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Pàrlamaid na h-Alba

Official Report

ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 9 October 2013

Session 4

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ECONOMY, ENERGY AND TOURISM COMMITTEE
28th 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:

Alison Anderson (Armstrong Watson)
Eileen Blackburn (R3)
Fergus Ewing (Minister for Energy, Enterprise and Tourism)
David Hill (Institute of Chartered Accountants of Scotland)
Maureen Leslie (Insolvency Practitioners Association)
Joan McAlpine (South Scotland) (SNP)
Frank McKillop (Association of British Credit Unions Ltd)
Donald McKinnon (Wylie & Bisset)
Mike Norris (MAX Recovery Ltd)
Claire Orr (Accountant in Bankruptcy)
Martin Prigent (TDX Group Ltd)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 9 October 2013

[The Convener *opened the meeting at 09:30*]

Bankruptcy and Debt Advice (Scotland) Bill: Stage 1

The Convener (Murdo Fraser): Good morning, ladies and gentlemen, and welcome to the 28th meeting in 2013 of the Economy, Energy and Tourism Committee. I remind everyone present to turn off, or at least to turn to silent, all mobile phones and other electronic devices, so that they do not interfere with the sound system. We have apologies from Marco Biagi, so we are joined by Joan McAlpine as a substitute.

Agenda item 1 is our continued scrutiny of the Bankruptcy and Debt Advice (Scotland) Bill at stage 1. Our first panel of witnesses are Frank McKillop, policy and relations manager for Scotland at the Association of British Credit Unions Ltd; Maureen Leslie, council member of the Insolvency Practitioners Association; David Hill—whom we also heard from last week—partner at BDO LLP and a previous chair of the insolvency committee of the Institute of Chartered Accountants of Scotland; and Eileen Blackburn, partner at French Duncan LLP and chair of the R3 Scottish technical committee. Thank you all for coming.

In view of the time, we have agreed that we will not have opening statements, but we have read the written submissions, which are useful. We are a little tight for time, as we have two panels to get through before 12 noon, so I ask members to keep their questions short and to the point. If we could have answers in the same vein, that would be helpful. As we have quite a big panel, rather than just throw open questions for all witnesses to have a say, it would be easier if we could direct questions to particular witnesses. If people want to respond to a question that has gone to someone else, they can catch my eye and I will try to bring them in and let them have their say.

I will start. From the written submissions, one issue of concern is whether the Accountant in Bankruptcy's ability to review her own decisions strikes an appropriate balance and provides an appropriate level of scrutiny. I will start by addressing this question to Maureen Leslie, as the issue was raised in the submission from the Insolvency Practitioners Association. Will you outline what exactly your concerns are about the proposal? If others want to come in and add to what you say, I will bring them in.

Maureen Leslie (Insolvency Practitioners Association): Basically, the concern is that there will be a conflict of interest. No matter how much effort is put into the separation of functions, inevitably, one decision-making body will be reviewing its own decisions. Currently, these matters are reserved for the court, which brings independent scrutiny to the decision-making process. We feel that that independence would be lost if the proposals went ahead.

The Convener: Mr Hill or Ms Blackburn, do you agree with that general position?

David Hill (Institute of Chartered Accountants of Scotland): Yes, I certainly do. As I said last week, the issue is that the public perception, if not the reality, would be that there are too many legs to the Accountant in Bankruptcy when it is reviewing its own decisions.

Eileen Blackburn (R3): Yes. We also have concerns that, in any event, the civil servants are not qualified to act in what is essentially a quasi-judicial role, which to an extent would usurp the role of the court.

The Convener: Mr McKillop, the Association of British Credit Unions seems to take a different view from that taken by your fellow panellists.

Frank McKillop (Association of British Credit Unions Ltd): We certainly value the opportunity to challenge decisions, such as proposals about trust deeds that we feel are unfair. In the original consultation process, we suggested that an independent review panel should be established. We understand that the argument against that was mainly about the cost, but the cost of going to court for a creditor is also significant, especially for credit unions, which do not have the budget to pursue court actions. We certainly value having a review function. Our idea was for that to be completely independent, but we are satisfied to see how that works out as part of the AIB's compliance unit.

The Convener: Maureen Leslie, would an independent review body satisfy you, or do you think that the issue needs to be left to the courts?

Maureen Leslie: The issue has to be left to the courts. Mr McKillop and I perhaps come at the issue from a slightly different approach. Mr McKillop mentioned the review of the grant of a trust deed or of a trust deed becoming protected. The particular case that we are discussing is about removal of functions in a bankruptcy from the courts and leaving it to the Accountant in Bankruptcy to review those decisions. Some of the matters that are referred to in the bill are in fact extremely complex. It has been set out that the matters that should be removed from the courts are administrative in nature. However, for example, one is an application for directions that a trustee can make on quite complex points.

To make this more real for the committee, most people would be familiar with the application brought by the administrators of Rangers Football Club for directions in the matter of the claim.

The Convener: I am very familiar with that.

Maureen Leslie: I thought that you might be. It was an application for directions on how to deal with the claim by Ticketus. Although that was a corporate insolvency process, it is typical of the kind of question on which a trustee in bankruptcy would seek directions. Ultimately those questions have to be decided by the courts. We question significantly whether the AIB would ever have the level of expertise that would satisfy either the trustee or the creditors concerned.

The Convener: Does anybody else want to come in on this point?

Dennis Robertson (Aberdeenshire West) (SNP): I am trying to remember who said that civil servants do not have the necessary level of experience of dealing with legal matters. Surely in the civil service and the AIB there are people who are well qualified in legal matters. They may not operate through the courts, but would you not accept that they have that level of knowledge and experience? Maybe Maureen Leslie will answer first.

Maureen Leslie: There are people there who have great experience, but they are not necessarily legally qualified. In fact, I am not aware of anyone in the office of the AIB who is a qualified solicitor. In any event, the application for directions is heard by the sheriff or a judge. I question whether that level of expertise is available in a civil service department.

Mike MacKenzie (Highlands and Islands) (SNP): I was interested in the example that Maureen Leslie used of Rangers Football Club. The bill does not deal with commercial bankruptcies, does it? Am I wrong?

Maureen Leslie: It deals with all bankruptcies. Consumer bankruptcies would fall within that, but the same legislation applies to business bankruptcies.

Mike MacKenzie: Not all cases will necessarily be as high profile, as technical or difficult as the Rangers example that you gave.

Maureen Leslie: That is right. The vast majority will not be that difficult. The issue is that, in the vast majority of cases, there is no need to apply for directions. The application for directions, for example, would come only in complex cases. It is rare and it relates to complex matters.

David Hill: I agree completely. The bill deals with all personal bankruptcies, as Maureen Leslie said. The vast majority are consumer bankruptcies and, in 99 per cent of those, directions would never need to be sought. Directions are sought only in complex matters. There is also the question of speed. A quick decision usually needs to be made, as in the Ticketus example. Therefore, straight to the core is seen to be better.

We are not against the AIB getting certain extra things. We agree with quite a few things in the bill, such as the recall of sequestration where there are sufficient funds to pay creditors. I agree that that should go to the AIB. We are not making a blanket statement that we do not want the AIB to do things—we are talking about certain instances.

Dennis Robertson: Mr Hill, you said that it is important that the process is speedy. Do the courts not sometimes slow up the process?

David Hill: They are usually good at dealing with urgent matters that they can deal with quickly. It is known that courts can be very slow for general matters, but when we need a quick decision on such an issue, we can usually get into court quickly and get a quick answer.

Dennis Robertson: You believe that it is a conflict of interest for the AIB to do its own reviews. Is there anything that gives you reassurance that the AIB would have a panel that is perhaps not independent—I am not sure that we can use that word—but is removed from the original decisions?

David Hill: I accept that different individuals would no doubt review decisions that had been made, but I remember saying last week that there is obviously an inherent temptation that, if people in a person’s organisation made the decision, that person would start from the point of view that the decision is probably right and would look only for something that is wildly wrong, rather than take a totally independent view. The public perception is that, on the face of it, someone who reviews a decision of their own organisation does not seem to be independent at all.

Dennis Robertson: Has that public perception been fuelled to an extent by people like you who do not agree with that?

David Hill: I suppose that that is possible.

Alison Johnstone (Lothian) (Green): On the same issue, it seems that only the Association of British Credit Unions looks at the proposal as a possibility that it would favour, although it suggests that an independent review panel would be a good idea, so there is obviously a lot of concern. Is your view that the driver and rationale for the change is simply to save money, or are there other good reasons for the proposal?

Maureen Leslie: I think that there are good reasons for doing it. The courts are extremely busy, and removing administrative processes from them where possible is to be welcomed. We have said that the removal of the application for recall of sequestration and allowing that to go to the Accountant in Bankruptcy where the recall is on the ground that the person has sufficient security to pay the debts in full is fine, but other matters are neither simple nor straightforward, and they should be heard by an independent justiciary, not by a civil servant or public body, no matter what the cost.

Eileen Blackburn: I would like the committee to take from the discussion the fact that we do not seek directions lightly. We go to court for directions only on the most complex occasions, because ordinarily we have recourse to legal advice and we have our own expertise. We would seek the directions of the court only in exceptional and complex cases in any event.

It seems iniquitous to me that a liquidator would have access to the court process in seeking directions whereas a trustee in bankruptcy would not under the proposals in the bill.

Chic Brodie (South Scotland) (SNP): I want to go back to a point that I made last week. We seem to be losing sight of what we are trying to achieve in looking after the interests of debtors and creditors. I get the feeling, partly from experience, that if people go through some of the processes, even the complex ones, that have been mentioned, the beneficiaries will tend to be the insolvency practitioners, lawyers and courts. Where does that kind of activity stop and where do we start to consider the debtors and creditors? There seems to be an opportunity for some people to make a lot of money by giving advice and in some cases unnecessarily extending that advice on the basis of the income that will accrue to them. Is that not the case?

Maureen Leslie: I disagree. I do not disagree that lawyers can make a lot of money in some instances, but I would certainly never take an application for directions or take issue with some of the other matters, such as the valuation of a contingent claim. I charge for my time, but I would never take those applications simply for the purpose of running up time costs. As a trustee and liquidator, my concern at all times would be to look after the interests of creditors.

For example, the valuation of contingent debts can make a huge difference to the outcome of a case. The claims can be significant. I am currently dealing with a bankruptcy in which there are two contingent claims, for £200,000 and £210,000. If I were to admit those claims, the dividend to ordinary creditors would reduce to something like 2p in the pound, but if I can deal with them and have a judicial decision on whether they should be admitted, and if so at what level, the dividend will be significantly improved, provided that they are not admitted in full.

09:45

Chic Brodie: But is that dividend not affected by the fact that one of the first fees to come out of whatever pot is available is that of the practitioners? Such fees are not inconsiderable.

Maureen Leslie: You are right that the first thing to come out is the practitioners' fees. The average fees in a sequestration are not considerable in every case.

Chic Brodie: I would suggest that, in most cases, they probably are considerable in relation to the amount of debt.

Maureen Leslie: I simply do not agree.

Chic Brodie: Okay—thank you.

Frank McKillop: I will pick up on that point. Credit unions have taken such an interest in the bankruptcy issue and bankruptcy reform because they find—exactly as Mr Brodie expressed it—that creditors are at the back of the queue when there is an insolvency. We welcome the bill's rebalancing of that, so that creditors, we hope, will receive a higher dividend from trust deeds, bankruptcies and other solutions wherever possible.

On the point about creditors being at the back of the queue, there are examples involving trust deeds of £5,000 where the debtor has been able to pay £150 a month, but the credit union has not got a single penny. There are concerns that we need to rebalance that. We would welcome any measure in the bill that reduces the costs for creditors and, ideally, improves the possibility of a better dividend.

David Hill: I will make a point about bankruptcy fees, in case the committee is not aware of it. In all bankruptcies—unlike trust deeds, which are a separate issue—the fees are audited by the Accountant in Bankruptcy. There should not be any excessive fees going through at all, and the AIB should be cutting any fees that it views as excessive. That is a big difference compared with trust deeds—bankruptcies are all audited.

Joan McAlpine (South Scotland) (SNP): On that point and on the point that Mr Brodie raised, at the height of the United Kingdom recession in 2008 and 2009, the UK's top 10 accountancy firms made £20 billion, £8 billion of which was pure profit, largely from their insolvency divisions. I struggle to see how we cannot say that there might be something wrong with the system and that people are making too much money out of insolvency.

David Hill: I will try to answer that. I am not sure that it is true to say that that was largely from insolvency—that is probably not the case. If you drill down, you will find that firms do not usually release the breakdown of their profits between their various divisions. The major accountancy firms are substantial businesses. I am not here to defend the amount of money that they make, but they employ a huge number of people. They mostly come in as the top graduate employers, so they have to pay people the rates that are appropriate for the jobs that they do.

Joan McAlpine: Do you think that that is why Deloitte made £40 million from the insolvency of Woolworths alone, for example?

David Hill: I am not here to defend a particular case, but Woolworths was obviously a complex case, and the accountants would have to get their fees fixed for that. They will have been able to justify those fees, if they got them. It seems a high figure to the man on the street, as it were, but it was a complex case. That is an extreme example, whereas the fees are nowhere like that for the vast majority of cases. There will never have been a fee of that size in Scotland.

Frank McKillop: From a credit union perspective, we recognise that there are costs involved in any insolvency. We have no objection to anyone getting a fair day's pay for a fair day's work. Our problem is who decides what fair pay is. From our perspective, it looks in some cases as though accountancy firms are getting a fair week's pay for a fair day's work. The problem is how the fees are set.

To come back to the idea of rebalancing bankruptcy and insolvency legislation, no one seems to have regard for what is fair to the creditors. The creditors get very little or, indeed, nothing at all. It is perfectly fair for the insolvency practitioner to collect a fee for their work, but how is that balanced with the fact that a creditor—including a small community credit union—could come away with absolutely nothing in many cases?

The Convener: This is an interesting discussion, but it is slightly tangential to the purposes of the bill. Unless members are desperate to make additional points, we need to move on and discuss wider matters.

Chic Brodie: What obligation are insolvency practitioners under to keep time sheets of the work that they do?

Maureen Leslie: We are obliged to do that. It is quite simple.

Chic Brodie: Who checks and validates the time sheets?

Maureen Leslie: We and our staff record electronically how much time we have spent. When we make an application in a bankruptcy for approval of our fees, we are obliged to give those time records to the Accountant in Bankruptcy. Every three years, the Insolvency Practitioners Association comes in and regulates its own practitioners. It spot checks files and reviews the primary time records. It insists on printouts from time-recording systems.

The Convener: We need to move off the remuneration of insolvency practitioners.

Mark McDonald (Aberdeen Donside) (SNP): I will ask about financial education. It would be fair to say that the views of the panel range from outright opposition to qualified support with a little bit of scepticism thrown into the mix.

In her submission, Eileen Blackburn states:

"We do not support the policy that discharge of the debtor is linked to financial education."

She also makes the assertion that most debtors can budget. I ask her to give the rationale behind not feeling that financial education should play a part in the process.

Eileen Blackburn: We are not against financial education per se. We are saying that it should not necessarily be linked to discharge of the debtor because there will be cases in which debtors have found themselves in financial distress through no fault of their own and not through deficiencies in their ability to budget. In some cases, people simply do not earn much money. They have living expenses that they need to cover and, often, we find that those expenses are subsidised by resorting to credit, sometimes at extremely high interest rates, as we all know.

Financial education may be appropriate in some cases, but we are against in principle the idea that it should be linked to the discharge. When the Bankruptcy (Scotland) Act 1985 was introduced, it was extremely welcome in as much as it did away with the idea that, in every case, the debtor had to earn a discharge. The concept of automatic discharge was introduced for the first time in that act; we remain supportive of the notion of automatic discharge with provisions in place to deal with debtors who do not co-operate or comply with statute during the course of their sequestration.

Mark McDonald: I might widen the question to consider money advice, but I will take some views on financial education first. I will go to the other end of the spectrum and ask for the view of the credit unions. They have welcomed the inclusion of financial education, but have expressed concerns about who should provide it. I ask Frank McKillop to expand on that and to suggest what protection could be introduced to cover their concerns.

Frank McKillop: Our concern relates to the initial financial advice that would be given before an individual would enter an insolvency product. We would be keen that there be a separation between the person who gives that advice and the trustee in a protected trust deed or bankruptcy. We realise that many insolvency practitioners are also qualified money advisers, but we would be keen to avoid any danger of a conflict of interests if they were nudging people towards a particular solution. We need to be satisfied that the two are completely separate.

On financial education, we enthusiastically welcome the ambition to create a financial health service for Scotland. Many of the problems of insolvency and overindebtedness, and of poor financial decision making, such as using higher-cost lenders, fundamentally come back to the poor financial capability that many people have. Measures to address that have to be welcomed. We absolutely recognise that for many people who become insolvent, it is not their fault—there is an income shock, unforeseen unemployment or relationship break-up or other crisis situations—but an awful lot of people become insolvent because of their lifestyle and spending habits. For people who need debt relief, it should not be the case that their debt disappears and then they carry on as before. We need to encourage behaviour change, so we welcome the provision.

Mark McDonald: I do not want to turn this into Frank McKillop versus Eileen Blackburn, but the views that the credit unions express on a separation between those who provide money advice and those who handle the insolvency appear to be diametrically opposed to the solution from Eileen Blackburn, which is that it is imperative that insolvency practitioners be among those who can provide money advice. Ms Blackburn, will you address the conflict-of-interests point that has been raised?

Eileen Blackburn: In a great many cases, debtors seek advice from the voluntary sector in the first instance—perhaps those who do not watch television and look at the adverts that are on all the time. When people come first through the money advice sector or through voluntary sector organisations such as StepChange Debt Charity Scotland, they are taken through their budget and the money adviser will reach a conclusion on whether they are suitable for a trust deed, the debt arrangement scheme or an informal arrangement, or whether sequestration might be the only option. At that stage, they might be referred to an insolvency practitioner. We feel that an insolvency practitioner would perhaps be better qualified to provide money advice in more complex cases. My personal approach in advising debtors, which I do fairly often, is to explain to them the full range of options. That allows them to make an informed decision—they can do that at the moment—about the most appropriate course of action for them, using the information that has been given to them.

Mark McDonald: The ICAS submission is also sceptical about the benefits of financial education, and you share the view that insolvency practitioners should be among those who can provide money advice. Will you give your rationale for those views?

David Hill: Obviously, we are not against financial education per se, but we think that it should come earlier than after someone has gone bankrupt—

Mark McDonald: I am sorry to interrupt, but how would you deliver that? Are you talking about having financial education across the board?

David Hill: It should happen much earlier, in school.

Mark McDonald: Okay, but obviously a large cohort of people who are no longer at school might find themselves in need of insolvency or bankruptcy. Often, they are the kind of people who would not seek such education. How do we reach the people who might not be able to source that education until they enter bankruptcy?

David Hill: That is difficult and there is no easy answer to it. I do not think that a vast percentage of the population will voluntarily turn up to do financial education after they have left school. I accept that it really has to be done earlier and that it is a long-term aim. We are not saying that there should not be financial education after bankruptcy; it just seems to be a bit late. There are also questions about who will fund the education and, as was mentioned at last week's meeting, what the sanctions will be if people do not do it. There are a few issues with how the bill is drafted but, based on its merits, we are not against the measure, as such.

10:00

Mark McDonald: What about insolvency practitioners providing money advice?

David Hill: I talked about an AIB conflict of interests, so I can accept that it might, on the face of it, look like there might be a conflict of interests. All I can say is that we are under a professional duty to give the best advice to the debtor. We have to document our advice, which is examined, as Maureen Leslie said. We are all regulated at least once every three years, and if it is shown that we have not given the best advice or gone down the right route, or indeed that we have given inappropriate advice, we suffer penalties.

Mark McDonald: The IPA expressed concern about the cost effectiveness of financial education. Will Maureen Leslie say more about that?

Maureen Leslie: We are aware that in other jurisdictions there are provisions for financial education as a condition of exit from a bankruptcy. I think that the system in the United States operates along those lines. As far as we are aware—I stress that this is only as far as we are aware—there is no evidence that such an approach has a significant impact. We have no idea whether the approach has been costed; I do not think that there is any suggestion that it has in the papers that we have read. We have no strong views on the matter; we simply say that if the approach is to be taken it will need a bit more development.

Mark McDonald: You take the view that there should be reference to insolvency practitioners in relation to provision of money advice. We could argue that we are hearing today from three representatives of insolvency practitioners, who all want a piece of the money advice pie. What would including insolvency practitioners add to the mix, given that there are local authority and citizens advice bureau money advisers, for example?

Maureen Leslie: Insolvency practitioners have to sit an examination on personal insolvency as part of their qualification. The examination is at an extremely high level—it is degree standard. Insolvency practitioners must study bankruptcy and protected trust deed processes, and they must be aware of non-formal solutions, including the debt arrangement scheme, debt management plans and the range of solutions that are available to people who are in financial difficulty.

We also have a professional obligation to be independent and objective. When we advise someone, our education and training and our professional obligations enable us to explain the wide variety of processes to the debtor and allow them to make an informed choice about a solution, as Eileen Blackburn said.

Mark McDonald: I see that Mr McKillop wants to say something, but first may I ask Maureen Leslie whether you recognise that the same concerns about conflicts of interests that were raised about AIB could arise in this respect? If the committee recommended that insolvency practitioners should be among the people who give money advice, would you recommend the inclusion of safeguards, to prevent conflicts of interests?

Maureen Leslie: I understand the committee's point about conflicts of interests, or the perception of conflicts of interests. However, when a director of a limited company is in difficulty, from whom should he seek advice? Is it not the insolvency practitioner who is able to advise him on the range of options that are available to him? Where else would a company director obtain advice at such a level? Only a small part of an accountant's training—no more than a couple of weeks—covers insolvency, so an accountant would generally refer their client to an insolvency specialist for advice on the options that are available.

In principle, there is no difference between the advice that is given at a corporate level and the advice that is given in personal cases.

Frank McKillop: We recognise that insolvency practitioners are qualified to give advice, but it is important that there is the separation that I talked about. An IP might give advice, but we would prefer that the person was not also a potential trustee.

I should say that we recognise that the vast majority of IPs behave with absolute integrity, but there are cases in which we have had to question the decision that was made. One example was a protected trust deed in which the total debt was £7,978 and the debtor was able to pay £195 a month for three years. That totalled £7,020. If that debtor had gone into a DAS for free they could have repaid £195 a month for three and a half years. It does not have to have been a long DAS. The creditors would have received just over £7,000. Instead, because a protected trust deed was used, the creditor share was £1,500 and over £5,000 was claimed by the trustee. We have a problem there. The question we have is about the options—DAS and protected trust deeds. The protected trust deed was a better option for the trustee but it certainly was not the better option for creditors and, in that case, given another six months of payments, the debtor would have been debt free and would never have been on the register of insolvencies, which would have been better for the debtor.

We are uncomfortable because of such examples. We welcome the fact that, in addition to the Protected Trust Deed Regulations (Scotland) 2013, the bill will—we hope—address situations in which a DAS should have been used but was not. We are concerned that things like that happen so we would welcome a safeguard to prevent them from occurring.

Mark McDonald: In terms of a safeguard—forgive me; I am not by any means an expert and am thinking aloud—would that be, for example, that an insolvency practitioner who had issued advice could not then be the practitioner in any case of bankruptcy that arose from that case? Would there be a disqualification to prevent the conflict of interests that you have described?

Frank McKillop: From the credit unions' perspective, the answer is yes. The advice comes from either the public sector or the voluntary sector and then the person is passed on to an insolvency practitioner if that is the correct route to take. If someone has approached an IP or a debt management company in the first instance, there should be a separation such that, if a protected trust deed or bankruptcy is the right option, it is passed on to someone else to conduct that.

The Convener: Hanzala Malik and Mike MacKenzie want to come in. Before I let them in, who will pay for provision of money advice?

Maureen Leslie: Money advice is provided by insolvency practitioners. Most of them offer at least a one-hour free consultation. In my experience, it is considerably more than one hour. I absorb that as part of my cost.

The Convener: If the bill provides for compulsory provision of money advice, will that be given free?

Maureen Leslie: Yes. It is given free at the moment and I see no reason for that ever to change.

Dennis Robertson: Can I have clarification? The advice would given free for one hour, but would there be a charge thereafter?

Maureen Leslie: Most practitioners say when we advertise that we will provide one hour's free advice. The reality is that it takes considerably longer and there is no charge.

Dennis Robertson: People have the choice to go down other routes including going to StepChange or citizens advice bureaux, where the advice is free, regardless of how long it takes.

Maureen Leslie: That is correct, and we would advise them that if they use a debt arrangement scheme, for example, they can receive the same service free.

Hanzala Malik (Glasgow) (Lab): In terms of the suggestion in the bill that money advice will be mandatory, I want to touch on this in respect particularly of first-time applicants who have perhaps been unaware of the system. I can understand, appreciate and accept the value of money advice, particularly for those who know or have gone through the system. For the first-time applicant I feel that mandatory advice is perhaps a little harsh and would cause difficulties for some members of our community.

When a family or individual is going through a difficult time in their life the last thing that they need is the compulsion to go through other hoops and rings. That is why I think that perhaps the mandatory element should be dropped for first-time applicants. We could perhaps have advice that it is preferable, rather than mandatory, for first-time applicants. That would solve a lot of problems for a lot of people.

David Hill: I have a lot of sympathy with that view. It is a difficult issue, and in the situation that you have outlined the person probably would need advice as they would be under stress. Personally, however, I am against a completely mandatory requirement; I think that "preferable" is a good word.

Applicants should be required to state that they have declined the requirement for money advice before they go ahead, so at least they will have thought about the issue, but it should not be mandatory. Some people would be very annoyed with a mandatory requirement, and some, for example accountants and lawyers who go bankrupt, may be qualified in that area, so there would be no need for them to have to take advice as they know what has happened. Although those incidents may be isolated, to make the requirement mandatory for everyone would be a step too far.

Hanzala Malik: My other concern is that the people who give money advice are sometimes strapped for time. They are overstretched, and the amount of people out there who can provide that advice just now is insufficient. If the demand is higher than the ability to serve it, people will have to wait to get the advice before they can go down that route. It is also unhelpful because someone's debt could be accumulating while they are waiting for money advice, which would mean that they might face hardship once again. I am concerned that people should not be put through such hardship.

David Hill: We can all give examples of people coming to us who have tried to go to the citizens' advice bureaux and not been able to get an appointment for five or six weeks. As Maureen Leslie said, people can be put into a debt arrangement scheme completely free of charge through a money adviser, but a lot of people choose to pay insolvency firms because they can do it immediately and there is no wait. There is very much a time issue, in that respect.

Mike MacKenzie: Maureen Leslie mentioned that the evidence on the American experience with money advice and education is somewhat inconclusive. Are you familiar with the work of Professor Warren in America, Ms Leslie? Would you agree that you are not comparing apples with apples when you try to draw a comparison with the situation in the US?

Maureen Leslie: Mr MacKenzie, you have got one over me—I am not familiar with that work at all. I said that, as far as I was aware, there had been no evaluation of the success of financial education as opposed to pre-appointment money advice. I was referring to post-bankruptcy financial education, but it would seem that you are better qualified than me to answer that.

Mike MacKenzie: The point that I am making is that the situation with regard to bankruptcy in America is really quite different from the situation in this country. I commend Professor Warren's work to you; she is now a US senator, so you will find her on the internet quite easily. It makes for a very interesting comparison, and you might find it interesting, particularly in the context of this bill.

The point remains that you are not comparing apples with apples when you attempt to draw conclusions from American studies. I hope that you would either agree with me or perhaps go away and do a bit more reading and come back to the committee with some evidence.

Maureen Leslie: I will happily go away and do some more reading.

The Convener: Go and do your homework. [*Laughter*.]

Maureen Leslie: I will make one final point on pre-appointment money advice. Although Mr Malik makes a number of very good points, particularly on delay and the increase in demand, I have been party to many discussions about the bill, and it is clear that that particular provision in the bill is designed to address the mischief of people being railroaded into one particular solution.

As Ms Blackburn mentioned, there is a lot of television advertising, but it is advertising only one solution. The concern of the Office of the Accountant in Bankruptcy is that, unless people receive independent advice about the range of solutions that are open to them, they could be pushed into an inappropriate solution, such as that which Mr McKillop mentioned. To that extent, the IPA supports the provision in the bill for pre-appointment money advice.

10:15

Joan McAlpine: My question is for Mr McKillop. In the written evidence from the Association of British Credit Unions, you talk about a situation in which a person is unable to pay their debt. Often, when someone enters the process of either bankruptcy or trust deed, they do not change their lifestyle to any great extent. You state:

"A situation which allows people to write off debts with no tangible impact upon their standard of living—especially in cases where an unaffordable lifestyle led to insolvency—sends out a very dangerous and morally corrosive message; essentially that 'repaying debt is optional'—a situation which is not only bad for creditors, but is socially and economically unsustainable."

How widespread is that situation at the moment, and how will the bill address it to improve matters?

Frank McKillop: Many credit unions have sent us examples of financial statements that they have received in relation to a bankruptcy or trust deed in which the allowances that the adviser or IP has allowed the individual seem extraordinary. A legendary example in the credit union movement is a case in which someone was allowed more than £300 a month to drive to work every day despite the fact that they lived in Rutherglen and worked in the centre of Glasgow. On top of that, they worked for First ScotRail and had free rail travel.

That example has become legendary, as you can imagine, and a number of other cases have been challenged. Some of our members tell us that people have started eating more as soon as they have become insolvent and that their monthly food bill has increased. The most extreme example that we have ever seen involved a community credit union in West Dunbartonshire. Someone took out a loan and, a fortnight later, they had entered a trust deed without making the first payment on that loan. When the financial statement came through, their monthly expenditure was £1,000 a month higher than was declared on the financial statement that they had filled in when applying for the loan. Such things happen.

We welcome the fact that a single, common financial tool is used in the bill and in the PTD regulations for every debt solution in Scotland. We hope that that will address some of the situations in which bespoke financial tools are being used—financial tools that creditors do not understand. We hope that having a single financial tool that people understand and that is used across the board will mean that entering bankruptcy, a protected trust deed or a debt arrangement scheme will be no better a deal for any debtor, so that they will not be attracted to any of those on the basis that they will pay less if they go into it. Likewise, it could potentially remove competition between providers who might otherwise say, "We'll do your trust deed for £100 a month, whereas they'll charge you £120 a month. Why not stick with us?" A single financial tool would remove the perverse incentives around debt relief and we very much welcome it.

Joan McAlpine: Would other members of the panel care to comment on any of the examples of excess that have been outlined?

Eileen Blackburn: We have been aware of such examples of excess, but I would like to think that those are exceptions rather than the rule. Many firms are already using a standard income and expenditure model similar to those that are used by StepChange and the one that has been developed by the Money Advice Trust. We certainly welcome the use of a single financial statement across the board, for most of the reasons that my colleague has mentioned. As a representative body of insolvency practitioners, we do not condone the behaviour that he is talking about.

David Hill: I endorse what Eileen Blackburn has said. However, those are extreme examples, although I do not deny that they have happened. The vast majority of people who are in difficult financial situations before they go into bankruptcy are still in fairly difficult financial circumstances when they are in it—they do not suddenly get extra money from somewhere. I do not think that we should be looking for people who have become bankrupt to reduce significantly their standard of living—that would be very detrimental. Some of Frank McKillop's wording could perhaps have been better.

Joan McAlpine: You say that people should not have to reduce their standard of living, but if they are already enjoying a luxurious lifestyle should they not be expected to reduce their standard of living significantly?

David Hill: Yes, although that would be an extreme example. The vast majority of people who go bankrupt are not enjoying a luxurious life in any shape or form. A look at 99.9 per cent of my files would assure you of that. Someone living in luxury is the one-in-1,000 case, and they obviously should reduce their standard of living, but the vast majority are generally struggling to get by.

The Convener: As some of the questions are directed at your submission, Mr McKillop, it is fair to give you the chance to respond. Your written submission mentions the common financial tool allowing for luxury items such as satellite television and the preservation of a heavy smoking habit. Do you have evidence that people are being allowed to have money to spend on such things?

Frank McKillop: Examples of that have been provided to us by credit unions. We certainly do not want anyone to be pushed into hardship; that is not the point that we are making. There is another example, from a credit union in South Lanarkshire, of what can happen if people do not protect their social media profiles well enough. The credit union googled someone who had entered a protected trust deed and found that they were posting photos from the holiday that they had gone on with the loan that they had just written off to the credit union. There are situations like that—and I agree with Mr Hill that those cases are in a minority, but they do happen—and the whole point of legislation and regulation is to stop such abuses occurring. That is certainly our perspective on it.

We do not want people to be forced into hardship, of course, but there are situations in which the people in debt have a better lifestyle than the credit union managers have, and the financial statements presented in the past have allowed them to maintain that. If you have got yourself into a situation where you cannot pay your debts as they fall due, it makes sense to pay something back to creditors. I return to the point that creditors expect something back when someone becomes insolvent. We recognise that there are cases where nothing can be recovered, but in cases where something can be recovered we expect something back, and to pay something back to creditors generally involves cutting back on spending elsewhere. In many situations, people are able to do that, and we would like them to be given a nudge towards that, whether that means cutting down on smoking, TV choices or other leisure choices, so that they can give some sort of payment to creditors to recognise the fact that they owe an awful lot of money and, even if they are not going to pay it all, they will pay something and will cut back on their lifestyle to accommodate that.

Alison Johnstone: The credit unions are strongly putting across the message that we must not accept debt as something to be taken lightly and that we should take our responsibilities seriously. There does not seem to be a great deal of concern about extending the repayment period, although Mr Hill has suggested that most people who are in debt are suffering badly and that times are really difficult for them. Are there any concerns about the period? Mr McKillop, you obviously feel that extending the period sends out the strong message, "You owe this money and we expect you to pay it for as long as possible." However, there are also concerns that it might be more expensive to continue to pursue the debt for longer.

David Hill: One thing to remember is that when you go into a bankruptcy you no longer have to make the payments that you were making to your creditors, so you can afford to make a contribution without having to reduce day-to-day expenditure. You might have been paying £200 or £300 on your loans up till then, and you no longer have to make those payments once you go bankrupt, so in theory you have £200 extra a month. Obviously, you do not have £200, because you could not afford what you were paying before, but you can afford to pay something and we certainly support the proposal that someone who can afford to pay, should pay. As Frank McKillop says, creditors are due to get something back, where possible. If a debtor cannot afford a contribution, the financial tool will ensure that they will not make one, but if they can afford to pay, they should do so.

The question of how long they should pay for is obviously complicated. The bill suggests that the period should be extended to four years, which does not seem unreasonable. The period is currently three years for a bankruptcy and extending that to four years is not a major change. Perhaps the balance is more towards the creditor's view that people who can pay, should pay, and perhaps creditors would get slightly more back.

Margaret McDougall (West Scotland) (Lab): One of the main changes in the bill is the change from the low-income, low-assets route to the minimal asset procedure. The MAP involves a six-month discharge period, which we have been told in evidence is inconsistent with the other options that are available. Eileen Blackburn felt quite strongly about that in her submission, so I ask her to comment.

Eileen Blackburn: We just feel that a six-month discharge period is simply too short. We do not see why, in a MAP situation, the discharge period should be any different from the period for a normal bankruptcy. Six months seems an unfeasibly short space of time.

In the previous consultations, we felt that, in many cases, 12 months was too short a discharge period, but that is the period that we now have. We see no reason why, under the MAP system, it should be just six months.

David Hill: I think that there is a bit of confusion about the purpose of the MAP and LILA. When LILA was brought in, it offered people a new route into bankruptcy. It was designed to alleviate the situation in which it was difficult to become bankrupt because there was an insufficient number of routes into bankruptcy. When the certificate for sequestration came in, which meant that any money adviser could sign a certificate that allowed someone to go bankrupt, there was no need for LILA. There is no need for people who go bankrupt to be treated differently. If they cannot afford a contribution, they do not pay one. My view is that there is no need for the MAP at all. Someone who enters bankruptcy and who cannot afford to pay does not pay. We do not need a special process for that; it just complicates the issue. That has led to some confusion about why the MAP has been proposed.

Margaret McDougall: I wonder what Frank McKillop's view is on that.

Frank McKillop: Generally, we do not take a position in such situations. When, realistically, nothing can be recovered for the creditors, we have always been reasonably relaxed about how that is approached under the law.

Margaret McDougall: So, is it the case that you believe that the change from LILA to the MAP is not required? Do you think that it is an option that should just not be there?

Eileen Blackburn: As David Hill said, LILA was introduced to allow people who were suffering extreme distress and who had no route into bankruptcy—people with very low incomes and no or virtually no assets—to have access to bankruptcy but, as he pointed out, there is now the certificate for sequestration route, which opens the door for anyone who needs that type of debt relief. We have not commented on whether we feel that the MAP is necessary, but when we appeared before the committee last week there seemed to be a bit of confusion about what the purpose of it was, even among committee members.

Margaret McDougall: Thank you.

The Convener: To go back to what Mr Hill said about the MAP, is not the point of it that the administration costs will be lower?

David Hill: Yes, that is the point, but they will be lower only because less work will be done. Creditors will receive virtually no information at all. They will get one letter that says that they will get nothing, that they should close their file and that they will not be written to again. That is how costs will be saved. That might be deemed to be the right way to proceed, but part of the point that I am making is that a bigger issue is that debtors in those circumstances will not be able to afford the fee—even if it is £100 rather than £200—that might be proposed for the MAP. It might be better to use any savings to make it possible for those people not to have to pay a fee.

I think that, in general, the MAP will just lead to confusion. The detail of it, whereby someone is discharged after six months but has restrictions imposed on them for 12 months, is even more confusing. There is a general difficulty with the MAP.

Margaret McDougall: You said that the alternative would be a certificate for sequestration.

Eileen Blackburn: That is simply the route into bankruptcy. It used to be quite difficult for debtors to petition for their own sequestration. They had to have a charge for payment or something similar to establish that they were apparently insolvent. That was recognised as a big issue. We were still hearing stories last week about money advisers who have drawers full of cases in which people are unable to apply for bankruptcy because they do not have the requisite £200. In the old days, it did not matter how much they had available, they had no route into bankruptcy. LILA was introduced for the very poor members of the community who were really struggling and could see no way out.

10:30

Margaret McDougall: But you—or it might have been David Hill—said that you debated not having the MAP at all, because someone would just get a certificate for sequestration. How much does that cost?

David Hill: The certificate itself does not cost anything, but there is still the application fee. As I understand it, the certificate is just one of the routes that qualifies someone to become bankrupt. The LILA route was brought in because people could not become bankrupt. The certificate was brought in later so that a person did not need to qualify for the LILA rules to become bankrupt. It sounds confusing and it is confusing. That is part of my point.

Margaret McDougall: What I am trying to get at is how much it would cost someone to get the certificate.

David Hill: It does not cost anything to get the certificate. It still costs £200 to apply for bankruptcy.

Eileen Blackburn: The certificate is an instrument that is provided by a qualified money adviser. Someone signs a form to say, "This person is insolvent." Once they have the certificate, it allows them to apply for bankruptcy.

Dennis Robertson: This may be a question for Ms Blackburn. The bill proposes a moratorium period. Do you support that?

Eileen Blackburn: We supported the idea that if we are looking for commonality across the various processes, a six-week moratorium period might be appropriate. However, we felt that it might be a bit confusing and we wondered how it would interact with the provisions of section 37 of the 1985 act, which deals with diligence. It is perhaps a somewhat technical point.

Dennis Robertson: Just a bit. Does anyone else have a particular view? The moratorium period gives a bit of breathing space, does it not?

David Hill: I think that it does. We would not be against it at all. It might not be used in a lot of cases but if it helps some people, we would not be against it.

Maureen Leslie: The IPA supports that.

Mike MacKenzie: I want to recap briefly. Mr McKillop said that he was quite strongly in favour of the common financial tool. Do other witnesses agree with that being brought in to use?

Witnesses: Yes.

Mike MacKenzie: Thank you. That is useful.

The Convener: If there are no further questions, we will call it a day. Thank you for coming in to provide the committee with evidence.

10:33

Meeting suspended.

10:44

On resuming—

The Convener: I welcome our second panel of witnesses: Martin Prigent, head of insolvency management at TDX Group; Mike Norris, executive director of MAX Recovery; Donald McKinnon, partner at Wylie & Bisset; and Alison Anderson, insolvency director at Armstrong Watson. Thank you for joining us.

You might have heard some of the evidence from the previous panel. Similar questions will come up in this evidence session. I remind members to keep their questions short and to the point. As we have quite a large panel, it would help if members directed their questions to a particular individual. If a panel member would like to respond to a question that someone else has answered, please catch my eye and I will let you have your say as time allows.

I will start by asking a question that we put to the previous panel about the Accountant in Bankruptcy reviewing her own decisions. Is that an appropriate change to make in the bill? There is a concern that that might represent a conflict of interest. Previous panellists have said that it would be better to leave that to the courts, as the position currently stands. Alison Anderson said something about that in her submission. What are her concerns?

Alison Anderson (Armstrong Watson): Our concern is about the conflicting responsibilities of the Accountant in Bankruptcy. As policy advisers, they put new policy in place but, as a result of being appointed as trustee in cases and making decisions regarding those cases, they deal with management and debt relief services as well.

In our professional life, we are not allowed to have conflicting interests in what we do. If the AIB is involved as an adviser and a supervisor, by taking fees in respect of cases when it initially dealt with the policy of those cases and by being involved through to the discharge procedure, there is a conflict of interest.

The Convener: Does anyone else on the panel agree?

Donald McKinnon (Wylie & Bisset): I am happy to agree with Alison Anderson.

Mike Norris (MAX Recovery Ltd): I would first like to give some of my background. Prior to working for MAX Recovery, I worked for 23 years in the AIB's equivalent in England and Wales, so I am slightly biased. However, I agree with what Mr Robertson said in the previous evidence session. There are people in the civil service who can make such decisions—that is not an issue.

The conflict issue is a bit of a red herring. We can see conflicts everywhere. The key question is how we identify and deal with those conflicts.

I have no real issue with the AIB acting in the proposed way, but I have two provisos. First, the AIB needs to be properly resourced to carry out the function, which raises the question of how the function would be funded. Secondly, adequate checks and balances are needed to ensure that anything that the AIB does is done in the correct manner. There is a bit more work to do on that.

I have no issue with IPs undertaking advice and the case, as long as there are proper checks and balances, which must fall to their regulator. That seems to be quite an efficient way of carrying on, in which someone with knowledge of the case takes over that case straight away.

Martin Prigent (TDX Group Ltd): I would tend to agree. I certainly acknowledge the concerns about a conflict. As Mike Norris said, there are ways to mitigate those concerns. A creditor normally looks to the regulator to provide an unbiased and balanced position. If the AIB was trustee in some cases, I would question whether that would be provided.

The Convener: We heard a suggestion from the previous panel that an independent review body might be established. Would you favour that? Is it necessary?

Martin Prigent: I would certainly be in favour of that.

Mike Norris: I am agnostic about it. I cannot see it doing any harm, but I am not convinced that it is absolutely necessary, provided that there is a route into the court for appeals. There should be something—I do not quite know what that something would be, but maybe a panel would be fine.

Mike MacKenzie: I have a question for Alison Anderson. Does the AIB have a history of making bad decisions? Is that what gave rise to your concern?

Alison Anderson: The bill does not identify how we can mitigate the effect of the conflict that we consider arises. The bill moves further into the depths of a potential conflict issue but, as Mike Norris indicated, it does not deal with how we will resolve those issues.

Mike MacKenzie: Mr Norris said that there can be conflicts of interest, and we are having a general discussion about that. The whole area seems to have a number of potential conflicts of interest. Is it purely a theoretical concern that conflicts of interest—even the merest hint of a conflict—should never be condoned in any circumstances, or is there substance behind the concern to suggest that the AIB is not very good at taking such decisions? A yes or no answer would be fine.

Donald McKinnon: I suspect that the concern arises from the culture that we have grown up with in our profession and the ethical guidelines and rules that we have worked with for the past 20-odd years.

Mike MacKenzie: Do courts sometimes get it wrong? Do they occasionally make mistakes?

Alison Anderson: Different sheriffs make different decisions. That is an issue; it happens and it gives us, under the Accountant in Bankruptcy, some issues to deal with. One sheriff can make a decision on something and another sheriff can make a different decision.

Mike MacKenzie: Courts sometimes make mistakes, but there is a perception of a conflict of interest for the AIB. Perhaps there is not really a clear and easy answer.

Alison Anderson: I do not think that there is a clear and easy answer.

Hanzala Malik: Good morning, panel. Thank you for joining us. Mike Norris made a comment about conflicts of interest. He comes from the industry and he suggests that the AIB can deal with such issues. I, too, am sure that it can, but when there is a conflict of interest and money is involved, it is prudent not to go down such a route for all parties concerned—not just the industry but the applicant and the client.

What has been said about historical principles is right. We in the UK are proud of having a clear ethical stance. We tend to be transparent and clear in our dealings, particularly when it comes to money and financial resources. It is therefore important that an independent body makes a judgment rather than the service provider going back and making its own judgment—and charging us for it as well. There is a serious issue with that ethical stance.

I am not suggesting that the AIB is not capable of making decisions. In suggesting that courts make mistakes as well, we are just going down a slippery slope in the blame game. We need to ensure that we have in place a system that is fair and absolutely transparent and which has no conflict of interest for anybody, so that no one can be accused of anything in the future. That is important. If we are trying to save the courts time, there is no harm in setting up another independent arbitration organisation—that is probably a better solution.

The Convener: Hanzala, are you coming to a question?

Hanzala Malik: My question is: how can absolute transparency be guaranteed when a body is making a judgment on something that it has already delivered?

Mike Norris: I honestly do not think that that can be guaranteed. I have no issue with anything that you said about fairness and transparency. That was absolutely correct.

My point is that, as a creditor, I do not really care who reviews the decision—who the independent reviewer or other reviewer is—as long as that is done fairly, transparently and cost effectively because, ultimately, the cost of such things falls on the creditors, no matter how the review pans out. Perhaps an independent review body is the way to go. I can honestly say that I have not really given any thought to how reviews should be done. If the Scottish Parliament decided that reviews were to be done internally at the AIB, that would not intrinsically cause me a problem, as long as I was satisfied that there were proper checks and balances.

Hanzala Malik: Martin Prigent has heard Mike Norris's answer about his position. Do you agree with it?

Martin Prigent: If we drew on a blank piece of paper what the system needs to look like, we would probably draw a regulator that is completely separate from the people who provide the services, which would produce something that is completely unbiased and balanced. We are not quite there, because this thing is already in process—we live in quite a complex process. However, I would like us to move to that blank-piece-of-paper approach and have a regulator that is separate from the service provider.

Hanzala Malik: That was very helpful.

Dennis Robertson: I will direct my first question to Donald McKinnon. I said that I suspect that the AIB has people with the appropriate knowledge and professional skills to take things forward in the way that has been suggested. We are looking at the bill's general principles; we are not delving into the absolute detail at the moment.

Do you accept that, given what it has said, the AIB will be able to resource and provide the transparency and fairness that Hanzala Malik referred to, after we have moved through the different stages of the bill? The AIB has given us an assurance—I think that it used the word "independent", although perhaps it cannot be independent—and it believes that its people are the right people to do the reviews.

Donald McKinnon: Independence is largely based on perception. If the perception suggests otherwise, there could be a conflict of interest.

Dennis Robertson: Whose perception?

Donald McKinnon: The creditor's perspective. There may or may not be a public perception that there is a conflict of interest but, if there is, there is no way to alleviate that.

The skill set exists, but I have worked practically with the AIB and I know that the skill set generally only applies for a period, after which it moves on to another area in the Government. At the moment, I believe that the AIB does not have a qualified insolvency practitioner. It had one, but they have moved on.

I have worked with the AIB for a number of years and recently under contracts 1 and 2 of its insolvency service provision. It seems that, when an individual gets to a certain level in the AIB, they move on—for whatever reason of career progression—and we have to go through the cycle again.

Dennis Robertson: In evidence last week, the AIB assured us that it would resource the measure, was moving towards it and would ensure that the checks and balances were there. Do you not accept that?

Donald McKinnon: That might be the case, but I can only act on statistical information from when I have practically dealt with the AIB over the past six years.

Dennis Robertson: So you do not agree with the general principle. That is what I am getting at.

Donald McKinnon: If the AIB is able to deliver, that is fine, but—

Dennis Robertson: So you agree with the general principle.

Donald McKinnon: If the AIB can deliver it.

Dennis Robertson: That is fine—thank you.

Alison Johnstone: A witness last week suggested that, if we were discussing whether there was a conflict of interest, there was already a conflict of interest. Do you share that view? It seems that the public are always unhappy when they see an organisation tasked with investigating itself, because it does not have the required separation. Do you agree that, regardless of how many firewalls there are, whether the system is set up with the best of intentions and even whether it works entirely independently, smoothly and as we would wish, it will never have the trust that it needs?

Donald McKinnon: If there is a conflict, there is always an opportunity for the insolvency practitioner to resign and be replaced by another, although I am not sure how that would work in practice.

11:00

Alison Johnstone: Does Mike Norris agree?

Mike Norris: Yes. There is always a problem with public perception. The view that I gave is the perception of someone whose company works in the insolvency industry and who works closely with the AIB, so we have some knowledge. For me, that perception is not there, but I absolutely agree that the wider public perception will be such that people say, “That can’t be right.”

The Convener: I bring in Mark McDonald to ask about a different subject.

Mark McDonald: You might have heard our discussion with the previous panel about money advice and financial education. I will return to those topics because there is a range of views on them in your written evidence.

Mike Norris’s submission raises a question about the effectiveness of financial education. I freely admit that I am not as well read as my colleague Mike MacKenzie is on the US example, but I note that you mention it and a number of papers on it. I am not sure whether you have read the work that Mike MacKenzie mentioned, but perhaps you could explain the rationale for your view. Will you also address my colleague’s point that to take the US scenario and transplant it to the Scottish situation might not be the most helpful of comparisons, as it does not compare like with like?

Mike Norris: On comparing apples with apples, I was in the policy side of Government for about eight years in a previous life and I believe that using other regimes’ experiences is commonplace and sensible. We have to be careful about dropping what is done in the US or anywhere else on top of any other nation state, because there will be local reasons why a measure might not work there, but I do not necessarily agree that we cannot make a valid comparison. We just need to recognise the differences.

I know the work of Elizabeth Warren. She was a co-debtor advocate—with Karen Gross, whom I mention in my submission—on a committee that looked at the Bankruptcy Abuse Prevention and Consumer Protection Bill about eight years ago. Karen Gross is now the president of a community college; her career has not progressed to the same extent as Liz Warren’s who, between times, was the initial head of the Consumer Financial Protection Bureau. I absolutely agree that Liz Warren speaks a lot of sense.

I have no problem with advice when people go into insolvency. It is absolutely right that people should have to seek proper advice before they make what is a fundamentally life-changing decision in some instances, so I have no problem with pre-insolvency advice.

My issue is with post-insolvency advice, and specifically with tying it to discharge and making it mandatory when it should be a matter of debtor choice. The argument was rehearsed earlier that not everyone necessarily needs advice. People fail for valid reasons and they might not benefit from that advice.

I will explain why I used the US experience as an example and I will take a minute or so to explain what was done in the US, because that might be useful information. The US introduced a system whereby people have to get advice when they go into and come out of bankruptcy. That was done by putting in place a maximum chargeable fee of $50 and requiring advice to be provided by the bankruptcy trustee. In my experience, if we tell an IP that they can charge up to $50, they will charge $50. That is what happened, and eventually that became a de facto cost in bankruptcies.

The problem is that, for $50, people do not get much advice. Most US trustees have a computer terminal in the corner of their office and, after the debtor has done what they have to do, the final thing that they will do is sit at the desk in front of the computer terminal, unsupervised, and go through an online course. They click the buttons and get a certificate, and that is it done. To my way of thinking, that is completely and utterly pointless, and if you talked to US trustees, they would say the same. That is the position that Karen Gross took when she was on the US committee. She went into the committee whole-heartedly supporting mandatory advice and came out of the process whole-heartedly against it because of what was put in place.

I accept that Liz Warren’s mind was not changed. She stuck to her principles and maintained that advice is a good thing. The problem is that, if it is to be done, it must be done well, and to do it well is not cheap. As a creditor, my concern is about who will do it. I understand that it will be done in the money advice sector. That is fine, but someone has to pay for that advice. In this day and age, where that money will come from is a concern because, if it does not come from the Scottish Government, it is likely to come out of estates, which means that it will come out of creditors’ pockets. As there is no body of evidence that whole-heartedly says, “This is a good thing and it works,” that is a bit of a risk.

Mark McDonald: I hear what you are saying and take your point. Do you consider that the principle is flawed? Alternatively, do you believe that the requirement for financial education is a good principle and that it is how it is executed in practice that is key? The latter point would have to be followed through in post-legislative guidance.

Do you contend that you do not oppose the concept of financial education? I take the point about debtor choice, but the flip-side is that the debtors who require financial education the most are often the ones who would not choose to have it. Is your point that the principle is not flawed and that it is how it is executed in practice that will be the acid test?

Mike Norris: My point is that I agree with the principle of financial education but not with the principle of mandatory financial education, because it is a waste of resources. We have to be realistic. If it is going to be done, it will need to be paid for, so to have people going through such education and incurring costs when they do not need to is, to be blunt, a waste of money and probably a waste of their time.

Debtor choice was probably the wrong phrase and a bit of a flip phrase to use, because you are right that, if a debtor is given a choice, he will say, “Do you know what? I don’t need it—I’m not going to go.” Targeted referral would be better, because someone has to take a view. The AIB, the trustee or whoever should look at the facts of the case and say, “Why did you take out that ridiculously expensive payday loan”—I do not know whether any payday lenders are in the room—“when you could have gone to a high street bank?” Whatever the reason was, somebody would look at the facts of the case and say, “That individual needs financial education.” That is fine and I have no problem with that, but to say that everyone going through a system should have such education is, to be blunt, almost a lazy way of approaching the issue.

Martin Prigent: I will echo some of Mike Norris’s words. I have no knowledge of the American system, but the computer in the corner of the room sounds quite interesting.

The outcome that we are trying to achieve is to rehabilitate the debtor so that they become a financially functioning individual again, which is to everybody’s benefit. If we ask the debtor, that is what they want, and if we ask the creditor, that is also what they want, because markets are competitive.

An important component is the solution. I agree that education being part of the solution is quite important but, if the right solution is in place and the debtor is working to achieve that over four years or whatever the period might be, that gives the debtor quite a large amount of education about how to manage their finances. It is quite a good point that the solution should rehabilitate the consumer.

Mark McDonald: Obviously, there is the prior money advice and there is also the financial education. We heard evidence about the ability of insolvency practitioners to dispense money advice and we heard ABCUL apply some caution to that notion. First, should insolvency practitioners be included in the list of organisations that can provide money advice? Secondly, what distinguishes them from the other organisations that currently deliver money advice? Thirdly, if our committee recommends that insolvency practitioners should be included in the list of those who can dispense money advice, should we include a safeguard similar to ABCUL’s suggestion that any insolvency practitioner giving money advice should be prevented from handling the insolvency or bankruptcy of the individual being advised?

What are the views of the panel on those points? Perhaps we can start with Alison Anderson and work along.

Alison Anderson: Clearly, I agree that insolvency practitioners should be included in the list of money advisers. We are highly regulated, experienced and highly qualified to give that money advice. The first point is that we should be on that list.

Donald McKinnon: Almost mirroring what Alison Anderson has said, I agree that we should be on that list. We are probably the most heavily regulated money advisers out there. We are subject to self-conformity to whatever organisation we choose to be licensed through.

I have absolutely no doubt that financial education should be provided at some point, but it certainly should not be at the point of discharge. If there is an appetite and a budget to deliver financial education and training, it should take place further down the food chain at a point before the debts are incurred. Having worked closely with the Accountant in Bankruptcy under contracts 1 and 2, I have called off in excess of 4,000 cases in the past four years. On a very rough analysis of those cases, probably about 50 related to repeat offenders. Therefore, I just ask whether education would have helped the other 3,950 people.

Mike Norris: I think that insolvency practitioners should be on the list of organisations that can provide money advice. What distinguishes insolvency practitioners? To be flippant, not a lot really. There are some money advisers out there who are very good at identifying the right option for individuals and signposting them in the right way.

Equally, there are some very good IPs out there who can do that as well as the money advisers.

As has been referred to, there is a level of regulation that sits above insolvency practitioners. To be frank, I would like to see that go further and really test the quality of the advice decision, because IPs would be put in an even stronger position if regulators considered not just the progress of a case but how the debtor went into that case. That would be difficult to do, because the issues can be subjective and the IP does not have the benefit of hindsight, but I would like to see some effort on that.

On safeguards, the issue comes back to the need for proper regulation by regulators who are aware of what is going on. If we said that IPs could not take on such cases, my concern would be that cosy arrangements might arise whereby people might say, "Okay, I will not take the case, but Fred down the road will take it, and I know that I will get his cases." There would still be scope for abuses, although I do not think that that would be widespread.

I also wonder whether something else could be done in the six-week moratorium period. I am not quite sure how that would work if people had already acted on the advice when they entered the moratorium, but perhaps some sort of cooling-off period could be built in. If the advice is, "Go into sequestration or bankruptcy with me," there should be a cooling-off period before people act on that advice, so that they can go away and reflect on it and talk to a CAB if necessary.

Mark McDonald: Essentially, there should be the potential to seek a second opinion.

Mike Norris: Yes.

Martin Prigent: My organisation sits between advisers or debt solution providers and creditors, so cases come to us from a wide variety of providers of debt management advice, including the charity sector and the free advice sector as well as insolvency practitioners. In all those different sectors, we see examples of great compliance and great advice to the consumer, but we also see exactly the same failures as well. It is not necessarily the case that one group is any better than the other—I am fairly agnostic on that. As Alison Anderson and Donald McKinnon said, the fact that IPs are heavily regulated should transfer into making people confident and comfortable about the proposals that have been put forward. I do not think that IPs would be any worse or any better than anybody else out there.

11:15

Chic Brodie: I would like to follow on from Mark McDonald's points and seek clarification, if I may. In the previous session, we were told that IPs give money advice for an hour and there will be no charge. I think that I heard Mr Norris say that such advice would take a fair amount of time. Is it charged for? Do you charge for money advice?

Mike Norris: I am not an IP.

Chic Brodie: Does that happen to your knowledge?

Mike Norris: I am probably the wrong person to ask. I do not think that I mentioned anything about IPs giving advice for an hour. That was certainly mentioned in the previous session.

Donald McKinnon: To be honest, it takes as long as it takes.

Chic Brodie: And is it free?

Donald McKinnon: Yes.

The Convener: Does Mike MacKenzie have a question on the same point?

Mike MacKenzie: It is on a similar point. Earlier, we heard from the Association of British Credit Unions. In its written evidence, it said that there are IPs that are known on the street to give good deals that afford people with debt problems the ability to continue with a high-flying lifestyle after having gone through an insolvency or debt advice process. I have some constituency or regional experience of that. Are you aware of that happening? From what you have suggested about the regulation of the industry, surely that would not be possible.

Donald McKinnon: I have been involved in a couple of high-profile cases. There is always a certain public perception that arises because creditors are quite happy to suggest that somebody is driving a particular vehicle, but in reality that individual may not own that vehicle. It could be owned by a third party or whatever. There is an automatic assumption that the person owns a vehicle if they are seen to be driving it, but nine times out of 10, that is simply not the case.

Mike MacKenzie: Are you suggesting that the credit unions are entirely wrong?

Donald McKinnon: I am not suggesting that they are entirely wrong. Again, it comes back to perception. Every case is judged and treated on its own merits. Insolvency practitioners are heavily regulated, and most firms are internally and externally regulated. I have worked in the profession for over 20 years, and I have never seen so much regulation in all my life.

Mike MacKenzie: Okay. Is it perhaps because IPs, companies, partnerships or whatever are overregulated that it seems that they are constantly breaking up and being bought and taken over by others to the extent that it is sometimes almost impossible to follow a particular case, as the company has been bought several times and the people who are dealing with the case have changed? Is it because the companies are so heavily regulated that they do not seem to be able to survive as businesses for very long?

Donald McKinnon: To be honest, I am unaware of lots of firms breaking up and moving on.

Alison Anderson: That happens because of the world we live in, but I do not really see the relevance.

Donald McKinnon: Most often, the cases would be transferred with the practitioner.

Mike MacKenzie: Yes. It just seems that there is a lot of that happening, and perhaps that makes it difficult to regulate.

Donald McKinnon: The cases and regulation would be transferred. Whoever a person chooses to practise under the banner of is almost irrelevant.

Alison Anderson: The IP is regulated.

Mike MacKenzie: Yes, but IPs leave and no longer deal with cases. Somebody else will take them over, and they will then leave. That seems to be rife in the sector.

The Convener: I am not sure how relevant this discussion is to the bill, Mr MacKenzie.

Mike MacKenzie: We talk about perceptions, including public perceptions, quite a lot. As has quite rightly been said, it is sometimes difficult to separate anecdotal evidence from widespread practice, and that is the area that I am trying to explore. I am suggesting that all areas that relate to the difficult business that we are discussing are subject to the same perceptions and that nobody is seen as being absolutely reliable.

Mike Norris: Answering that question from a creditor's perspective, I point out that, as a bulk creditor, we have thousands of trust deed cases and that, given that it is important for money to come back to us, we want this to happen. The idea that a large number of debtors out there are playing the system is a fallacy. We just do not see it. I will be interested to hear Martin Prigent's view on this; there are certainly some debtors who play the system, but I would have to say that they are not the majority or even a significant minority. I honestly believe that the vast majority of debtors are in their position through no fault of their own and, in the vast majority of cases, IPs generally do an okay job in coming up with a reasonable level of repayment of debtors. It could be higher but, as a creditor, I would always say that.

Mike MacKenzie: That was very helpful.

Margaret McDougall: On the resources that are available for money advice, we have heard evidence that money advisers, particularly in the voluntary sector and local authorities, are being stretched at the moment. Given that that situation is not likely to improve, should IPs be available to give money advice? The voluntary sector is certainly under a lot of pressure. There are long waiting lists, and people who phone up Citizens Advice Scotland find themselves having to wait for appointments. The same is true for money advisers in councils; sometimes you cannot even get through on the phone. Because of that demand, should IPs give money advice?

Donald McKinnon: On a practical level and from a commercial point of view, the insolvency practitioner is generally available seven days a week and can visit individuals almost everywhere. Having worked in and been a chairperson of citizens advice bureaux, I can see the situation from both sides of the table. Bureaux have different protocols and will, for example, book two people in the morning and two people in the afternoon, whereas a similar commercial practice is able to see more people. It is not that the commercial practices are churning people; they simply have more staff and a different, more commercial attitude to seeing individuals.

Margaret McDougall: Yes, but there are no resources for money advice in the bill, which implies that it would be free. Is that the case for independent money advisers?

Alison Anderson: Yes. Insolvency practitioners should be on the list of money advisers for all the reasons that have been highlighted. As Donald McKinnon has said, commercial businesses such as Armstrong Watson and Wylie & Bisset see a lot of people who are looking for advice, and the advice that they give is free. People make an appointment and come in and the process takes as long as it takes.

Margaret McDougall: So the appointment does not last only an hour. People can go back and see you again.

Alison Anderson: It takes as long as it takes. You have to bear in mind the circumstances of individuals who come into our office and the huge amount of effort that it has taken for them to realise that they have a problem. As you have said, they have not been able to get through to various bodies on the phone; they have taken the plunge, have made the call and have been let down. We pick up their call and run with their case. We give them advice and, in fact, simply let them tell their story; after all, letting someone else hear their story very often makes it easier for them to see the wood for the trees.

Margaret McDougall: What do you think of the previous suggestion that financial education be part of school education?

Alison Anderson: Starting this sort of thing very early on at school is an excellent idea. However, I agree with Donald McKinnon about the low number of cases where financial education might have helped. I have administered approximately 2,000 cases since 2004 and believe that such education would have helped only in a very small percentage of cases. It is a minor issue.

Margaret McDougall: Mike Norris mentioned a computer system in the US. How would that sort of thing be provided in Scotland if we went ahead with it?

Mike Norris: The evidence that we have just heard has been very useful. I was not, for example, aware of the proportions of people who might need financial education but, if money was going to be spent on this sort of thing in Scotland, I would rather see those 50 people get really in-depth financial education that might involve face-to-face, computer or remote learning. Scotland might have its own peculiar issues with delivering that type of education, given the number of people who live on remote islands and so on. If you are going to do this, it needs to be targeted. If these are the proportions that we are talking about, you could probably construct a very effective financial education course.

Margaret McDougall: Of course it all comes back to resources. Given the pressure that the voluntary sector is under, who would provide this financial education? That is certainly not made clear in the bill.

Donald McKinnon: It should not be linked to discharge. As the numbers show, we do not have an issue with repeat offenders because of a lack of financial education.

Mike Norris: I absolutely agree with Donald McKinnon about getting financial education before discharge—I simply cannot see the rationale behind such a measure. I suspect that the people who need financial education are those who are least deserving of punishment. They might just be financially inept and it seems unfair to punish them by delaying their discharge.

The Convener: I call Joan McAlpine.

Joan McAlpine: My question is not about financial education, convener.

The Convener: That is fine. I think that we have dealt with that issue.

Joan McAlpine: You might heard the previous panel's concerns about the profits made by the insolvency business and I know that you touched on the matter when you talked about regulation. My question, which is for Alison Anderson, concerns an example from my constituency of what could be viewed as that kind of profiteering. Two years ago, dgArts in Dumfries went into liquidation and it has taken two years for the liquidator, Armstrong Watson, to come up with any deal for creditors, many of whom are artists living on the margins. You recently told them that they would get 12p in the pound, but your hourly rate is £177. One of my constituents, Rab Wilson, was owed £1,200 but his payout will be only £144, which is less than what Armstrong Watson charges in an hour. Do you consider that to be fair or an example of why the industry needs to be regulated?

The Convener: The member is entitled to ask whatever question she wants and the question itself is relevant to the subject in hand. I appreciate, Ms Anderson, that you might not have come prepared to answer that question, but if you want to do so, it is entirely up to you. Please do not feel that you have to.

Alison Anderson: I would prefer not to, but I could have a discussion with Joan McAlpine after the meeting. I have to say, though, that there was a very good reason why the process took two years. It was all to do with an insurance claim.

The Convener: The details of the case are not of particular interest to the rest of the committee so perhaps the issue should be discussed separately.

Do you have another question, Joan?

Joan McAlpine: I just think that when a creditor gets less than the insolvency company's hourly fee, there is something badly wrong with the industry.

The Convener: I think that you have made your point.

Mike Norris: I am happy to address this issue, and I am sure that Martin Prigent will be happy to do so as well.

I speak as a creditor with a lot of cases. I am going to do a very risky thing and compare Scotland with England and Wales; as a proportion of the total, fees are significantly higher in trust deeds in Scotland than they are in individual voluntary arrangements in England. There has to be some reason for that—after all, they are not that different—and a lot of the AIB's work on reforming trust deeds will help in that respect. Percentage realisation with regard to fees is also a good thing. You are right to raise concerns about fees, but I think that pressure is being applied and stuff is going on that will deal with the matter. It concerns creditors generally. The fact is that some firms are better than others and I do not think that we should tar all IPs with the same brush.

11:30

Martin Prigent: I echo that. There has been constant criticism about the fees for quite a long time. That will have come across strongly in all the creditor evidence that the committee has received. Creditors have now engaged with the industry on this—with the trust deed working group, for example, on the regulation—and there is a lot more engagement by creditors. To be fair, at any point creditors can try to control fees on cases; they just need to understand their rights and what they can and cannot do.

Donald McKinnon: Perhaps fees should not always be mixed up with profit. There are an awful lot of running costs in an organisation. Software licences are required in order to be compliant with the regulator, and the average cost of those is £850 per user. Although fees may be high, profits could equally be low.

Dennis Robertson: My question is directed to Mr Norris, who brought up the issue of a moratorium. Many people get into debt through no fault of their own—it is down to circumstance. As has been mentioned, it could result from the loss of a job or unforeseen bills that they find themselves not in a position to meet. Often, the adverts on television get them to try a quick fix that does not work. Do you support the general principle of a moratorium? If so, why?

Mike Norris: I can answer your first question very quickly: yes, I do. In answer to your second question, I go back to the point about breathing space that was made earlier. A moratorium allows the debtor to get their head around what they are going into, which is a fairly complex and traumatic experience for them. I am struggling to come up with a definite reason, but it just feels right to have a moratorium up front to allow things to progress and to allow everyone to get their head around the process. I appreciate that that is not a very satisfactory answer.

Dennis Robertson: Does it, to some extent, enable the process of money advice education?

Mike Norris: Absolutely. All those things can be done in that period.

Dennis Robertson: Are there any other views on the moratorium?

Martin Prigent: Creditors work to their own moratoriums, to an extent. A lot of creditors will now give debtors a certain amount of breathing space before they enter a debt solution if the debtor mentions that they are struggling. It is an issue that is recognised by creditors, which is good news for debtors who need breathing space. There is a quite complex process of bringing a lot of things together in a short period of time, and the moratorium allows that to happen.

The Convener: I have a question on something that has not yet come up with this panel, but which came up with the earlier panel. It is for Martin Prigent and Alison Anderson, who both mention the issue in their written submissions. Why do you think that the six-month discharge period for MAP debtors is inappropriate?

Martin Prigent: I agree that, in cases in which the debtors meet the criteria for the MAP, there is very little return available to creditors, so we need to try to wipe the slate clean in a reasonable amount of time. I possibly came at the subject from an anti-creditor viewpoint in that I believe that the period should be 12 months because I believe that the debtor should have a slightly longer breathing space. I do not think that six months is long enough to rehabilitate the debtor, take them out of the marketplace and protect them from whatever advertising and loan selling is going on. I think that 12 months is a better period of time in which to do that.

The Convener: You think that the debtor would benefit from a longer period of protection.

Martin Prigent: It would give better protection for the debtor if the period were extended slightly.

Dennis Robertson: Is "rehabilitation" the correct term? Are we not talking about informing, advising and educating? Are we not talking about "habilitation", which is a much more positive outcome?

Martin Prigent: I agree that it is about all those things. Ultimately, it takes us to the same place.

Dennis Robertson: Okay.

Alison Anderson: My comments are similar to Martin Prigent's. Six months is not long enough to deal with the situation and give the debtor the protection that they need from creditors. Debtors will always continue to get documentation from creditors, and we need to deal with that. It is a practical thing to do.

The Convener: There are no further questions. Thank you all for coming. It has been very helpful for the committee to get your evidence.

As we have some time in hand, I suggest that we now deal with item 4 on the agenda. We will go back into public session at 12 noon to take evidence from the minister.

11:35

Meeting continued in private.

11:58

Meeting continued in public.

Subordinate Legislation

Protected Trust Deeds (Scotland) Regulations 2013 [Draft]

The Convener: I reconvene the meeting for item 2, which is evidence on the draft Protected Trust Deeds (Scotland) Regulations 2013 from Fergus Ewing, the Scottish Government Minister for Energy, Enterprise and Tourism. He is joined by Chris Boyland, head of strategic reform, and Claire Orr, executive director of policy and compliance, who are both from the Accountant in Bankruptcy's office; and by Graham Fisher, who is from the Scottish Government's legal directorate. I welcome you all.

Before we take evidence from the minister, I have something to read out. ICAS has pointed out that there is an error in the text supplied to the committee. It relates to the key statistics in annex B to the paper that members have in front of them.

Under the third sub-heading, "PTDs Discharged—Trustee Fees", the second bullet point states:

> "These figures are based on the actual fee as taken from the Form 7 received by AiB."

The fourth bullet point states:

> "The estimated fee, as provided by the Trustee in Form 3 when the PTD is registered, is often different from the actual fee charged, as provided in the Form 7, when the PTD is discharged."

However, neither form 3 nor form 7 give details of a trustee's fee; they give only administration expenses. Although those would include trustees' fees, they also include the cost of realisation, statutory fees and other expenses of a protected trust deed, which are payable to parties other than the trustee. The statistics should therefore refer throughout to administration expenses, which are quite different in scope from trustees' fees.

I thank ICAS for pointing that out, and I hope that that is clear to everybody on the committee.

We turn to scrutiny of the draft regulations. I invite the minister to say something by way of introduction.

12:00

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): Thank you, convener.

The regulations will deliver a number of benefits. First, they will improve transparency. Secondly, they will ensure that fact-finding fees are not paid ahead of creditors' dividends. Thirdly, they will support debtors who can pay to pay, by making the comparison with the debt arrangement scheme much clearer. In one case on the AIB's system, the debtor repaid £3,980.52 over and above what they owed—they could have repaid their whole debt nearly twice as quickly if they had gone into the DAS. I am sure that we would all agree that we want the right vehicle to be used for debtors who want to pay their debts in full rather than go into a debt relief scheme. The regulations will also have a positive impact on dividends overall. Perhaps most important, in some cases, they will end the practice of some trustees taking contributions from a debtor's benefits income.

The Scottish Government has had concerns for some time about the transparency of protected trust deeds and the way that the high costs of fees and outlays can sometimes swallow up any return to creditors. I think that that point was made a moment ago in the convener's errata. Those concerns have been highlighted by organisations such as credit unions, and I note and very much welcome the support of credit unions across the board for the changes that we are introducing.

It surely cannot be right that more than a third of protected trust deeds will pay no dividend whatever. That is not what trust deeds were for. It surely cannot be right that some firms have increased administration costs by more than 25 per cent over the lifetime of a case, and that more than half the gross receipts ingathered in some protected trust deeds are spent on costs. However, that is what is happening at the moment.

I am pleased to say that we are doing something about the situation. Following extensive consultation with stakeholders, we have listened to views and have developed a package of proposals that I believe provide a balance between the rights and needs of all parties concerned with trust deeds. In the light of stakeholder concerns about the introduction of a minimum dividend for protected trust deeds, we have decided not to proceed with that measure at this time, but we will keep the position under review in the event that the proposed changes do not have the impact that we expect.

I turn to the measures that are being introduced. We are changing the way in which insolvency practitioners can levy their fees for PTDs. They will no longer be able to charge an hourly rate. Instead, they will charge a single, fixed, up-front fee, augmented by a percentage of funds ingathered. That means that insolvency practitioners will now have more of an interest in the success of the trust deed.

We are improving transparency by requiring that creditors be notified of the level of fees that the trustee will charge before they are asked to agree to the protection of the trust deed. Protection of the trust deed means that diligence cannot be carried out by creditors on the debtor—thus providing protection to the debtor as a sine qua non of the protected trust deed.

Creditors will be asked to approve any increase to the trustee's fixed fee and an annual update on the performance of the trust deed. Where the expected dividend has reduced by 20 per cent or more, trustees will now be required to provide creditors with details of the options available to them.

We are excluding outlays that were incurred prior to the date when the trust deed was granted, such as fact-finding fees from the PTD itself. Such fees, which can be quite substantial and have been roundly criticised in the money advice world, can no longer be charged separately and will now be treated in the same way as other debts included in the trust deed are treated, which brings trust deeds into line with practice in bankruptcy.

We are making a determined effort to tackle the lack of transparency and the rising cost of PTDs. Key stakeholders have recognised that. For example, ABCUL, the representative body for credit unions, said:

> "New measures to clamp down on abuses of protected trust deeds and provide greater transparency for creditors are welcome and vital to make the process fairer."

PTDs are an important form of debt relief, but they must be sustainable, which means that they must be transparent and offer creditors a reasonable return. That has not always been the case, but the regulations will help to ensure that it is the case in future. If not, we stand ready to make further reforms. Like ABCUL, I think that the new arrangements are welcome and vital in making the process more transparent and fairer to all. I hope that the committee shares that view.

The Convener: Thank you, minister. We heard evidence from ICAS and R3, whose principal concern relates to the timing of the changes, 18 months in advance of the date on which the Bankruptcy and Debt Advice (Scotland) Bill, which the committee is considering, is expected to come into force. ICAS and R3 think that, given that during the 18-month period there will be no harmonisation between the two different tools—the protected trust deed and bankruptcy—there will be a significant increase in debtors choosing bankruptcy over protected trust deeds. Is that the Scottish Government's view?

Fergus Ewing: No, it is not. I am pleased that you asked the question, because after reading ICAS's evidence last week I sought and obtained a meeting with ICAS and R3. I should say that I have met IP representatives previously—I think that it was earlier in the year—to consider such matters and indeed have engaged with IPs regularly. It is fair to say that I am no stranger to IPs in Scotland—

The Convener: Not in a personal capacity, I hope.

Fergus Ewing: My meeting with representatives of ICAS and R3 last week was extremely helpful. We had a positive discussion. ICAS and R3 were able to ventilate their concerns fully. We do not share their concerns, for three reasons. It might be helpful if I run through them, given that these are serious points. We recognise that IPs operate in a profession in which members carry out their duties in accordance with the rules and in a professional manner, and that cases of abuse, if there are any, are minor. I think that ICAS acknowledged that in communications to the committee as recently as today or yesterday. That is common ground.

However, we do not agree with ICAS for these reasons. First, in England and Wales there is a solution that is equivalent to the PTD: the individual voluntary agreement. The usual practice is for an IVA to run for five years, not three, so there are 60 monthly payments. If ICAS's argument were correct, we would expect IVAs to have dropped in popularity, importance, prevalence, usage and uptake, but in fact the opposite has happened. IVAs have been a success, despite payments going on for two years longer than would be the case with bankruptcy.

The central tenet of ICAS's case is that if there is a discrepancy between the periods of total payment—36 months as opposed to 48 months—debtors will automatically go for 36 months. Well, despite the period being 60 months in England, take-up of IVAs increased from 1,928 in 1990 to 49,039 in 2011. The proposition seems to be that debtors will always go for the cheapest option, but that is simply not the case. We are not saying that IVAs are identical to PTDs, but they are broadly equivalent. Therefore, there is clear evidence that a longer period of payment—and paying more—will not discourage people from choosing the option of the PTD, which is equivalent to the IVA, over bankruptcy.

Why is that? There are a number of reasons. From my glimmering recollection of operating in this field as a solicitor for many years before I was elected, I know that those reasons are very real.

First, debtors choose to enter a trust deed rather than bankruptcy because they perceive that there is less stigma. That is very important to understand. A great many people do not want to enter bankruptcy: they do not want to say, "I am a bankrupt." Whether people are right or wrong about that perception, we feel that the idea that there is that stigma is wrong and that it is something that we should try to remove, because many people who enter bankruptcy do so through no fault of their own as a result of circumstances in their lives such as redundancy, bereavement and so on. There should be no broad-brush generalisation that all people who are bankrupt are rogues, as that is just not the case, and we would therefore like to tackle that stigma.

Be that as it may, there is still a view out there that there is a great stigma attached to bankruptcy. Many people who believe that they can make a substantial contribution and want to give their creditors something back—even if they perhaps cannot pay all their debt—want protected trust deeds because the stigma is not as great as that which is associated with bankruptcy.

There are other reasons, which may be lesser, although they may be more important in some cases. There is a fee of £200 to enter bankruptcy, but there is no fee for entering a PTD, so there is an immediate financial cost for bankruptcy that is not attached to PTDs.

Some debtors find—this can be very important for some people—that their terms and conditions of employment do not allow them to continue in their job when they are an undischarged bankrupt. If someone cannot get a job or risks losing their job if they enter bankruptcy, they plainly have a very strong interest in PTDs as a possible means of avoiding such a cataclysmic and disastrous consequence in their life. That affects a minority of people, admittedly, but it is the case for a few.

The much wider argument is that a lot of people in Scotland want to pay their debts in full—they do not want to take the easy or cheap option. They do not want to get off with it all; they want, through a sense of moral probity or of duty to pay back creditors, to pay their debts in full, and we want to encourage that.

If ICAS is correct that people would just choose the cheapest option, nobody would pay off their debts—they would all just enter PTDs or, depending on their choice, sequestration. That is not the case, and I am delighted that the numbers of those who are going into the DAS are rising, thanks in part—I think—to the changes that have been made during my period of stewardship of this area of responsibility. That is good news, and we want the situation to continue.

Some people who enter PTDs should be going into the DAS because they can pay their debts off in full, and we want to encourage that.

I respect the IPs' views, and I wanted to take the time to acquaint myself with the arguments. However, having had the opportunity to do so and to reflect with my officials, I urge the committee to accept that, for the reasons that I have set out, the significant impact on the numbers of people entering PTDs as opposed to sequestration that IPs say will happen as a consequence is unlikely to occur.

The Convener: Thank you for putting that on the record.

Dennis Robertson: Good afternoon, minister. On the point about debtors wanting to pay their debts, a longer period may sometimes be more acceptable to them, although it will cost them more, because they feel that the payments are more affordable, whereas they might struggle with payments over a shorter period of time.

Do you agree that extending the time period—as with the IVA in England—would enable people to pay off their debt?

Fergus Ewing: That view was expressed in large part by ABCUL, which believes that the PTDs should be allowed to run for at least five years relative to the debt. We received representations that suggested that the period should be equiparated with that south of the border.

After listening carefully to the views of all stakeholders, including ICAS, we thought that, in order to strike a balance between debtors and creditors, four years seemed to be the correct period. I understand that ABCUL is saying that five years might be more appropriate, while ICAS says that three years might be more appropriate. We are adopting a middle view, if you like. I understand Mr Robertson's point, and it is a valid one.

12:15

Mike MacKenzie: I hope that you can clarify something. I have been led to believe that the common financial tool is a bit kinder to people who are on benefits, as it does not extract payments from them. Do you agree that, in that regard at least, the tool is superior to some of the alternatives?

Fergus Ewing: Yes. We believe strongly that the common financial statement will help considerably, and it is right that we introduce it now. It might help the committee if I explain that the common financial statement arose from discussions: the need for a single common financial tool was agreed following meetings of a working group that comprised representatives of ICAS, the IPA, the free money advice sector, the banking sector, the credit union sector and the AIB.

The agreed approach was to adopt one single method of computing how much people should pay from their income. That issue has been looked at for a long time, and the desirability of having a single method is self-explanatory. One wants to avoid the inconsistencies that have arisen in the past, with some people paying vastly more than others. That has been a feature in some instances that I have seen in years past, and even of late. I am pleased to say that, in the bankruptcy reform consultation, 25 stakeholders supported the common financial statement and only four supported an alternative model.

Mr MacKenzie is quite right, in that one of the differences with the CFT is that it prevents money from being taken from people whose sole income comes from benefits. I do not think that it is right—morally, financially or in any other respect—that money should be taken from people on benefits to pay contributions in that way, and that will not happen under the CFT. I want to make clear that I am not suggesting that the problem is widespread. From memory, it is regulation 21 and not the CFT itself that specifies that that will be prevented. In other words, we have set out in law that, in Scotland, people whose sole income comes from benefits will not have some of that income predated to pay creditors.

I understand that ICAS is not happy with the CFT, or may not wish it to be introduced at present—I am not entirely certain of its position, so I hope that I am not misrepresenting its views. However, we feel strongly that the CFT is a good thing and should be introduced now. It is morally correct—incidentally, it has been supported by organisations such as the British Bankers Association, the Finance and Leasing Association, major utility companies and building societies and by other bodies. There is widespread support for it. The UK Government may follow suit and copy what we are doing in Scotland; I am not sure about that, but I hope that it does. We think that the tool is a major step forward for fairness, equity and transparency in the law of debt in Scotland.

Margaret McDougall: My question is on possible conflict of interests concerning the AIB and trust deeds. Such conflicts could be avoided, but it has been suggested that a protected trust deed review board will be set up. Who will be on that board? How can we be sure that there will be no conflict of interest?

Fergus Ewing: Thank you for your question. That point has been raised by ICAS and, to be fair, we want to respond to it in detail and treat the view with respect, as we have done with all the other representations. The Accountant in Bankruptcy, Rosemary Winter-Scott, is acutely aware of the need for independence and impartiality in undertaking the new functions that will arise following the implementation of the regulations and the forthcoming bankruptcy bill reforms.

I am pleased to tell the committee that the Accountant in Bankruptcy's operational policy and compliance team—the OPC—will be charged with undertaking decision reviews and issuing directions to trustees. I mention that because the OPC is completely independent from the parts of the organisation that are directly involved in administering bankruptcy, the supervision of PTDs or managing the provider contract for the firms that act on the AIB's behalf. The AIB has recently undertaken a reorganisation of teams to distance the OPC physically from the operational teams involved and further reinforce its independence.

In theory, it can be argued that a conflict of interest will occur but I hope that, by mentioning those operational arrangements that the Accountant in Bankruptcy is to put in place, I will persuade members that the apparent conflicts of interest will never become real ones. I am of course aware that the large accountancy firms are often themselves not unfamiliar with issues relating to conflict of interest, acting—as many of them do—for a huge number of commercial companies, many of which operate in the same sector. I hope that, as accountants recognise that it is perfectly possible to discharge conflicts of interest by making appropriate internal arrangements, so the Accountant in Bankruptcy will be able to do so.

It should be said that the Accountant in Bankruptcy has no financial interest of any sort in any of the matters, because no one working for it has any direct financial return from any of the undertakings in which they are involved.

To answer Margaret McDougall's point, the PTD board will include a wide range of representation, which will include creditors, credit unions and IPs.

Margaret McDougall: So the board will be independent from the Accountant in Bankruptcy. Will it consist of individuals who are brought in to sit on the board?

Fergus Ewing: There will be a large representation on the board, which will include representation from creditors, credit unions and IPs—all appropriate stakeholders in the area. I have 100 per cent confidence in the Accountant in Bankruptcy in those matters. I do not believe that the situation will give rise to any difficulties whatever.

Claire Orr (Accountant in Bankruptcy): Perhaps there is some confusion about the role of the PTD review board as distinct from the AIB's powers of supervision. The AIB will conduct the powers that it has on supervision as set out in the regulations but, separate from that, the role of the review board is to aid it with consideration of further changes to PTDs and the operation of the system. That is why we are keen that it include representatives of all parties who are impacted by protected trust deeds.

Margaret McDougall: How many people will be on the board? What is the proportion of independent members to AIB members?

Claire Orr: Really only the secretariat will be from the AIB. The board will be chaired and led by the AIB, but all the members will come from sectors that are impacted by protected trust deeds.

Alison Johnstone: ICAS is concerned that there is a lack of evidence that a 48-month contribution period will result in a net benefit increase to creditors. What analysis was done of the impact on creditors and, of course, debtors before the decision to settle on four years was made?

Claire Orr: No specific analysis of the four-year period has been done. When we consulted on the changes for the bill and the regulations, we started from a default position of people going into the debt arrangement scheme and paying back for eight years if they could do so in that time. The consultation told us that there would not be general support for that but there was support for a period of six years and other years within that. Therefore, the four-year period has come from that wider discussion, and is in keeping with the principle that those people who can pay their debts should do so.

That is the first stage in the levelling of the contribution period across all the solutions so that no one solution has a perceived advantage over another in encouraging people who can pay to pay. Some of the analysis that we have of existing protected trust deeds shows that a number of them already last for longer than four years. There is already evidence of debtors paying for that length of time.

Chic Brodie: As I understand it, the IPs have argued that, because the trust deed is a voluntary arrangement between the debtor and their creditors, the creditors have a right to object to the trust deed and prevent it from becoming protected if it does not meet their particular needs. Comment was also made that the draft regulations give the AIB the power to overrule decisions in the trust deed. Does that not undermine the position of creditors?

Fergus Ewing: We believe that the AIB should have powers to intervene but only when there is evidence that the trustee is not fulfilling the requirements under the legislation. The AIB would refuse to record a trust deed as having protected status only when the conditions in the regulations have not been met. That includes when the income and expenditure of the debtor are deemed to be excessive and no valid explanation has been provided by the trustee. If the CFT is used, we do not expect that situation to occur.

The AIB would also intervene when it has evidence that the debtor has not co-operated with the administration of the trust or has not met their obligations under the trust deed. We believe that the powers that will be given to the AIB could be helpful to the trustee when creditors do not agree to ask the trustee for an increase to the fixed administration fee. In those cases, the trustee can apply to the AIB for the increase to be agreed. The AIB will look at the request and, if it finds that an increase in the fee will result in a benefit to the creditor, it will agree an increase to the fee.

Although ICAS is right to raise the point about the powers of intervention, and I see ICAS's general point, use of the powers would be occasional. I expect that it would be the exception rather than the norm and, in some cases, it might actually be of assistance to the trustee.

The Convener: I want to go back to something that you said in your opening remarks about comparisons with the situation in England. Is it not the case that, in England, access to bankruptcy is much more restricted than in Scotland, and the fee is considerably higher than the £200 that is charged here?

Fergus Ewing: That might well be the case; I am not an expert on the matter so I will turn to my colleagues in a minute. I just point out that, in England, there is a two-year difference in the period for contribution payments, which is a substantial difference. The key point is that, if ICAS is right and people simply go for the cheapest option, one would expect people to go to some lengths to find it, would they not? Not only has that not been the case but the number of people who are entering into IVAs has increased massively, so the figures clearly contradict the proposition that people will seek the cheapest option that involves their paying least to their creditors and making minimum contributions for the shortest period of time. The evidence from down south just does not indicate that that is what happens. Also, that is not the view that has been taken by the credit union world, if I can put it that way.

We should bear it in mind that, unlike ourselves, money advisers deal with people who have debt problems every day and all day. In any event, the second set of reasons that I gave about reasons for choosing PTDs over bankruptcy are also pretty valid.

In response to your question, convener, I do not know whether my officials will have anything to add about your point that access to bankruptcy in England is not similar in nature to that in Scotland.

12:30

Claire Orr: It is generally similar in every way, apart from the fee. The fee is higher, as you say, convener. In England, it is between £600 and £800, but I understand that the access to the arrangements is broadly similar to those that apply here.

The Convener: Given that the committee has already heard evidence that the £200 fee is a barrier for many people in Scotland, I wonder whether the £600 to £800 fee in England is a more substantial barrier and whether that, more than other factors, may explain the high uptake of IVAs.

Claire Orr: There are other things that happen at UK level. A number of organisations sometimes meet the application fee for people who apply for bankruptcy in England, so different arrangements apply that may cancel that out.

Margaret McDougall: The draft regulations presuppose that the Bankruptcy and Debt Advice (Scotland) Bill will enter the statute book as it is. If any changes are made to the bill during its passage through Parliament, the regulations will have to be amended. Can you assure us that that will happen?

Fergus Ewing: I expect that, as with all bills, there will be some amendment during its passage. I think it unlikely, should the committee be minded to recommend that the regulations be approved, that there would be significant amendment on the essentials, but Margaret McDougall makes a perfectly reasonable point. I can say only that, were that situation to arise, we would address it at the time. However, we believe that there are strong reasons for introducing the measures now. If we delay by 18 months, it would mean that the changes impacting on PTDs would not come in until 2019, and we want to avoid that. We want people to be clear now that money will not be taken from their benefits, which could still be the case were the regulations to be rejected today.

We want to ensure that the arrangements to move away from an hourly fee—whether it is £96 an hour or slightly higher, as some cases appear to indicate—to a fixed fee are introduced. We want to promote the further dissemination of information about the relative performance of firms that do that work, and there has already been information showing that there is considerable variance between the estimated return to creditors and the actual return to creditors, although we are still at an early stage and we will obtain further information and a fuller picture as the years go by.

The regulations will have enormous benefits, and we do not think that it is right to postpone them. That is why we have introduced them now, rather than wait 18 months before introducing them. We believe that society as a whole, debtors individually and creditors should benefit from the provisions. That is why we are moving the motion this afternoon.

The Convener: If there are no further questions, we shall move to the formal debate. I remind the minister's officials that they can no longer participate on the record, though they may speak to the minister or pass notes to him. I invite the minister to speak to and move motion S4M-07759.

Fergus Ewing: I refer to the arguments that I have put, without labouring them.

I move,

That the Economy, Energy and Tourism Committee recommends that the Protected Trust Deeds (Scotland) Regulations 2013 [draft] be approved.

Motion agreed to.

The Convener: We have to produce a report by 11 October, which is two days away. Do members agree to produce a short, factual report and to publish it by then?

Members *indicated agreement.*

Meeting closed at 12:34.

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