee if we go through them in a less dry way.

The Convener: I see that everybody is nodding their heads.

Sarah Fleming: I will pass over first to Alistair, and then Rachel will go through some points.

Alistair Hamilton (Law Society of Scotland): My great age means that I was involved in the Bankruptcy (Scotland) Act 1985. However, since it was passed, the Executive, other parliamentary groups and the Law Society have been seeking improvements to it. We greatly welcome the bill, which will fulfil many wants in respect of the clarity of our present system, and will modernise it.

The committee's adviser said that some of our points are technical: they are, but they are nonetheless important, because the bill is like a balancing act. It balances many interests, as your adviser has pointed out, particularly those of debtors and creditors. If we do not get the balance right, there could be great difficulty in making the bill effective. Although we may suggest that amendments be drafted, we really suggest changes to the substance of some of the provisions. Such changes are necessary to ensure that the balancing act is preserved. Rachel Grant will deal with several points from our submission.

Rachel M Grant (Law Society of Scotland): The points are set out in detail in our submission, and we have many further technical points to add. However, I will concentrate on three main areas that we suggest the committee should think about. I will mention a few others in passing.

The first area is bankruptcy restrictions orders. As members are aware, the bill provides for the discharge of the debtor after one year, which is a debtor-friendly innovation, if you like. To counterbalance that, the bill will introduce bankruptcy restrictions orders. A debtor will normally be discharged after one year, but if their behaviour, either prior to their bankruptcy or in the course of it, is in any way inappropriate, it might be that the bankruptcy restrictions order would be extended from two to 15 years.

We are concerned that the bill as drafted may not allow the correct balance to be struck. We understand that it was intended that a person who has a bankruptcy restrictions order against them should always disclose that to the public—for instance, when applying for credit. The bill does not cover that. It will not take a lot to change it, but it is important for public protection that if the courts think that a bankruptcy restrictions order is appropriate, the public should be made aware of that. That is what happens in England and Wales, where such a provision has already been implemented.

14:15

The second point relates to the mechanism for obtaining a bankruptcy restrictions order. Only the Accountant in Bankruptcy will be able to apply for a bankruptcy restrictions order. In many cases, the Accountant in Bankruptcy is the trustee and has all the information, so there will be no problem, but if an insolvency practitioner is the trustee, a mechanism must allow that practitioner to report to the Accountant in Bankruptcy. The bill does not provide for that, although such a mechanism would not be particularly difficult to introduce.

The third point relates to the Accountant in Bankruptcy's decision whether to apply for a bankruptcy restrictions order. The bill does not provide for a review of such decisions. It is felt that an insolvency practitioner might conclude from his or her investigations that an order was appropriate, although the Accountant in Bankruptcy had said that it was not. There would be a bit of a stand-off, so we feel that it would be appropriate to allow for an appeal to the sheriff court.

That ties in with the more general point that the bill will give the Accountant in Bankruptcy a lot of supervisory powers. Rights of appeal to a sheriff will apply in some, but not all, instances. It would be more appropriate always to have a right of appeal to a sheriff. Without such a right, people face judicial review, which is horrendously complicated and expensive.

I move on to exercise of the trustee's power. As members will be aware, the trustee in bankruptcy's role involves management and realisation of the debtor's estate. In other words, he must ingather all the debtor's assets—or all the assets that he is allowed to ingather—sell them off and use what money he receives to pay creditors. The bill will restrict the amount of work that a trustee can be required to do in investigating the debtor's affairs. The trustee will be required to undertake investigation and recovery work only when it would benefit the estate financially and be in creditors' interests.

At first glance, that is obvious: the idea is not to throw good money after bad and not to waste time and expense following useless lines of inquiry. However, the provision is drafted so widely that it could be open to abuse. The requirement to investigate and recover assets is important in protecting the public from the unscrupulous debtor who might try to conceal assets. For the wider public interest, the provision should be restricted, so that at least a minimum amount of investigation is required. The example is perhaps silly, but without that amendment, a trustee could just ask a debtor, "Do you have any assets?" and the debtor could say, "No—I have nothing", to which the trustee would say, "Are you sure?" and the debtor would reply, "No. Nothing." After that, no inquiries would be made, but a little bit of inquiring might uncover the fact that the debtor had sold some of his assets for less than their value or had transferred his house into his wife's name. A minimum amount of investigation must be required in order to protect the public and to give creditors confidence that sequestration has a purpose.

The debtor's home always presents a difficult issue to deal with and the bill is right to introduce changes that will encourage dealing quickly with the home. The home should normally be dealt with within three years; that is in the debtor's interest, because it means that the worry about what will happen to the home does not hang over him and his family. It is also in the creditor's interest, because the home tends to be the debtor's most valuable asset. If it is to be sold, it is better to sell it quickly. There are two main problems in how the bill is drafted in this respect. The first is that if nothing is done with the house for three years, it will automatically revert to the debtor.

Certain events can be used to stop that from happening—sensible events such as the trustee having a contract to sell the property that would realise money for the creditors. If such a contract is in place, there is no point in the property reverting to the debtor after three years. A trustee can do other simple things to stop the three-year period running; I am thinking of the recording of title——which simply involves putting a notice on the register—under which the trustee takes title in his own name. He can also take the even simpler step of recording a memorandum, which is a straightforward thing that can be done in half an hour. Such simple steps can be taken to stop the three-year period from running and nothing in the bill requires that anything further be done after that. There is a possible loophole in that a trustee could record title and register a new memorandum—I am sorry that they are rather technical terms—to stop the three-year period running, and then just sit back. Trustees should not do that because it would be contrary to guidelines and so forth. It would be in everybody's interest for the bill to include a provision to require on-going activity in relation to a home. Such an addition would achieve the outcome that the bill aims for.

The second problem is conveyancing. I hope that the committee will be pleased to hear that I do not plan to bore you with too much conveyancing detail. At the moment, our conveyancing system relies on the public's being able to ascertain the owner of a house. They can do that by way of the registers—the land register and the sasine register—which show who owns a house at any given point in time. The information is important for all sorts of transactions in which members of the general public engage when they are buying and selling property. People need to know that the person who is trying to sell them a house owns it.

The changes that the bill proposes could lead to the registers not always being up to date—they may not always accurately reflect the ownership of the property. That will have very serious repercussions for the general public, particularly people who are buying and selling property. The point is not just a technical and legal one; it is an important point that is in the public interest.

Over the past few years, a couple of cases involving the registers have gone all the way to the House of Lords, with all the expense and delay that goes with such cases. The cases were taken in order to remove uncertainty in the area and the outcome was that the House of Lords re-emphasised the importance of the registers. It is therefore unfortunate that the bill's drafting currently means that the registers will not be as effective as they should be. Again, we believe that the bill should be amended to make it clear that the registers should always be kept up to date. In summary, the bankruptcy restrictions order, the power of the trustee and the situation with regard to the debtor's home are the three main points that the Law Society wants to bring to the committee's attention.

I have a few other technical points to make, but I will do so in less detail. The first relates to the law on bodies such as trusts, partnerships and clubs. At the moment, the procedure for sequestrating those bodies is the same, but the bill will change that. We do not know why: we cannot think of any good reason to do so. The change may have been made inadvertently; if that is the case, there are good grounds for seeking consistency. All bodies should be treated the same under the bankruptcy provisions, regardless of their entity.

The second technical point is that the bill will change diligence quite dramatically. It will also change the Bankruptcy (Scotland) Act 1985 to take account of those changes. We believe that the changes have not been effected comprehensively. Some further changes are required to ensure that all the new diligences are properly dealt with in the parts of the bill that deal with bankruptcy. As I said, the points are a bit technical, but they could have serious repercussions.

The third technical point is on block applications. At the moment, a trustee may have 100 appointments in his name. If he dies, 100 separate applications need to be made to transfer everything to the new trustee. That is a complete waste of time, money and effort, as the committee can imagine. The bill is useful in introducing provisions that will allow block applications to be made, but that will be possible only when a trustee or an insolvency practitioner dies or when someone ceases to be an insolvency practitioner. We believe that there are other circumstances in which it would be useful to have the ability to make a block application, such as when a practitioner moves from one office to another. That would save time, money and effort for everyone, including the courts.

In addition, the bill's drafting means that the Accountant in Bankruptcy will have to be involved in making such applications. We do not think that that is necessary; we suggest that the trustee who takes over should be able to do that. The courts will play a supervisory role, so there is no question of any inappropriate behaviour taking place.

Finally, the bill proposes alterations to the disqualification provisions. Although the changes that it seeks to the restrictions on what a bankrupt can and cannot do are important, we do not believe that they are as comprehensive as they should be.

Our three main points are about bankruptcy restrictions orders, the power of the trustee and the debtor's home. We have also set out the minor but more technical points in our submission. I hope that what I have said has been of assistance; I am more than happy to clarify any gobbledegook that might have come out inadvertently.

The Convener: That was extremely helpful—you talked about various practical issues.

I emphasise that, at the moment, we are considering only part 1 of the bill. We will undoubtedly speak to the Law Society again when we consider other parts of the bill. You said that more on diligence is needed in part 1.

Alistair Hamilton: I have a few supplementaries to what Rachel Grant said; the committee will understand why we got her to do our introduction from the way in which she did it.

There is a possible problem with the BRO that may sound like a drafting point but is not really. The wording of the bill means that the requirement on a person to say that they are the subject of a BRO when they obtain credit—which is vital, because it is the only way to prevent bankrupts from resuming in business immediately after their one-year discharge—appears to terminate with the discharge from bankruptcy. That will defeat the whole object of the BRO, which is to extend from two to 15 years the period during which a debtor would have to disclose such information. It would be easy to cure that because the intention is clear.

To amplify what Rachel Grant said about conveyancing, there is a register that identifies debtors who have been sequestrated, so anyone who investigated the ownership of a house would know whether the previous owner had been sequestrated. However, we are worried about what will happen if the house reverts to the debtor. It seems that no provision is made to record the fact that the house belongs to the debtor again. If the reversion of the house to the debtor after three years is interrupted by the trustee's taking other action, the bill makes no provision for that to be recorded in the registers. In our view, there are no obstacles to doing what is necessary to tidy up the bill. We must get those elements of the bill right; we are anxious that our general approval for what is being done is not affected.

Rachel Grant and I will be happy to answer questions that members want to pose. I would not like the committee to think of all our concerns as being technical. Even though a point may be technical, that does not mean that it is any less important because it might be on a vital issue. Although diligence will be dealt with later, Rachel Grant talked about the effect of bankruptcy on diligence, not the effect of diligence on bankruptcy. The part of the bill that deals with bankruptcy is where we must look if every form of diligence is not dealt with.

The Convener: Point taken. Several members want to ask questions. Jamie Stone was the first to put his hand up.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): I want to ask about a point that Rachel Grant kindly made. Thank you for what you have told us—I am no lawyer, and it helped me enormously to have matters put so simply. Everyone would say amen to my not being a lawyer, because I would not be a very good one at the best of times.

The business of the registration of who owns what alarms me. What you said is news to me. As a layman, it seems to me that it is completely contrary to the idea of freedom of information. Have you any idea about how that could have happened? Is it a straightforward blunder or an oversight? It seems extraordinary.

14:30

Rachel M Grant: I would not call it a blunder or an oversight. In a huge bill such as this one, there are many cross-references and issues. The Law Society of Scotland pored over the matter, and the business with registration became apparent to us. As lawyers, we are concerned about what is on the register. The two cases that I mentioned brought the importance of the register to the fore. We call it the race to the register: basically, whoever gets there first wins. It could become a huge problem if it is left unresolved, but it is not a huge problem to fix. It would require any reversion to the debtor to be registered.

Mr Stone: What do you mean by "whoever gets there first"?

Rachel M Grant: At the moment, if I had agreed to sell my house to you before I went bankrupt, it would be a question of whether you or my trustee got to the register first. That is what we call the race to the register. However, the problem could be easily dealt with by requiring that any reversion to the debtor be recorded in some way in the register.

Alistair Hamilton: This is one of the longest bills that we have ever had; it is a tremendous bit of drafting. The fact that we can pick out only certain points suggests a word of praise for the drafters.

The Convener: Believe me, there is no shortage of other points.

Christine May: In my experience, it takes about three months to make an alteration to the register, unless the witnesses know differently. Can alterations be made more quickly in the case of bankruptcy? If I buy a property, the registration of that will not appear for about three months.

Rachel M Grant: The registration might not appear for three months, but a solicitor would be able to establish whether an application was pending. It is possible to get matters sorted out more quickly—there is no backlog. I am not a conveyancer, but there are procedures to ensure that you get a good title to a property on the day you hand your money over.

Sarah Fleming: Matters should be sorted out instantaneously. There should not be a gap of months during which it is not clear who the owner of a house is. Even if ownership is not immediately apparent, there are, as Rachel Grant says, ways of checking. That is part of registration, so there should not be a gap; neither should there be a gap once the bill has been passed.

Alistair Hamilton: Everything is now fully computerised. There used to be delay while the mechanics of registration took place; now, it is instantaneous. However, people have to find out—

Rachel M Grant: It is not always instantaneous.

Murdo Fraser (Mid Scotland and Fife) (Con): I used to earn my corn—part of the time—by doing conveyancing, so I have some knowledge of the matter. I want to get my head absolutely clear about this, and please correct me if I am wrong. If nothing happens, after three years the house automatically reverts to the debtor unless, in the meantime, the trustee has recorded a notice of title or a memorandum.

Sarah Fleming: Yes.

Murdo Fraser: Why, therefore, is it necessary to do anything else? After three years, could a purchaser not assume, without anything else being recorded, that the title was clear?

Rachel M Grant: I highlighted those issues as being problematic from the debtor's point of view; from the conveyancing point of view, other things could happen. For instance, missives could be concluded for the sale of the property but not finalised. Nobody would know whether missives had been concluded—

Murdo Fraser: Do you mean concluded by the trustee?

Rachel M Grant: Yes. The trustee concludes missives with a third party to sell the debtor's house. I cannot remember all of them off the top of my head, but there are other matters to consider. However, certainty avoids doubt, cost and upset for everybody. The Law Society of Scotland would support an amendment to ensure that if a property reverted to the debtor after three years, that would be recorded on the register. That would be a minor, and sensible, change to the bill.

Murdo Fraser: Would recording that be the responsibility of the trustee or the debtor?

Alistair Hamilton: It would have to be the responsibility of the trustee.

Shiona Baird (North East Scotland) (Green): My point is about the wider issue of disclosure. I am interested to know where else a debtor has to disclose his BRO. You mentioned a register, but is there any other way? What do people do at the moment?

Rachel M Grant: There are two different issues. The disclosure of BROs that I was talking about is a specific requirement on a debtor to tell anybody from whom he is obtaining credit that he is a bankrupt. For three years, someone who has been sequestrated—made bankrupt—must, each time they go along to a bank or buy a washing machine on hire purchase, say that they are a bankrupt when they apply for credit. It is proposed to reduce that period to one year for most debtors.

If someone is subject to a bankruptcy restrictions order, it is important for the protection of the public and those who might lend that person money that they always disclose that fact. Effectively, that shows that they have been made bankrupt for longer than the normal one year, that is, for a period of between two and 15 years. Under the bill as drafted, that would not be required in every case. It is not a huge issue, but it is a drafting point.

Shiona Baird: I am thinking about people conducting a business and placing orders with somebody who is trading despite being subject to a bankruptcy restrictions order.

Alistair Hamilton: It is only about obtaining credit. It is a reflection of the provisions on undischarged bankrupts obtaining credit.

Rachel M Grant: People in business can make their own contracts, and they can require others to disclose whether or not they are a bankrupt. No doubt, people will change their terms of business to reflect that.

Shiona Baird: What sort of penalty would there be for people who failed to disclose—

Alistair Hamilton: It is a criminal offence at the moment, and it is a criminal offence in the bill.

The Convener: Presumably, if I were to run a Dun & Bradstreet check on you, it would show up your bankruptcy restrictions order.

Alistair Hamilton: Yes.

Rachel M Grant: That would depend on Dun & Bradstreet. I assume that it would include that.

The Convener: Or I could run a credit check.

Alistair Hamilton: We have not mentioned the fact that a lot of people who are made bankrupt are made bankrupt because they have taken a lot of credit that they cannot repay. In addition to being subject to bankruptcy orders and so on, those people suffer the snag that the credit industry knows about that failure, and may refuse them credit for years. There is no provision for that under the bill, because it is not required. It is not a statutory obligation, but the credit industry exchanges information about debtors.

A lot of debtors who would have found bankruptcy easy will now have to think twice because of the effect that it will have on their credit. If they resume business, the BROs become important. If we are to have BROs at all, people should be obliged to disclose them. They are the only restriction on carrying on business after being made bankrupt or during bankruptcy. They are not like the disqualification rules for directors, under which someone cannot be a director of a company if they are disqualified. Bankruptcy only restricts someone's ability to obtain credit. There is nothing to say that they will not be able to carry on a business in their own name.

Michael Matheson (Central Scotland) (SNP): You said that, under the provisions of the bill, it would be easier for individuals to be made bankrupt.

Rachel M Grant: I do not think that we did say that.

Michael Matheson: I think that Alistair Hamilton did.

Alistair Hamilton: What I was saying was that, given a shorter period, it might be more attractive to—

Michael Matheson: That is the point that I wanted to raise with you.

Alistair Hamilton: It will not be any easier.

Michael Matheson: What is the Law Society of Scotland's view on reducing the period to one year from three years?

Rachel M Grant: The Law Society of Scotland deliberately does not give policy views on matters. We are here to discuss the proposed law, its effect in practice as we understand it and its impact on people.

Michael Matheson: Do your members who work with bankrupts not have a view on whether reducing the timescales is a good idea?

Rachel M Grant: We represent the Law Society of Scotland, which is commenting not on the policy of the bill but on its practical implications.

Michael Matheson: Oh well, fair enough.

Christine May: The proposed reduction to one year could mean that many more people will apply to become bankrupt. There is some evidence from England of a noticeable increase in applications since the timescale there was reduced. As we have discovered, general knowledge of bankruptcy law is limited, and relatively few lawyers are specialists in insolvency. Will the legal profession have sufficient specialists to cope with a great increase in bankruptcy applications and, with restrictions on legal aid, will lawyers want to deal with folk who might have no income and no assets and are unable to pay?

Rachel M Grant: Lawyers tend not to advise bankrupts unless they have a specific legal issue, because we are not financial advisers. Debtors who seek advice on their financial position go to money advisers, citizens advice bureaux or insolvency practitioners, but they rarely come to lawyers because, unfortunately, we have to charge them for things and we are the last people whom they want to see. Therefore, an individual's decision as to whether to become bankrupt does not usually involve lawyers; we tend to become involved only if there is a particular legal argument or complexity. Most sequestrations or bankruptcies never see a lawyer; only the more difficult ones come through to us.

There is much training for lawyers—a lot of people run courses—so I am sure that the Law Society of Scotland, among others, will ensure that they are aware of the changes to the legislation. However, in my experience, lawyers are not involved in the day-to-day running of sequestrations.

Christine May: When you referred to your few wee supplementary points, you talked about insolvency practitioners and block applications. Does an insolvency practitioner make those applications in their own name at a specific address?

Rachel M Grant: Yes.

Christine May: What happens if they move firm or the firm's office changes from 200 High Street to 220 High Street?

Rachel M Grant: Any appointments as trustee are individual appointments as opposed to firm appointments. Practical issues are involved if a practitioner is a partner in one firm and then moves to another—there might be times when it is appropriate for them to leave all the work behind for another insolvency practitioner in the firm to take on. It is possible to do that, but they have to do multiple applications, which wastes court time, their time and debtors' and creditors' money.

Alistair Hamilton: In her opening statement, Rachel Grant was not talking about simply moving to another office across the street; she meant moving to another firm across the street. That happens nowadays, because things are much more flexible and partners change firms. It is a practical point.

Christine May: I recognise that.

Mr Stone: I have another quick question for Rachel Grant. A few minutes ago, she said that the thrust of what the Law Society of Scotland is saying to us is based on the technicalities and the detail of the bill, but not on the policy. Why is that? The Law Society's role is to represent lawyers and ensure standards, but what about the proposals' impact on creditors? Does the Law Society really have nothing to say on the political thrust of the policy in the bill?

Rachel M Grant: Sarah Fleming is probably the best person to answer that. Obviously, we cannot speak in isolation, but our view is that it is important to balance creditors' rights against debtors' rights. I think that it was Mr Grier who said that, if we go too much one way, the system breaks and we have to go back the other way. When we considered the bill, we sought to achieve a balance between debtors and creditors. In that way, we are neutral—down the middle—in that we have debtor and creditor clients and no vested interest. Sarah Fleming may be able to add a few more points as to why the Law Society chose not to come down on one side or the other. It seems to me to be the safe path to go down the middle.

14:45

Mr Stone: That sounds like the Liberal party.

Alistair Hamilton: It is another way of saying that it is a jury question and not a lawyer's.

Sarah Fleming: Deciding what is policy and what are the practical implications is difficult, because those matters are interrelated. In commenting on the bill, we agree with the Executive's standpoint that there should be a balance between debtors and creditors. We agree that the bankruptcy restrictions order provisions are appropriate, because they help bring the balance into play again.

Another issue is what difference will arise with a one-year period in the bankruptcy restrictions order provisions. One reason why we have not commented on that is that it is like reading the runes—without an evidence base, we cannot

know what the situation will be in the future. The committee might wish to take evidence on what has happened in England, but England is not Scotland. It would be guesswork on our part to state whether people would wish to declare bankruptcy under a new regime. We are commenting on how we think the bill would affect them, the system and creditors or debtors in a practical sense, which is why we have not taken a view on the change in the bankruptcy period from three years to one.

Mr Stone: Thank you. As a committee, we have to be clear that the witnesses are taking no view, as opposed to thinking that silence means that they are taking a middle view. Both sides have been considered and it balances out.

Rachel M Grant: For a balance to be achieved, as set out in all the consultation papers, the provisions must be tightened up. That balance can be upset if the provisions are not tight enough and they allow debtors or creditors to take unfair advantage. We have highlighted some issues that would adversely affect debtors and others that would adversely affect creditors. I am not avoiding the question; we are highlighting areas where we see potential practical problems arising.

Sarah Fleming: For example, when the Executive consulted on the issue before, the Law Society took the view that there might be difficulties in changing the bankruptcy period from three years to one. That might be mitigated if other provisions are put in place to balance it. It comes back to the bankruptcy restrictions provisions. All in all, that is the only stance we can take.

The Convener: Has there been any feedback from south of the border on the working of the English legislation?

Rachel M Grant: There is only anecdotal evidence that I do not think is very helpful.

Christine May: We will see you afterwards.

Alistair Hamilton: We know from available figures that there has been a large increase in bankruptcy. The Institute of Chartered Accountants of Scotland claims that it would cost the Accountant in Bankruptcy—the AIB—an extra £3.5 million a year to deal with the potential increase in bankruptcies.

Rachel M Grant: But I do not think we are in a position to comment on that.

Alistair Hamilton: We cannot comment on that.

Rachel M Grant: We are lawyers; we do not add up.

The Convener: You will be glad to know that the Finance Committee is responsible for considering the financial memorandum to the bill.

Alistair Hamilton: What that cannot take into account is the effect on people's credit if it is refused to them—it has nothing to do with the formal bankruptcy—because they have failed to pay their debts. The convener touched on that too; it is the big imponderable. Maybe all could be cured by not permitting those people to spend on their credit cards for years because of their failure to pay their debts. That is not provided for in the bill. However, that is a fact of life, and we do not know what its effect will be.

The Convener: We have exhausted all questions from members. Both the written and oral evidence were extremely helpful. We look forward to seeing the witnesses again for later parts of the bill when we will discuss other matters in more detail. The meeting was very helpful and I thank the witnesses for attending.

The second panel consists of representatives of the Committee of Scottish Clearing Bankers. I welcome Rob Beattie and Karina McTeague. Would you like to make some introductory remarks?

Karina McTeague (Committee of Scottish Clearing Bankers): I echo the comments of the Law Society of Scotland—we are pleased to be asked along to discuss the bill with the committee. We see it as our role to provide information to the committee that will help it in its deliberations as well as to put forward our own view.

Mr Grier said that we are seen by the committee as representing the body of creditors generally, but we speak only for the Scottish clearing banks. Although we may share some issues with creditors generally, we cannot represent a broad community that goes from one end of the spectrum to the other.

I will give the committee some context. In 2004 the Department of Trade and Industry produced a report on overindebtedness. Out of 9,000 respondents, the DTI discovered that about 6 per cent were in debt, including 2 per cent who were in debt for credit cards or personal loans. The proportion of respondents who were in debt for more than three months was 1 per cent for credit cards; however, for personal lending the number was so insignificant that the DTI did not report it. I put those figures to the committee to give members an understanding of what creditors are and where banks sit within that context.

We have read the bill and have engaged actively with the Scottish Executive during the various phases of consultation on it. We definitely encourage any initiative that will help entrepreneurialism in Scotland, but our main concern about the reduction of the bankruptcy period from three years to one year is whether it will achieve that objective. We are not aware of

any evidence from other jurisdictions or other countries that suggests that it will do that. That is not a reason for not leading the way, but it is a concern.

The European Commission has set up a working group to establish whether there is a connection between the stigma of bankruptcy and the rate of entrepreneurial activity in a country. I understand that the Insolvency Service in England and Wales has been invited to sit on the group, but I am not aware whether the Scottish Executive is involved.

The CSCB is concerned that the bill inextricably links business debt and consumer debt. The committee will be aware from the previous evidence-taking session that other countries that have introduced similar bankruptcy provisions have experienced quite dramatic increases in bankruptcies and that some of them are considering ways of redressing the balance. We are concerned that reducing the bankruptcy period for consumer debtors might have inadvertent knock-on effects on the Scottish economy and, indeed, on certain social elements such as consumer confidence.

The banks are very aware of their responsibility to lend to people who can afford to borrow. As has been pointed out, a balance must be struck. Although the bill seeks to maintain that balance through the introduction of bankruptcy restrictions orders, the CSCB's information is that, since their recent introduction in England and Wales, the orders have been attached to less than 1 per cent of bankruptcies. That raises questions about the effectiveness of the bankruptcy restrictions order as a way of counterbalancing the reduction in the bankruptcy period and, indeed, about the extent to which it will be perceived that a person who becomes bankrupt may not be without fault. If there is a very clear provision in addition to a bankruptcy restrictions order for those who might be described as—for want of a better phrase—culpable debtors, those who are bankrupt for only a year might be more likely to be treated sympathetically when they seek further credit.

The banks are aware of the need to share information, particularly with regard to credit cards, which represent the main source of individual indebtedness. A problem that affects all credit card issuers is that, when filling in an application form, a potential customer must provide information about their current income and expenditure, including any other debts and credit cards that they might have. If they fill in that form incorrectly, they might end up with multiple credit cards and a debt that they cannot deal with. Although the banks would have agreed to provide credit, they would not have been aware of the true basis on which they were doing so. As a result, banks across the UK are taking immediate steps to share certain information that will give them a broader view of the situation. They will not have to rely simply on the information that a customer provides on an application form.

We are here to help the committee in its deliberations. Unless Rob Beattie has anything to add at this stage, it might be more helpful for members to have more time to ask questions than for us to go into more detail on our written submission.

The Convener: That is helpful. Rob, do you have anything to add?

Rob Beattie (Committee of Scottish Clearing Bankers): As Karina McTeague has covered all the issues that the CSCB has raised, I too am happy to explain any further points that members might want to raise.

The Convener: Three or four weeks ago, someone who had been through bankruptcy told us in evidence that only two banks, neither of which was a member of the Committee of Scottish Clearing Bankers, would provide a bank account for discharged bankrupts. One of the difficulties that he had in rebuilding his life was that the banks refused to let him even open an account—he was not looking for an overdraft facility. Is that the policy of the clearing banks?

15:00

Rob Beattie: I will answer that on behalf of the Royal Bank of Scotland. Basic accounts are available that must remain in credit all the time and have no overdraft facility. As a general rule, if an undischarged bankrupt is a customer of the bank, he will be allowed a basic bank account with no facilities. Once a person is a discharged bankrupt, the basic account is available to him subject to suitable references being taken up by the bank.

Karina McTeague: I understand that you are referring to the evidence that was given by an individual called Mr Wallace. He was definitely talking about discharged bankrupts. I looked at the Financial Services Authority's website to see what the position was throughout the UK. The FSA website deals with undischarged bankrupts, for whom all the restrictions under a proposed BRO would still be in place.

My understanding from the CSCB is exactly as Rob Beattie has explained: basic bank accounts are generally available to discharged bankrupts, and credit would be considered in the context of the overall credit risk and general decisions that are made. Banks will have their own policies for undischarged bankrupts who are existing customers. I do not mind going into my bank's policy on that, but I understand that the committee wants to hear from the CSCB.

The Convener: So, if I am a discharged bankrupt, I should be able to open a current account with a card and so on, but without an overdraft or credit facility, with any of the clearing banks.

Karina McTeague: A basic bank account, yes.

Christine May: Does a basic bank account include a debit card and a cheque guarantee card?

Karina McTeague: No, because by providing someone with such facilities, the bank is essentially giving them access to credit. That is when we have to start considering the position of someone who is bankrupt.

Christine May: As I recall, that was the point that was made by the witness to whom the convener referred. He alleged that a basic bank account was not sufficient to allow him to go back into business. That is not what I wanted to ask you about, but thank you for clarifying that.

I was pleased to hear Karina McTeague speaking about the responsible attitude that is taken by banks. That did not come through in the written evidence, so I was going to pick that up with you. You spoke about the increased sharing of information. I presume that that will require more time, more staff and additional bits of software. What might that do to the cost of credit and indeed to the availability of credit at the sort of speeds to which we have become accustomed?

Karina McTeague: I have no facts to support that suggestion. Although I have not been close to the discussions that have taken place among the main clearing banks in the UK, I know that they have been discussing the matter. However, I can only conjecture.

Christine May: I think that your conjecture and mine might be the same. I am pushing you a little on policy here, but you said that people do not give sufficient or entirely correct information. We have heard evidence from some of the money advice folk that even when correct information is given on the basis of which one would think that credit would not be extended, credit is extended. Will you comment on the clearing banks' view on that and on what might be done? I recognise, of course, that it is a matter reserved to Westminster.

Karina McTeague: Absolutely. I have two comments to make on responsible lending. First, it is one of the biggest agenda items for the Scottish clearing banks and for clearing banks throughout the UK. Secondly, the banks are subject to the banking code and the business banking code and also to regulation by the FSA. One of the key points is encapsulated in the FSA's term "treating customers fairly". That is a nice phrase because it does just what it says on the tin. The banks are very aware of the issue. It is a hot topic and the press, in particular, are interested in it. The banks are fully behind anything that helps them to make decisions that take account of the customer's ability to take on additional debt.

Rob Beattie: I read the previous evidence that was given to the committee. When banks lend money, they are not looking to make a loss or to write off debts. I accept that there is anecdotal evidence that, on individual occasions, more money is advanced than should be on the basis of the information that has been given to the funder. However, in those cases, we must consider what information was given to the funder. I assure you that the credit assessment and credit scoring procedures that are in place are not designed to lead to the banks having losses on their books. We have responsibilities to the banks' shareholders and depositors.

Christine May: However, given the evidence from down south about the increasing number of bankruptcies, do you agree that it appears that excessive credit is being offered to folk, thus allowing them to get into excessive debt?

Rob Beattie: I would like to see information on the reasons for such bankruptcies and to know who petitioned for them—the bank or other creditors. I do not think that the level of bank lending per se drives the number of bankruptcies.

Shiona Baird: I have a supplementary question on responsible lending. Do the banks think that they have a role in educating people by going into schools and speaking to students? Do the banks give such advice as an adjunct to their lending? Such education seems to be the one thing that is missing.

Karina McTeague: The industry has a strong interest in that. However, we are caught on the horns of a dilemma. On the one hand, it seems socially responsible to go into schools to help to educate students and we would all support that. On the other hand, the industry is open to claims that we are trying to flog our wares. We work hard to strike the right balance, but it is fair to say that any of the banks that are represented by the CSCB is delighted to get involved. In fact, all the banks are involved in one way or another.

Mr Stone: I hear what you say about the understandable notion of not looking for losses. My question is not about the banks deciding whether to give a person an extended loan that may be beyond their scope. Even when customers do not go down the loan route, many of them do not have the time or inclination to look at their bank statements as often as they should. Many customers are not online. When a customer exceeds their overdraft limit, most banks will start to bounce cheques and standing orders and a

hefty charge will be associated with each item. You do not want losses, but what are your thoughts about not going for the maximum profit, given that banks make good profits? People should manage their money properly, but some people cannot and they end up with big charges that they had not expected simply because they go beyond their £1,000, £2,000 or £5,000 limit. What do you have to say about that way in which you treat your existing customers?

Karina McTeague: We always let our customers know what the bank charges will be. Generally speaking, banks are responding to the issue through the use of technology. More and more people, if they are not online, have mobile phones and can have their balances texted to them, which gives them—

Mr Stone: If they ask for that. Forgive me, but I am not aware of a facility through which people receive a text to say that they are in their final £50 of credit, that their card will not work shortly and that they could face big charges. Some banks issue a letter, but it often does not reach the customer until days after the card has stopped working.

Karina McTeague: There is a difficult balance to strike—the word "balance" is a theme in the discussion. We need to consider the amount of investment and resource that we put into dealing with the relatively small number of customers who are in default and balance that with the aim of running the business for the benefit of shareholders, remembering that investment in protecting individuals who are in default has an impact on services and costs for other customers.

Mr Stone: I will leave it at that, although I would need to be convinced further on the issue.

The Convener: I will develop the theme. One aim of the bill is to remove barriers to entrepreneurship, particularly for people who have been made bankrupt. Serial entrepreneurs often become bankrupt. I used to work for Digital Equipment Corporation, so I know that the person who founded it in the late 1950s was either bankrupt or nearly bankrupt six times before the business took off. In America, that is a way of life; people just come back and try again. The problem in this country is that it is difficult to do that. One difficulty is that people can get a current account, but they cannot get a cheque card, which means that they cannot write a cheque for more than £50. It is understandable in a way that they do not get credit, but even basic facilities seem to be unavailable to them. If that situation remains unchanged, that will not help with the bill's objective of removing barriers to entrepreneurship. Do the banks not have a responsibility to consider their policies and practices and to be a bit more flexible in such situations?

Rob Beattie: Again, the issue is one of balance. On the one hand, you might say that a bank has lent too much money to somebody already but, when they apply for more money, the bank provides the facility although the information suggests that it should not do so. The issue is the customer's track record. If the customer is in default from time to time or has been made bankrupt, clearly they are a higher risk. At the end of the day, we lend shareholders' money for a return and we look to get that money repaid in due course. Therefore, we must be sure that a sufficient income stream is available from the customer's business income to repay the debt. There is a difficult balance to strike. If banks are too flexible, the danger is that they will become irresponsible lenders. Venture capital funds are available—they are prepared to take a higher risk to fund new enterprises, but they look for a much higher return through having a share in the equity and the uplift. There is not just repayment of interest—profits are shared if the business is a success.

The Convener: Does the CSCB have figures on the number of people in the past two or three years who have been made bankrupt and discharged and who have received assistance in starting or restarting a business? Are there such statistics?

Karina McTeague: Not that I am aware of.

The Convener: They would be helpful.

15:15

Christine May: I want to pursue that theme a little further. We heard evidence at the beginning of the meeting that, in view of the individual risk of being a sole trader, many sensible entrepreneurs will incorporate their business. However, we also heard that many banks will not lend money to a business, particularly a new business, unless the person starting the business gives a personal guarantee, which quite often includes the family home. That puts the director of the limited liability company in a position that is no better than that of the sole trader. What might be done to improve the position for directors and thus help entrepreneurs?

Rob Beattie: What you have outlined puts the individual in a slightly better position. If the individual who starts a business and incorporates it as a company comes to a bank looking for lending facilities, they are asked how much they are looking for, what the purpose of the loan is and how the repayment is to be made. Banks look at the assets of the business to see whether it has any worth. I agree entirely that it is possible that a personal guarantee from directors will be sought. Of course such a guarantee is purely in favour of

the bank; if the company fails and the director is in a position to pay the guarantee, his obligation is extinguished. The other creditors of the company are not repaid from that source but are left for a dividend in the liquidation. That is not quite the same as the position for the individual who, when made bankrupt, loses everything. A particular creditor benefits from the guarantee.

Christine May: You are saying, "Leave it alone."

Rob Beattie: In what respect?

Christine May: I asked whether you could suggest anything that might reduce the risk to a director of losing their home. You are saying that if they are in a position to repay the sum of the guarantee to the bank, which is commonly the biggest creditor, they will not necessarily lose their home.

Rob Beattie: Yes, but what the particular customer is prepared to do is a matter for him or her. The bank can only request a guarantee. It is up to the customer whether they provide a guarantee and whether they provide any security by way of the matrimonial house in support of the guarantee obligation. Venture capitalists are prepared to take a much higher risk and might not look for personal security from the directors of a new business, but they seek a much higher reward if a business is successful. That might be the avenue available to a new businessman, rather than going to the high street bank, which caters for the vast majority of the community.

Murdo Fraser: I turn to the changes to protected trust deeds and the debt arrangement scheme. As creditors, do you have a view on the effectiveness of the debt arrangement scheme to date and what improvements might be made to that scheme and to protected trust deeds?

Karina McTeague: A consultation paper has just come out on protected trust deeds, so we are not in a position to respond. The banks have not seen a lot of activity on the debt arrangement scheme.

Murdo Fraser: There has not been much activity. That is the point.

Karina McTeague: We do not have much to say on that other than to share observations that other people have made and to speculate. We do not have a particular view on it. It is a good idea to give people an opportunity to work their way through any financial difficulties that they are in that fall short of bankruptcy, because it allows the person to continue to meet their obligations in a safer environment. We support fully the concept of the DAS.

The Convener: Thank you very much indeed. Your written and oral evidence was extremely helpful.

Item 3 is our approach to further consideration of the bill at stage 1. Our consideration falls into two parts: the paper that deals primarily with collecting evidence from down south; and the committee's views on today's evidence.

The paper is self-explanatory. It was prepared by the clerks at the committee's request and concerns what evidence we should take on what has happened south of the border and from whom we should take that evidence. At the end of the paper, there are two recommendations: to

"seek evidence from the organisations/individuals suggested in paragraph 3"

and to

"remit to the clerks, under the guidance of the Convener, the scheduling and form of evidence, with a preference for a single panel giving oral evidence at a meeting of the Committee in Edinburgh."

Is the committee happy to accept those recommendations?

Members *indicated agreement*.

The Convener: The second part of the item is to consider the evidence we heard today. We have heard from the Law Society of Scotland and from the Committee of Scottish Clearing Bankers. I ask Nicholas Grier to take us through the essential points that they made.

Nicholas Grier: I will talk first about the points that the Law Society made, which were all well made. I was rapped over the knuckles for saying that they are technical; they are matters that the Executive probably overlooked in the drafting of the bill. They are not insurmountable, as it requires only a little more tweaking to get the wording right and fix them. I hesitate to speak for the Executive, but I would be surprised if it could not deal with those difficulties, particularly on recording title.

There is one point that we ought to ask the Law Society to explain a bit more. Paragraph 6 of its submission talks about sequestration and diligence. The Law Society obviously has some concerns about that matter, but the paragraph is vague, so we might ask it to tell us exactly what it is worried about.

Christine May: That would be helpful.

Nicholas Grier: I would like to think that the Executive will take on board all the other points the Law Society made and will come back to us with a note of what it has done about them.

The Convener: It would be worth making those points in the stage 1 report when we write it.

Nicholas Grier: It would.

Christine May: I apologise for having to slip out and therefore not knowing whether anybody picked up on the answer to the last question that I

asked the Committee of Scottish Clearing Bankers. The witnesses had no suggestions to make on directors' liabilities and bankruptcy. I would like to explore that a little more to find out whether anything could be put into the bill that might assist.

The Convener: One of my concerns about the evidence that we have heard so far is that nearly everybody who has referred to the bill's objective of improving entrepreneurship has said that, if it does that, it is at the margins. However, on one or two matters, such as the one you mention, we might be able to build in something that will achieve that.

Christine May: I was struck that, today, we heard for the first time that making life easier for debtors will probably make life more difficult for business. Our adviser made that point earlier. It might not be such an issue for large businesses, which can more easily withstand such problems, but it is really difficult for small businesses.

The Convener: And for start-ups.

Shiona Baird: We must acknowledge that wherever there is a debtor there is a creditor. That is really important. I am concerned that if we change the law to enable incorporated companies to, for want of a better phrase, hive off assets, we will put at risk other businesses that trade in good faith with such companies. The knock-on effect could be that those other businesses go bankrupt.

The Convener: You get a domino effect.

Shiona Baird: Yes, and that is something that we must bear in mind in all our conversations.

Mr Stone: I am leaping ahead a bit, but there is a parallel issue that I would like to mention.

We heard from the clearing banks about people plunging into debt. Perhaps I am the only one who does not particularly agree with what was said, but the banks must see the signs and it should not be too much trouble to send out a text message or an e-mail. We heard that that sort of admin would impinge on shareholders' profits, but I am not sure about that. I have three children at university, so I know all about what can happen in the blackest moments: they can run up another six £40 bills for not paying their direct debits, and they know full well that it is their old man who will pay for that.

The Convener: I do not think that we should put that into the stage 1 report.

Christine May: Jamie Stone and I should get together to share our sob stories.

Shiona Baird: I did not follow up on the question about education, but there is one thing that seems to be missing, and it might have an effect. There are no longer local bank managers to whom people can go for advice. I remember our early days in business, when we had a really caring bank, which would phone us up and say, "Hang on. If we process this cheque, it will put you into overdraft." That sort of care seems to have gone.

Mr Stone: It might be a punt that could work with the bankrupt.

The Convener: We are not here to sort out the banking system.

Shiona Baird: But that helps.

The Convener: Absolutely. Maybe part of our recommendation could be that the banks need to do more on a non-legislative basis to accommodate people.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I apologise for having to leave the meeting, and I apologise too if I raise anything that has already been dealt with in the part of the meeting that I missed.

We are in terrain that could be fruitful, and I would like to go back to what Christine May said about asking a different set of questions and considering whether there are other things that could be done to foster and encourage enterprise. I endorse that approach, because I have a strong sense that we have been stuck in the tramlines of getting responses to and comments on the detail of the Executive bill as drafted. However, we have discovered as we have gone along that the bill has its roots and its thinking in a specific time and place and that the world is evolving around it.

My general question is about where, when or whether it might be possible to explore some of the broader territory and to ask whether there are other things, legislative or non-legislative, that the Enterprise and Culture Committee could usefully factor into the discussion. We must not stray too far, of course, and some of the issues around banking are perhaps a case in point. However, I sound a note of caution in response to what Shiona Baird and you have said, convener. We should not generalise too much about what banks do or do not do. Without naming any banks specifically, it strikes me that there is variation in different parts of the country even within the same bank in how well relationships are developed, either with business clients or with personal account holders. I am wary about generalising and saying that banks do something or do not do something. There is huge variation, and we may stumble upon examples of good practice in the course of our inquiry.

Nicholas Grier: If you ask about new ways of stimulating entrepreneurs and about how banks can deal with that, you will find that that is not a problem that is restricted to Scotland. Almost all economies are doing that, and they are all coming

up with much the same sort of thing, but with variations. One answer is to take people's property out of the equation. The idea is that, if you do not have debt secured over your house, you are more likely to risk your livelihood. However, the cost of that is that your entire family must stand guarantors for your debt, or that you have to pay dearly for your interest.

If one bit of the system is tweaked, there is a knock-on effect somewhere else. You cannot win every time; whatever you do, somebody else loses. We have talked about the banks' responsibility to shareholders, and the banks will say that that is their primary job. That is one of the problems right at the heart of commerce. If you make things easier for debtors by sending them text messages, that comes at a cost. It actually comes out of interest on depositors' accounts, and if you are a saver with the bank you will not be thrilled about the fact that you are getting a rotten rate of interest because the bank is propping up debtors. I am not defending the banks; I am just saying that that is the way it is.

This may be a gloomy remark, but I fear that there are no easy answers to the problem. If someone had found the answer, they would already have done something about it and we would all be doing it. It is not a quick fix. I am not suggesting that you are saying that it is a quick fix, but it is a familiar problem.

The Convener: It also comes down to the entrepreneurs themselves. When I set up my business, I deliberately asked for an overdraft facility that was much higher than I anticipated ever requiring, on the ground that the most difficult time to get an overdraft facility is when you need it.

Christine May: Did you get it?

The Convener: Yes.

Mr Stone: And look where he is now.

The Convener: I can report that it is all cleared and paid off. I am not near bankruptcy, so I can stand for Parliament again.

We have two more sessions on part 1 of the bill. On 28 February, we shall hear evidence from the Accountant in Bankruptcy and from the sheriffs. On 7 March, we shall hear evidence from the enterprise agencies and entrepreneurs, from the English and Welsh organisations and from the Deputy Minister for Enterprise and Lifelong Learning and his bill team. We shall hear from the minister at the end of each part of the bill, because that is an easier way to handle it. Members will be excited to learn that, from 14 March, we will be considering floating charges.

15:31

Meeting suspended until 15:38 and thereafter continued in private until 16:39.

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