

ENTERPRISE AND CULTURE COMMITTEE

Tuesday 18 April 2006

Session 2

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CONTENTS

Tuesday 18 April 2006

Col.

SCOTTISH ENTERPRISE	2891
BANKRUPTCY AND DILIGENCE ETC (SCOTLAND) BILL: STAGE 1	2898
SCOTTISH MEDIA AND BROADCASTING	2924
SCOTTISH FOOTBALL (REFORM)	2928

ENTERPRISE AND CULTURE COMMITTEE

10th 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:

Nicholas Grier (Adviser)

THE FOLLOWING GAVE EVIDENCE:

Rob Beattie (Committee of Scottish Clearing Bankers)

Daw son Lamont (Highland Council)

David Mair (Glasgow City Council)

Susan McPhee (Citizens Advice Scotland)

Lesley Pryde (Glasgow City Council)

Brenda Tamburrini (Citizens Advice Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

SENIOR ASSISTANT CLERK

Douglas Thornton

ASSISTANT CLERK

Seán Wixted

LOCATION

Committee Room 1

Scottish Parliament

Enterprise and Culture Committee

Tuesday 18 April 2006

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

Scottish Enterprise

The Convener (Alex Neil): Welcome to the 10th meeting in 2006 of the Enterprise and Culture Committee. I ask everyone to switch off their mobile phones. I have received apologies from Shiona Baird and Jamie Stone, who will be late.

Item 1 on the agenda concerns Scottish Enterprise's budget and restructuring plans. We have received a request from Scottish Enterprise to change the date of its appearance before the committee from 25 April to 2 May. Moreover, we have been informed that, contrary to what we had been promised, we will not receive its written submission this week. The paper will be submitted to the committee after the Deputy First Minister and Minister for Enterprise and Lifelong Learning has seen it, but before Scottish Enterprise officials appear before the committee. I have already pointed out to Jack Perry, the chief executive of Scottish Enterprise, that we need the paper in plenty of time to be able to read it, understand what it is saying and decide the questions that we want to ask.

Usually, I would have agreed to such a request. However, given that the committee decided to ask Scottish Enterprise to attend on 25 April, I thought it only right and democratic for members to decide whether to agree to change the date to 2 May.

Christine May (Central Fife) (Lab): I appreciate why Scottish Enterprise has asked for the date to be changed. However, the danger is that a number of issues might become confused.

For a start, there is the question of the budget. At the previous meeting, I was careful to make it clear that I wanted to confine my remarks to the activities of the organisation that are relevant to this committee, including, for example, how it intends to deal with and meet its strategic objectives. Although I accept that everything comes down to money and that organisations need budgets to carry out their functions, I am less concerned about how Scottish Enterprise has managed its budget—which is an issue more for the Audit Committee and the Finance Committee—than I am about its ability to match local work such as skills development and training

with national strategic work. I wonder whether Scottish Enterprise officials feel that we want to grill them on the budget and that they do not really want to discuss the matter with us until they have sorted that out with the minister. I appreciate that, but it would be helpful if they were able to speak to us on 25 April and perhaps to come back the next week after their discussion with the minister. If the answer to some of our questions is, "That is still subject to a finalised audit" or "That is subject to further discussions with the minister", that is fair enough. I am interested in hearing my colleagues' comments on the matter.

Murdo Fraser (Mid Scotland and Fife) (Con): I will comment on that in a second, but I want to ask for clarification, as I am trying to follow the trail of e-mails that I have received over the past few days. We originally asked for a written report from Scottish Enterprise by 12 April. Am I right in thinking that Scottish Enterprise agreed to provide a report within that timescale?

The Convener: Yes.

Murdo Fraser: Stephen Imrie, the clerk, received an e-mail on 13 April, the day after that deadline, after chasing up Scottish Enterprise, which said that the board of Scottish Enterprise was now determined that the report would not be released prior to its review by the Minister for Enterprise and Lifelong Learning. I just wonder whether, as a matter of form, it is appropriate for the board of Scottish Enterprise to take that position. We are a committee of the Parliament, and part of our responsibility is the scrutiny of the work of Executive agencies such as Scottish Enterprise. Is it procedurally correct for the Scottish Enterprise board to say, "We're not responding to a request from a parliamentary committee, notwithstanding the fact that we've already agreed to do so, because we want to speak to the minister first"? I throw that open as a question to the committee.

Karen Gillon (Clydesdale) (Lab): I am also trying to follow the correspondence trail. I disagree slightly with Christine May, as I think that the budget will have implications for how the job can be carried out. The enterprise agency's overrunning so far on its budget creates issues for the confidence of business in Scotland, and that has an impact on us. I was party to the conversation about the meeting on 18 April—today's meeting—and about whether or not Scottish Enterprise representatives should come. My understanding was that they had offered to come today, and were willing to cancel holidays to do so. Given the family-friendly nature of the Parliament, I think it appropriate that we acceded to their request to come on 25 April. However, the fact that we are now being told, "Sorry, we can't come even on 25 April," although they had already

agreed to come, and the fact that they were prepared to cancel holidays to come today, causes me some concern about what is going on.

I want to know the answers to some quite simple questions. When did the board know, and when did the officers know, that there were problems? What did they do about them? How did they communicate them and to whom? What steps were taken to resolve those issues? Those are not questions about the future structure of Scottish Enterprise; they are questions about the past that I want answered before I even begin to look at the future of Scottish Enterprise. How can we judge what is placed in front of us about the future of the agency if we do not know that the processes and procedures that were in place in the past were robust enough to cope with the problems that it faced at that time? I have serious doubts that they were robust enough, but somebody somewhere must be able to account for that, and I want Scottish Enterprise to come to the committee.

As a parliamentary committee, we have an obligation to hold Scottish Enterprise to account. We also have an obligation to hold the minister to account for his roles and responsibilities. I do not want to mix the two things up, and I believe that we have a responsibility to fulfil both duties, so I think that we should see both the minister and the Scottish Enterprise representatives, preferably on separate occasions, although if they want to come back on 2 May they will be welcome to do so.

The Convener: To deal with Murdo Fraser's point, my understanding is that the minister has not insisted on seeing the submission before it comes to the committee. That was purely the decision of the board of Scottish Enterprise. That is my clear understanding. Like committee members, I think that the board should have responded more positively to the request from the committee. At this stage, it is a request, but we have powers, if required, to demand that both people and papers come before the committee. I do not think that we are at that stage, but I agree with Christine May, Karen Gillon and Murdo Fraser that we should invite Scottish Enterprise representatives to come on 25 April and, if necessary, to return on 2 May, because there may be outstanding questions that cannot be answered next week.

We should also require that the submission that it was going to make to us is with us by the end of this week at the latest, because members need time to read the papers before we meet next week. I think that that is a reasonable demand. It is now three weeks since we took the original decision to invite it and since it promised us its written submission. I do not think that we are being unreasonable—I do not want to be unreasonable. I think that our request is fair and I sense that that view is shared by the members who have spoken.

Christine May: Regardless of whether there is a report for us to read, I would still like us to extend the invitation to Scottish Enterprise to be here. That way, if we have not been given the report, we can ask why.

Michael Matheson (Central Scotland) (SNP): It is worth emphasising that we tried to accommodate Scottish Enterprise by putting back the meeting by a further week. We are holding it to the commitment that it made to come before us on 25 April. We are not putting on it anything that it did not know about three weeks ago.

Richard Baker (North East Scotland) (Lab): I accept all that, but the priority for the committee is to have all the information available to ensure that it can do its job of scrutinising the strategy, and the impact of the new budget on it, as well as possible. I am happy that we invite Scottish Enterprise to appear on the 25th, but I am concerned that we might lack information on another part of the Scottish Enterprise strategy that would have been available to us at a later meeting. If that will be the case, we should invite Scottish Enterprise to come back to the committee at a later date.

Karen Gillon: I appreciate Richard Baker's point. However, the point of the meeting on 25 April is to be clear about what has happened up to this point, who knew about what, when they knew and what they did about it. It is not rocket science. Private discussions with the minister, about how Scottish Enterprise will solve the problem that it faces and take forward a new strategy, are on-going. I, as well as businesspeople in my constituency, am keen to know how we got into the situation, who was monitoring things and what remedial action was taken when it was known that there was going to be a budget overrun. It is clear from the documents that I have seen that remedial action was supposed to be taken, but that did not happen and I want to know why.

Susan Deacon (Edinburgh East and Musselburgh) (Lab): I think that we are in danger of allowing the detail of time and handling to eclipse some of the substantive discussion that needs to take place. I am relaxed about which way we jump on the timing of discussions. The reasons given for putting back the discussion were sensible but, equally, it would be perfectly appropriate for us to have the discussion on the date that was suggested previously. Rather than sitting here having half-discussions about what we might discuss and when, it would be better for all concerned if we just got on with having that discussion in order to get transparency and, hopefully, generate more light than heat around some of the issues that have been in the press. It is important that the discussion is as informed as possible.

I have two points to make. One is to flag up a parallel discussion that took place this morning at the Audit Committee, of which I am a member, about its work on Scottish Enterprise, which has been on-going for some years. It just so happens that the Audit Committee's work now coincides with current issues that have arisen. Useful material has arisen from the work of Audit Scotland and the Audit Committee that would help to inform our discussion and put in context some of the issues around the financial situation and the new arrangements for project appraisal and so on. I am sure that the clerks would communicate the information anyway, but I thought that the point was worth recording.

Secondly, I think that I am at variance with Karen Gillon. I am interested in discussing some of the wider forward-looking structural and strategic issues. I would not like to think that we had constrained any discussion with the agency simply to looking back and raking over the coals of detailed financial management issues.

14:15

Murdo Fraser: I wish to make a small point in support of the proposal to invite Scottish Enterprise witnesses to give evidence on 25 April, simply because, as I understand it, that is in advance of the final agreement with the minister on the way forward. When we originally discussed the dates, we wanted to see the agency's witnesses before that final agreement was reached so that we could have some input into the decision making. It would be valuable, particularly given what Susan Deacon has just said about looking forward and being able to contribute to the process if, rather than hearing evidence from Scottish Enterprise after all the decisions have been made, we could hear from it while the decision-making process was still in a state of fluidity.

The Convener: There is consensus that we want to see witnesses from Scottish Enterprise on 25 April. Is that agreed?

Members indicated agreement.

The Convener: That would be with the possibility of recalling them on 2 May, if that proves essential. Is that agreed?

Members indicated agreement.

The Convener: Remember that, provisionally, we also have the Minister for Enterprise and Lifelong Learning coming on 2 May.

Are we also agreed that we should ask Scottish Enterprise for the written submission that we should have received last Wednesday by the end of this week, so that we have time to read it ahead of our meeting on 25 April?

Christine May: Referring to what Susan Deacon said, could we confirm that we do not wish just to look back, and that we want to be able to discuss what happens in the months ahead and over the next three years? That is the really important bit.

The Convener: Absolutely.

Michael Matheson: I want to clarify something. Was the request to put back the meeting with the board of Scottish Enterprise to 2 May, or was the board simply saying that it will not have all the information available for us until after that date?

The Convener: There are two separate matters. One is the issue of the meeting. The request to come to our meeting on 2 May came prior to last week. Scottish Enterprise will have its meeting with the Minister for Enterprise and Lifelong Learning on the morning of 2 May, and it has said that some information might not be available for us. That was about 10 days ago.

That is a separate matter from what happened last week. We were supposed to get the paper from Scottish Enterprise on Wednesday. Someone from the agency phoned to ask if it was okay to postpone that until Thursday. I agreed to that on the basis that one day would not make much difference. About an hour after we were supposed to receive the paper, we were notified by Scottish Enterprise that the board had decided not to give us the paper until the minister had seen it. Presumably, the paper is available, but Scottish Enterprise did not wish to give it to us until the minister had seen it. We should say that we want the paper this week so that we can question the witnesses next week, as well as addressing the other matters that Susan Deacon and other members have highlighted.

Michael Matheson: What happens if you go back to Scottish Enterprise on that basis and it refuses? What would the course of action be then?

The Convener: The committee has powers to demand both papers and people. I really hope that it does not come to that. I hope that Scottish Enterprise sees reason. The last thing that we want is to get into that sort of situation, in which lawyers and others can get involved. Given that Scottish Enterprise is an agency of Government, I hope that it will see reason.

Susan Deacon: It is worth reiterating the point that Christine May made earlier, that, as with any discussion, process or organisation, the information that can be made available at any given point in time will vary. If the shorter timescale, which is the preferred one as far as we are concerned—the original timescale, if we want to look at it that way—is to be adhered to, Christine May's point stands, as we recognise

that, in certain areas, Scottish Enterprise will say that it is not yet in a position to give us all the information, because of certain processes still being under way.

Christine May: But it should give us what information it can.

Susan Deacon: Such factors should be explained to us transparently; then, we will engage in the discussion accordingly.

The Convener: We would want the additional information to be available for the following week, given the meetings with the minister to be held on the Tuesday morning. Is that agreed?

Members *indicated agreement.*

The Convener: That is agreed for the meeting of 25 April, with the proviso of possibly also using our meeting of 2 May. We will request the papers by the end of the week so that we have time to read them before next Tuesday.

Bankruptcy and Diligence etc (Scotland) Bill: Stage 1

14:19

The Convener: Item 2 is on the Bankruptcy and Diligence etc (Scotland) Bill. I ask Nicholas Grier to advise us.

Nicholas Grier (Adviser): I hope that members all have the new pink papers, which should have just arrived. I shall try to talk members through my briefing note. I do not want to be too long about this, although the area of law that we are considering is rather complicated. I will try to do this reasonably intelligibly.

I start by telling the committee about diligence against earnings. I refer to the process whereby sheriff officers come to an employee's place of employment and ensure that money is taken out of the employee's wages and paid to the various creditors, to family creditors, or to the sheriff clerk, who will divide up the various sums among the creditors. The system seems to work reasonably well on the whole, although it is obviously not very popular with employees whose wages suffer the diligence. However, I have indicated in the briefing that there are some difficulties.

One difficulty is that historically it was thought that ordinary creditors should do better than family creditors, but that is no longer seen as acceptable. Under the proposals in the bill, creditors will be treated equally. The family therefore stands as good a chance of getting money from the employee as ordinary commercial creditors do.

The second difficulty is that the Debtors (Scotland) Act 1987 was not perfectly drafted. It appears that what is happening in practice is what was intended to happen, but the wording in the 1987 act does not reflect what was intended to happen. By some happy chance, people are deducting the money in the way that was intended, even though the wording of the legislation does not reflect the intention. The bill tidies up the legislation to make what happens—

Christine May: Legal.

Nicholas Grier: Legal, as it were, since you put it that way. I would hesitate to say that people have been acting illegally, but the legislation was not perfectly drafted.

The third improvement proposed in the bill is to ensure that more information is disclosed so that creditors, debtors and employers will have a much better idea of what is going on. Although that may incur costs in its own right, it will do no harm for people to have more idea of what money is due, to whom it is due and how much is outstanding.

That is not to say that everything has been sorted out. I highlight some remaining problems in the part of the briefing that deals with other controversial aspects of the proposals. An issue arises with the equivalent English orders, but the Executive and the Department for Constitutional Affairs have not yet worked out a procedure that creates parity with the Scottish system. Other difficulties that have yet to be worked out relate to pension schemes and student debt. Those problems will not be easy to resolve, but the idea is that they should be left until we have slightly more information.

I move on to arrestments in execution and actions of furthcoming. The phrase “action of furthcoming” is wonderful and very old. It has led to much confusion—the “furthcoming” is commonly produced on computers as “forthcoming”.

With an arrestment in execution, sheriff officers go to a place where the debtor has assets—commonly money in a bank account or, in perhaps unlikely circumstances, furniture in a repository and so on—that are being held in the hands of a third party and arrest the assets. That means that the bank, the repository or whatever is not to release the assets to the original owner without the consent of the creditor, who is unlikely to give that consent. Arrestments in execution are certainly very effective. If someone has money in a bank account that is arrested, the creditor is placed in a strong position. An arrestment in execution is very inconvenient for the debtor, as it means that, in the case of the bank account, the account is frozen, or, in the case of furniture, they cannot get their furniture back.

If the creditor wants to get the money, furniture or whatever, they can do two things. They can ask the debtor to sign a mandate, which is a document that authorises the release of the furniture or money to the creditor. That is an informal process, which has been going on for a long time and is hallowed by use, but there are one or two questions about its legality. It is proposed that the rules as to its legality should be made clearer by the setting up of a statutory form of mandate. Everyone would then know where they stood.

The second step that a creditor can take, rather than have a mandate, is to go to court for a decree of furthcoming. Of course, applying to the court incurs further costs in its own right. It is sometimes necessary to have a decree of furthcoming, because otherwise the creditor will not know the result of the arrestment of any bank accounts.

The proposal is to replace the antiquated action of furthcoming with an automatic release of arrested assets to the creditor within 14 weeks, subject to certain rights that protect the debtor and the arrestee, by which I mean the bank, furniture

store or whatever organisation holds the assets. The fact that the creditor will not have to go to court to secure a decree of furthcoming ought to save everyone time and money—well, I say that it will save everyone time, but that will not necessarily be the case. For example, questions have been raised about the 14-week period; after all, interest will run on the debt during that time. In that respect, the action of furthcoming is quicker than the proposed process.

Another difficulty with the current arrestment system is that the entire bank account can be frozen, which can pretty well leave the debtor penniless. The bill proposes a safety net of money—I believe that the figure of £304 has been mentioned—that will remain protected in the bank account; however, that will not apply to business bank accounts. If a business is run through a limited company or if someone holds a trading account, the safety net money will be arrestable.

Because it is not always easy to find out whether the arrestment has successfully arrested anything, new proposals in the bill require a statement to be issued within three weeks of arrestment to make it clear whether anything has been arrested. At the moment, the proposals do not impose a requirement to disclose a nil return. That might cause some difficulty, because people might not know whether anything has been done or whether the arrestment has been fully carried out. The measure should be looked at again.

Because arrestment orders and actions of furthcoming can be unintelligible—sometimes they are written in rather old-fashioned Scots—it has been suggested that such orders should take a nice, new, intelligible form. Finally, one misfortune that can befall a debtor is the double whammy of having to suffer the diligence against earnings and the arrestment of his bank account, and we need to examine whether he should be put in such an awkward position.

Subject to any comments that we might hear today, the general feeling is that arrestment can be a useful form of diligence and that diligence against earnings can be relatively successful. However, as I have pointed out, there are difficulties with execution of arrestment orders and actions of furthcoming.

One further problem that must be examined is that, if a certain amount of money is protected in an individual's bank account, some statutory bodies—known as involuntary creditors because they cannot withhold services in the same way that other creditors can—might decide simply to go to sequestration. That might or might not happen, but those bodies have said that it is certainly a possibility. I should also point out that local authorities think that the 14-week automatic release period is too long.

There is another issue worth mentioning; however, because it is covered in part 12, we have not been asked to discuss it. Following a charge, local authorities, HM Revenue and Customs and so on can obtain a summary warrant and start exercising diligence against debtors and arresting things. The bill proposes to introduce an intervening period after a charge to give the debtor a bit more time to produce some money and pay his taxes or whatever the debt might be. However, some statutory bodies have expressed concern about this extra stage, saying that debtors have been told many times that they need to pay the money.

14:30

To change the focus, perhaps I could mention the role of the banks. Banks have to deal with arrestments; it is to them that the sheriff officers will turn. They do not particularly like having to deal with them because it is inconvenient and time-consuming and they get no financial benefit. There was talk of the banks being paid some money, but the Executive has rejected that. At the moment, banks are being co-operative, but given that it costs them money to deal with arrestments and that there are more than 100,000 arrestments per year, I can understand why they might not necessarily feel so enthusiastic about the procedure in the long run.

Action groups for less advantaged people have made the point that, even if there is a safety net, if a bank account is arrested there might be difficulties with funds such as tax credits or housing and other benefits being paid into that bank account. Citizens Advice Scotland and other bodies are worried that those extra funds that are paid into bank accounts could be arrested before the benefits are used for their proper purposes. The debtor would then be in the unfortunate position of expecting money that could be used for a child's nursery care, for example, but which is arrested by the creditor. That would put everyone in a very difficult position.

I am sure that Citizens Advice Scotland will speak to this issue more eloquently than I, but it has tentatively suggested that banks should separate the money that comes in for particular purposes. For example, if tax credit or housing benefit money comes in, it should be removed and put into a separate account that will not be arrestable. The money could then be used for the purpose for which it was given. However, banks might have difficulty with that idea. First, they would have to set up the separate accounts and they are hardly likely to do that for nothing—well, they might, but I think that it would incur a cost. Secondly, a bank would normally have the right to seize whatever money is paid into an overdrawn

account at the best of times. There are some difficulties with the idea, but Citizens Advice Scotland will no doubt be able to provide more information.

I have a few more issues to mention. There is a problem when a sheriff officer carries out an arrestment, because they do not necessarily find any money in the bank account. If there is no money, they might need to try again on another day. Therefore, sheriff officers might have to carry out several arrestments for one debt, which does not seem very efficient. Although the proposed provisions suggest that information is going to be made available about whether an arrestment has been successful, arrestments might have to be made day after day until some wages or something else comes in, which is not very productive. That problem has not been fully addressed.

If a debtor is smart enough, they will not keep any money in a Scottish bank anyway. It would be far more prudent to keep in it a building society because there are lots of them, and an even more astute debtor would keep it in a building society south of the border. There would then be a great deal more confusion about where their money is. A really astute debtor would not have their money in a place where it could be arrested or seized by money attachment, as we discussed the other week.

Sometimes, when a creditor does not know whether the debtor has a bank account or where it is, the banks have to suffer what is known as a fishing expedition, in which all the major Scottish banks and sometimes English banks that have places of business in Scotland are served with arrestments. Five or six arrestments could all take place at once, which is expensive for the creditor and might also be expensive for the debtor. Banks do not really like having to waste their time on such things. Although a debtor could, in theory, raise an action for wrongful arrestment of his bank account, it is unlikely that he would want to go down that path as it would be expensive; he would probably have to get legal aid, and the whole thing would take a great deal of time and trouble.

Perhaps I have presented a rather negative view. However, although arrestment is not particularly effective for the can't pays, there is no doubt that it is extremely effective for the won't pays. It might not be my place to say this, but I think that many creditors would say that arrestment is well worth retaining.

The Convener: You highlighted the cross-border problems that arise when English companies have bases in Scotland. Would there be a problem if a company was French, German or American?

Nicholas Grier: Wages could still be arrested. Difficulties with the English system of earnings arrestment do not seem to have been resolved and, similarly, it is not clear what would happen if someone wanted to levy a Scottish earnings arrestment in England; it could be done but it would not be easy. There would be no automatic approach whereby someone ticked a box or filled in a form; it would take more effort than one might expect.

The Convener: Should the matter be resolved before the bill is passed?

Nicholas Grier: The matter should be given further consideration, although it should not preclude the passing of the bill. It might simply need to be revisited.

Susan Deacon: I am not sure whether my question is for Nicholas Grier or for Rob Beattie, who will give evidence later in the meeting. I want to understand in practical and technical terms the fishing expedition to which Nicholas Grier referred. How would banks use technology to track down accounts in the circumstances that the adviser described? We all know that technology has moved on dramatically in recent years, but I am not up to speed on how the system would work.

Nicholas Grier: I defer to Mr Beattie, but I imagine that it is not difficult to check whether a debtor has a bank account. However, such checks are inconvenient and are just one more thing that must be done. A certain amount of running around would be necessary just to establish that a debtor was not on the books. If many banks had to do that every day, a lot of time and money would be wasted without benefit to anyone, except perhaps the creditor, who might at least establish that the debtor did not have an account with a particular bank.

The Convener: I will bring in Rob Beattie when we move on to item 3.

Christine May: Nicholas Grier discusses pensions in his paper and suggests that public sector workers would be "at a considerable advantage". Is that because public sector pensions are more generous than are private sector pensions?

Nicholas Grier: No. Perhaps I did not phrase that as well as I should have. My point was that public sector worker's pensions are not normally arrestable, whereas private companies' employees' pensions are.

Christine May: Could we receive a short briefing on why that is the case?

Nicholas Grier: I imagine that there is a historical reason, but I do not know what it is.

Christine May: I would be interested in finding out the reason.

Nicholas Grier: Perhaps it is a benefit of working for the Government.

Christine May: Maybe.

The Convener: That means that none of us can have our pensions arrested.

Nicholas Grier: I am sure that the news comes as a relief to members.

The Convener: It does.

We move on to item 3, for which I welcome witnesses who are here to discuss the bill. There are some familiar faces. Susan McPhee is head of social policy and public affairs at Citizens Advice Scotland; Brenda Tamburrini is from the Easterhouse citizens advice bureau; Rob Beattie—who was mentioned by Nicholas Grier—is from the Committee of Scottish Clearing Bankers; Dawson Lamont is the head of exchequer in the Highland Council; David Mair is a senior solicitor in the chief executive's department of Glasgow City Council; and Lesley Pryde is a senior revenues officer in the financial services department of Glasgow City Council.

A question was put to Rob Beattie, so I invite him to respond. How does a bank go on a fishing expedition?

Rob Beattie (Committee of Scottish Clearing Bankers): The fishing exercises to which Mr Grier referred are quite a common experience for Scottish banks. When a creditor wants payment from Donald Macdonald and does not know where he has an account—if he has one—it is easy to serve four arrestments on the four Scottish banks, which give them an obligation to search every branch in Scotland to find out whether Donald Macdonald has an account with their banks.

Sometimes an arrestment specifies just a name and address. Technology allows us to search for a name and find out whether we can identify the right Donald Macdonald. We also need to check whether the name has a capital or small D and starts with Mc or Mac, for example. If an exact match is made with the name and address, it is picked up relatively quickly once the names have been entered into the computer. In the past, we have discussed with sheriff officers the prospect of serving arrestments electronically so that name searches could be undertaken more efficiently. However, concern was expressed about the law on that topic and on whether an arrestment would be properly served if it were served electronically rather than on paper. That concern is why we still receive paper arrestments most days.

If we find numerous Donald Macdonalds but we do not find an exact address match, the problem is whether we attach an account with a creditor balance that looks as though it belongs to the debtor for whom the creditor is searching. If we

make a mistake, our customer will sue us for wrongfully freezing his account. Invariably, each bank's arrestment team asks the sheriff officer for further details, such as other addresses, a date of birth or other identifying information. We can search postcodes, so if the postcode on the address that we have been given is wrong, we will not find the debtor.

If we still cannot find a particular Donald Macdonald, even with additional information such as his date of birth, we issue a circular that asks our branches in Scotland to search their accounts to try to identify that person. They might think that an address is not right; the person perhaps used to live at that address but moved three months ago to a new address, so the records had been changed. Sometimes, that can be picked up. We must try to pick up such information, because we are subject to court orders and are obliged to arrest funds.

Of course technology should allow us to key in a name and address and find somebody relatively quickly, but unfortunately the process is not as simple as that. We receive a large volume of arrestments, some of which relate to people who do not have accounts with any of the four Scottish banks. That is quite a process. We have staff who do nothing else full time but deal with the volume of arrestments.

The Convener: That answer was given because a specific question on the subject was asked. Each organisation can now make a brief opening statement in support of the papers that have been circulated, after which I will open the meeting to broader discussion. We might want to pursue the issues that Rob Beattie raised, as well as other issues.

I will start with Glasgow City Council's representatives, as this is the first time that we have heard from that council.

Lesley Pryde (Glasgow City Council): We are so enthusiastic that two of us have come through to Edinburgh. David Mair is the lead officer.

David Mair (Glasgow City Council): I trust that everybody has a copy of our submission. I apologise for its being late; I am afraid that we were in pre-Easter chaos at the end of last week.

The Convener: That is okay. You will understand that, as members received the paper only this afternoon, they have probably not had the chance to read it in detail. Once we have done that, we might have to send you written questions.

David Mair: I have nothing to add to what the submission says, so it might be easier if I read out what I have written about parts 9 and 10 of the bill.

Our submission says:

"PART 9: DILIGENCE AGAINST EARNINGS

Glasgow City Council notes the changes to the diligence against earnings.

The only concern for Glasgow City Council as an employer is in the implementation of the requirement to intimate on the debtor, the creditor and possibly also the Sheriff Clerk. This may result in increased resources being necessary to comply with this requirement."

Part 10 is on arrestment in execution and action of furthcoming.

The Convener: That bit is missing from our copy of the submission. We will sort that out afterwards. Please tell us briefly what it contains.

David Mair: Part 10 states:

"Glasgow City Council is concerned to note that arrestment and action of furthcoming or sale in execution of a Summary Warrant shall be competent only if the debtor has first been charged to pay the debt due by virtue of the Summary Warrant. Please see Part 12 below."

Glasgow City Council is pleased to note that, subject to certain conditions, the sum arrested will be automatically released after a period of fourteen weeks. This should substantially reduce both the amount of time and the expense it takes to recover all sums arrested."

14:45

Dawson Lamont (Highland Council): Thank you for the opportunity to address the committee. My responsibilities in the Highland Council include dealing with council tax as well as non-domestic rates. Another part of the portfolio is delivery of the benefits service. I accept that there is a need to take an approach that balances the interests of the debtor and the creditor. I believe that local authorities such as the Highland Council try to help debtors who find themselves in difficult circumstances.

We welcome many of the measures in the bill; I have set out in our submission many of the fairly obvious plus points. On the negative side—I should put the word "negative" in inverted commas because I understand that there is a contrary view on this—is an issue that relates to the requirement to serve a charge for payment prior to instructing an arrestment. I am sure that the committee is aware that many local authorities consider that that will create an increase in both time and cost. In the Highland Council, which covers the largest rural area in the country, there is the statutory bank arrestment fee, which is £43.25. In addition, if a charge is served, the act of sederunt adds a further £80.75. We would increase the costs again for a joint and several liability. To increase the costs that could fall on the creditor if the debtor does not pay will bear most heavily on authorities such as the Highland Council.

It is important that we recover the moneys, because they go straight into services via the

council tax. We welcome the proposal for the protected minimum balance to be left in a debtor's bank account, but given the impact of all the costs, we could go from having what is currently a relatively—I use the word advisedly—efficient way of recovering moneys, to a process that takes longer and is less worth while. If there is not a lot of money to begin with, how successfully will money be recovered?

I managed to pull out figures about the Highland Council's success rate in arrestments lodged, which is something like 5 per cent for non-domestic rates. I was surprised at the figure of 32 per cent for council tax, which is quite a lot of money in council tax. We lodged 9,145 bank arrestments in the financial year 2005-06, which is significant in terms of the impact on the creditor, although I appreciate that there is a contrary view on that.

The views of my authority and, I am sure, of many others are coloured by the fact that we are involuntary creditors—I know that Mr Grier explained that earlier—which means that we cannot withhold goods or services. Basically, we are there to provide services and must do that, so we cannot withhold credit. However, there is a second part to that; the local authority does not have access to full disclosure of all the circumstances that relate to the individual. Therefore, a finance company or bank, for example, will be in a much stronger position as far as being able to take action when it comes to default is concerned. It is important to recognise those issues.

I finish by saying that we always use diligence as a last resort. We genuinely try to make arrangements with debtors—particularly debtors who are in difficulty—and we try to deal personally with them whenever we can, rather than refer the matter to the sheriff officer.

Rob Beattie: Thank you for inviting me along to address the committee. I am here on behalf of the banks, to represent the banks as the recipients of arrestments. We receive many thousands of arrestments each year.

I would like to comment on the point that Mr Lamont made in his note to the committee, which states that there is a

“statutory Bank Arrestment fee of £43.25”.

I do not know who gets it, but it is not the banks.

I agree entirely that arrestments are a useful form of diligence, and there are clearly occasions on which the banks are seeking repayment of a doubtful debt and would use arrestments, although not in the same numbers as they are used by local authorities and Government departments.

I am happy to assist the committee in its deliberations in any way I can.

Susan McPhee (Citizens Advice Scotland):

As members may know, Citizens Advice Scotland has been campaigning for changes to bank arrestments for years, so we are pleased by the proposals in the bill. Bank arrestments are the most commonly used type of diligence—about 155,000 were carried out in 2003. It is a peculiarly Scottish issue, because in England the equivalent—third-party debt orders—are hardly ever used; only about 6,000 were used in the past year.

Unlike the local authority representatives, we are pleased to see that service of a charge will be required, because that will provide debtors with a formal notice period. For some of our clients—particularly the no-income, no-assets clients—that could provide the route to sequestration that does not currently exist. We also believe that the protected amount of £304—which is shortly to be uprated to £370—will make a big difference to many of our clients, because at the moment we have examples of many cases in which people have been left penniless as a result of arrestment of all the moneys in their bank accounts.

We do not consider, however, that the changes go far enough because the bill will not give protection from arrestment of state benefits or tax credits. Under the existing social security and tax credits legislation, those payments are meant to be unarrestable. In practice, however, because of the way in which banking practice operates, they are arrestable. Fifty per cent of our debt clients are in employment of some sort but, even so, their average monthly income is only £801. The remainder of our clients are unemployed, retired or sick and disabled, which means that most of our debt clients will be receiving some form of benefit or tax credits.

We are concerned that problems will remain for our clients unless account is taken of that. There are three groups in particular for which we envisage such problems. The first is people who get housing benefit or local housing allowance, which is often paid directly into a bank account and can be well in excess of £370. Arrestment of those payments could lead to rent arrears. The second group is disabled clients, who often receive high levels of income comprising various benefits and premiums. Arrestment of those payments could leave a disabled person unable to pay a carer's wages. Some of those payments are made specifically to help people cope with a specific disability and for no other purpose, so to arrest such moneys would cause those people problems. The final group is people who receive tax credits. The child care element of tax credits can be for nursery fees or a child minder, so arrestment of those benefits could jeopardise child care arrangements and might cause the recipient to forfeit his or her employment.

I hand over to my colleague, Brenda Tamburrini from Easterhouse citizens advice bureau, who will give you some case examples from her experience.

Brenda Tamburrini (Citizens Advice Scotland): I, too, thank the committee for giving us the opportunity to come along today and provide examples. In Easterhouse, our concern is for the majority of clients who wish to pay but are unable to do so. Our experience is that the vast majority of people want to pay their debts, but they just simply do not have sufficient income to do so.

As Susan McPhee said, we are concerned about particular groups, such as people on disability benefits. A single person who receives a disability allowance can often have an income of over £200 per week. Obviously, the £304 that would be preserved in their bank account would be insufficient to meet their mobility needs.

Clients who receive child tax credits must often pay nursery fees. They get assistance for up to 70 per cent of the cost, which is paid directly into their bank accounts. If they were unable to access their accounts, they would simply not be able to pay nursery fees for that month. We had a recent example of that situation. A client came into the bureau and told us that she had recently separated from her husband. She had been working only a couple of days per week and had numerous debts after the husband left, so she decided that she would have to increase the number of hours that she was working. She approached her child's nursery about that and was told that it would be no problem and that they would give her additional child care. She could not pay for it, but the nursery said that she could settle up once her tax credits and so on had been sorted out.

There was a delay with her tax credits, however, and she found herself with numerous debts, including council tax arrears. She had believed previously that her husband had been paying the council tax, but she discovered that there were a couple of years of tax outstanding. The council was taking action against her and she was concerned that she would not be able to continue to pay her child care costs. She had not been served with an arrestment notice, but the threat of that being done was causing her extreme distress. She came into the bureau and we managed to contact the local authority on her behalf. When the client had approached the local authority, they had been unable to assist her—she was told that she simply had to pay the full amount of council tax arrears.

We find that a problem is that clients who are not given the opportunity to pay council tax arrears by installments often decide not to pay. I am sure that the local authority would say that it gives

clients numerous chances to pay their arrears, to which they do not respond, but that is because when clients approach the council to offer repayment, they are told that they must pay in full. They cannot do that, so they simply ignore the debt and wait for something to happen. That is why we welcome the proposed charge. We feel that receiving the charge following a summary warrant would cause clients to take action. Currently, councils do not act if there have been council tax arrears for a year or so. Our experience is that it is perhaps six or seven years before the council serves a bank arrestment, so steps could be taken before that to recover the arrears.

We have discussed there being a hierarchy of diligence. We hoped that there could be an earnings arrestment in the first instance and if that was unsuccessful, there would be a bank arrestment. For clients who are on benefits, it is possible for a deduction to be made from their benefit, which would prevent the need for a bank arrestment. However, the possibility of taking that type of action seems to be ignored.

Murdo Fraser: Good afternoon. I have a couple of lines of questioning. I will start with Rob Beattie. You made a point earlier about the cost to the banks of dealing with arrestments, fishing expeditions and so on. You also refer to that to an extent in paragraph 5 of your written submission. Has an assessment been made of the costs to the banks of dealing with arrestments? What increased costs are likely to result from the bill, if it progresses to enactment in its current form?

Rob Beattie: Calculations have been done on what it costs to deal with an arrestment. The cost varies from bank to bank, depending on the number of arrestments that are served. A fishing diligence will be served on all four Scottish banks, but a creditor might believe that a debtor has an account with one bank or perhaps will decide to put an arrestment into the hands of the two larger banks—the Bank of Scotland and the Royal Bank of Scotland. The volume of arrestments varies from bank to bank and therefore so does the number of people who are involved in processing the arrestments centrally and carrying out name searches. Then again, individual branches are affected by arrestments coming into play because branch staff must remove the money from an account and place it in a separate suspense account, where it is frozen in favour of the arresting creditor. I do not have an up-to-date figure for the administrative cost of an arrestment, but it is likely to be more than £30.

15:00

Murdo Fraser: What extra costs would the banks face if the bill was passed in its current form?

Rob Beattie: Training will be required because quite a few changes are envisaged, including the protected minimum sum, which is an excellent idea. I could take you through the technical details that have occurred to us.

Murdo Fraser: Please do not.

Rob Beattie: There will be some practical difficulties. For example, the protected sum is £304 rising to £370, but if Mr and Mrs Smith hold a joint account, will the protected sum be £370 for the account or £370 each? If it is the latter, they would be better off having separate accounts because they would both receive protection of £370. If there are two separate accounts and the arrestment is against both parties, we would protect the first £370 in each account. However, how much of the balance of each account would we attach to meet the arresting creditor's needs? How would we decide? Would we attach the whole amount, up to the sum that is being attached? If the sum to be attached is £2,000 and we knock off the first £370, will the balance of both accounts be attached under the arrestment? After 13 weeks the automatic release provision comes into play, but we will have more than we need. How much would we debit from each account? That has not been clarified.

Also, it is not clear what will happen when two arresting creditors lodge arrestments against the same debtor on the same day. The arrestments will rank equally and the protected sum will be retained for the debtor's benefit but, if there is no mandate and no action of forthcoming, how much will we release and to whom? Will money be released pro rata depending on the amounts that are being claimed by the two creditors?

There will be more administration. We will have to explain to staff that, in addition to the usual procedures whereby we work out the position between the bank, the debtor and the creditor and establish whether there is something to be attached, we will have to deduct £370 and then decide whether there is anything else to be attached and what steps we need to take. The need for training on that means that the system will be more expensive to operate initially.

Brenda Tamburrini: We have evidence that the banks are charging customers £25 for an arrestment on their account. Recently, we had a client who had £46 arrested from her bank account and the charge from the bank for that was £25.

Rob Beattie: I can well believe that because banks now receive so many arrestments. If an arrestment is a one-off, it will be dealt with, but if a customer regularly receives arrestments against their account, the bank will seek to charge the customer a fee for the work that has been involved

on the basis that the creditor does not pay anything for the service. It is the debtor who bears the brunt of the cost.

Murdo Fraser: That is a fair point. We have to be aware of the law of unintended consequences. If the banks have to do a lot of extra work but get no money for it, they will look to recover their costs elsewhere. They might even start to refuse bank accounts to people who they think might be at more risk of arrestment. Is that a possibility?

Rob Beattie: I do not think so. In the past, we have discussed the basic bank account and the problems that a discharged bankrupt faces in finding another bank account. A discharged bankrupt can apply for a bank account and a basic account will be offered in the first instance. I do not envisage that, through the questionnaire for opening a bank account, banks will seek to find out whether arrestments are likely to be served on the customer. A credit reference search will be carried out on a new customer. Any outstanding judgments against that person might affect the bank's decision about whether to open an account for them. However, the possibility that the potential customer is regularly served arrestments would not be part of the assessment of the account opening process.

Murdo Fraser: Okay—

The Convener: Are you moving on to another subject?

Murdo Fraser: Not altogether, but I will go off at a tangent, so you might want to bring someone else in before I do so.

The Convener: I will bring you back in for your tangent later, but I think that Christine May and Karen Gillon have questions that are specific to the current topic.

Christine May: I want to take that last point a little further, Mr Beattie. If the bill comes into effect, are banks likely to institute tougher credit reference checks before they open accounts for people? Are banks more likely to restrict the facilities that account holders can have if their banking history shows debts and arrestments? The committee has been concerned about the ease with which people with a poor financial record can obtain banking facilities.

Rob Beattie: Nothing in the bill will affect a bank's process of opening an account or its judgment of whether it should open an account for a particular customer. If somebody has a poor financial record, it would preclude the possibility of any further advances being made to them. The bank would be wary about providing new facilities to a discharged bankrupt but, again, that would depend on the purpose and track record of the individual.

Where somebody has a history of debt and unsatisfied judgments against their name, the chances are that they will be able to open an account, but it will be maintained on a creditor basis with no banking facilities made available. However, the proposed changes to arrestments in the bill will make no difference to the way in which a bank decides to open an account.

Christine May: I remind the committee that I received evidence from local money advice services that debtors who have significant credit card debts have been offered a further loan and another credit card by banks. I have deep concerns about that. What would it take to make the banks more wary about offering those wider credit facilities to folk?

Karen Gillon: The CAS submission suggests that money from tax credits and housing benefit should be separated from other money in a bank account. How difficult would that be to administer and would the banks be prepared to do it?

Rob Beattie: I was interested in that proposal which, on the face of it, seems like an excellent idea. However, millions if not billions of transactions—credits and debits—go through the banks' clearing system in the course of any banking day. Adopting the CAS proposal would mean that every credit that enters a particular bank account would have to be scrutinised to find out its source. The vast majority are presumably normal banking transactions, whatever the credit might be, whether it is salaries or just a payment between individuals. To then have to vet every credit to a customer's account to see whether it refers to a benefit payment or a tax credit would be very difficult.

Karen Gillon: I refer you back to Christine May's question about the potential problems of people obtaining credit or bank accounts. Would the process you describe be costly for a bank to administer?

Rob Beattie: To vet every credit?

Karen Gillon: Yes.

Rob Beattie: It would be very costly.

Karen Gillon: Would that then make it harder for people to obtain bank accounts if their main source of income is—

Rob Beattie: Benefit payments of some description?

Karen Gillon: Yes.

Rob Beattie: In that case, I think that another solution to the whole problem would have to be found. It has been suggested that, rather than trying to arrest an individual's benefits, one solution would be to allow the individual to pay so much per month to their creditors out of their

benefit before they received it. If we were to go down that route, however—and this is a personal opinion—people might have to request a special account called a benefits account, an exempt account or whatever name might be used for it. Any credits that went to an exempt account—the account number would presumably have to be given to the Benefits Agency—would not be attachable by arrestment. That would avoid the need to go through everybody's account at the close of business each day.

It depends on when the arrestment is served. The account would have to be tracked. It would be necessary to go through the account and trace the payments that came into it, establishing where they came from. If there is a benefit payment coming in and if it is the only payment, it is not to be attached. That process would be time consuming, so it would be better to have a special account. I stress that these thoughts are right off the top of my head and have had no consideration from my own bank, never mind from my fellow bankers. It would be one possible solution to have some sort of exempt account.

Susan McPhee: Benefit payments and tax credits are marked. As most of us here probably know, child benefit comes up as "CB" in our accounts.

Rob Beattie: I agree that those payments are identifiable—there is no doubt about that. At the moment, money in an account is simply money in an account, which is due by the bank to the account holder. The source of the money is irrelevant. It might be that only benefits will have made up the credits to the account concerned, but it would still be necessary to go through the account and check the credit or balance. There is a rule known as Clayton's case, with which I am sure Mr Grier is familiar, which relates to how the source of the money in an account is calculated. Such a calculation would have to be carried out on each occasion to ensure that the source of the money in an account was a benefit payment, and that it was therefore free from arrestment. That would presumably be in addition to the exempt sum of £370. Carrying out such calculations would certainly create administrative problems.

Karen Gillon: Is Citizens Advice Scotland suggesting that all benefits should be exempt? If somebody has income support coming in, they would not have to pay any of it back.

Susan McPhee: Yes.

The Convener: Michael Matheson has a point to make on this subject next, although I have not forgotten about Murdo Fraser.

Michael Matheson: Conceivably, a person might be on housing benefit and could also be receiving a direct payment into their account from

their local authority for their care provision. They might have accrued debts to the local authority, and the authority could arrest their wages. They might be left with £300 a week or whatever in their bank account. They might be in a private let and might lose their tenancy and end up homeless and unable to pay for their carers.

I understand what Rob Beattie was saying about setting up a separate bank account. However, it seems to me that, in this age of modern technology, with benefits paid into accounts having a reference number or some sort of indicator next to them, if an arrested account is isolated, it should be possible to identify clearly what comes into it. If I go into my bank and ask the teller about anything that has come into my account, they can print off the details there and then. It could be determined that anything else that comes in with the same references is not arrestable.

Rob Beattie: Yes, but we would then have to make a calculation of what makes up the money in your account.

Michael Matheson: That could be done easily by referring back to the debits that have come off over the past month.

Rob Beattie: That is right. If all the credits that ever come into the account are benefits and if all those benefits are non-arrestable, it could be determined that the money in that account, whether it is £1 or £100, is made up of benefits. As soon as another credit comes into that account that is anything other than a benefit, what is the non-attachable balance of the account then? The debits then have to be deducted. The first debit will extinguish the first credit. A calculation has to be made to work it out.

The amounts involved may be below £370 anyway, in which case the calculation would not be required. However, although the bank account would show the source of the credit on the statement, a manual exercise would be required. The programming would have to be amended to say that any credit to a particular account bearing any of the stated identification markers as a benefit is not attachable and is therefore deducted from the balance. We would need a sophisticated program to work out the debits that have come off the account.

I agree that it sounds very straightforward, but I am sure that an information technology person would tell me that it would be difficult to program that particular function into the mainframe. That is my assumption, although that could be done.

15:15

Michael Matheson: I do not dispute the need for a calculation, but we need to find a way to

overcome the problem. I am concerned that a local authority that arrested someone's account, purely in order to pursue a debt, could incur more cost because the person ended up homeless, with all the problems that would flow from that. The person's account would be frozen, meaning that they could not be paid their housing benefit. A way needs to be found, under the present mechanisms, to prevent that from happening.

Rob Beattie: Does that not go back to debt counselling? If someone is in that amount of trouble, that will not be fixed through bank accounts and the like.

Lesley Pryde: If Glasgow City Council was aware that a bank arrestment of that nature would lead to someone becoming homeless—which would suggest that their financial circumstances were dire—it would reassess the situation and, hopefully, come to a payment arrangement with that person. As Dawson Lamont has pointed out, this is a speculative form of diligence. Local authorities will generally do everything that they can before going to such extremes.

The Convener: The debate has focused exclusively on people who receive benefits, but some of the people whose bank accounts are arrested could be low-paid people who have no benefits coming in. Whatever solution you come up with has to apply to them as well as to people who are in receipt of benefits, whether they are working or not.

Rob Beattie: Yes, I agree.

The Convener: Identifying all the benefits could discriminate against people who are on a low income.

Susan McPhee: But they would probably get tax credits, which are as identifiable as benefits.

The Convener: Is it not like when pensioners' incomes get to a certain level and the ones who are on the boundary are the ones who always suffer? Those are the people who are most likely to be caught in that situation.

Susan McPhee: There might be some people in that situation, yes.

Brenda Tamburrini: Can I go back to an earlier point? The point was made that there is difficulty in working out people's benefits. Having previously worked in a bank for 25 years, I sympathise with the banks and recognise the difficulties that they face. However, Nicholas Grier said that local authority pensions could not be arrested. If local authority pensions can be identified, why can the banks not identify benefits?

Nicholas Grier: I will have to get back to you on the finer points of why local authority pensions cannot be arrested. I am afraid that I cannot give you an answer to that off the top of my head.

Susan Deacon: I want to ask the Citizens Advice Scotland representatives a bit more about the human dimension of this—the psychology, if you like. We have talked an awful lot—today and in other discussions, often quite critically—about the oversupply of credit, but we are all a bit more hesitant to talk about the overdemand for debt. I am anxious about some of what is being suggested today, in terms of the psychology of an individual who may be vulnerable to getting into debt and may be tempted by the availability of credit. In terms of the psychology of the individual in those circumstances, would what you propose not significantly tip the balance towards their seeking to obtain further credit and running up more debt? I realise that the whole debate is about where we draw the line and how we achieve a balance, but you are suggesting a substantial step.

Susan McPhee: Of the 155,000 bank arrestments in 2003, 150,000 were carried out by local authorities for council tax debt. Our research shows that one in four of our clients had council tax debt. We envisage that our proposals for bank arrestments would impact on council tax debt rather than extend credit. However, we know from our research that about one in six people borrows again to try to get out of other debt problems.

Susan Deacon: I hear what you are saying, but although the debt that manifests itself might be a result of council tax, the council tax may have gone unpaid because of the individual's spending patterns. That brings us back to the psychology of the situation. If we create the conditions that you suggest for people who are on benefit, will we not create a situation in which the disincentives to getting into debt are sufficiently reduced so that people's spending patterns—let us talk about that rather than about people getting credit—might lead them into further debt? That brings us back to Murdo Fraser's point about the law of unintended consequences. What impact might your proposals have on behaviour?

Susan McPhee: Research on CAB debt clients shows that there are two streams. First, there are people who are in debt because they are in poverty and simply do not have enough money—they tend to be people who are on benefits. As I said, the average income of our debt clients is £801 a month and more than a quarter have incomes of less than £400 a month. They are in debt because they cannot afford to live on the money that they have. The other stream is people who were earning enough to pay off whatever they were borrowing, but something has happened to them, such as job loss or disability. Our clients are not in debt because they have gone on holidays. People whose circumstances change tend to have borrowed within their limits until then, but something happens to put them in that situation.

The Easterhouse bureau has a different kind of client group altogether.

Brenda Tamburrini: I understand Susan Deacon's point, because obviously if no diligence is available, bank arrestments will not be possible. However, we do not argue that no diligence should be available. We are happy with earnings arrestment and diligence can be taken against benefits. In Easterhouse, our clients tend to be on benefits or on low pay topped up with tax credits. They want to pay their debts. Very few of our clients go for sequestration—they do not take the easy option. I realise that they have problems getting sequestration, but I find that the people who have very little are the ones who are the most keen to pay.

The Convener: We will go back to Murdo Fraser's tangential point.

Murdo Fraser: Eventually. I hope that I can remember what it was. It was related to the costs of arrestment, but on the slightly different issue of earnings arrestment, which has not really come up in the evidence. I have had representations from the small business community on earnings arrestment. If I remember correctly, the business that processes the arrestment gets paid the grand sum of £1 for each arrestment. The proposal is to increase that to £1.50. For a small business, the administrative burden of dealing with earnings arrestment is substantial, particularly if it is dealing with two or three creditors. I appreciate that no one on the panel represents small business, but can any of the employers who are present comment on whether the fees that are paid to employers are sufficient to cover the administrative costs or whether it would be fairer to ask creditors to pay more than they currently pay?

The Convener: Is anybody in a position to answer that?

Brenda Tamburrini: I thought that the fee was 50p.

Murdo Fraser: You might be right. I thought that it was £1; perhaps it went up from 50p to £1.

Dawson Lamont: It is a token payment; it bears no relation to reality.

Murdo Fraser: I will ask one final question, going back to something that Dawson Lamont mentioned earlier. By the way, is it Lamont or Lamont?

Dawson Lamont: The stress is on the first syllable.

Murdo Fraser: Yes, most Highlanders pronounce it that way.

The Convener: So you are no relation to Norman?

Dawson Lamont: Oh, absolutely not. [Laughter.]

Murdo Fraser: I asked the question only so I could see how it would be reported in the *Official Report*.

Dawson, you spoke about the effect of arrestments of bank accounts and said that, in many cases, arrestments could become less effective. Is it therefore more likely that councils such as Highland Council—although perhaps the witnesses from Glasgow will want to answer this as well—will simply bypass arrestment and go straight to sequestration? I am thinking about the law of unintended consequences: if we make the arrestment procedure too difficult, we will simply see a rise in the number of sequestrations.

Dawson Lamont: It is extremely difficult to anticipate what will happen. Obviously, earnings arrestments are more valuable to councils pursuing council tax. The big problem with council tax is that there is no direct benefit on the water and sewerage element, which, of course, is a retained function.

We would need to have experience before we could come to any conclusion on what the consequences could be. Highland Council puts a high premium on the quality of the money advice that we offer. Trained and dedicated advisers deal with our customers. We would not be inclined to go down the sequestration route in any big way, although I cannot give a guarantee on the point that you raise about unintended consequences.

Murdo Fraser: May I put the same question to David Mair?

David Mair: Yes, but I will answer it as someone who has been a debt recovery solicitor for 20 years, rather than as someone who is an employee of Glasgow City Council.

Arrestments are very effective—both earnings arrestments and bank arrestments. In Glasgow, we instruct 30,000 earnings arrestments and 48,000 bank arrestments each year. They are a very effective tool for debt recovery. If arrestments are lost, an effective method of collection will be lost. That will inevitably lead to the use of other forms of collection and possibly to a greater reliance on sequestration.

Christine May: We have spoken a lot about people on benefit and people on low incomes. One group that we have not discussed—although David Mair may have touched on it a moment ago—is the can pay, won't pay group. Will the current legislative proposals make it more effective for you to collect from that group? Will there be additional costs? What are the advantages and disadvantages of the proposals, in relation to that group?

David Mair: Particularly for arrestments, the abolition, in effect, of the concept of an action of furthcoming will make a big difference. Being able to collect funds without having to go to court for a decision, because the bank can hand the funds over—

Christine May: Even with a 14-week delay?

David Mair: I am not convinced that a court action would take a much shorter time. By the time that I, as a solicitor—after being instructed by the financial services department to proceed with an action of furthcoming—raise the action, go through court, get my decree, intimate it to the bank, and so on, it will be pretty close to 12 to 14 weeks later anyway. I am therefore not too concerned about the 14-week period; what I am happy about is that I will no longer need an order of court to get the money.

15:30

Lesley Pryde: For Glasgow City Council, that would free up David Mair as a resource. He would not be needlessly raising actions of furthcoming and we would get the money in much more quickly, we would hope.

Rob Beattie: To come back to a point that I made earlier, we find that mandates are used to quite an extent. Actions of furthcoming are obviously definitive. With automatic release, there is the problem that if more than one account is attached by a single arrestment against Mr and Mrs Smith, who each have an account, we will require clarification of how much to take from each account—assuming that sums are attached in both—to pay the creditor. If Mr and Mrs Smith are due to pay council tax, how much do we take out of his account and how much out of hers? With an action of furthcoming, that would have been clear because the court would have given us the order to pay out. A mandate from the customers themselves would also have said how much we should pay out. We need to fine tune one or two things in the system.

Christine May: Does the Committee of Scottish Clearing Bankers have a form of words that could be used to get over that difficulty?

Rob Beattie: We do not have a form of words. We have discussed that with the bill team in the Scottish Executive. So far, nothing has been agreed with the team, but the points have been raised with it.

Christine May: Previous evidence has shown that folk are reluctant to go for advice until they are up against the wire—I suspect that our local authority colleagues will say exactly that. Given that the bill might make it more difficult for those on low incomes, will it make it more or less likely

that people will go for advice earlier and more willingly, or will it make no difference to that? I am conscious that we cannot make people go.

Susan McPhee: The service of a charge will have an impact because it is a formal notification. Citizens Advice Scotland's experience is that something formal happening, whether it is a bank arrestment or something earlier, is a trigger for people to go for advice. The service of a charge will definitely have an impact, which I hope will prevent the bank arrestment from happening.

Lesley Pryde: I am not sure that service of a charge will make the debtor act more quickly. In addition, the service of the charge will be more costly for the debtor, or for the local authority if the debtor does not pay the fees.

Karen Gillon: Why would people respond to the service of a charge rather than to a summary warrant? I would respond to a summary warrant because I would be terrified that someone was going to take me to court.

Susan McPhee: The service of the charge at the beginning is another formal step that would push people to seek advice.

Karen Gillon: Why is that more formal than a summary warrant? That is what I cannot understand.

Susan McPhee: It is just another formal notification.

Karen Gillon: So it is just another chance; it is nothing new or different.

David Mair: I am more concerned about the won't pays than the can't pays because the service of a charge will make no difference to them. If they have not paid despite having had three reminders and a notice telling them that a warrant is going to be served, a charge for payment will not make any difference. However, I appreciate Susan McPhee's opinion on the matter.

Lesley Pryde: If the service of a charge was introduced, it might make a difference initially simply because it is new, but it will not make any difference in the long term because, to my mind, a summary warrant is much more severe.

Dawson Lamont: The service of a charge will impact on the can't pays because the costs will be passed on to them. Some of those costs could be considerable, particularly for the service of a charge in a rural area.

Rob Beattie: Was it a sheriff officer who served a charge or was it just done by notice? My knowledge of debt recovery is a bit suspect these days.

The Convener: It was a sheriff officer.

Rob Beattie: Initially, it might have more meaning to have somebody at the door serving a charge, but I agree that after the first 12 months or so of a new procedure, people would probably get used to what was to happen. As Mr Grier said in his paper, before taking advice, the smart debtor, if they have any money, ensures that their money is out of their account before the arrestment is served. They get 14 days' warning.

Brenda Tamburrini: Clients normally come to us once there has been some court action—once diligence is taken against them. When they get a council tax bill that says "summary warrant" on it they tend to ignore it. I appreciate the problem that Karen Gillon is having with this. If I get a final demand through, I think, "I have to take action," but we quite often deal with clients with mental health issues who are simply unable to deal with their financial situation. However, when someone comes to the door, it prompts them to do something. In most cases, that is when we see clients.

Karen Gillon: For folk who just do not want to pay, it does not matter whether somebody comes to the door—they will not pay anyway. Rather than introducing a new charge, does the format of the summary warrant need to be amended? If I have £500 of council tax debt, if you add another £100 to that—which is probably what it would be in my constituency—that is 20 per cent on top of what I am already paying. We could set out the summary warrant in a clearer format and make people aware that it is an intimation of court action and not just another council tax bill.

David Mair: In our submission prior to the bill, we said that as long as some sort of letter was sent out, the process might work. We find in our council that if people look at a letter from our financial services department, they see it as just another letter from financial services. If the letter is from the solicitor to the council, it has more of an impact. On the specific category of won't pays rather than can't pays, we could probably serve a letter like that and it would have as much effect as, if not more effect than, a charge for payment.

Susan McPhee: For us, the important thing about the charge is that it will allow clients with no income and no assets to be apparently insolvent and to be sequestrated, if their debts are £1,500. That is not the case at the moment—they have to sit and wait. That is one of the reasons why we are so in favour of the charge—it will give people access to sequestration.

Christine May: On balance, would you say that, overall, the proposals in the bill are an improvement on the present situation or do they make it worse?

Susan McPhee: They are an improvement.

Brenda Tamburrini: I agree.

Rob Beattie: Overall, it will not make much difference to the won't pays; for the can't pays, it will improve their situation.

Christine May: What do the local authorities think?

Dawson Lamont: With the exception of the service of a charge, which I see as a bit of a retrograde step, the bill is a definite improvement. It introduces protections for the debtor at the same time as maintaining the capability of payment to the creditors.

David Mair: I agree with Dawson Lamont.

Lesley Pryde: Another point is that it is possible that people will be given a chance to make time to pay applications under summary warrant. That is not really a forward step, but on the whole the bill is an improvement on the current state of affairs.

The Convener: Thank you for your written and oral evidence. That was extremely helpful. There still seem to be a lot of unanswered questions that need to be resolved at stage 2. We may want to flag those up in our stage 1 report. I am sure that the clerks and Nicholas Grier will have taken note of them.

Christine May: The convener will recall that the bill team came in to give us an informal briefing prior to our consideration of the bill. Is it worth asking for another short, informal briefing now that the bill team has had the opportunity to consider the evidence that we have taken?

The Convener: That is a good suggestion. Are members happy with it?

Members *indicated agreement.*

The Convener: Okay. We will try to arrange that, bearing in mind the timetable for the committee's consideration of the bill.

Scottish Media and Broadcasting

15:40

The Convener: Item 4 is on the Scottish media and broadcasting industry. A Scottish Parliament information centre briefing paper has been circulated. Members may remember that in January we agreed to commission the paper, which is a very informative one, from SPICe. Our purpose was to get a hold on what is happening across the broadcasting and print media in Scotland, with a view to deciding whether we want to take matters further.

We should probably have the discussion in two parts. First, members should comment on the paper and mention any gaps if they think that there are matters on which we could do with additional information. Secondly, we can decide whether we want to pursue the matter and, if so, in what form.

The briefing paper is very good. It has thrown up a number of interesting facts and figures that I was not aware of, in particular the newspaper circulation figures and the employment figures on page 13. The employment figures seem to suggest that we are, as we probably thought, under-represented in the sector in comparison to the rest of the United Kingdom. That is not a surprise, given that the media tend to be centred in London.

I will take comments on the paper first and then we can discuss whether we want to take matters further and, if so, in what way.

Stephen Herbert, the author of the paper, is here to take the blame. More seriously, I welcome Stephen, who is here to answer any questions.

Christine May: I am grateful to Stephen Herbert for the paper, which is very informative. The media love to discuss themselves. Such a discussion took place on the radio this morning in an item from Seattle, in which the future of newspapers and what they might look like was discussed.

The issue has a number of strands and we have an interest in them all, but I suspect that we have very little influence over many of them because they relate to commercial decisions taken by commercial organisations in pursuit of their bottom line. For example, developments in technology mean that other sources of information are now available to people who previously bought newspapers. That has led to significant changes in the newspaper industry, which have largely been driven by the lack of advertising revenue as new forms of information have become available.

I was interested in the section of the briefing on the potential of local television and local radio and

in what Glasgow City Council and other local authorities are doing; I think that North Lanarkshire Council has also used local TV as a means of disseminating information.

I was struck by the concluding comments in the final paragraph of the briefing and I took the opportunity to speak to Stephen Herbert about the issue earlier. The paragraph suggests that stakeholders want the committee to become involved, but I wondered to what end they want us to become involved. If folk feel neglected or unloved that is regrettable, but I am not sure that it is the business of the committee to stroke egos. If we are going to do anything with the broad range of media, cultural and broadcasting organisations, I would want to be very clear about our purpose. Although ego stroking is good and very nice for everybody, it is not necessarily a productive use of the committee's time. If we were to do anything—and I am not convinced at this stage that we have the time or that we should—I would want to be clear about why we were doing it, what aspects we would examine and for what purpose.

15:45

Susan Deacon: I join others in commending the paper for providing an informative overview of the key issues. I am grateful for it. To my mind, the paper confirms the correctness of our previous decision not to initiate a formal committee inquiry. We previously agreed that we should certainly not have an inquiry into matters that are essentially about the restructuring of the industry and internal industrial relations issues, as the original request asked of us. However, on the wider strategic issues, it is questionable whether we have a peg on which to hang an inquiry into the what, why and when of the strategic developments that are taking place within the sector.

On the issue of debate and discussion, I will pick up where Christine May left off. As the paper's concluding comments suggest, there may be other ways of fostering discussion and so on. If we can in any way use the SPICe paper to inform debate and discussion within the Parliament, that would be perfectly proper. For example, if the two or three cross-party groups with an interest in the issue are not already aware of the paper, we could and should readily bring it to their attention.

As far as wider discussion is concerned, ample opportunities have been available in and around the Parliament for discussions with other bodies. For example, not just through the prism of the committee but at various stages more generally, the Office of Communications has held parliamentary briefings, in which some of us have taken part, on issues such as digital switchover. I for one believe that we should send the message that it is right and proper that the sector continues

to find ways of engaging with parliamentarians. However, I am of the view that there is no specific reason for initiating—we have, if you like, no peg on which to hang—a formal committee inquiry.

The Convener: Is that the committee's generally held view?

Members indicated agreement.

The Convener: We have already agreed that we will meet Ofcom from time to time to update ourselves on public sector broadcasting, which is the one area in which we have influence but no power as such. To be fair, Ofcom has been good at keeping the committee informed as developments take place and it has been keen to consult the committee at each stage.

Christine May: Given its interest in how the media influences the economy and reports on it, the cross-party group on the Scottish economy might wish to consider some aspects of the paper. A number of committee members are also members of that cross-party group. Equally, other cross-party groups might also have an interest. Perhaps we could circulate the paper to those interested groups—the clerks can advise on what the most efficient form of circulation would be—so that folks with an interest can discuss the paper.

The Convener: Three of the five co-conveners of the cross-party group on the Scottish economy are present at the table. Perhaps we can encourage that group to hold a seminar on the future of the industry.

Richard Baker: I agree with everything that has been said but I ask that, through its dialogue with Ofcom, the committee keep a watching brief on some of the developing situations. For example, although we have already taken evidence on the BBC situation, the way in which the Grampian Television brand has been dropped following Grampian's merger with Scottish Media Group has also raised local concerns. Wider social issues are involved. As Stephen Herbert's excellent paper mentions, the lack of regulation of digital broadcasting, to which the traditional TV licence does not apply, will have an impact on the general cultural services that people across the country receive. Given all those on-going activities, it is an excellent idea that we should keep a watching brief on matters. As the convener suggested, we could perhaps invite Ofcom to speak to us at a later stage as developments unfold.

The Convener: A practical consideration is that we have a full work programme up until the summer recess, after which we will consider the Bankruptcy and Diligence etc (Scotland) Bill at stage 2. That will take us right up to the Christmas recess, so we probably could not squeeze in much more. In practical terms, the chances of our being able to carry out an extensive inquiry are not great anyway.

We appear to have reached a consensus on that matter. We will keep a watching brief on things. I thank Stephen Herbert for his very helpful paper and we will encourage the cross-party group on the economy to discuss the issue.

Susan Deacon: We should not be prescriptive and say that the issue will be of interest only to the cross-party group on the economy. As I have said, a number of cross-party groups, particularly some on cultural issues, will also be interested in discussing it. We should simply alert parliamentarians to the matter.

The Convener: Fine.

Scottish Football (Reform)

15:50

The Convener: Item 5 is consideration of responses to our report on the reform of Scottish football, although as the Scottish Football Association has pointed out our inquiry was originally on

“the future of football in Scotland”.

At this point, I must thank Nicholas Grier for his very helpful contribution to today's stage 1 consideration of the Bankruptcy and Diligence etc (Scotland) Bill.

We have received a memorandum from the Scottish Executive and a response from the SFA. I believe that members want to discuss both papers and decide whether we should do anything about them. I should say that what I know about football can be written on the back of a postage stamp, so I ask for other members' comments on the responses.

Richard Baker: The responses bring our inquiry and report to a perfectly good conclusion, because both parties pretty much agree on the need for increased participation, better facilities and—yes—SFA reform. Although some people want progress to be more revolutionary than evolutionary, the Executive and the SFA seem to want things to evolve.

As both responses point out, we have embarked on a 10-year action plan, and there will be many opportunities for this committee and others to examine its progress. I hope that when Parliament scrutinises the action plan it will look back on our report and reflect on whether the goals that have been set by the SFA and the Executive have been achieved.

Although some questions remain outstanding, I do not think that the committee needs to pursue them formally. Of course, sportscotland's audit of local sports facilities, which has been promised for mid-May, and the implementation of the subsequent strategy will be important in achieving these goals—no pun intended—of increased participation and better facilities.

I am pleased by the consensus in the responses on those matters, and I hope that progress will be made on them in future.

Michael Matheson: Although our report expressed concern about the lack of local sports facilities and highlighted the need to examine what happens at the grass roots, both responses very much focus on national and regional facilities. Indeed, the Executive's response does not address the local issue at all and the SFA says

that most of the national and regional facilities are for the “top end” of the sport.

As one would expect, the Executive’s response is very much along the lines of, “Aren’t we doing well?”, but it does not really add anything to our report’s recommendations. For example, it has not commented on key suggestions such as the establishment of a football academy, despite the fact that, as the SFA points out, there is a growing disparity between investment in local football facilities in Scotland and the situation in England, where a fund has been set up to provide investment in that respect.

I suspect that these responses—particularly that from the Executive—have come a little early, because sportscotland’s audit will give greater insight into and shed new light on the extent of the lack of local sports facilities, particularly for football. The strategy that the Executive and the SFA develop in response to that audit will give us much more of an idea of how serious they are about tackling some of the issues that we have highlighted.

Christine May: I agree with what Michael Matheson said about local facilities, the funding of which will continue to be problematic, because such facilities are relatively expensive. I note that the Executive’s response is not limited to football facilities but mentions “other sports” and I agree with that approach. The SFA’s response is perhaps a little disingenuous in that it appears to forget that the greatly increased funding in England comes from the English premiership—funding comes from the sport itself rather than from Government. The level of Government support in England is about on a par with—

Michael Matheson: That is match funding—

Christine May: Yes, but to be fair, less is match funded in Scotland than in England, perhaps because of the nature of the sport.

On the Executive response under the heading “Other Areas of Public Policy”, how we deal with sectarianism is a topical issue. The committee should keep an eye on how successfully sectarianism is being dealt with, because recent events have not been edifying.

Murdo Fraser: The responses from the Executive and the SFA were much as we might have expected them to be. I agree with Richard Baker that the responses represent the final word on our inquiry and report and I do not have much appetite for further work on the matter. To respond to Christine May’s suggestion, the last thing that the committee should do is to get involved in discussions about sectarianism. We should not open the door to such discussions, in particular at this stage in the parliamentary calendar. We should record our thanks to Richard Baker for his

work on the football inquiry. The process was interesting and generated good responses. We have produced a sound foundation for future work should a future committee want to reconsider the matter, which I dare say will happen.

Karen Gillon: The responses were entirely predictable. The report was worth doing and the proof of the pudding will be evident in two, three or four years’ time. We should wish Walter Smith and his team all the best for the future.

The Convener: In the final paragraph of its response, the Executive says that it does not want to give the committee an annual report on football. I am not inclined to go to the barricades on the matter; I am quite happy for the Executive not to provide such reports. Do members share my view?

Christine May: We welcome the fact that we will not get an annual report.

Karen Gillon: The Executive should brief the convener annually on football.

The Convener: Absolutely. The Executive can start doing that next year, when there will be a new committee and a new convener.

I think that Susan Deacon is the only member who has not commented; do you want to say anything?

Susan Deacon: I have nothing to add to what has been said.

The Convener: Thank you. I look forward to seeing members at next week’s meeting.

Meeting closed at 15:58.

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