The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 30 October 2013

Session 4

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ECONOMY, ENERGY AND TOURISM COMMITTEE
29th Meeting 2013, Session 4

CONVENER

*Murdo Fraser (Mid Scotland and Fife) (Con)

DEPUTY CONVENER

*Dennis Robertson (Aberdeenshire West) (SNP)

COMMITTEE MEMBERS

*Marco Biagi (Edinburgh Central) (SNP)
*Chic Brodie (South Scotland) (SNP)
*Alison Johnstone (Lothian) (Green)
*Mike MacKenzie (Highlands and Islands) (SNP)
*Hanzala Malik (Glasgow) (Lab)
*Mark McDonald (Aberdeen Donside) (SNP)
*Margaret McDougall (West Scotland) (Lab)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Sharon Bell (StepChange Debt Charity Scotland)
Keith Dryburgh (Citizens Advice Scotland)
Rachel Grant (Law Society of Scotland)
Russell Hamblin-Boone (Consumer Finance Association)
Yvonne MacDermid OBE (Money Advice Scotland)
Euan McPherson (Lloyds Banking Group)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 30 October 2013

[The Convener *opened the meeting at 09:33*]

Decision on Taking Business in Private

The Convener (Murdo Fraser): Good morning, ladies and gentlemen, and welcome to the 29th meeting in 2013 of the Economy, Energy and Tourism Committee. I welcome committee members, our witnesses—who I will come to in a second—and those in the public gallery. I remind everyone to turn off, or at least to turn to silent, all mobile phones so that they do not interfere with the committee's work.

Agenda item 1 is to ask the committee to agree to take item 4 in private. Is that agreed?

Members *indicated agreement.*

Bankruptcy and Debt Advice (Scotland) Bill: Stage 1

09:34

The Convener: Item 2 is continuation of our scrutiny of the Bankruptcy and Debt Advice (Scotland) Bill at stage 1. We have a large panel of witnesses, who, starting on my left, are: Sharon Bell, who is head of StepChange Debt Charity Scotland; Keith Dryburgh, who is policy manager for Citizens Advice Scotland; Rachel Grant, who is a member of the insolvency law committee of the Law Society of Scotland; Russell Hamblin-Boone, who is chief executive of the Consumer Finance Association; Yvonne MacDermid, who is chief executive of Money Advice Scotland; and Euan McPherson, who is head of credit operations strategy at Lloyds Banking Group. Thank you all for coming along.

As we have a large panel this morning, I do not intend to ask for opening statements. We have all the written submissions, which I am sure will be covered in the question-and-answer session. We want to cover quite a number of issues, including: the common financial statement; advice on applying for bankruptcy; who should provide money advice; financial education; issues around the Accountant in Bankruptcy reviewing her own decisions; and issues around debtor contributions.

I am conscious that we have a large number of witnesses, so I ask members to direct their questions to a particular panel member initially. If other witnesses want to support or disagree with what has been said, they should try to catch my eye, and I will bring them in as best as I can. Clearly, we cannot have all six witnesses answering every question, as that would mean that we would not get through the questions very quickly. However, if people strongly support or disagree with a point that has been made, I will try to bring them in, if they catch my eye, as time allows. I remind members to keep their questions short, focused and to the point; short and focused answers would also be helpful.

The first question is on money advice and comes from Chic Brodie.

Chic Brodie (South Scotland) (SNP): Good morning. My question is for Mr Dryburgh, but Sharon Bell and Yvonne MacDermid may want to answer after him. We want people with debt problems to be able to get money advice, but what kind of qualification do you think money advisers should have?

Keith Dryburgh (Citizens Advice Scotland): First, we support the proposal regarding mandatory advice for those seeking debt relief.

We think that it is right that those who are taking such a big decision should get quality advice beforehand. We see people who have made an application for bankruptcy for whom that was perhaps not the right route, and it may be that they would not have taken that route if they had had advice beforehand.

In our written submission, we note our concern that a recent change in the debt arrangement scheme regulations has meant that money advisers need only be

"working towards type 2 of the Scottish National Standards for Advice and Information",

rather than having already attained that. We worry that that is somewhat open-ended, so we would prefer the bill to mention a higher standard.

Another concern about debt advice is that the bill refers to a requirement for money advice

"on such other matters as may be prescribed"—

Chic Brodie: Mr Dryburgh, I know that, as I have read through your written submission, which is very good. My question is: what kind of qualifications, experience and expertise should a money adviser have?

Keith Dryburgh: As I mentioned, we are concerned that there may have been some watering down in the new DAS regulations. We think that money advisers should have attained, rather than just be working towards achieving, type 2 of the national standards. We would like that to be clarified in the bill to ensure that there is an even standard of quality advice across the money advice sector.

Sharon Bell (StepChange Debt Charity Scotland): We support the idea that money advisers should have qualifications up to type 2 of the Scottish national standards. Our advisers currently gain qualifications by going through a six-week training school before they are allowed even to speak to a member of the public—even then, they do so under supervision. At the moment, the charity is going through the accreditation stage so that it can be accredited for type 2 of the Scottish national standards.

Another area on which we would like some clarification is online advice. More and more people are using online tools. We have our own online tool, as do the Money Advice Trust and others. We would like clarification of whether an online tool would also meet the criteria.

Chic Brodie: We might come back to that in a minute. Ms MacDermid?

Yvonne MacDermid OBE (Money Advice Scotland): Thank you for the opportunity to give evidence. As an organisation that raises standards in money advice, Money Advice Scotland feels that qualifications should form part of the overall framework. However, it is important to distinguish between individual qualifications and the accreditation of an agency. The Money Advice Service is doing a lot of work on building a quality framework against which funding will be aligned in future. Indeed, the Scottish national standards are positioned in such a way that they could likely be matched to the framework.

We are extremely supportive of qualifications. Indeed, as we speak, we have candidates going through the certificate in money advice practice. I think that that is the way forward. I believe that, with regulation changing next year—from 1 April, consumer credit will be regulated by the Financial Conduct Authority—we will see qualifications in the future, and they may well become part of regulation. I do not think that that would be a bad thing, because we need—

Chic Brodie: Can I ask another question? I always remember my father saying to me, after I got my degree, "You've been educated to degree level, but you've got no common sense." [*Laughter*.]

The Convener: We will refrain from making any comment on that, Mr Brodie.

Chic Brodie: I assure you that it still applies.

Hanzala Malik (Glasgow) (Lab): I do not believe that.

Chic Brodie: I do.

What auditing is done once people are accredited as advisers? How are you closing the loop to make sure that, notwithstanding all the education that they have had and all the qualifications that they have, they are giving sound, common-sense advice?

Yvonne MacDermid: I will pick up that question first, and then perhaps defer to my colleagues from Citizens Advice Scotland and StepChange. From the Scottish national standards point of view, there is a four-yearly audit that looks at the organisation and the quality of advice. The membership scheme within CAS passports people into the scheme, but there is still the quality of advice audit, which is done by people who are of the high standard that is required for them to go into organisations and look at cases.

As you suggest—we would all support this—consumer detriment must be avoided at all costs. When people come for advice, they come in good faith to look to better their situation and not to worsen it. The type 2 role in the standards and the introduction in the DAS regulations of the provision on "working towards accreditation" give us opportunities to improve the quality of money advice across the piece, and I suggest that that

extends not just to the free sector but to the fee-charging sector.

As I said, regulation will change from next year, and it looks to me as if what the Financial Conduct Authority proposes in the new-look regime will address some of the issues that we have all had concerns about.

Chic Brodie: Let us hope so. Is that your experience of money advisers, Mr Dryburgh?

Keith Dryburgh: All citizens advice bureau advisers are trained to a very high standard. All advisers—even the volunteers—go through an eight-month training period, and the money advisers have even more extensive training periods. All bureaux are audited each year to make sure that they are meeting national standards for advice. There is high-quality auditing of the advice that citizens advice bureaux provide, so we are very confident that CAB advice is quality advice.

Chic Brodie: Thank you. Ms Bell?

Sharon Bell: All our advisers' conversations with clients are recorded, and we have weekly reviews of all advice that is provided by our staff, as our staff supervisors check that. We also have an annual audit that checks the quality of the charity as a whole as well as the advice, and we use our monthly one-to-ones to give information back to staff and do one-time training with them. We do auditing all the time, and there are quality checks as part of that process.

Chic Brodie: Thank you.

The Convener: Rachel Grant wants to come in.

Rachel Grant (Law Society of Scotland): I have just a couple of points to add to what has been said. I am a lawyer, and it is important for me to mention our qualifications, continuing professional development and on-going training. That chimes with what everyone else has said. We also carry insurance and there is recourse for people who have had bad advice. That is an important element. One would hope that, if the systems are put in place, people will get good advice, but things do go wrong—that is life. It is therefore important that those who have been given bad advice and suffered as a result have proper recourse.

The Convener: Dennis Robertson has a supplementary question.

Dennis Robertson (Aberdeenshire West) (SNP): It is probably directed at Mr Dryburgh. How much pressure is put on organisations such as CAS by the need to get people through the training, given not just the time aspect but the costs? Are people still willing to come in, knowing that there is such a commitment to training, especially in areas such as money advice?

09:45

Keith Dryburgh: The current period is tough for clients and bureaux. The welfare reforms that are coming in are putting huge pressure on bureaux, as are the austerity public sector cuts. However, we are finding that, as a result, the number of people who want to come in and help is increasing, so we have no shortage of volunteers who are willing to go through the training.

The mandatory advice requirement will probably put some pressure on debt services. The AIB says that only 7 per cent of bankruptcy applications that were previously processed without advice will move over, but that extra amount will put some pressure on advice services that are already under pressure.

Dennis Robertson: My next question partly follows on from Chic Brodie's questions. There is some face-to-face advice, and people are phoning in, but what about the online aspect?

Keith Dryburgh: Advice must be available across the different platforms. We have a website called adviceguide from which people can get advice on taking action themselves on their debts. However, it is equally important that face-to-face advice is available and is supported. We find that people with debts tend to want that type of advice; there is almost a counselling aspect to ensuring that they get the right advice. It is important that all avenues of advice remain open and supported.

Dennis Robertson: Do the people who provide advice online have accredited qualifications?

Keith Dryburgh: When I talk about online advice, I am referring to the different things that people can do before they come in for advice to ensure that they know what all their debts are and to whom they owe money. The online advice gets them prepared so that when they come in for advice, everything is to hand and they can make the right decision based on the advice that they get in person.

Yvonne MacDermid: We run the wiseradviser programme, which provides training throughout Scotland, and it is currently oversubscribed. There is no slackening off at all in the demand for the training, but we have recently had an injection of funding from the Scottish Government and the Money Advice Service for new projects. We estimate that there will be more than 100 new full-time equivalent money advisers, so there should be some capacity to pick up the demand.

We also have in place training through e-learning, which allows us to give more advisers access to training throughout the country. There

may be issues with remoteness, so we are looking at different ways of delivering training.

We are also trying to encourage different ways of delivering the advice itself. A whole new channel strategy is building on what is already there, which includes telephone advice and assisted self-help, and we are looking at providing electronic portals. That is the way forward in allowing us to mop up some of the increased demand that we are seeing, especially in the light of universal credit and welfare reform.

Hanzala Malik: I want to ask Keith Dryburgh about money advice. The bill suggests that money advice would be mandatory. Are the CABx up to taking on the additional work that would be required?

In phone calls to some CABx, I have found out that waiting times can be from three to six weeks. People may need to get advice as a matter of urgency, and I think that it would be detrimental to all concerned if they had to wait for that length of time.

Do you think that money advice should be mandatory? If so, do you believe that there is a resource issue? If there is, what would that mean for your organisation?

Keith Dryburgh: The question whether money advice should be mandatory is a good one. Mandatory advice is crucial, because we see too many people who try to apply for bankruptcy themselves. It is a life-changing decision. Some people lose their £200 fee because they are not actually eligible for bankruptcy, while others go into it when another route would have been better for them in the long run. It is crucial that even people who understand the issues get that quality advice to ensure that they take the right decision, because it is a hugely important decision for the next decade of their life.

There is a question of resources, and we are disappointed that the AIB does not think that the requirement for mandatory advice will have an impact on the money advice sector. Such a requirement, in addition to mandatory financial education, will have an impact on free advice services. It needs to be matched with adequate resources to ensure that we can provide that advice without having waiting times that are weeks long.

Hanzala Malik: Helping someone to fill in a form, which simply involves filling in a document correctly, and giving them advice on exactly what they should know about the rights and wrongs of bankruptcy are two different issues. I think that an organisation can deal with filling in a form. However, if you are suggesting that the requirement for mandatory advice would necessitate more resources, that would clearly mean that all the money advice organisations would be looking for more funding. Where do you see that coming from?

Keith Dryburgh: I am not sure where the resources would come from, but if you want quality advice it needs to be funded. Filling out the form and giving advice are part and parcel of the same process. It is crucial that people get advice so that they can take the right decision; it is also crucial that they complete the form accurately so that they do not lose their £200 fee at the end of the process.

Hanzala Malik: It is almost as if there is a conflict of interests. It is in the interests of people who give legal advice to give that advice because they get a fee for it, but if they do not get appropriate funding there is a danger that people will not get the quality service that they will require under the new legislation. It is a chicken-and-egg scenario. People have been told that they need advice, which will be mandatory, but the agencies that will provide that advice will not be able to do so in time, and they are also looking for more resource that is not there. I do not know how you can bridge that gap; I am looking for ideas about how you intend to bridge it. We could change the bill so that advice would be preferred, not mandatory. If advice is to be mandatory, we need to know what the price tag is.

Rachel Grant: Our view is that, although advice is very important and should always be available, it should not be mandatory, and that it should be the choice of the debtor. Making it mandatory is quite a big step to take in impinging on people's rights.

The Convener: I would like to ask Euan McPherson from Lloyds Banking Group and Russell Hamblin-Boone from the Consumer Finance Association about their perspective as creditors. Do you think that creditors have a responsibility to provide money advice?

Euan McPherson (Lloyds Banking Group): Creditors do provide funding for money advice through a number of channels. We certainly work closely with the Money Advice Trust and Money Advice Scotland, and we work directly with StepChange as well. The banks do not provide a direct aid programme to citizens advice bureaux, which I see as the Government's responsibility, but we do play our part.

Russell Hamblin-Boone (Consumer Finance Association): I agree with that. The larger lenders of shorter-term finance also play their part in working with the debt advice agencies, for example, by offering funding and working with them on exchange schemes and learning how one another's businesses work, but they are not qualified money advisers.

I suppose that there is an element of money advice if you are lending to somebody responsibly, because you will be looking to see whether they can afford to borrow, and if you have to turn them down you must be able to explain why their application for a loan has been refused. However, money advice is the responsibility of the experts. We can work with the experts but we cannot be advisers.

Hanzala Malik: It is easy for the lenders to say that they are working with people, but would you be willing to allow a test to prove that you can actually do that? My concern is that, if we are going to demand in legislation that people must be given mandatory money advice and then we fail by not being able to provide it, that will work against the purpose of the legislation.

Some might say that it is against human rights to demand the advice, but I am not sure that that is the case. However, I agree with the philosophy that, if someone does not have that money advice, they should not be put in a position where they are penalised for not getting it in the first instance, or be asked to go away and get it, adding a lot of time on to the outcome and putting them under a lot of undue pressure. That is why I am concerned. If we have mandatory advice in the legislation, are service providers confident that they can fulfil that task?

Yvonne MacDermid: For clarification, mandatory money advice is already in the legislation—in the Debt Arrangement and Attachment (Scotland) Act 2002. We have always said that mandatory advice should be in place simply because often the people in question are vulnerable. We were challenged in other committees about the same issue, which is that people should have choice. While we acknowledge the issue of consumer choice, when people are under pressure they become vulnerable and need to have the advice.

It is absolutely essential that we should have continuity. The various parts of the debt piece have to sit alongside each other. Money advice should not be mandatory in one part of the debt piece and not mandatory in the other, especially when it comes to bankruptcy. Bankruptcy is a huge step, which, although life changing for all the right reasons, could also be life changing for all the wrong reasons.

The gateway has been improved and opened up to include others who can give money advice, including insolvency practitioners, people working at type 2 of the Scottish national standards, and local authorities, which are big providers and big funders of money advice. We tend to focus only on CABx as a source of advice, but let us not forget the role of local authorities and of other voluntary sector organisations.

It is essential that we have mandatory advice across the piece; otherwise we will have policies that are out of kilter with each other. That does not make sense to me.

Hanzala Malik: I totally disagree. You cannot assume that someone will step in and support people. There are clear resource implications. If your organisation can give advice without any additional resource, say so. If you are not in that position, do not say that other people can come in and give advice. That is not the issue. The issue here is that, if we are going to say to people that they need mandatory money advice, we need to be able to see whether we can provide that advice. There is no point in making a law that we cannot execute.

Yvonne MacDermid: I understand that. However, I spoke earlier about looking at other channel strategies and other ways in which we can deliver advice. It does not have to be face to face. There is a lot of telephone advice, for example. StepChange is one of the main providers, along with the national debtline and others. There is also the new funding that I mentioned.

I am not suggesting that there is adequate funding out in the sector, because there is an increased demand. What I am suggesting is that quality advice should be given to people so that they are in a better position once they have sought the advice and taken the steps.

Let us not forget that, even with advice, some people choose to go down a totally different route. They may come for advice and decide, “That’s not for me.” They may be looking to pay for advice and think that someone else can give it for less. It is really important that people get advice.

Euan McPherson: Yvonne MacDermid mentioned a number of the free-to-the-customer channels for getting advice. If there is no capacity in the free sector, there is a vibrant commercial sector, which is looking at the debt arrangement scheme and protected trust deeds as well. Having that money advice ensures that we get the proper standards before people enter into these solutions.

Keith Dryburgh: The debtors who we are talking about today are mainly debtors who are in crisis—people who are desperate. We all deal with thousands of other debtors who have lost control but who can be helped without having to resort to bankruptcy or DAS, so it is only a minority of debtors who we are talking about today.

The debtors who we are talking about are often desperate and suffer from health problems as a result of debt. They are not in a position to deal with the situation themselves. It is often people who really need support, so it is really important to ensure that they have quality support and advice.

These are not your ordinary debtors but people who have passed the point of crisis.

Chic Brodie: Taking Mr Dryburgh's point on the culture around the issue, I am concerned when I hear Mr McPherson say that there is a commercial sector involved in debt advice.

During our alleged recess, I spent some time with a bank's clients who had received fixed-rate tailored business loans—embedded swaps. They thought that the advice that they had received was bona fide. I am concerned that we will create a sector in which commercial bodies get involved and we start having incentivisation to generate funds—albeit at a lower level, depending on how you deal with it. What confidence can you give us that there will not be a pseudo culture, as we have seen in parts of the banking sector over the past four years, to generate more and more business by trying to attract more and more debtors to your portfolio?

10:00

Euan McPherson: I cannot give you that confidence. It is not a sector that we have any control over as such. The commercial sector is the largest supplier of DAS payment plans, so the plans are not coming from local authorities. That is also the case with protected trust deeds. In the industry down in England, the insolvency practitioners are often commercial companies. We just need to ensure that the advice and the route into the debt solution is the best solution for the customer and is not driven by any commercial desire of a company.

Chic Brodie: But you cannot give me any confidence at this stage that that will happen. I presume that the culture will reflect, albeit not at the same level, the sort of culture that we have seen in the finance sector over the past four, five or six years.

Euan McPherson: I probably cannot comment on that, because it is a completely different sector.

Chic Brodie: Today it is.

Euan McPherson: No, I mean the debt advice sector compared with the banking sector. A lot of advertising goes into attracting people to discuss their debt solution and there is also a big lead business. I do not think that we can ignore that work. It may well help to fill the demand to deal with customers, but we need to ensure that the standards behind it are the same as they are in the free sector.

Chic Brodie: Which is why I asked the first question. Thank you.

Rachel Grant: The aim is obviously to protect vulnerable debtors and to ensure that they are not pushed down a route that is not for them. My question is: will mandatory advice prevent that from happening? I do not think so. Someone might get excellent advice, but just going along to get advice will not necessarily prevent them from being pushed down the wrong route. That is why we believe that the availability of quality advice is more important than it being mandatory. The mandatory aspect does not add anything other than potential problems.

The Convener: Has either Money Advice Scotland or Citizens Advice Scotland estimated how much additional resource you will need to deal with the consequences of the bill, if it is enacted? Have you considered an approach as to how you would get those additional resources?

Yvonne MacDermid: We have made no such estimate of the figures. We are the national umbrella organisation, so we do not give advice per se. However, we obviously engage with funders to talk about funding for the sector and we engage with the Money Advice Service. As I said, the Money Advice Service has put considerable amounts of funding into Scotland and we have worked with it.

This is a big job and we do not know exactly how much funding we need, but we know from our internal information, and from recent research that was done by the Improvement Service, that there is a lot of demand and there is also a lot more latent demand. The Money Advice Service's own research backs up that finding.

As Euan McPherson explained previously, the Money Advice Service now receives funding from the industry as companies pay a statutory levy. The Money Advice Service is funding activities in Scotland and works closely with local authorities and with the Scottish Legal Aid Board. There has been more funding and we will need more funding going forward, because we do not know what the demand will be, particularly around universal credit and welfare reform.

Keith Dryburgh: We have not made any predictions but we are concerned that, as Yvonne MacDermid said, welfare reform—in particular the bedroom tax and sanctions being applied—will mean that people fall further into debt. We are worried that the number of debt clients will go up anyway.

The AIB indicates that about 7 per cent of applications come in without advice, so we are talking about hundreds of applications rather than the thousands that go into the advice sector, but we are worried that demand will go up anyway. It is hard to know, but we know that demand for advice will go up because of the economic situation that we are in.

Sharon Bell: We have already seen demand increase this year for advice from our advisers, and figures are up 60 per cent on last year. We are already recruiting and training staff. I have done projections based on information from the bill, and we are looking at potentially taking on another six to eight staff to cope with increased demand. We are taking on people now because we want them to be trained up and in a position to help when the legislation changes.

The Convener: Your organisation is funded by the industry.

Sharon Bell: That is correct.

The Convener: So are you getting additional resources from the private sector?

Sharon Bell: No. We got some additional resources through SLAB for a specific project, but we get our funding through the sector from creditors in the form of a levy that is paid to the charity.

The Convener: Okay. You said that you were going to bring on board an extra six to eight advisers. How are you getting the additional money to pay for them?

Sharon Bell: We are moving resources from elsewhere within the charity to fund the Scottish part.

The Convener: That is interesting.

Dennis Robertson: Some of the numbers that Sharon Bell quoted are concerning in some respects. What percentage or numbers of people go down the bankruptcy route? We understand that more people are coming forward for generic debt advice, given that welfare reform and so on means that a lot more people are getting into debt. However, how many go down the bankruptcy route?

Sharon Bell: About 15 per cent of our clients in Scotland will use the bankruptcy solution and 10 per cent will use the protected trust deed solution, which is also an insolvency solution. We give advice to about 12,000 people a year, but there is an increase this year, so we expect the number to be about 2,000 people.

Dennis Robertson: They will take the bankruptcy route.

Sharon Bell: Yes—through our organisation.

Margaret McDougall (West Scotland) (Lab): I want to clarify a point. The bill as it stands states that we must have mandatory money advice. Are the resources sufficient at present, or does the money advice sector need additional resources?

Yvonne MacDermid: Given the situation with welfare reform and universal credit, I do not think that anybody in this room who deals with money advice would say that demand for it will go down; it will definitely increase because people's lives are more complicated. We know from our members that the time spent with clients is much greater than it ever was, because their lives are complicated and not straightforward and they must spend more time looking at money advice. I am sure that Keith Dryburgh and Sharon Bell would endorse that point.

The facts speak for themselves. The sector will need more resource to deal with people's problems, although we do not fully know yet what impact universal credit and welfare reform will have. However, those factors will bring many new people to advice centres. We hear from members that more people from different social strata are seeking advice: far more young people now seek help, but what is even more worrying is that far more older people who do not have the capacity to earn are seeking help.

We therefore know that there are more people in debt and that that includes more people from different social strata. The Money Advice Service's research bears that out, because it looks at behavioural economics and segments the debt market in terms of who is in debt. The situation is worrying and we expect there to be quite a demand for money advice services going forward.

Keith Dryburgh: I echo what Yvonne MacDermid has said. It is not just about the numbers but about who is coming for advice and the complexity of the advice that is needed. It involves people who are appealing benefit decisions and going to tribunals, and people with multiple debts. The cases are not straightforward, so advisers must spend a greater amount of time on unravelling them.

The complexity of the cases is increasing at the same time as the numbers are increasing. It is imperative that money advisers are adequately resourced to meet not just the number but the complexity of the cases that are coming through.

Margaret McDougall: So financial resources are required as well as the people resources that you need in the shape of trained staff. Many citizens advice bureaux rely on the voluntary sector. The funding might come from local authorities or the Scottish Government, or from the finance sector. You are saying that you will need more financial resources to implement the bill.

The Convener: As we have no more questions about money advice, we will move on to the issue of the common financial tool.

Mike MacKenzie (Highlands and Islands) (SNP): I suppose that my question is probably best directed to Yvonne MacDermid and Sharon Bell.

As you will know, the bill intends to introduce one financial tool—the common financial tool. In principle, is using one tool so that everyone sings from the same songbook a good idea? As far as I am aware, two tools are in common use, and there seems to be a preference for the common financial tool over the StepChange tool. It seems to me that they are both fairly similar. What are the merits and demerits of each of the tools? Why might one be thought to be better than the other?

Yvonne MacDermid: We welcome there being one common financial tool, whatever that might be, for the purposes of continuity and certainty. You mentioned that, at the moment, there are two tools, but—dare I say it—there are many variations on a theme in how financial statements are done. We believe that there should be one tool, as that will mean that everyone is treated the same.

As we have mentioned to various committees, over the years we have had concerns about the fact that different assessments have been made of people's income and expenditure. In some cases, that has been done with no real guidance. There have been instances in which a debtor has gone to an advice agency that has used the common financial statement, which is the tool that was developed by the Money Advice Trust and British Bankers Association and which is signed up to by the industry; it has come up with one figure based on the nature of the family or the make-up of the debt; and the trigger figure has been applied. The debtor has then gone to an insolvency practitioner who happened to use the StepChange tool, which has come out with a different figure altogether.

That just causes confusion. When such a person is interviewed, they are having to be told, "This is what we've come up with, but when it comes to contributions, because a different methodology has been used you may well have to do something different." That does not seem right to me. People should be assessed on the basis of their income, their expenditure and what they have by way of disposable income to pay back their debts with.

Sharon Bell: I will not dispute what Yvonne MacDermid says. There is confusion in circumstances in which a client goes through the process and is assessed using one tool, and then becomes bankrupt and the Accountant in Bankruptcy or an insolvency practitioner uses a different tool or a variation of the same tool.

We have argued that, regardless of which tool is used, it should be used throughout the person's process. We do not need to have only one specific tool. If the CFS tool is used at the beginning of the process, there is no reason why it cannot be used throughout the person's assessment, in the same way that StepChange's guidelines could be used throughout someone's assessment.

There are differences in the way in which the two tools assess situations. We are doing work with the Money Advice Service and the Money Advice Trust to look at the guidelines nationally to see where there are differences and where we can make the tools more similar in some regards. Our tool is based predominantly on all socioeconomic groups of bankruptcy debtors, whereas the common financial statement is used for one category only. We have different categories and maximum guidelines. We can demonstrate that fewer than 6 per cent of our clients go over the maximum of our guidelines when they use the tool. We can also demonstrate how our tool works and the ability of the clients to work within the guidelines. We can demonstrate that we do not have high breakage rates with our tool, but we have not seen any indication from the Accountant in Bankruptcy or anybody else that the CFS can produce the sort of evidence that we can.

10:15

Mike MacKenzie: It is obvious, Ms Bell, that you have a clear preference for the StepChange tool. I would expect that but, bearing in mind the fact that I am a layperson, you have not explained to me how it is better than the common financial statement.

I am also slightly uncomfortable about the idea that one person could have payments assessed through one tool but somebody else could get a different result by using a different tool even if they follow the same tool all the way through the system. That does not seem to me to be fair to debtors or creditors. Surely one common tool is inherently fairer and more reasonable.

Sharon Bell: We totally support that there should be—

Mike MacKenzie: There should be one tool.

Sharon Bell: There should be a tool to be used, yes.

Mike MacKenzie: Okay. Could you help me a wee bit by explaining further why you think that the StepChange tool is better?

Sharon Bell: We think that the StepChange tool is better, if you want us to call it that. I do not necessarily think that there is a better or worse solution because it all comes down to what the person's income and expenditure are.

We have maximum guidelines for certain categories. For instance, we have maximum guidelines for the spending on food or clothing, as does the CFS tool. If the client does not hit that maximum guideline, it does not matter. What goes

on the expenditure is what they spend for their food or their clothing. The difficulty, if we want to put it like that, happens if they go over our maximum guidelines. We write down in our expenditure an explanation of why they may have, for example, higher food costs—perhaps because somebody is gluten intolerant.

Mike MacKenzie: So it has an inherent flexibility.

Sharon Bell: Absolutely. Both tools do.

Mike MacKenzie: That is not really an advantage for the StepChange tool, then, because both have that flexibility.

Sharon Bell: Both tools do; it is just that they have different ways of categorising what the maximum values are.

Mike MacKenzie: Forgive me, but you seem to be struggling to communicate to us what the advantages of the StepChange tool are. If we support the principle of one tool being used, a choice will have to be made and the intention of the bill is to use the common financial statement. If you wish the StepChange tool to be retained, I would expect you to make a fairly robust case for that, and I am still struggling to hear what I would regard as a robust case.

Sharon Bell: I argue that the Accountant in Bankruptcy has not made a robust case on why the CFS tool must be used, either. I also argue that the StepChange guidelines can be demonstrated to be workable. I can produce evidence to show our success rate with the tool. It is also accepted within the sector.

Mike MacKenzie: We have probably explored the matter as far as we can.

Chic Brodie: I would never disavow my colleague Mike MacKenzie's views, but we have just discussed the quality of money advisers and now we are being asked to accept an untested tool. Why cannot the two tools be run in parallel, at least for a period, to determine which is more applicable? With the best will in the world, no two money advisers will give exactly the same advice, so why are we talking about having a spectrum of advice but restricting the mechanism that will provide an outcome for the debtor?

Yvonne MacDermid: If I picked you up correctly, you said that the tool is untested, but that is not the case.

Chic Brodie: I meant under the proposed regime, obviously.

Yvonne MacDermid: Given that the proposed regime is based on what already exists—the common financial statement, which the Money Advice Trust and the British Bankers Association have developed—the tool has been well tested and well endorsed. It is up and running, and many people have licences for the common financial statement, so we are not talking about something coming out of the blue.

Chic Brodie: How do you validate the accuracy? I go back to the point about audit. How do you audit the actual outcomes against the planned outcomes?

Yvonne MacDermid: That is done in terms of the return to creditors, which lies behind both tools. We look at income and expenditure and the trigger figures, as they are called, and at the ranges of income and expenditure.

Having looked at the two tools, I understand that the differences are to do with the ranges for types of expenditure. The methodology is slightly different and sometimes, but not all the time, a different place is arrived at according to the household category or even whether the person runs a car.

We do not have a preference for one tool or the other; we are asking for a common financial tool. We know that the Money Advice Trust tool works, and it seems to have buy-in, as does the StepChange tool from the creditors who fund StepChange. We want one tool so that everybody has a degree of certainty and what people will pay is not left to chance.

Chic Brodie: Forgive me, but not everybody will have the same degree of certainty because, as I said, the money advice that is given will not be consistent. It is the nature of things that, if there are two money advisers in a room, they will give different advice.

I struggle to see why you suggest restricting us to one tool. We come back to whether we achieve the outcomes that we are setting out to achieve. I hear what you say about the return to creditors, but I am at a loss to understand why you say that, although it is okay to have the uncertainties of advice given by money advisers, we should restrict the determination of the repayment to only one tool. Why is that the case?

Yvonne MacDermid: If two tools are in place or if we say to people that they can do the income and expenditure whichever way they like, the debtor will not know what the amount will be. As was highlighted earlier, if they start a process using one tool but go to a money adviser who uses the common financial statement, which then goes to the AIB or an IP, the amount that is available to the creditors could well be different.

That is why I am talking about continuity. Sharon Bell is right that, if one tool is used throughout the process, there will be continuity. Perhaps for competition, there should be two

tools, but my view is that we should keep it simple and have one tool that seems to work.

Mike MacKenzie: We are perhaps making too much of the sophistication of the tools. Mr Micawber had a pretty good tool that describes quite well what the tools seek to do. When I started to explore the area, I hoped that there would be a more scientific analysis of the tools that perhaps illustrated in graphic form their merits and demerits across the range of scenarios that they have to deal with.

Are you aware of more in-depth analysis of how the tools operate? They deal with people on pretty low incomes who have low levels of assets and with people on high incomes who have fairly high levels of assets, and there is everything in between. There is a range of scenarios. Is there a scientific analysis of the tools for the committee to read, perhaps in the early hours, to understand better how they operate?

Yvonne MacDermid: I am sure that we could organise that.

Mike MacKenzie: I would be very interested if you could share that information.

Keith Dryburgh: Citizens advice bureaux have used the common financial statement for a number of years, so that we provide consistent advice. The AIB convened a common financial tool working group, which recommended the use of the common financial statement. The recent Protected Trust Deeds (Scotland) Regulations 2013 also state that that statement will be used.

I was not part of the group, but I am aware that research found fewer breakages under the CFS than were in the StepChange figures and that there was a difference of about 5 per cent in the average payments worked up. I do not have those figures with me, but they form part of the Scottish Parliament information centre briefing.

The Convener: We need to follow that up.

Sharon Bell: I am happy to provide evidence about how the StepChange tool is used and how it is calculated, as well as our breakage figures, if that is what they are being called.

The Convener: Okay. We need to move on to address other areas.

Alison Johnstone (Lothian) (Green): I will address my questions to Keith Dryburgh in the main. Citizens Advice Scotland's submission raises concerns about the proposed change in the contribution period and about debtors finding a payment every month for an additional year. The point is made that bankruptcy is for those who are in major need of debt relief, and concern is expressed about the greater opportunity to miss contributions, which would perhaps increase hardship. Will you comment further on that? Has enough research been carried out on the additional period?

Keith Dryburgh: We are concerned about the proposal to increase the contribution period from 36 to 48 months. We do not get the feeling that creditors were clamouring for such a change—it seems to be a bit out of left field and it was not consulted on, but it is in the bill.

The longer payments are on-going, the more likely someone is to have a crisis that leads to a breakage in the agreement. Bankruptcy is about wiping the slate clean and letting a person get on with their life. To increase the payment period to four years would increase the hardship and the problems that could arise.

I have looked at the *Official Reports* of previous committee meetings. The AIB did not appear to have done any research to show that the longer period would increase returns to creditors. Indeed, it could decrease the returns, if more breakages occurred. We are concerned that no research has been done into whether the proposal has any benefits. On the basis of our knowledge of clients, we are concerned that people could lose out under the proposal. We want the payment period to return to 36 months.

The Convener: Euan McPherson wants to add something from a creditor's point of view.

Euan McPherson: I echo the points that Keith Dryburgh made. The proposal was not in the consultation. If it had been, I do not think that we would have pushed for 48 months, for the reasons that Keith Dryburgh gave—bankruptcy is about wiping the slate clean and 36 months is an adequate payment period.

Russell Hamblin-Boone: I agree, for the same reasons as have been given. In addition, a short-term loan involves a small sum, so it might be better for a person to clear that more quickly than to spread it over a longer period.

Rachel Grant: The bill provides that the period is not just a fixed four-year period; the trustee has the option to extend it. We are concerned that the vulnerable debtor might come under pressure to extend it. It seems silly to say that we will have a fixed period of four years but that it can be extended.

The 2013 regulations, which will come into force at the end of November, will extend the period of contributions to four years. That was not consulted on, which is perhaps why it did not come to everyone's attention. Until the new bankruptcy legislation comes into force, the period will be three years, so there might be the unintended consequence that more people will go down the sequestration and bankruptcy route to pay over

three years, because it is perhaps human nature that people would prefer to pay three as opposed to four years of contributions.

Yvonne MacDermid: If there are breakages in the bankruptcy arrangement, the creditors get less back. However, extending the period to 48 months will involve more trustee fees. That might inadvertently give creditors the return that others have envisaged.

10:30

Sharon Bell: I support what my colleagues have said. We have done research on our clients and looked at the difference between cases that lasted three years and cases that lasted four years. If a case goes up an extra year, there is a 15 per cent increase in breakages of payment arrangements. The proposed measure might not help more people and might cost more as a result.

Alison Johnstone: Thank you for those clear responses.

Changes in the discharge process mean that discharge will no longer be automatic, and I am aware that Citizens Advice Scotland is concerned about some of the criteria in that process, one of which is that the debtor has co-operated with the trustee. There is not much definition of what co-operation means. Does that need to be explored further?

Keith Dryburgh: We firmly believe in automatic discharge. The bill almost seems to encourage trustees to find something wrong so that they cannot discharge someone. It also adds an administrative burden to the trustee, who will have to apply for discharge, rather than it being automatic.

As you mentioned, we are concerned that the criterion that the debtor must have co-operated is too broad, because it does not say what co-operation means. If the person had problems with money and had to take a payment holiday period, would that mean that they had not co-operated? If it was difficult to get money from them, would they not have co-operated? It seems to be up to the trustee whether a person gets discharged, which is too vague for us.

Rachel Grant: The Law Society also disagrees with the proposal that discharge should no longer be automatic. The Bankruptcy (Scotland) Act 1913 did not allow for automatic discharge and, when the Bankruptcy (Scotland) Act 1985 said that people could have automatic discharge after three years, it was seen as a huge step forward that would stop people ending up in bankruptcy in perpetuity for various reasons, which is undesirable.

More generally, there is a lack of coherence between discharge and deferral. There is a procedure for deferral of discharge; the idea is that the discharge is deferred beyond the existing period of sequestration if that will benefit the creditor—if, for example, the creditor can get more assets in. The new concept of the bankruptcy restriction order, which was introduced relatively recently, was designed to address a lack of co-operation and, in effect, debtor misconduct.

The two things are distinct and the legislation is a bit muddled. The Law Society suggests that deferral should remain in cases when the trustee thinks that there will be a benefit to creditors, so one-year automatic discharge can be deferred subject to an application being made to the court, which will protect the debtor. At the moment, the courts look carefully at such applications.

In cases in which a debtor is being uncooperative and the aim is to punish him for his lack of co-operation and refusal to adhere to the system, the bankruptcy restriction order route can be used. Under that, an application is made to the court—because the order would restrict somebody's fundamental rights—and the applicant says to the court, "There's been a lack of co-operation. It's appropriate that this person should remain under the restrictions of bankruptcy." The person could remain under those restrictions for two to 15 years.

A bit more work could be done to clarify things. When things are done for the benefit of creditors and when things are done to address a lack of co-operation from the debtor needs to be made clear. That would address the concern of Alison Johnstone and Keith Dryburgh that why certain steps are taken should be clear.

Sharon Bell: StepChange has a difficulty with this, because we would not know what advice to give clients. We would not know whether it was a one-year discharge, a four-year discharge, any period in between or longer. We are talking about the bill attempting to provide clarity and fairness but, if we cannot advise our clients, how can they make an appropriate decision in the process?

Rachel Grant: If a debtor enters the sequestration process and co-operates, and if the sequestration period is fixed, he will know that he will be discharged at the end. If he fails to co-operate by, say, not disclosing his assets, he will be susceptible to an application for deferral if it helps the creditors or a restriction order if he has not co-operated. The two approaches work quite well and I think that they would address Sharon Bell's concern.

Yvonne MacDermid: For us, the issue is debtors who have been discharged having to make payments beyond the discharge period.

That confuses people and, as we have made clear in our submission, we need to give some thought to equalising the number of payments with the discharge period—notwithstanding situations in which the debtor is unco-operative. If people are advised that they will be discharged after a year—as is the case at the moment—but their payments go on for three years, that leads to a lot of confusion. After all, the issue for most people is the money in their pocket and paying off their debts. The situation needs to be recognised and perhaps equalised.

Alison Johnstone: Another criterion that has raised concern is that the debtor has complied with the statement of undertakings. That statement is issued at the beginning of the process, but the fact is that life changes and things happen to people—they might have family difficulties or lose their job or whatever. Is the bill flexible enough to address the fact that many debtors simply cannot comply with the statement of undertakings because of changing circumstances?

Keith Dryburgh: There is a concern that people can sign the statement in good faith, with no intention of doing wrong and every intention of co-operating, but then break its terms because of some unexpected event. The question is whether, if they break the terms of the statement through no fault of their own, they will be held to that. There might not be enough flexibility to ensure that people who have co-operated but have been unable to comply with the statement because of something that has happened are not held to that.

Rachel Grant: When you talk about the statement of undertakings, do you mean the undertaking to pay a contribution?

Alison Johnstone: Yes.

Rachel Grant: People agree to pay £100 a month or something like that.

Alison Johnstone: Yes—and then life happens.

Rachel Grant: The proposed changes will allow for changes in circumstances to be taken into account under the section of the 1985 act that deals with contributions. That is a fundamental issue. If a person in the sequestration process agrees with a trustee that they will pay £100 a month, that agreement is based on their financial position—in other words, their earnings and outgoings—at the time. If they lost their job the following week, the agreement would have to be reassessed, as it would be if they got a better job and were earning double. Trustees do that regularly and, if agreement cannot be reached at a certain point, they can go to court, which, as an independent arbiter, will determine the correct contribution. I do not think that the issue that you have highlighted is a problem at the moment and I do not think that it will necessarily be a problem in the future.

Alison Johnstone: Finally, I see that, in its submission, Citizens Advice Scotland notes its disappointment that

"the Bill makes no mention of the problems that undischarged bankrupts experience retaining their bank account"

and argues that the issue should be looked at urgently and covered in the bill.

Keith Dryburgh: A problem for years has been that people who are made bankrupt often lose their accounts. Indeed, only one bank will open accounts for undischarged bankrupts, but its branches are not commonly found in Scotland and we have heard numerous cases of people having to drive 100 miles just to open a bank account and then finding themselves unable to do so. Because banks think that undischarged bankrupt customers are a risk, they close their accounts. If we apply the statistics for England to Scotland, that suggests that 6,500 people who were made bankrupt in Scotland last year lost their accounts and 1,600 were unable to open another. There might be a big emphasis on the rehabilitation of debtors, but they will find it difficult to get rehabilitated and get on with their lives if they cannot get a bank account and cannot get their wages paid in.

In July, the Department for Business, Innovation and Skills in England amended the draft deregulation bill to reduce the risk to banks. Given that banks are based in the United Kingdom, it is imperative that the same thing happens in Scotland to ensure that banks open bank accounts for undischarged bankrupts and do not close the accounts of those who have been made bankrupt.

The Convener: Mr McPherson, do you want to give a Lloyds perspective on the matter? I assume that your bank is not one of those that offers a service to undischarged bankrupts.

Euan McPherson: We are definitely one of the banks that Keith Dryburgh has referred to as causing an issue. It is a known issue and the change that has quite rightly been made down south has eased the situation. To be honest, I am not sure about our current stance on the matter but, from a Scottish perspective, I think that it is something of a technical issue. I am sure that I will be educated on the law of acquired assets after discharge, but I think that the best way of putting it is that, once we understand the legal position, the bank will probably react accordingly.

Rachel Grant: This is a minor point but, as Euan McPherson has suggested, it is a technical legal issue that is being addressed in England through the UK Government's red tape challenge. If the Scottish Government followed the same

route, we would have consistency throughout the UK. I do not think that this is a party-political issue at all; it is merely something that it would be useful to include in the bill.

The Convener: So it would be competent for a stage 2 amendment to bring such a provision into the bill.

Rachel Grant: I am not sure what stage the red tape challenge is at but, as has been mentioned, changes have been proposed to address the problem and it would seem sensible to consider the same approach up here to ensure that there is no distinction north and south of the border.

Yvonne MacDermid: Such a measure would be completely congruent with the concept of a Scottish financial health service. If the provision is not in place, we will have a missing link. I certainly think that it is imperative to address the matter.

The Convener: I believe that Margaret McDougall has a question on the issue.

Margaret McDougall: Actually, my question has been answered, in that the witnesses seem to think that the bill should cover the issue of bank accounts.

Marco Biagi (Edinburgh Central) (SNP): Following up the convener's reference to competence, I wonder whether such a move is actually within the powers of the Scottish Parliament. It seems to me that a provision requiring banks to offer accounts to undischarged bankrupts verges on the territory of consumer or commercial regulation rather than bankruptcy law.

Rachel Grant: I cannot respond on the point about competence, but my understanding is that if there is a will there is a way. Perhaps it is for your legal advisers to suggest a route to achieving that but, if you choose to follow that, I am sure that a way will be found.

The Convener: We will discuss the issue with our excellent adviser at the close of the meeting.

Mark McDonald (Aberdeen Donside) (SNP): My question, which is for Rachel Grant, is about the section in the Law Society's submission on the removal of judicial involvement. The Law Society says that it is

"extremely concerned about the removal of ... parts of the sequestration process from the Scottish courts."

However, at our previous evidence session before the recess, Maureen Leslie, who I believe was from the Insolvency Practitioners Association, said that there were extremely

"good reasons for doing it."

She continued:

"The courts are extremely busy, and removing administrative processes from them where possible is to be welcomed".—[*Official Report*, *Economy, Energy and Tourism Committee*, 9 October 2013; c 3417.]

It was also noted that large numbers of bankruptcies and sequestrations were not of the technical nature that would require court involvement. Would the Law Society not support reducing court business that might not necessarily require to be dealt with through the courts?

10:45

Rachel Grant: I do not think that Maureen Leslie and I are in disagreement; indeed, this is something that we have discussed. The Law Society is not suggesting that administrative matters should not be dealt with by the Accountant in Bankruptcy, but anything that is of a legal nature or could have a considerable impact on an individual's status deserves proper judicial scrutiny. The point that we are trying to make is not that administrative matters should not be dealt with by the Accountant in Bankruptcy. However, it is not straightforward or easy to say what is administrative and what is a legal matter. As drafted, the bill does not clearly address how it will be decided whether something is administrative or legal.

I read Maureen Leslie's evidence, and the point that she was making was that the vast majority of cases trundle along perfectly happily and legal issues do not arise. I do not see a lot of sequestration cases but, when I am asked to advise on them, there is a specific legal issue and, when there is a specific legal issue, it should be dealt with by the court. Debtors and creditors deserve that. So we do not disagree with Maureen Leslie or with the proposal that administrative matters should be transferred to the Accountant in Bankruptcy; our point is about ensuring that legal matters are properly dealt with by someone who is legally qualified, such as a judge.

Mark McDonald: I see nods from Yvonne MacDermid and Sharon Bell, so I wonder whether they have anything to add.

Yvonne MacDermid: I concur with Rachel Grant. Insolvency practitioners go through a lot of training, and their cases are audited. I would love the money advice sector to be able to get to where insolvency practitioners are.

From a consumer's point of view, if there is a legal issue, it is important that it is dealt with by someone who has the appropriate skills and knowledge. The individual who is dealing with the case should be able to recognise when a case is outside their realm of competence.

Sharon Bell: I support that. Taking some administrative processes out of the court makes sense, because it would help the decisions for a client or debtor to be processed as quickly as

possible. If a case goes to court, there are sometimes delays, so we do not have a problem with transferring the administrative role to the Accountant in Bankruptcy. However, if the problem is a legal one, we believe that it should stay with the courts.

Rachel Grant: An administrative process is, by its nature, not contentious. It will require a degree of supervision by someone, whether that be the Accountant in Bankruptcy or the court, but it is not contentious. It makes a lot of sense for such matters to be dealt with by the AIB.

The areas that we think should remain with the court are the areas of contention and dispute, such as when the interests of the creditors are contrary to the interests of the debtors, or when the law is simply not clear. We have law that is not clear. For example, in our submission, we mentioned the Nortel case, which got insolvency lawyers throughout the UK very excited because it was to do with pensions and who got paid first, which is important. That case had to be determined by the Supreme Court.

That sort of thing is way outwith the competence of the Accountant in Bankruptcy, and it would not have been in anyone's interest for it to have been dealt with by the Accountant in Bankruptcy, as that would only have added to the cost and delay. If complex matters are referred to someone who does not have the necessary qualifications and expertise, they will take longer to deal with them and people will be unhappy with the decision. By its nature, such a case will involve two people with different views. It will then have to go through an appeal process and the whole thing will take a lot longer and be more costly.

Mark McDonald: I have two brief questions, convener, both of which will require a one-word answer. First, do the witnesses recommend that the committee should approve the general principles of the bill at stage one—yes or no?

The Convener: It would be slightly unfair to insist on a yes or no answer; it might be a qualified yes.

Sharon Bell: We support the majority of the proposals, but we have concerns, which we put in our submission.

Keith Dryburgh: My answer is pretty much the same. There are concerns, but we support the majority of the bill.

Rachel Grant: We support the policy objectives, but we do not believe that the bill as drafted will achieve them. Some fundamental legal issues need to be addressed.

Russell Hamblin-Boone: We deal with small sums, and a large proportion of the bill is not relevant to short-term lenders. We do not specifically disagree with anything in the bill.

Yvonne MacDermid: We support the bill, with the caveats and concerns that are in our submission. We urge the committee to look particularly at and endorse the proposed common financial tool and the mandatory advice.

Euan McPherson: We generally support the bill.

Mark McDonald: My follow-up question is: do your organisations intend to suggest stage 2 amendments to the committee?

Sharon Bell: Yes.

Keith Dryburgh: Yes.

Rachel Grant: Yes—definitely.

Russell Hamblin-Boone: I do not think so.

Yvonne MacDermid: Yes.

Euan McPherson: Yes.

Mark McDonald: We look forward to receiving the amendments.

The Convener: Did the official reporters get that? [*Interruption.*] They did—thank you.

Dennis Robertson: I have a quick point to get absolute clarity from Rachel Grant. I do not think that you are talking about someone having their own lawyers; you are suggesting that, if an issue goes to court, it should go before a judge.

Rachel Grant: I am saying that the issue should go before a judge. A member of the independent judiciary should look at matters. I am a lawyer. I did a bit of research on this panel of witnesses and found that a few of them are legally qualified, too, but that does not necessarily mean that there is expertise in a particular area. A judge also has judicial training. The ability to issue a proper judicial decision is not just a question of knowing the law.

The Convener: Has Marco Biagi's question been answered?

Marco Biagi: The conflict of interest angle has not been covered. We have talked about the AIB's capacity, but not so much about the conflict of interest that has come up in some submissions. MAS's submission says:

> "There would need to be sufficient 'Chinese Walls' in place to give confidence and integrity".

What would success look like in achieving that integrity?

Yvonne MacDermid: Complete separation of powers would be needed. The concern is about the agency having powers at all the different levels. The position would need to be absolutely

clear and transparent to provide confidence. I understand that many Government agencies and departments use such a model.

The presentation of the arrangements should make people confident that the same people will not review a case and that a decision by one part of the organisation should be reviewed by another part. The organisation needs to have distinct and separate sections that do not have a cosy relationship with one another. They should work alongside one another almost as if they were external to the organisation.

Marco Biagi: Your view is that that is definitely achievable through organisation and management.

Yvonne MacDermid: Yes—if it is managed properly. The checks and balances need to be in place and to be seen to be in place, so that the public have confidence in the system.

Marco Biagi: StepChange also raised the issue. Do you agree with MAS or does your view differ?

Sharon Bell: I agree with Yvonne MacDermid, but I go further in saying that the Accountant in Bankruptcy must report on its decisions, to ensure that it is open and transparent. If possible, a neutral person should also be involved in the decision-making process.

Marco Biagi: The Law Society also raised the issue. Ms Grant, are you as sanguine as others are about the potential for managing the situation organisationally or would you like changes to the bill?

Rachel Grant: We would like changes to the bill. Under quite a lot of the proposed changes, the accountant will review her own decisions. I suspect that that already happens, in that a junior person's decision might be subject to review by a senior person, but that is not what we are talking about. We are talking about a situation in which the AIB has issued or made a decision that one party is not happy with. It is important that the AIB's decision should be subject to review by an independent party. In many areas, the court system is used, and we believe that that should continue to apply in this case so that, if people are unhappy or challenge any of the AIB's decisions, they have the right of recourse. The self-review proposal simply adds an extra layer of administration, an extra layer of cost and an extra delay, and that does not serve anybody's interest.

Marco Biagi: Can the organisations that were broadly confident about or believed that it is possible to deliver such separation suggest any parallels or other organisations that they are aware of that successfully operate such separation?

Yvonne MacDermid: Yes. The Department for Work and Pensions is a case in point. It reviews decisions that it has made. Regardless of what we might think about that, it happens and a mechanism exists.

We should be mindful of and acknowledge Rachel Grant's point about the need for the intervention of the courts. We must also remember that we have fewer courts and that there is now less access for people to courts. There is a proposal to merge the tribunals and the court system. We also need to keep on the radar that things are being considered more administratively. The proposal could be possible, but all the safeguards need to be in place.

Marco Biagi: To break the convener's rules, I throw the question open to anybody else. Does anybody else have any particular views?

Rachel Grant: To come back to the fundamental point, the AIB can review and make administrative decisions, but there may come a point at which those administrative decisions become legal points and, in that case, they must go to the court. If it is apparent at the outset that the law is not clear or that there is a legal issue, putting the issue through an internal administration appeal process or self-review process—call it what you like—will simply not help anyone. It will waste the AIB's time and the time of the parties that are in dispute. It would be much better for the case to go directly to the court.

There are proposals relating to restrictions on the courts, but we will still have courts. There would just be a rearrangement of the administration. There is also a proposal to bring in a second tier of sheriffs, who could perhaps deal appropriately with such things.

Marco Biagi: Do the other organisations have views on the conflict of interest potential? I see that they do not.

Chic Brodie: Forgive me, but we all have self-interest in the matter, and we sometimes lose sight of who we are talking about. At the end of the day, we are talking about the client—the debtor—and the creditor. CAS says that we are largely talking about those at the lower end of the income scale. How will they afford to go through the court process?

Rachel Grant: We have to remember that the vast majority of sequestration cases go nowhere near the court and do not raise such issues, and that the issues that go before the court do not necessarily involve a dispute between a debtor and a creditor. If a dispute with a debtor is involved, the debtor has a right to apply for legal aid if his circumstances allow for that. In my experience, the issues that go before the courts do not always include the debtor, because they are

often technical legal issues. Alternatively, if the debtor is involved, they are quite fundamental issues regarding the debtor and, in those cases, the debtor will be entitled to legal aid if they cannot afford to go to court.

The types of issues that go before the court have to be dealt with by it, because they are fundamental to the debtor. Affordability is an aspect, but it is even more important that the debtor gets the right decision. If he goes to a self-review by the AIB, he may not get the right decision, or he may get the right decision, but he may not like it.

Chic Brodie: Sometimes they may not get the right decision from the court, either.

Rachel Grant: Absolutely, but one has more confidence in getting the right decision on a legal point from a judicially qualified person. There are always views on what are the right or wrong decisions in the courts, because there are always two parties and two different views. In an adversarial system, one person will necessarily think that they have been hard done by.

11:00

Keith Dryburgh: That raises the good point that a lot of the debtors that we are talking about have a low income, which is part of the reason why they are in debt. A lot of them do not even get close to the court, because they cannot afford to apply for bankruptcy, as it currently costs £200.

The Convener: That very good point leads on to Margaret McDougall's next question.

Margaret McDougall: The bill deals with the introduction of the minimal asset process to replace the low-income, low-assets process. The bill does not refer to the fee that will be charged, but we have heard in evidence that it might be £100, as opposed to the £200 fee for LILA. Will Keith Dryburgh give his views on that and on whether the fee could be paid in instalments?

Keith Dryburgh: Since the LILA fee was increased to £200 from £100, nearly 800 clients who have come to us for advice have been unable to come up with the fee. As far as I am aware, a few hundred of them still want to—and probably should—be made bankrupt, but they cannot afford the fee. There was a 50 per cent increase in the number of such people after the doubling of the fee. We believe that the fee should, as a minimum, be brought back down to £100.

As Margaret McDougall indicated, we believe that there should be alternative ways of paying the fee. That is not allowed at the moment, but we believe that somebody should be able to pay half the fee up front and pay the rest in instalments but be unable to get discharged unless they pay all the instalments. At the moment, there is the capacity for somebody to save up money for the fee with the Bank of Scotland, but we are finding that low-income people do not choose to do that because they have no access to that saved money if, for example, their fridge or their central heating breaks down. We therefore find that very few people manage to save up money for the fee and that people are stuck in the situation of being unable to pay. The fee needs to be reduced, and we would also welcome any alternative way of paying it.

Margaret McDougall: Is that also the view of Money Advice Scotland?

Yvonne MacDermid: We have referred in evidence to a fee waiver. We believe that if people are so hard pushed, the fee should be waived, as happens in England and Wales. That would be our first position for people in that situation.

Rachel Grant: The question is what the purpose of the fee is. Is it to allow the Accountant in Bankruptcy to be self-funding? Is the purpose to put an obstacle in the way of people self-sequestrating? Is the policy decision that people should have access to sequestration? The LILA route into sequestration came into place in the first instance because there were debtors who could not access bankruptcy. If we brought in LILA to allow them to access bankruptcy, should we be putting anything in their way to prevent them from doing so? It seems to me that there is a policy decision to be made around that. The Law Society does not have a view on that, because it is a policy decision; it just occurred to me that we must wonder what the purpose of the fee is. Is it to be an obstacle? If we do not want such an obstacle, should it be removed?

Margaret McDougall: Would that also be the case for other routes to bankruptcy for which a fee must be paid?

Rachel Grant: The other routes to bankruptcy are often debtor driven, but a fee must always be paid for the personal application ones. I do not know whether that is a fundamental or serious hurdle in other circumstances. The money advisers would have to give a view on that.

Margaret McDougall: Will Yvonne MacDermid comment on that?

Yvonne MacDermid: I think that it would be important to have a fee waiver for the route into the MAP for those who would be eligible. We get a lot of feedback from our members that echoes what Keith Dryburgh said, which is that a lot of people cannot get into bankruptcy because they are surviving from day to day financially. We are not talking about people just running out of money at the end of the week or the month; some people are reliant on food banks, which we have heard a

lot about recently, and they just do not have the money. If we say to them, "Save up the money", even with the best will in the world something will come along, such as having to buy food or a piece for their child's packed lunch for school. It is difficult. We are not talking about a lot of people or the loss of a huge amount of potential income. We are talking about a policy that might help a lot of people to get back on their feet, enable them to start participating in society again and give them a fresh start.

Margaret McDougall: The bill says that the discharge for MAP would be six months. What is your view on that?

Yvonne MacDermid: Again, that is congruent with a fresh start. Some agencies have expressed concerns that it could be a disincentive to someone who ended up out of work because they might have to stay out of work to continue to be eligible to stay within the process; otherwise, their case would go to full administration, which could go on for three years, or indeed four years, as intended in the bill. There are some real concerns about that.

For the kind of people that we are talking about, who are at the margins, six months seems a reasonable way to allow them to get back on the route again. However, we need to look at—dare I say it—the unintended consequences.

Margaret McDougall: What would they be?

Yvonne MacDermid: As I mentioned earlier, it might be people feeling that they could not get into a job because they would no longer be eligible to remain within the MAP. It would push them into full administration—at least, that is my understanding.

Rachel Grant: The Law Society's view is that the 12-month period of sequestration should apply across the board. The six-month period just adds confusion. I am not quite sure what point Yvonne MacDermid is making. If you go into sequestration, you are in sequestration for whatever period, until you are discharged. I am not sure that there is provision in the bill at the moment for someone to go in as a MAP person and change halfway through to a normal person.

Yvonne MacDermid: That happens at the moment.

Rachel Grant: If that did happen, it would cause an awful lot of confusion and complexity, and confusion and complexity add to the cost, which is in no one's interests. A one-year period across the board would be far more straightforward and far easier for people to understand. For that reason, we would not support the six-month period.

Margaret McDougall: On a different question, what is CAS's view on the financial education that is mentioned in the bill? Who would provide it?

Keith Dryburgh: We are supportive in principle. Financial education is a good thing but the way in which it is talked about in the bill leaves significant questions about who will provide the training, what format it will take, who will provide evidence of completion, who will enforce it and what the consequences will be if the person does not take up the financial education.

The bill's financial memorandum suggests that the money advice sector will provide it but it also says that the

"change in the amount of time that money advisers may need to spend with ... existing clients will not have a material impact on their overall capacity and caseload."

We would disagree with that because it says that on the one hand there will be a change in the amount of time that we will need to spend with clients but on the other hand that it will not have an impact on resources. There are a lot of question marks, and we would want answers before we would support that aspect of the bill. We need to know whether we are supposed to provide the training, who will train our advisers and what will happen if our clients do not do it. Do we enforce it? There are a lot of questions that should be answered in the bill and not in the regulations following the bill. If that were the case, we could support it.

Margaret McDougall: Does anyone else have a view on the financial education issue?

Yvonne MacDermid: Like CAS, we support it in principle although we have some concerns about how it will be resourced and what that will mean for the sector. I should also mention that we have been thinking about what financial education might look like, in terms of the people that may have to go through the programme and how that might work, because you have to be able to give access. We have far-flung places in Scotland and rural and island communities. People are not able simply to hop into a place to do a financial education module or whatever.

In principle, we support the whole concept of financial education. Many people might say, "Let's have it in schools." That is fine—let us have it in schools—but there are a whole lot of people who are well beyond school age who could perhaps benefit from it, and the question is one of identifying who they are and what the education might look like.

Chic Brodie: I ask this question of Yvonne MacDermid and Sharon Bell. Is it possible that money advisers could also be financial educators?

Yvonne MacDermid: Part of our strapline is raising standards in money advice and financial inclusion, which includes financial education. Citizens Advice Scotland has money guides, who are funded through the Money Advice Service.

There is a merging and meshing of what we would refer to as preventive work, which tries to build people's capacity for numeracy, literacy, how to handle their money and what to do at the different hotspots in their lives. That is the future.

Chic Brodie: There is no possibility of a conflict of interest, is there, if someone is going through the education process and could be a beneficiary, if they are looking for money advice at the end of that process? Is that possible?

Yvonne MacDermid: I do not see that as a conflict, certainly not in the free sector. The advice is free, so there would be no conflict of interest. It would be part of an offer of money guidance, which includes debt advice. Some organisations have internal protocols in place. People will see an adviser who will do budgeting, and once whether or not they have a debt problem has been identified, the case gets passed to someone else within the organisation. The citizens advice bureaux have a different system in place, with generalist workers passing cases over to specialists. Personally, I think that that is the way that things need to go. The two things are not distinct from each other.

Chic Brodie: That is why I asked the question.

Yvonne MacDermid: Yes. They are merged together.

Sharon Bell: I agree with Yvonne. Our advisers give financial education and support to our clients throughout the process, irrespective of whether they go through an insolvency process and use a trustee. We will always be there to support them throughout the process. The bill introduces a bit of confusion about who is responsible, and at what point. To whom is the financial education provided? Is it only to those who have previously been sequestrated or who have gone through a trust deed? Should it be provided to anybody if the trustee feels that it is appropriate? That is the aspect that we are a little bit unsure about.

A function of all proper, quality advice is that it includes an element of financial education for clients.

Keith Dryburgh: One of the big principles of the CAB service is empowerment. It is not just a matter of telling the client what to do; it is about empowering them to take control of their lives and to make the right decisions when they get out of the bureau. That fits well with what we do and with what everybody else on this panel does, but there are questions in the bill that we want to be replaced with answers, to ensure that we know what we are signing up to.

Rachel Grant: The Law Society agrees whole-heartedly with the importance of financial education being available to everybody. We have concerns, however, about the proposal to link that to a discharge. That ties in with our concern about linking entry to the process with the undertaking of financial education and with getting out of the process having undertaken that education. There is no doubt that financial education is important, but building it round sequestration and making it compulsory is not particularly helpful to anybody, and we think that financial education should not be linked to discharge.

Dennis Robertson: Do you not view financial education as a preventive measure for the future?

Rachel Grant: If you seek prevention, it should be done before people enter the process.

Dennis Robertson: For people who are already in the process, the aim would be to prevent them from going back into it in future.

Rachel Grant: We do not mention this, but others have done in their submissions. A lack of financial education is not the main reason for people entering sequestration; there are other reasons. There are other people here who are better able to confirm that, but that is my understanding: it is not a lack of financial education that necessarily causes people to become bankrupt; it is other social circumstances or unfortunate events in their lives.

The Convener: We have probably covered the ground that we wanted to. I thank all the witnesses for coming along today, for answering our questions and for their assistance to the committee in our scrutiny of the Bankruptcy and Debt Advice (Scotland) Bill.

11:15

Meeting continued in private until 12:51.

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e-format first available
ISBN 978-1-78351-963-7

Revised e-format available
ISBN 978-1-78351-981-1

Printed in Scotland by APS Group Scotland