

ENTERPRISE AND CULTURE COMMITTEE

Tuesday 28 March 2006

Session 2

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ENTERPRISE AND CULTURE COMMITTEE

9th 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)

David McLetchie (Edinburgh Pentlands) (Con)

*attended

THE FOLLOWING ALSO ATTENDED:

Dennis Canavan (Falkirk West) (Ind)

Nicholas Grier (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Mr John Campbell (Society of Messengers-at-Arms and Sheriff Officers)

Brian Cook (North Lanarkshire Council)

Kevin Dillon (Stirling Park Ltd)

Yvonne Gallacher (Money Advice Scotland)

Dorothy Lowe (Society of Messengers-at-Arms and Sheriff Officers)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 5

Scottish Parliament

Enterprise and Culture Committee

Tuesday 28 March 2006

[THE CONVENER *opened the meeting at 14:00*]

Scottish Enterprise

The Convener (Alex Neil): I welcome everybody to the Enterprise and Culture Committee's ninth meeting in 2006. I have a few housekeeping points. I apologise to members for the lack of catering—we are trying to secure tea, coffee and water. The situation is down to the fact that Janet Anderson is, unfortunately, off sick. She always ensures that we have plenty of catering. We hope that she makes a speedy recovery so that we can get fruit again. I ask everybody to switch off their mobile phones.

Members will note the change from the original agenda, with a new item 1. On Friday, I received a request from Christine May to add an item on Scottish Enterprise's budget and restructuring plans. I asked the clerk to submit a paper on what we know officially and what has been reported unofficially. I ask Christine May to lead off the discussion on the issue.

Christine May (Central Fife) (Lab): I am grateful to you, convener, and to the clerk, for producing the paper. In the past few weeks, a fair amount has been said and written about Scottish Enterprise, which is reflected in the clerk's paper. However, as the paper also points out, many of the comments are in the realm of speculation and have generated rather a lot of heat but not a great deal of light. For that reason, I am anxious for the committee to consider the current issues that surround Scottish Enterprise. It is within the committee's remit to examine Scottish Enterprise's role and interaction with other agencies in helping to deliver a successful economy for Scotland. Three issues arise. The first is Scottish Enterprise's budget, or the amount of money that it has to fulfil its role. The second is the structure of the network and the extent to which the final decision on that will assist the body to carry out its role. Thirdly, there are other business matters, such as the retendering of the business gateway, which has implications for Scottish Enterprise's work and how it delivers.

Scottish Enterprise has twin roles. The first is to grow Scotland's economy, focusing on, as the committee's business growth inquiry found, the key sectors and industries in which Scotland has,

or potentially has, an edge; and building Government, public sector and, much more important, private sector investment to grow industries and to allow us to take our place on the world economic stage. The second role, which I have highlighted frequently and which balances the national strategic role, is the delivery of local enterprise, local growth and productivity improvements in key local businesses, whether they be world-shattering exporting businesses or plain ordinary businesses that have persisted in a locality for a long time and want to do better but need assistance to do that.

The committee's next opportunity to discuss with Scottish Enterprise how it can fulfil those roles will be during the consideration of the budget that we undertake around the end of April and beginning of May as part of the budget cycle. Given what has been happening in the structure of Scottish Enterprise and funding for enterprise in general, which we highlighted in our report on business growth, the committee might want Scottish Enterprise to provide a paper to inform our deliberations on the budget. My view is well reflected under the heading "Action" in the clerk's paper, which suggests that the committee consider the information that it wants the agency to provide before we discuss the matter. I am interested in hearing what other members think about that.

It is important that we concentrate on matters that are within the remit of the Enterprise and Culture Committee and do not rehash press speculation. To be fair, no witnesses from Scottish Enterprise are here today to comment on the speculation. I am not keen for people's jobs and livelihoods and the future of Scottish businesses to be reduced to a conversation about whether reports are true and Scottish Enterprise is in dire straits.

Murdo Fraser (Mid Scotland and Fife) (Con): I support Christine May's proposal. During the past few weeks, there has been a steady drip of information about Scottish Enterprise, much of which has been speculative. Some of the information might have been leaked by disgruntled individuals in the agency and some of it might be made up—we do not know. The crucial point is that the Enterprise and Culture Committee is responsible for considering enterprise and the wider economic picture in Scotland and should have a full understanding of what is going on in Scottish Enterprise. For example, we should know how matters stand in relation to budget overspend, proposed staff reductions and restructuring, all of which might be related. I would have no difficulty with a restructuring exercise that considered staffing levels, but it would be a different matter if staff reductions were linked to the overspend. Many questions remain about the agency and

there has been a lot of speculation. It would make sense for the committee to try to get to the truth of the matter and to secure as full a picture as possible of what is going on in the organisation.

Events are moving quickly in Scottish Enterprise and positions are being taken. The Parliament will soon be in recess, but when business resumes towards the end of April it would be appropriate for us to invite witnesses from Scottish Enterprise to come before us with a report on how matters stand, particularly on the future of the restructuring. It would also be appropriate for us to hear from the Minister for Enterprise and Lifelong Learning, who has responsibility for Scottish Enterprise and, which is important, the agency's budget allocation. We should hear the minister's views on proposed changes in the organisation and we should hear how he intends to deal with the budgetary pressures that have been suggested.

Michael Matheson (Central Scotland) (SNP): I endorse what Christine May and Murdo Fraser said. For several weeks, stories have been appearing in the press, in particular about Scottish Enterprise's financial situation. It is important that we move away from speculation and focus on the facts. We need factual information about the agency's financial situation.

There has been a lot of speculation about the implications of the agency's financial situation on its work programme, which might be reprioritised. We should consider those implications and ascertain what work Scottish Enterprise might have to shelve. We should at least ask for a comprehensive report from Scottish Enterprise that gives factual details on the financial situation that it is encountering and identifies the implications for its work programme and the extent to which the programme must be revised. Like Murdo Fraser, I feel that we must move fairly quickly on this matter and I hope that, by the end of April at the latest, we can secure a report from Scottish Enterprise setting out the details. When we get that report, we should ask the minister to come before the committee to discuss it.

Karen Gillon (Clydesdale) (Lab): I, too, think that we need to establish the difference between fact and fiction and to put the facts on record. If any of the reports that I have read turns out to be true, a serious problem is developing in our enterprise agency.

There is some similarity to the situation that emerged with Scottish Opera, in which an organisation believed that it could spend ad infinitum in the knowledge that, at some point, the Executive would probably have to bail it out. I would be concerned if that were the case. Indeed, the committee is aware of my concerns about how local economic development has progressed over

the past two years. If any of these claims is borne out, local economic development will suffer first, which will have the biggest impact on many of the constituencies that members around the table represent.

In fact, I believe that we are giving Scottish Enterprise too much time to compile its report. I want that report to be available for our next meeting, on 18 April, because we will need it sooner rather than later if our work is to have any impact and if we are to take forward our discussions with the minister. I wonder whether, in addition to submitting a written report, Scottish Enterprise could give evidence to the committee on 18 April to enable us to get behind some of the statistics and to probe a bit further into how these financial challenges will affect the delivery of economic regeneration in some of our most deprived communities.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I generally concur with the views that have been expressed and support Christine May's proposal. I have a few brief comments on process and timing.

I cannot understate the importance of having a good, thorough written report as the basis for our discussion. As we have heard, it would be decidedly unhelpful for the agency, the committee's reputation and any scrutiny of the matter if we simply became involved with all the claims, counterclaims, press reports and so on.

I would welcome guidance from the convener on how the minister would fit into this equation. After all, we could follow up our examination of Scottish Enterprise's information by discussing the matter with the minister during the usual budget process. If we need to find out more about what the Executive is saying or doing on this matter before then, it might be more appropriate to seek a written submission from it.

The Convener: The First Minister himself might well have provided the committee with a rough guideline when he said the other day that ministers would not make any final decisions until near the end of April. Given that response, it would be sensible to follow the suggestions made by Karen Gillon and Christine May and agreed by other members to request a detailed written report from Scottish Enterprise that we can read and digest before our first meeting after the recess. Given the timescale that the First Minister outlined for ministerial decisions, we should invite Scottish Enterprise to attend our meeting on 18 April to give evidence to back up that report and give us the chance to ask questions. I hope that the chairman, the chief executive and the director of finance of Scottish Enterprise can attend that meeting, because they are the three people who need to answer our questions. We should invite

the minister to come to the committee towards the end of April, by which time I hope that ministerial decisions will have been made. At that meeting, we can try to understand those decisions and their implications for future budgets. We will deal with the budget formally in late April to early May so what I have suggested would tie in with the budget cycle.

14:15

Christine May: I do not necessarily disagree, but I wonder whether there might be merit in delaying the request for submission of the report until the first week after the recess so that we can consider it during that week and call Scottish Enterprise to give evidence the following week. We are now at the end of March, so we are asking for a significant number of difficult issues to be clarified within a fortnight. There is little point in Scottish Enterprise reporting that it is still in a state of flux and that it has nothing to tell the committee. I caution that if we want meaningful information, we should give Scottish Enterprise three weeks in which to prepare a report for our return from recess on 18 April. We can consider the report during that week and then take evidence after that.

Karen Gillon: I understand Christine May's point, which is one with which I would usually concur. However, I am just not convinced that Scottish Enterprise has not already produced such a report in some form for the Executive. If it has not done so, we should be asking serious questions of the minister; I hope that the minister has been asking the kind of questions that we will ask. I am not convinced that the report could not be produced within the suggested timescale, especially given the seriousness of the situation. If Alex Neil is right—I have no reason to suggest that he is not—that ministers are going to make a decision by the end of April, and if we want to try to influence that decision, we should interview Scottish Enterprise on 18 April rather than 25 April. However, if members want to push it, I am quite relaxed about that.

Michael Matheson: I agree with Karen Gillon. It is reasonable to expect the report to be ready for when we come back after the Easter recess. If the senior officials of Scottish Enterprise cannot furnish us with a detailed report within a fortnight on the serious allegations that have been made about its financial difficulties, I would be concerned about their stewardship. It is perfectly reasonable for the committee to expect to receive within two weeks a report that gives us the factual information that we are looking for about what is going on in the organisation.

Susan Deacon: I might have missed something, but I thought that we were broadly agreed on the need to ask for the report within that timescale.

The question is what we then go on to do—whom we invite to give evidence and when. We could agree to ask for the report within the outlined timescale but create a little bit of breathing space thereafter for the convener, deputy convener and clerks to consider the timeline and how best to factor in other deliberations.

The Convener: It is always advantageous to give people plenty of notice. It would be unfair of the committee to wait to receive the report on 18 April and then decide to invite Scottish Enterprise's senior officials to come to the committee the following week. I would rather make a decision today. Do we accept Karen Gillon's proposal to invite Scottish Enterprise to come before the committee on 18 April, or do we ask it to come the following week? That is what we are arguing about—we definitely want the report.

Given the timescale that the First Minister outlined in Parliament last week, when he said that decisions would be made towards the end of April, I think that if we are going to interview the minister at the appropriate time, we have to interview Scottish Enterprise first. The committee has been left in the dark on this issue for long enough. It is time that we found out what is going on. We have had no briefing whatsoever, whether formal or informal, and there is a lot of concern about Scottish Enterprise. The quicker we try to get some answers, the better.

Susan Deacon: It is important to state for the record that we have not requested such a briefing to date. We are doing that now.

The Convener: We have not requested one, although, in my role as an MSP, I have asked for a ministerial statement before now.

Susan Deacon: That is separate from the work of the committee.

The Convener: Yes, although in such situations the committee would usually be offered a briefing. Let us not argue about it. The key point is that we have agreed that we want the report.

Christine May: I would have preferred more time, but it is evident that members of the committee think that the matter should be pursued more urgently. I have no intention of pressing the matter to a vote. If members wish to ask Scottish Enterprise to appear here on 18 April, that is fine.

Mr Jamie Stone (Caithness, Sutherland and Easter Ross) (LD): The reason why I have not spoken so far is that Scottish Enterprise does not cover my area. Whether or not a small business gets assistance or a grant can mean life or death for it. I hope that the message goes out that we are going to be thorough. It is not good enough to give the impression that we are just going to ask a few questions, chat about it and then move on.

Wee businesses that are struggling in going down the route that we all say they should follow by becoming entrepreneurs will want us to conduct tough questioning. We should follow that through until we get results. I am sure that we will, but we need to get that message across.

The Convener: Absolutely.

Christine May: The other message that we have to get across is that the economy of Scotland is performing well against a huge range of measures. We know that there are areas where we need significant investment, but in recent weeks we have seen reports that put Scotland in a good position compared with that of the rest of the United Kingdom. We want to be sure that our enterprise agency is able to play its role in sustaining that situation and helping it improve.

The Convener: I am not sure that there is universal agreement with all that.

Christine May: Perhaps not, but that is my take on the situation.

The Convener: We will ask Scottish Enterprise to provide us with a detailed report on the facts and figures and invite the chairman, chief executive and director of finance to our meeting on 18 April. Thereafter, we will arrange a meeting with the minister, which we hope will be the following week or, at the latest, the week after that. Is that agreed?

Members indicated agreement.

Karen Gillon: For the briefing to be meaningful to the committee it will have to be in the hands of the clerks the Wednesday before we return from the recess, so that it can be posted to members.

The Convener: Absolutely. As Susan Deacon—or someone else—said, it will have to be an in-depth and thorough report, so that we can get the facts and figures and put an end to the speculation. Is everybody happy with that?

Members indicated agreement.

Bankruptcy and Diligence etc (Scotland) Bill

14:23

The Convener: We come to item 2. I ask Nicholas Grier to give us a briefing on the fourth element of the bill, on attachment of money.

Nicholas Grier (Adviser): I refer members to the briefing note that I prepared, which should have been circulated to them. Money attachment is another type of diligence that the bill will introduce. It will enable sheriff officers and messengers-at-arms—I will just call them sheriff officers for the time being—to uplift cash in a way that they have not been able to do before. They hope also to be able to uplift cheques and postal orders, although there is some difficulty with those.

Concern has been expressed at previous meetings about the possibility of money being taken from people's clothes or off their person. There is no suggestion that that will be the case. It is not envisaged in the bill and, in any case, it is not permitted under common law.

The point of the diligence is that it will be useful for the enforcement of payment of debts. It is likely that it will be most suitable for the won't pays—people who are in a position to pay their debts, but just refuse to do so. There will be restrictions on when it can be used. It will not be available for use at a debtor's dwelling house, but it could be used at their business premises. If the debtor is a company, it is unlikely that there would be any question of the measure being used at a dwelling house. It is likely that the diligence would be appropriate for companies and limited liability partnerships, where money might well be available.

Money attachment will take place only at the same times as the ordinary types of attachment—in other words, not between 8 o'clock in the evening and 8 o'clock in the morning, not on Sundays and not on certain other special days—unless permission is obtained from a sheriff.

Various difficulties are envisaged with the proposed new money attachment diligence. The principal one is that it is difficult to substantiate the ownership of cash. Anyone who has cash is quite likely to say that it belongs to somebody else and it may be difficult to establish who actually owns it. The bill provides a mechanism for taking the matter to court but, even if it is taken to court, there is still the opportunity for a good deal of confusion, not to mention time, cost and inconvenience for others involved who are trying to assert their true ownership of cash that the sheriff officers have uplifted.

There would also be practical problems with uplifting cash from a till. For example, in a public house, a publican might be unwilling to hand over the cash because employees might be waiting to get paid. There might be other difficulties extracting it and there are concerns about how the diligence would be carried out. The Society of Messengers-at-Arms and Sheriff Officers has suggested that, if necessary, the police might have to be called, which might cause a degree of difficulty that was not envisaged when the bill was drafted.

There is also the potential problem that, if cash can be uplifted, any sensible debtor will get much smarter about never keeping cash in places where it can be found. It will be artfully hidden so that sheriff officers cannot get it, which might defeat the purpose of the new diligence.

On top of that, the bill envisages the uplifting of cheques, postal orders and, potentially, other instruments. There will be difficulties with that because if a cheque that is made out in favour of a debtor is to be uplifted, it would have to be negotiated through the sheriff officers account and it is unlikely that the banks would be willing to be involved in that practice unless they received some sort of statutory indemnity for the inconvenience to them of doing it. I also imagine that the sheriff officers might have their own concerns about having to deal with cheques that are not made out to them.

There are practical difficulties with money attachment and further consideration might need to be given to how the proposal will be dealt with in practice. There is also no provision in the bill for intimation to the debtor of a failed attachment or for the sheriff to receive any reports on a failed attachment. That is not the case with various other diligences under the bill.

Is it likely that money attachment will be used? It is obviously too early to be definitive about that, but it is unlikely that it will be used much and the use of money attachment for instruments would be even less likely unless something was done about how the banks would deal with such situations. However, it is probably still quite a useful measure to have, because there might well be debtors who have cash and should pay their bills; money attachment would be a useful method of enforcing such debts, particularly for HM Revenue and Customs or local authorities that are properly due money and would be able to uplift it.

If there are any questions, I would be happy to answer them.

Christine May: I have a question that it occurred to me to put to the witnesses as well. If people are afraid to keep cash because they fear that a money attachment order could be attached

to it, could that result in more of a company's assets being held in bank accounts and therefore capable of being accessed in the normal way? Might that be one of the benefits?

Nicholas Grier: It might be. Debtors could keep the money in bank accounts, but it is much more likely that they would put it where nobody would find out about it and then nobody would know about it. It depends on how cynical one is.

Christine May: I am full of the milk of human kindness and not cynical in the least.

Nicholas Grier: I am a lawyer, I am afraid.

Michael Matheson: If someone were to say that money that had been seized from a debtor's property was their money, would they have to go to court to prove that it was their money? If so, what level of evidence would they have to present and who would incur the costs?

14:30

Nicholas Grier: That is a fair point. The sheriff officer is expected to ask whether anyone else has an interest in the cash. Many people may have interest in the cash, but there might be no one to ask. Therefore, money may be uplifted that might belong to someone else. In that case, the person concerned would have to go to court at his own expense—unless he could get legal aid—to get his hands on his cash, which, for all we know, might have been uplifted in error.

Michael Matheson: That procedure would be at the cost of the person who is trying to prove that the money is theirs.

Nicholas Grier: It would depend. The procedure would be at the cost of the creditor, or perhaps the sheriff officers, but even so it would be considerably inconvenient and stressful for everyone concerned. Those matters are not fully explained in the bill and must be examined further.

Mr Stone: My question may be obvious, but now that the use of postal orders and cheques is increasingly unusual, the fallback position is that money that is not hidden in a wee hole somewhere as cash will be in an account of some description. Am I correct in thinking that a mechanism already exists for dealing with money that is held in an account?

Nicholas Grier: Yes. A bank account can be arrested.

Christine May: As long as one knows that it is there.

Nicholas Grier: Yes.

Michael Matheson: If money cannot be taken from someone's home, how will the mechanism work in relation to someone who operates a business from home?

Nicholas Grier: That is another problem that arises with money attachment. Under normal attachment, you would usually take assets from the person's business premises and then go to his home. If someone runs his entire business from home, you would therefore go to his home, but there is a restriction on the things that can be taken. You cannot take the tools of his trade and certain of his domestic belongings. If the worst comes to the worst, those things can eventually be taken, but you would have to go to court to get approval in such circumstances.

The Convener: Perhaps we should sleep in the office.

As there are no further questions, I thank Nicholas Grier for his helpful briefing.

Item 3 is also on the Bankruptcy and Diligence etc (Scotland) Bill. Some of the faces on this afternoon's panel are familiar to us: Yvonne Gallacher is from Money Advice Scotland; John Campbell is president of the Society of Messengers-at-Arms and Sheriff Officers, and Dorothy Lowe is the society's deputy president; Kevin Dillon is director of Stirling Park Ltd; and Brian Cook is head of revenue services at North Lanarkshire Council.

We have received your written evidence, for which I thank you. A representative from each organisation is welcome to supplement the written evidence by making introductory comments.

Yvonne Gallacher (Money Advice Scotland): Thank you for giving Money Advice Scotland the opportunity to come before the committee.

There is a quick way of saying what we feel about this policy initiative: in some ways, it is like using a sledgehammer to crack a nut. Most people have said that money attachment will be used very infrequently. The Scottish Law Commission and others have said that, because the mechanism exists in other jurisdictions, it should exist in ours. However, if it will be used only in relation to a small number of people, one wonders how much effort should go into including it in the bill.

Nevertheless, some people will try to circumvent the processes—I am talking about people who could pay but are avoiding paying. As has been said, other diligences, such as earnings arrestments and bank arrestments, are available. The question is how to square the circle by ensuring that money can be found when one believes that it is there. Others round the table probably share some of our views about how one can manage to get access to the money. If someone is determined not to pay, they will have investigated every way of concealing assets, such as ensuring that someone else holds them.

In relation to the ordinary debtor, we know from a seminar that we held that there are strong

concerns about how money attachment would be enforced. Nicholas Grier alluded to the issue in his briefing paper. If someone has, for example, a public house or another place of entertainment, the cash in the till could suddenly disappear because it is used to pay people's salaries and so on. We have concerns about money attachment. We appreciate that measures need to be in place to enable all forms of debt to be recovered, but we feel that there are other ways of doing that.

The Convener: Do Dorothy Lowe or John Campbell want to comment? I do not think that they referred to the matter in their submission.

Mr John Campbell (Society of Messengers-at-Arms and Sheriff Officers): We did not. First of all, good afternoon. Unfortunately, Nicholas Grier has taken much of the wind out of my sails with his excellent précis. The Society of Messengers-at-Arms and Sheriff Officers understands the rationale and the general principles behind the proposed new diligence of money attachment. However, we have grave concerns about the practicalities of executing it. The society's main concern is the personal safety of officers and their assistants when they are engaged in executing the new diligence.

Before coming to today's meeting, I sought advice from our specialist insurance brokers. As you may be aware, officers of court are required to hold professional indemnity insurance cover. The insurance brokers advised me that it will be extremely difficult for officers to obtain adequate insurance cover for executing the new diligence. They compared that work to the work of individuals who are usually engaged in collecting cash. The employees of firms such as Securicor undergo extensive training and are provided with protective clothing, helmets, armoured vehicles and so on, but officers of court do not have any of those.

It is essential for the bill to provide a statutory definition of money. We have concerns about credit card vouchers, promissory notes, IOUs and the like. The proposed new diligence is fraught with dangers and practical difficulties. We believe that it will prove expensive for both debtors and creditors. In conclusion, I confirm that our members do not look forward to executing it.

Kevin Dillon (Stirling Park Ltd): Thank you for giving me the opportunity to speak today. As a sheriff officer and messenger-at-arms with Stirling Park, I fully concur with John Campbell's comments on the personal safety of officers. That is one of our primary concerns.

Nicholas Grier said that he does not think that money attachment will be used often. There is an analogy with exceptional attachment orders under the Debt Arrangement and Attachment (Scotland)

Act 2002. They were considered in the same light, yet, at the end of 2005, Glasgow sheriff court had an eight-week backlog of applications for exceptional attachments. Therefore, I believe that money attachment will be used by creditors.

Local authority creditors who seek payment of non-domestic rates by debtors—perhaps in the licensed trade—will want to use money attachment. Furthermore, they will want to use it at times that give the best chance of getting the money—that is, outwith the hours of 8 am to 8 pm. It will be possible to apply to the court to operate the diligence outwith those hours, and the creditor will want to do that. They will want the sheriff officer to go to the premises at the time when they will have the best chance of getting the money—perhaps at the close of business or when the cashing up is done. To return to John Campbell's point, the safety of officers is paramount. We can imagine an officer and a witness going into premises with a decree to attach a large sum of money, but what about the practicalities of doing that when people are fuelled by alcohol and it is late at night? What will the officer do next? He will take the money, but where will he take it to? Where will he put it? Such situations are obviously fraught with dangers.

My second point is that there needs to be clarity about what money will be attached and how. For example, where will it be put? Will the officer put it into an account? If so, will that be an interest-bearing account?

Under the bill, what will happen if the debtor eventually pays and the money has to be returned before the payment order is granted? Will the officer take the money back in cash? Will he issue a cheque? Will the debtor accept a cheque? Will he only accept cash? There are many grey areas in the bill. There has to be clarity in respect of the safety of officers and the practicalities of carrying out the diligence, given that money is involved.

Brian Cook (North Lanarkshire Council): I thank the committee for inviting me here today. I apologise for the general nature of the paper that I have submitted. Its references to monetary attachments are limited.

I feel a bit like Nicholas Grier must have felt earlier when he said that he was a lawyer, as, unlike some of my colleagues on the panel, I am an accountant. I collect revenue and I am quite comfortable with the introduction of the money attachment provisions. I recognise that there will be a number of practical difficulties, many of which are similar to those that relate to existing diligences—arrestments of earnings, bank accounts and property. We already have special attachments and work around the difficulties.

Securicor employees do not have uniforms, helmets, armoured vans and so on because of

legislation but as the result of a commercial choice. We may well end up with sheriff officers employing Securicor to take the money away, if there were that much of it—I wish that there was.

I concur with Kevin Dillon, in that I would be quite happy going into a pub at 11 o'clock on St Patrick's day to attach money, if that is a way of getting a debt paid by an organisation that has not paid its debt and is happy to continue trading without making the contribution that similar organisations make to the well-being of the community.

The Convener: For the record, I should say that, when Kevin Dillon was talking about people being fuelled with drink, he was talking about the people in the pub, not the people from the council.

Brian Cook: You have not seen the sheriff officers.

Mr Stone: I want to explore further the situation as regards cheques and postal orders. Let us set aside the cash aspect, although I can see that there could be significant quantities of cash in a pub or whatever. However, if a business is trading illegally or is in trouble, it will bank a cheque as quick as lightning as soon as it is received, in case it bounces. Firms in such a position tend not to have large amounts of cheques and postal orders sitting around; they get them to the bank as soon as possible—if necessary, they send a wee boy down the road to bank them. Does that not mean that your likely targets are unlikely to have numerous cheques, postal orders and so on lying around at any given time?

One of the important things for a company in such a position will be to get the cash out of the bank and squirrel it away somewhere or, indeed, move it to an account that cannot easily be accessed by the debt chasers. Do you have any comments on that issue?

Mr Campbell: I feel sure that the proposed new diligence is designed to attach the takings of a business on the day of the takings. I do not envisage it being used in situations in which a trader holds on to a week's takings. The idea is that the attachment would be used to attach the funds collected by the business that day. For a pub, for example, a Friday or Saturday evening would obviously be the best time to execute a money attachment.

We should remember that, particularly with regard to general shopping, we live in a culture in which we use plastic and cheques with guarantee cards. Such items are just as good as cash. If the purchase is made on a Friday, the trader might have difficulty lodging payment in a bank account until the Monday.

Kevin Dillon: Occasionally, when you go to execute a diligence, there will be cheques on the

premises. In this day and age, a lot of businesses—whether in the restaurant trade or otherwise—do banking throughout the day. One of the dangers is that the people whom we are trying to reach—those who can pay, but will not—will effectively circumvent the system by doing their banking regularly.

Secondly, if a debtor has a cheque in his hand, the first thing that he will do when an officer attaches that cheque is contact the payer and get them to cancel it. What is the creditor expected to do when the cheque is banked? Who will pay the charges? Who is marked as the payee of a crossed cheque is not the only issue regarding that bit of paper. What happens when a debtor phones the person who gave them the cheque, says that it has been attached by a sheriff officer and asks the person to cancel it and give them a new one?

14:45

Mr Stone: Would you like to comment on the offshoring of cash? There may be an arrangement for money to go to a clearing bank in this country and then straight to an account in a place such as Jersey.

Mr Campbell: In the circumstances that Kevin Dillon outlined, the bill provides for the creditor to pursue the individual who issued the cheque. The difficulty is that the cheque does not provide an address for its supplier. The Data Protection Act 1998 prevents us from chasing the individual or organisation that issued the cheque, so that possibility becomes redundant.

Mr Stone: In essence, Kevin Dillon is telling us that the provisions for attaching cheques will not work.

Mr Campbell: The provisions will work only in instances where we are able to obtain the address of the individual or organisation that supplied the cheque.

Yvonne Gallacher: I would like to comment on the role of cheque cashers, which is an area of growth. In his paper, Nicholas Grier made the point that the banks are not keen to be part of the money attachment system and that difficulties will arise as a result. I am sure that cheque cashers will be more than happy to see this as an area of growth for them. They already make quite a profit on the cashing of cheques, because they are willing to take risks. In his paper, Nicholas Grier spoke about the risk associated with the system of cashing cheques. Given the environments in which such cheques are likely to be lying around, there is real potential for the market to change and for people to use cheque cashers more.

The Convener: So the provisions could have the side effect of defeating one of the purposes of

the bill, which is to make the whole process much more civilised. They would be counterproductive.

Yvonne Gallacher: Yes. I am thinking of money laundering.

Mr Stone: I am displaying my ignorance, but when a cheque goes to a cheque casher, who provides cash in return for a fee—that is how they make a profit—legally the deal has moved from the debtor who is being chased to the cheque casher. Is that a solid wall beyond which the present law cannot get?

Yvonne Gallacher: Yes, to my knowledge, although the matter should be checked. The process would be moved to the next stage, because the cheque would no longer be in the hands of the debtor.

Mr Stone: At this stage, that appears to be a fundamental flaw in the bill.

Christine May: I have a range of questions, some of which are based on the written submissions. However, I would like to take us back to first base for a moment. Is anyone suggesting that, as part of the range of diligences, including arrestment of bank accounts and other attachments about which we have heard, money attachment is not a sensible closing of a potential loophole? Let us talk about the principle for a moment, rather than about how money attachment might be implemented.

Mr Campbell: In principle, there is scope and room for this diligence in Scotland. However, it should not be as readily available as the bill proposes.

Christine May: That is helpful. A number of references have been made to the fact that money attachment operates in other jurisdictions. Do you have any information from those jurisdictions that indicates that your fears are well founded or groundless, and that the system does or does not work?

Mr Campbell: No. Our fears are based on our present experiences in the execution of diligence and the removal of moveable items. As you might imagine, we encounter difficulties with that from time to time. At present, under an attachment, moveable assets are listed and valued, although they are not physically removed from the debtor's possession at that point. Thereafter, the debtor receives formal intimation of the date and time that are assigned for the articles' removal.

Money attachment will involve none of that. No warning will be given. An officer will simply enter the premises, identify himself, produce the decree, explain why he is there and set about emptying the tills and the safes. He will hope that he can walk out of the premises in one piece.

Christine May: I do not discount the difficulties and I accept that everything that you describe is a potential risk, but I am trying to find out whether money attachment is in principle a good thing because it will close off another avenue that the unscrupulous might otherwise exploit by thinking that, if bank accounts or property can be attached, they will keep their assets in cash. If cash can also be attached, the incentive to hold cash is reduced. If the fears and dangers could be minimised or reduced, would money attachment be a good thing in the range of available diligences?

Kevin Dillon: I agree that any diligence is good, provided that it is well thought out and well legislated for so that no grey areas exist. A diligence becomes bad—for want of a better word—or unworkable when grey areas exist. An officer does not have discretionary powers and must interpret the legislation as stated. In principle, there is a place for the diligence of money attachment, but the problems of its workability need much scrutiny. My concerns are about the practicalities of what is in the bill.

Christine May: Mr Cook is the only witness who is particularly supportive of the proposal. Will you give examples from your local authority in which the diligence would be useful? Examples without names would help.

Mr Cook: As we have said, the provision is a good one to deal with the avoidance culture, under which businesses—and some individuals—keep as little money as possible in bank accounts, because local authorities use them as their current means of recovery. I suspect that we will have more opportunity to use the new diligence with businesses in which cash is the common means of payment—pubs and others in the licensed trade, such as hotels and restaurants. Such establishments frequently do a lot of business at the weekend when they have a large turnover. The bill will provide a more able means of attaching the asset—the cash—without having to go through the vagaries of arresting a bank account.

I commend the proposal. I understand that it will involve practical difficulties, but most of the recovery work of sheriff officers and messengers-at-arms involves practical difficulties.

Christine May: Page 5 of Money Advice Scotland's paper says that clearer definitions of "money" and "place" are required. Do you have anything to add to that?

Yvonne Gallacher: We would like clarity. As we have said, more specific definitions are needed in the bill.

Dorothy Lowe (Society of Messengers-at-Arms and Sheriff Officers): I support what my colleagues are saying. For example, in mainly

commercial circumstances—such as a bookmaker's or a bar in the afternoon, when it is relatively safe and people are not hanging about full of alcohol, or a corner shop—the attachment could work, assuming that it is regulated properly and that we sheriff officers are protected. There are situations when the till in a corner shop is full of money.

The Convener: Is there not a bit of a contradiction in the sense that, in the interests of fairness, you should give warning, but if you gave warning, that would defeat the purpose?

Dorothy Lowe: Absolutely.

The Convener: There is a balance to be struck.

Mr Campbell: We should also appreciate that, as well as unscrupulous debtors, there are, unfortunately, unscrupulous creditors. The legislation, as framed, is far too loose. I can readily imagine a creditor insisting that an officer call at, say, a bookmaker's premises on a Saturday on an hourly basis. I am sure that you would agree that that would be going too far. You can imagine the stress level increasing as the day goes on and how that might manifest itself in the officer and his assistant.

Another issue about which I feel that I must make you aware is the fact that the police are often reluctant to provide us with assistance in advance of the execution of our duties. They invariably wait until there has been some form of enforcement or breach of the peace before they lend us assistance, even in circumstances in which we fully anticipate that there will be problems.

Brian Cook: I would like to be an unscrupulous creditor, but I might have misunderstood the bill. I thought that continuous attachments in the same place to the same debt were to be prohibited. I thought that there was a suggestion that I would not be able to go back hourly or half-hourly.

Nicholas Grier: I think that the bill is silent on that. As far as I am aware, the issue of continuous attachment is not addressed in the bill, although you may have views to the contrary.

Kevin Dillon: The bill deals with money that is brought on to the premises after execution of the first attachment. It mentions that money that has previously been attached cannot be attached again. One of the questions is how that money can be identified; nevertheless, the bill states that any money that is brought on to the premises after the execution of the first attachment may be attached.

The Convener: We are talking potentially about harassment, which we want to avoid. John Campbell's point is that the bill needs to be tighter to avoid harassment. It is supposed to be a pro-enterprise bill, but it might not be.

Susan Deacon: My question follows on from the evolving line of questioning. If I pick it up correctly, the response to Christine May's question by most, if not all, of our witnesses is that there probably is a place for this diligence if it is properly regulated and controlled. I would like any or all of you, if you wish to do so, to go further on what that regulation might look like and how it might be enforced.

Mr Campbell: Perhaps there should be a requirement for an application to be made to a sheriff and, thereafter, a hearing before a sheriff with a view to persuading him to grant an order allowing money attachment. That would require to be done outwith the knowledge of the debtor, or else the money would disappear. That strikes me as an obvious initial control.

Beyond that and the granting of the order, there should perhaps be legislation that states that an officer must be accompanied by police constables in the execution of the diligence. Rather than the sheriff officer having to ask for assistance, the police would be required to provide us with assistance. There should be a judgment as to whether we could attend on one, two, three or four occasions, which could be a decision of the sheriff and could be considered in the application.

15:00

Kevin Dillon: I agree with John Campbell, although the problem is that if we go with police as a requirement, we stand a chance of inflaming the situation in a way that may not otherwise have occurred.

I mentioned earlier that there is probably a place for this diligence in the sense that all diligence is an extra tool in the tool bag for creditors and it will be used. However, the difficulty is getting any money attachment legislation to be precise and to the point, as there are so many variables concerned.

The Convener: Susan Deacon's question was about how the bill could be made more precise.

Dorothy Lowe: There are overenthusiastic creditors and, as John Campbell said, there are creditors who can be undesirable. Perhaps there could be a restriction on the value of the debt and maybe the type of debt, as well as protection for the debtor in certain circumstances. That is open to a range of issues, and it has to be looked at from all angles. That will take a lot of thought, but we are more than happy to go away and think about that and perhaps recommend to you what the sheriff officers think would be workable.

Susan Deacon: That is very helpful. I am also interested to know whether that kind of issue has been explored in the discussions that have gone before, such as those facilitated through Money

Advice Scotland and the Executive. It is important that we do not divorce the practicalities from the principles; we must consider both. Has that kind of practical issue had an airing elsewhere before now?

Yvonne Gallacher: Certainly, the matter has been discussed at the various seminars that we have held, as have people's concerns about the lack of detail and how things could be misconstrued. As we said in our response on the setting up of the commission, this is an area that is still quite unregulated and people are not adhering to debt collection codes of practice or the code of practice of the Society of Messengers-at-Arms and Sheriff Officers. That needs to be addressed.

Again going back to previous evidence, we are working with the Convention of Scottish Local Authorities and the Society of Local Authority Chief Executives and Senior Managers to establish a corporate debt recovery policy that we hope will address such issues. The policy will try to strike a balance between local authorities collecting whatever debt is owed to them—whether it is commercial or public debt—and addressing some of the issues. However, we need more detail and more consumer protection for everybody, whether that is the sheriff officer who is out there trying to collect the debt, or the person affected by the debt situation. The bill needs more detail and we need to go away and think more about how the diligence is to be implemented. For example, we are fully behind the debt advice and information package, but how can we ensure that we can evidence the fact that the client has had that before any attachment is done? That goes back to the debate that we had about record keeping and about how we can ensure that the attachment is not just put on a record but never sent, received or whatever. There need to be mechanisms for such things in the bill.

Susan Deacon: All those comments are helpful, and we will reflect on them further.

I have another line of questioning that goes in a completely different direction.

The Convener: Before you go on to that, I ask for some clarification from our witnesses. You were volunteering some additional suggestions about how the bill could be tightened up. If you could give us those in writing within two weeks, that would be extremely helpful. I am afraid that two weeks is the most time that we can give you, as we have to prepare our report to a deadline. That information would be extremely helpful.

Karen Gillon: I have a question along the same line that Susan Deacon has been pursuing.

The Convener: Okay. We will finish this line of questioning and then Susan Deacon can come back on her separate point.

Karen Gillon: Let me play devil's advocate for a minute. I am sure that Brian Cook would probably argue that, just as there are overenthusiastic creditors, there are overenthusiastic debtors, particularly in relation to corporate tax, council tax or business rates. Why should Mrs Smith the pensioner struggle to pay her council tax every month while a businessman who has money in his till does not pay for the services that he receives?

Mr Campbell: There is no reason whatever.

Karen Gillon: I assume that that is the point of money attachment for the local authorities. While I accept that we might need to tighten up the proposals, I see nothing wrong with visiting that person every hour if they are getting money every hour and if that is the only way, after all other measures have been exhausted, to retrieve the amount that is owed as a payment for public services that are delivered in the local community.

Who would pay for the police, if they were to accompany you on every visit? Would they be paid for by the sheriff officers, the creditor or the debtor?

Mr Campbell: As things stand, the taxpayer pays for that.

Karen Gillon: But at the moment, the police do not accompany you on every visit.

Mr Campbell: No. At present, we seek police assistance only when we feel that it is necessary or when a situation has occurred that merits their attendance.

Dorothy Lowe: As John Campbell said, that is often difficult. We can wait for up to an hour for police assistance.

Karen Gillon: Only an hour?

Dorothy Lowe: If a sheriff officer is in a public house to attach funds and feels intimidated or under threat, 10 minutes is too long. A sheriff officer would not put themselves in that position, because no job is worth risking personal safety. However, we will be expected to go into such situations, knowing fully what we might face, but without protection. We have concerns about that.

Mr Campbell: We all agree with Karen Gillon's point, but not every debtor or creditor falls into one particular bucket.

Dorothy Lowe: We have spoken more about the commercial aspect, but we have never really brought into our thoughts the implications in domestic circumstances. Different concerns arise in those circumstances, such as social concerns, but our practical concerns surround the commercial aspect of our work.

Karen Gillon: We are quite far down the road with the bill. At how many consultation sessions

have you given your views and raised your concerns with ministers?

Mr Campbell: We have been discussing the bill for almost two years.

Karen Gillon: Have all your concerns been raised with ministers?

Mr Campbell: Regularly.

Karen Gillon: What has the response been?

Mr Campbell: Not a lot.

The Convener: The bill.

Dorothy Lowe: We tried to be positive, because of the preconception that we would be negative toward the bill. We welcome the bill and, as Kevin Dillon said, there is a place for the money attachment diligence. We raised our concerns, but we did not want to come across as negative. We knew that practical issues would arise, but we thought that we could work round them. Karen Gillon sounds alarmed that we are a good bit down the line and that the required changes cannot be made to regulate the system. Is that your concern?

Karen Gillon: The concerns that you raise seem pretty serious. I realise that we are at stage 1 and that we will have amending stages, but your concerns seem fundamental.

Mr Campbell: I have two comments, the first of which is to correct myself. In the past couple of weeks, the Society of Messengers-at-Arms and Sheriff Officers has had meaningful meetings with the Scottish Executive and we have made progress on what the society considers to be the four main issues. Secondly, as members will know, we were required to restrict our written response to the committee, although notwithstanding that, we exceeded the limit of six sides of A4. We intentionally refrained from making written comment on money attachment, because we had already sufficiently exceeded the limit.

The Convener: For future reference, I am told that that is only indicative. We have had more substantial written submissions than six sides of A4. Anyway, we are having these sessions to explore such issues.

I am picking up that you are in favour of the principle of money attachment, but are concerned about the practicalities. You seem to feel that there need to be more safeguards in the bill for the practical implications of the policy. We need to discuss the detail of that.

Susan Deacon: I want to clarify one particular point around which we seem to have danced. To what extent do you believe—by that sweeping “you”, I mean whoever cares to respond—that the

bill requires amendment or do you think that some of the detail ought to be addressed by secondary legislation? I am mindful that concerns have been expressed elsewhere about too much being put into secondary legislation. What is the appropriate legislative vehicle for that detail?

Mr Campbell: Ideally, it ought to be primary legislation, but it could be remedied in secondary legislation.

Kevin Dillon: The Debt Arrangement and Attachment (Scotland) Act 2002 contained a number of issues that were going to be dealt with by secondary legislation. However, there are still critical issues that have not been dealt with by the 2002 act. I am concerned that if the bill is passed, and secondary legislation is used as the vehicle to correct any difficulties in it, we will be left working for two to three years with what we have and in a position where—

The Convener: In a vacuum.

Kevin Dillon: Yes.

Susan Deacon: I want to put a couple of broad-brush questions specifically to Brian Cook. With the greatest respect to the other organisations that are represented on the panel, I am conscious that this is the first time that we have been able to hear a local authority's perspective, certainly from the revenue collection side.

Brian, you were a little apologetic about having taken a broad approach to your submission, but I thought that it was very helpful because we had not heard that perspective previously. I want to give you the opportunity to amplify any of the points that you made in your written submission.

I was particularly interested in the section on impact and wondered whether you could put more flesh on the bones of some of your comments. I would like to hear more about the—if I can use the term—won't pays. Karen Gillon touched on this issue a minute ago. I am conscious that a great deal of local authority time is spent dealing with the people who cannot pay, but it is important that we get a clear sense from you about what can and should be done to address the problem of people who will not pay. It is a wide-ranging question, so could you share your insights and thoughts with us?

Brian Cook: The people who will not pay leave us in a sad situation. Reference was made earlier to the pensioner council tax payer who struggles at times to make the payments, but who will make them. We make a lot of effort to facilitate those payments. It galls the revenue side and the sheriff officers who we engage to do a lot of the collections to have to pursue that type of clientele, and it galls us that there so many people who will not pay.

During the past year or so, our local authority has been using sequestration and the debt arrangement scheme, which has given us more tools to do certain things. I am quite happy with that particular legislation if it helps the debtor to manage their financial affairs. What is proposed in the roundness of the Bankruptcy and Diligence etc (Scotland) Bill will help to bring more clarity and a wider range of recovery across the range of our debtors.

15:15

Where money attachment has not been available, there has been the opportunity for avoidance by people who can pay, but will not. The smart folk out there will be aware of that, bank their cash only when they need to—for example, to pay a bill—and immediately take it out again. Through the sheriff officers, we have spent a lot of time and resources arresting bank accounts that have contained pennies when we know that the businesses must be trading better than that. Instead of putting the cash through banks, businesses make use of their cash reserves to pay their bills and liabilities, and we must have the opportunity to realise that asset. I acknowledge that there are difficulties with cheques, but I hope that the proposed legislation will act as an incentive to businesses to meet more payments. Perhaps the message will get through if, for example, I visit a bookmaker every hour on the hour to attach money. I do not expect to have to go there every day from Monday to Saturday every week for years, but I hope that sooner or later they will get into the habit of paying. If nothing else, from a commercial point of view, it is cheaper. If you pay the council direct, you will not incur court costs and expenses, statutory additions and so on.

I appreciate that the bill concentrates on bankruptcy and diligence, but another problem is the availability of personal credit. Because we allow people to have a range of credit, we have to accept that they will get into arrears. However, local authorities are hampered by the fact that there are very few services that they can withdraw from or refuse to provide to the population or the business community. After all, the roads and infrastructure need to be maintained for businesses; children need to be educated; and the elderly need care. Unlike other creditors, who are able to switch off the supply to, or to refuse to trade with someone does not pay their bills, the local authority still has to care for that person's parents and educate their children. We welcome the extension of diligence to give us more powers in that respect.

Susan Deacon: That is helpful, thank you.

Murdo Fraser: I want to ask sheriff officers about the practical aspects of enforcing this

diligence. The opportunity for interminable disputes to arise over ownership of money could stymie the practical impact of the provisions. For example, you might come into my house, find a large wad of cash behind the clock on my mantelpiece and say, "Right—we're having that to pay the debt." I should point out to any housebreakers who might be listening that I am speaking hypothetically and that there is no such clock on my mantelpiece. However, I might then say that I am simply looking after the money on behalf of my wife, my mother, my daughter, my next door neighbour or whoever. Similarly, from a business perspective, you might come into my pub on a Sunday morning. Although the till might be full of cash, I might say that I was looking after it for my barmaid. What could you do in those circumstances?

Mr Campbell: As we can enter only commercial premises, we cannot, for example, look behind the clock on your mantelpiece. Although the bill provides for a presumption of ownership on the part of the debtor if the money—whatever it might be—is on the debtor's premises, it does not then confirm whether we have the power to open a lockfast safe or till or to search an employee or other individual who might have removed the cash from the till as we approached. The provision is far too loose.

Murdo Fraser: So if you turn up to someone's premises you cannot force access to a till or safe.

Mr Campbell: The bill is silent—or, at least, vague—in that respect.

Murdo Fraser: So you have to rely on people leaving their money lying around before you can get your hands on it.

Mr Campbell: Yes. I know that the law is open to interpretation, but nothing in the bill confirms that we have that authority.

The Convener: What if you turned up at a business that was a partnership—not a husband-and-wife partnership in which both parties legally share the assets anyway—and found cash lying around that genuinely belonged not to partner A, who might be on the premises at the time, but to partner B? Would you still take that money?

Mr Campbell: If the court order or decree were merely against partner A, the fund in the business would be exempt from attachment because it would be owned by the partnership and not the individual.

The Convener: That was a simple answer.

Murdo Fraser: There is a presumption in the bill that money in premises belongs to the owner of the premises. How difficult would it be for someone to rebut that presumption? If an officer turned up at a pub and found money, but the

publican said, "That's not mine; it belongs to my brother, who just left it here", how would the officer make a judgment about what to do?

Mr Campbell: In all likelihood we would require the publican to produce documentary evidence to demonstrate who owned or was the lessee of the premises.

Kevin Dillon: There might be a difficulty about money that was on the premises.

Dorothy Lowe: We might have to make representation to the court, which would decide whether the publican had good reason to believe that the money did not belong to him. However, in the circumstances that Murdo Fraser described we would assume that the money belonged to the publican.

Mr Campbell: If we were in a pub to pursue debtor A and we met an individual who said that he was B and showed us a lease for the premises that was in his name, we would accept that as sufficient evidence.

Murdo Fraser: I can foresee all sorts of problems down the line.

Mr Stone: The bill is comparatively silent on opening tills. Is the same true for cash-boxes and locked drawers?

Mr Campbell: Yes. The bill does not mention facilities for storing cash.

Mr Stone: Very few people leave money lying on a table, however indebted their business is. The money is always locked away.

Mr Campbell: Yes.

Kevin Dillon: Money from businesses in the licensed trade—pubs and clubs—is normally collected from tills and sent to a store room in the depths of the building to be counted behind a locked door. Indeed, the money is usually collected from such places, so it is not normally lying about. Even tills usually contain only a petty cash float. Most of the money is kept in a safe.

Mr Stone: Okay.

Shiona Baird (North East Scotland) (Green): Are the witnesses saying that messengers of the court would not be able to gain access to money that was kept behind a locked door?

Kevin Dillon: The bill makes no mention of the authority to open shut or lockfast places, although we have that authority under current arrangements for attachment.

Shiona Baird: Would a criminal offence be committed by a debtor who emptied a till as soon as they saw an officer enter the premises, because the debtor would be defeating the ends of justice—or whatever the term is?

Kevin Dillon: If an officer went to carry out a money attachment and the debtor tried to secure the funds that were in the till by putting them in his pocket, I suppose that we could argue that the debtor was in breach of the money attachment diligence, but the officer would have no power to do anything about that.

Mr Campbell: A difficulty would arise, because the officer would not have completed the attachment, so technically there would have been no breach.

Shiona Baird: Oh dear.

The proposed new diligence would apply only to businesses, so—for once—we are discussing a matter that comes within the remit of the Enterprise and Culture Committee. However, the diligence could be executed only in the limited number of businesses that keep cash or cheques on the premises. As I understand it, all cheques are marked “account payee”. Does that mean that the banks would become involved? Cheque cashers were mentioned, but I do not understand how the system works and would appreciate a more detailed explanation. Would banks have to agree to money attachment and release cash from crossed cheques?

Mr Campbell: There are mechanisms that allow certain organisations to cash cheques that are not made payable to them. I am thinking particularly of local authorities. My firm regularly receives cheques that are made payable to the firm, but I simply hand them to my local authority client and it is able to cash them. I imagine that a similar procedure for clearing cheques can be set up for officers of court.

Shiona Baird: Does the person who signed the cheque not have to give permission for that? I have banked such cheques in connection with letting my farm cottages, but I had to have a prior agreement with the bank and a signed agreement from the tenant about what was going to happen.

Mr Campbell: If the bill becomes law, it will be lawful for the cheque to clear.

Shiona Baird: You said that court costs can be added to the debt. How much do they add? Are they a major cost?

Mr Campbell: At the moment, we are unable to answer that. We have not received any quotations for the additional insurance that will be necessary. Experience will tell us what the additional expense will be. If an officer is engaged on a Saturday or a Friday evening, he is entitled to charge 75 per cent of the prescribed fee. At the moment, there is no prescribed fee for money attachment.

Shiona Baird: So that is another omission that needs to be addressed.

Finally, how many businesses do you think money attachment will apply to? In your experience, are businesses in the retail and service sectors the ones that are likely to have the cash?

Brian Cook: In North Lanarkshire, we have approximately 10,000 businesses, but we only go after the small proportion that does not pay, which brings the figure down to hundreds. We always pursue businesses that are late with payments or which make too few payments and make arrangements with them, but like most of the harsh diligences that are punitive on organisations, money attachment will be a last resort. We do not attach goods or make arrestments unless we have been unable to secure the money by any other means. The number of cases in which money attachment will apply will probably be in the low hundreds, but it depends. As Kevin Dillon said, we do not know how effective and successful money attachment will be. If it generates buckets of cash, he is right to suggest that I will want to attach money every hour during the day.

Mr Campbell: All of us, including Brian Cook, could readily name 20 or 30 habitual non-payers of council tax and rates. We know who they are. They know how to play the system and how to avoid paying. I can focus on 20 or 30 such individuals in South Lanarkshire, but money attachment will be a useful diligence in only one or two of those cases. Those individuals habitually live beyond their means and on credit. They run overdrafts and they have businesses that do not take in cash. We no longer live in a cash-paying culture.

The Convener: I thank the panel for an extremely helpful session that threw up a number of issues for us to address in our stage 1 report.

While the matter is fresh in our minds, we move on to item 4, which is our debriefing. It seems to me that we have quite a few issues to consider.

15:30

Nicholas Grier: We certainly do. It seems to be agreed that money attachment is a good thing in principle but that the devil is in the detail. There are questions about the practicalities of how it should be done. Susan Deacon and Karen Gillon teased out the fact that there should perhaps be a bit more consultation on the practicalities. I hesitate to throw stones but, when the bill was drafted, the Executive perhaps did not think through exactly how difficult it would be to attach money.

There are other problems. Do we put all of the wording regarding how this will operate into primary legislation, where, at least, we will have some idea about where we can find it, or do we

leave it to secondary legislation, even though we do not know when that will come out and we will have to leave a gap in the legislation until then?

The issue is difficult and we are going to have problems dealing with it. People will be able to get a warrant for entry in relation to an attachment. Is there any reason why we could not have a warrant for entry into lockfast places in a business premises to see whether money is being stashed away there? Do we know how expensive all of this will be? I think that it will be expensive to operate, as sheriff officers will charge a premium to work at awkward times of night. Furthermore, any police who are involved might need to be paid. Banks will probably want money for the extra practicalities of dealing with cheques. A great deal more detail needs to be sorted out. The Scottish Executive needs to address all those issues and devote a lot of thought to these matters before it comes back to us.

The Convener: I am uneasy about the use of the police. The matter that we are discussing is, essentially, a civil one. Once the police are involved, where does their remit end?

Nicholas Grier: There is a criminal element to it. If someone defies one of these orders, they will be in contempt of court—you are not supposed to stop these things happening once they are in operation.

The Convener: However, getting the police involved up front is a change of practice.

Nicholas Grier: Quite so. That would need to be specifically legislated for.

The Convener: If we were to make any recommendation in that regard in our report, we would need to take some evidence from the police. I suspect that such evidence would show that the police are not particularly favourably disposed to the idea.

Susan Deacon: I am keen to bottom out the issue about how more progress can be made in these discussions. There is a limit to what this committee can do simply by continually calling people in and taking evidence from them. If we are to ensure that some serious collective energy and effort goes into the question of whether and how the proposal can be made to work in practice, the work would have to be done under the auspices of either the Executive or a body outwith this committee. I worry about the fact that, in situations such as this, it is difficult to answer the in-principle question—whether one is for or against something—unless one is clear that a workable solution can be put in place. It is a chicken-and-egg situation. I wonder whether work is in train in the Executive to consider some of the practical issues in parallel with some of the detailed deliberation that we are doing.

The Convener: On the workability of the proposal, we could write to the Executive to say that we will have our report ready in May and to ask whether it is doing anything to consult further and to come to conclusions on this aspect of the bill, given the number of issues that have been raised with us about it. I suspect that there is a need for more detail in the primary legislation as well as a greater amount of work on the secondary legislation.

We should write to the Executive to say that we think that this is an area on which much more work should be done and to ask for an assurance that that work is being done and that the right people are being consulted, given the timescale that we are working to. We can attach to our letter a summary of the issues that have been identified by Nicholas Grier and the witnesses.

Christine May: An attachment about the attachment. Okay.

Mr Stone: I agree, provided that we can agree to include in that list two matters that we have touched on today. The first one is the cheque-cashing loophole, which is worrying, in that it could allow money to escape sideways. The other point is about the unscrupulous creditor. I accept totally what Karen Gillon said about Mrs Smith paying her council tax and the unscrupulous business not paying tax. In some forms of privately owned fast-food outlet—I will not be too specific—there is a hierarchy of lending. I can envisage someone further up the pyramid using the system every 10 minutes or every half hour to get cash out. The man further up the hierarchy could be a debtor. Without being too nit-picky, I wonder whether the Executive has considered the different classes of creditor, such as the council versus the more unscrupulous creditor. Can that be covered in legislation? I would be interested to hear Nicholas Grier's comments.

Nicholas Grier: I should not think that the Executive has considered that rather obscure point. It is fair to say that there is an issue about unscrupulous creditors. However, the particular situation that you envisage seems not to have been addressed in any of the documentation that I have seen here or anywhere else.

Michael Matheson: I have to confess that you have got me on that one, Jamie. Could you perhaps go over it again? I am not entirely with you.

Mr Stone: It would not be appropriate to do so in the meeting, but I will give you an example of what I mean afterwards. You will have come across such situations in your constituency. Did you get my point, Nicholas?

Nicholas Grier: I am not absolutely clear about it.

Karen Gillon: You are very diplomatic, Nicholas. You lost, Jamie.

The Convener: I suggest that, prior to our sending the letter, you have a word with the clerks and Nicholas Grier in private, Jamie. We want to ensure that the point is covered if it is genuine. I also suggest that we ask the Executive to reply to the letter before we finalise our report and that we consider simultaneously its reply and the additional information that we get from today's witnesses, so that we know what we want to incorporate in our report. Is that agreed?

Members indicated agreement.

Christine May: I want to pick up on Karen Gillon's good point that the honest payer who pays with great difficulty should not be disadvantaged. That applies whether we are talking about an honest individual or an honest business, because businesses can be put at a disadvantage by unscrupulous traders too. If a workable solution can be found, there could be a useful closing of a possible loophole in diligences. The issue is whether such a solution can be found. I have to say that we heard little this morning in the way of practical suggestions, which would have been helpful. The Executive might be discussing the matter with those who gave us evidence. If it is not, I encourage it to do so.

The Convener: The Executive, which has resources that we do not have, might be able to look into experiences in other jurisdictions.

Christine May: Yes. That was the other point that I was going to make.

The Convener: Perhaps we should suggest that the Executive lets us know whether it has done such research and tells us the results. Is that agreed?

Members indicated agreement.

Shiona Baird: I have one other point. I am concerned that the entrenched, habitual non-payers that we heard about—the 20 or 30 people or businesses that could be named—are so clever that they can evade payment of their debt under the current system and will be able to do so under the system that the bill proposes. Has anyone given any thought to how on earth we ensure that such people pay? In effect, the rest of us are all paying for their non-payment of business rates.

The Convener: We could add that question to the letter to the Executive and ask the panel members who were before us today whether they have addressed the matter and what ideas they can give us.

Tourist Boards (Scotland) Bill

15:38

The Convener: Item 5 concerns the Tourist Boards (Scotland) Bill. As members can see, the bill is going to be fairly short and sharp. To be helpful to the Minister for Parliamentary Business's office, I suggest that we co-operate with trying to get stage 1 of the bill completed before the summer recess. We have already been through the vast bulk of evidence that could come before us on this issue. The bill merely tightens things up and sets them out in statute. We do not need to make a big song and dance about a short, sharp, straightforward bill, which I do not imagine is controversial in party-political terms.

Christine May: That is a dangerous thing to say. In my experience, saying that something is not controversial brings everyone out of the woodwork.

The Convener: Especially in the tourism industry. Can we agree the action that is recommended in the paper that has been circulated? The timetabling would be a joint suggestion from the committee and the Minister for Parliamentary Business. Is that agreed?

Members indicated agreement.

St Andrew's Day Bank Holiday (Scotland) Bill

15:40

The Convener: Item 6 is the St Andrew's Day Bank Holiday (Scotland) Bill. For the purposes of this item, I welcome the member in charge of the bill, Dennis Canavan. I ask Stephen Imrie to update us on the progress of commissioning the external research that we agreed to commission.

Stephen Imrie (Clerk): I thought that it would be useful to give the committee a verbal update on where we have got to in commissioning the research that the committee agreed to seek. We successfully formed a steering group of officials, which consists of myself, some colleagues from the parliamentary research unit, some staff from Mr Canavan's office and some officials from the Scottish Executive. That group reviewed the terms of reference and the specification for the research bid, which was sent to a small number of possible contractors—six or seven different organisations. I am pleased to tell the committee that, of those organisations, four have responded.

I have not yet had an opportunity to look at the responses, but on Wednesday I and my colleagues from the Scottish Parliament information centre will sit down and evaluate the tenders according to some agreed criteria and will select the successful bidder. We will be pleased to inform the committee of the successful bidder once the contract has been signed. The intention is to be as speedy as possible in getting the research under way. The research timetable in the specification that was given to the possible companies sets out that the deadline for having the research under way is 3 April; that a progress report will be given to officials by 28 April, with a draft report of findings submitted to the same team by 15 May; and that the research is to be completed by 29 May. At all those stages, I will be happy to give the committee information on how the process is going and on the relevant draft reports from the successful contractor.

Following discussions with the office of the Minister for Parliamentary Business, the view is that the stage 1 debate could take place this side of the summer recess. However, that will be dependent on the research being done and the committee having time to consider it and to produce another stage 1 report this side of the summer recess. The matter is for committee members to decide in the fullness of time, but my personal view is that that timetable is doable. I will do everything in my power to ensure that the contractor delivers the research to the timetable and quality that the committee would expect.

The Convener: I remind committee members that the steering group of officials that is overseeing the study includes representatives from the Scottish Executive and from Dennis Canavan's office. They are responsible for ensuring that the research is a robust piece of work. The last thing that we want is any questioning of the methodology or the quality of the output; we want everyone to accept that the research has been conducted in a reasonable manner.

Dennis Canavan (Falkirk West) (Ind): I ask for some clarification of what Stephen Imrie has said. Did the officials from the office of the Minister for Parliamentary Business say that it was their wish for the stage 1 debate in Parliament to be completed before the summer recess or did they simply want the committee's stage 1 report to be completed before the summer recess?

Stephen Imrie: The view that was expressed to us was that the stage 1 report should be debated in Parliament before the summer recess. Therefore, both the agreed committee report and the debate in Parliament should be completed before the summer recess.

Dennis Canavan: Thank you.

The Convener: Obviously, we cannot make a final decision on that until we are sure that the research has been completed on time.

Christine May: I am entirely content with what I have heard. It is a good way in which to proceed. I look forward to seeing the reports back from the consultants.

The Convener: Is everyone happy with that?

Members indicated agreement.

The Convener: A happy committee—good. Thank you, Dennis.

We will take item 7 in private. I ask all those who are not entitled to be here for the private session to leave. I thank them for their services. I suggest that we have a five-minute break for coffee before we go into private session.

15:45

Meeting suspended until 15:50 and thereafter continued in private until 16:51.

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