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Pàrlamaid na h-Alba

Official Report

INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE

Wednesday 22 January 2014

Session 4

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INFRASTRUCTURE AND CAPITAL INVESTMENT COMMITTEE
2nd Meeting 2014, Session 4

CONVENER

*Maureen Watt (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP)

COMMITTEE MEMBERS

*Jim Eadie (Edinburgh Southern) (SNP)
*Mary Fee (West Scotland) (Lab)
*Mark Griffin (Central Scotland) (Lab)
*Alex Johnstone (North East Scotland) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Alan Benson (Glasgow and West of Scotland Forum of Housing Associations)
David Bookbinder (Chartered Institute of Housing in Scotland)
Rosemary Brotchie (Shelter Scotland)
Paul Brown (Legal Services Agency)
Garry Burns (Govan Law Centre)
Michael Clancy (Law Society of Scotland)
Patrick Harvie (Glasgow) (Green)
Andy Young (Scottish Federation of Housing Associations)

CLERK TO THE COMMITTEE

Steve Farrell

LOCATION

Committee Room 1

Scottish Parliament

Infrastructure and Capital Investment Committee

Wednesday 22 January 2014

[The Convener *opened the meeting at 10:00*]

Housing (Scotland) Bill: Stage 1

The Convener (Maureen Watt): Good morning and welcome to the second meeting in 2014 of the Infrastructure and Capital Investment Committee. I remind everyone to switch off mobile phones and other such devices as they can affect the broadcasting system, but I note that some committee members will use their tablets to consult their papers. I also welcome Patrick Harvie to the meeting.

The first item on the agenda is evidence from two panels of witnesses for the committee's stage 1 consideration of the Housing (Scotland) Bill. I welcome to the meeting our first panel. Rosemary Brotchie—I hope that I pronounced that correctly—is policy manager at Shelter Scotland, David Bookbinder is head of policy and public affairs at the Chartered Institute of Housing in Scotland, Andy Young is policy manager at the Scottish Federation of Housing Associations and Alan Benson is director of the Glasgow and West of Scotland Forum of Housing Associations.

Adam Ingram will begin the questioning.

Adam Ingram (Carrick, Cumnock and Doon Valley) (SNP): Good morning, everyone. The Scottish Government's declared vision is

"that all people in Scotland live in high quality, sustainable homes that they can afford and that meet their needs."

To what extent do the bill's provisions support that vision?

David Bookbinder (Chartered Institute of Housing in Scotland): I am happy to kick off on that. A lot of areas in this wide-ranging bill will contribute to the improvement of housing and housing standards in the private rented sector, the owner-occupied sector and indeed the social sector. Only certain parts of it relate to physical standards, particularly in the owner-occupied and private rented sectors, but the overall issues with regard to rights, obligations and an improved housing system across the sectors are reflected in almost every part of the bill.

Rosemary Brotchie (Shelter Scotland): I thank the committee for the opportunity to give evidence. Shelter Scotland very much supports the bill's aims and feels that many of the measures will achieve them. However, as the session continues, members will note that a few concerns that we have about some areas will emerge, and we suggest that the committee might wish to look for certain areas to be strengthened. If you have had an opportunity to read our submission, you will have seen that there are a few areas—particularly the provision of temporary accommodation and permanent homes for people who have found themselves homeless, and safety standards in the private rented sector—where we think an opportunity to strengthen the bill has been missed.

Andy Young (Scottish Federation of Housing Associations): I thank the committee for inviting the SFHA to give evidence. We support the bill's broad aims and principles, but I agree with David Bookbinder that in general it deals with the management of tenancies rather than with supply, which is more linked to your question.

Alan Benson (Glasgow and West of Scotland Forum of Housing Associations): On behalf of the forum, I thank the committee for the invitation to give evidence. Like others, we agree with the bill's general principles and think that it is certainly moving in the right direction. Housing bills do not come around very often, so when they do it is essential that we use them to deal with the real and difficult housing issues that still exist in Scotland.

I back up the other witnesses' comment that certain details still need to be addressed. We can discuss them later in the meeting but, as far as the private rented sector is concerned, the bill does not contain much to try to improve standards, which will be a major issue for the sector if it is increasingly to be used to help people in housing need.

Adam Ingram: I am sure that my colleagues will pick up on some of the issues that you have mentioned.

The Scottish Government expects one of the bill's main outcomes to be sustainable communities. Do you agree that its provisions support that outcome?

David Bookbinder: As the committee knows, the bill contains a number of measures to help landlords to have more flexibility on allocations and to deal more effectively with antisocial behaviour. Those provisions could be said to have the aim of helping to maintain sustainable and cohesive communities and we very much welcome them.

However, we should not overegg the extent to which the provisions on allocations and antisocial behaviour will dramatically change the situation. Social landlords already have good flexibility on allocations. The bill contains welcome clarification

and minor amendments to the existing legislation. We very much welcome provisions such as that to allow landlords to take age into account when allocating housing, which is common sense.

No single measure on antisocial behaviour will change the world. Serious antisocial behaviour cases will always be tricky to deal with, but there are significant improvements that will help. Any way in which legislation can help landlords to deal with antisocial behaviour will contribute to happier and more settled communities.

Rosemary Brotchie: Adam Ingram's question pointed to management in the social rented sector. On achieving sustainable communities, David Bookbinder identified the antisocial behaviour measures in the bill. Shelter Scotland agrees that much more needs to be done to ensure that social landlords provide the best supply from a limited social stock, but we have concerns that the proposals on eviction processes could have negative consequences, given how they are defined in the bill.

We have concerns, but we agree that responses to antisocial behaviour should be strong, consistent and effective. We do not want any detrimental change to housing law that would affect tenancy rights as a knee-jerk reaction. We want to ensure that landlords can use the responses in the bill effectively.

Andy Young: David Bookbinder is right and I agree with him again. It is important to realise that the bill's measures alone will not be a panacea for tackling antisocial behaviour, which will always require a multi-agency approach.

Alan Benson: Our forum represents community-based housing associations in Glasgow and the west of Scotland. We argue that we have provided sustainable and cohesive communities for the past 35 years or so. We feel under siege to an extent, because the major issue is that it is becoming more difficult to maintain those communities and all the good work that has happened. We would support anything that the bill can do to reverse that trend.

The rent payers in our communities are now expected to meet a lot of added costs that were not expected to be met in the past, such as the cost of maintaining waiting lists. That was a good idea in previous legislation, but it costs an organisation such as the one that I work for £6,000 a month. Perhaps that money could be better spent. Our organisation has 150 voids in a year, but 1,000 people are on our waiting list. It would be useful to debate that and consider how best existing resources can be used. However, the thrust of maintaining stable communities is good.

Adam Ingram: Are you content with how the Scottish Government's consultation process was conducted? Do you have any issues with that?

David Bookbinder: The consultation was comprehensive. Various issues were covered in different consultation processes, such as the right to buy, social sector tenancies and allocations and the future of the private rented sector. By and large, we could not say that consultation has been lacking. However, there was no prior consultation on one or two measures that appear towards the end of the bill. I will not go into detail on that now, but it meant that some of us were not in a position to comment in detail on some of the newer provisions relating to, for example, the Scottish Housing Regulator. We need more time to look at such provisions, but thankfully there is more time between now and stage 2 in which to do that.

Rosemary Brotchie: I agree with David Bookbinder. Different Scottish Government teams consulted on different parts of the bill, so there was no single consultation. I echo the point that measures have appeared in the bill that we were perhaps not expecting as a result of the consultation process, and we need some time to consider them. That approach has meant that there are some additional measures that we would have promoted through the consultation process had we had the opportunity to do so. I hope that the committee will consider those issues at stages 1 and 2.

The Convener: What specific measures are you talking about?

Rosemary Brotchie: An example is that there was no opportunity during the consultation to raise particular issues around electrical safety in the private rented sector. We have also identified other matters on which we would have wanted to respond but that did not fit into any of the areas that were consulted on.

Andy Young: It is a fair point to say that some issues were not consulted on but, on a positive note, the consultation was very thorough on those issues that were consulted on, and our members were allowed to feed into the process.

Alan Benson: I echo that. Some of the views that our members expressed in the pre-legislative consultation were taken on board when it came to the drafting of the bill, so we were pleased with the process. Probationary tenancies is one such issue on which our members commented and that has not appeared in the bill, so someone must have listened to us during the pre-legislative process.

Adam Ingram: Thank you.

The Convener: As members have no further questions on that topic, I call Alex Johnstone, who has some questions on the right to buy.

Alex Johnstone (North East Scotland) (Con): Abolishing the right to buy is a headline objective of the bill. What benefits will come from that?

David Bookbinder: The key benefit is supply. For reasons that everyone is familiar with, recent years have not seen as many sales as were made in the 1980s and 1990s. The certainty that abolishing right to buy will give local authorities, landlord local authorities and housing associations with regard to their strategic and business planning roles—they will know how much rental income they will have and how much stock they can use for allocations and homelessness—will be a huge benefit.

Ultimately, right to buy is an individual right, and it is difficult to use it in a strategic way. Its time in Scotland has very much come. Even if, as I said, sales are not enormously high at the moment, that could change, which would make greater inroads into removing supply. CIH Scotland believes that the measure is hugely welcome.

Alex Johnstone: Will you reduce the matter to simple numbers? How many vacancies do you expect to be created by the abolition of right to buy?

David Bookbinder: I do not have those figures.

Alex Johnstone: Those who are denied right to buy, for the most part, will continue to be tenants. A deep assumption in the argument is that abolishing right to buy would massively increase housing stock availability, so how many vacancies will be created by abolishing that right?

David Bookbinder: An oft-used argument in favour of right to buy is that a tenant who buys does not vacate the property, but if they had not bought, they might not have immediately vacated the property either. That is a short-term argument. The longer-term argument is a no-brainer—that supply is increased by maintaining council and housing association stock at its maximum.

I do not have figures to hand, but I would be happy to supply them. I think that the Scottish Government has already supplied figures in the policy memorandum that accompanies the bill. It is undoubtedly the case that abolition will have a beneficial impact on supply over the longer term.

10:15

Alex Johnstone: I think that the sales rate is currently about 1,000 a year in Scotland, but if we abolish right to buy, we will not create 1,000 vacancies a year. We will create a number that is very much smaller than that—if there are any, initially.

David Bookbinder: It is a longer-term move. As I said, if we look at the impact on supply over the longer term, there is no doubt about the contribution that right to buy has made to depriving councils and housing associations of the ability to house people in housing need.

Rosemary Brotchie: I agree with everything that David Bookbinder has said. I add that the issue is not just the volume of stock that is lost through right to buy but the types of homes that are lost. When I say "lost", I mean lost from the social sector. We have often seen the most desirable and best maintained homes in the best areas—often homes with particular characteristics—sold to their tenants, so that they are no longer available to social tenants in the future. Being able to secure those properties for the future is important.

Andy Young: The long-term issue is important. A study was done a couple of years ago—off the top of my head, I cannot remember the names of the people who carried it out, but I can supply the details later—that revealed horror stories about ex-right-to-buy properties that are now in the private rented sector for rents approaching double what the social rent would be. The study suggested that, UK-wide, that is costing the public purse up to £2 billion a year in excess housing benefit. That is one of the longer-term issues that David Bookbinder referred to.

Alan Benson: Working for a housing association, I know that there are practical issues around right to buy in relation to trying to manage the business, as the asset base is at risk all the time. That is one of the issues that we are dealing with.

Alex Johnstone is right to say that abolishing the right to buy will not suddenly create 1,000 new vacancies every year because tenants will still be in those houses, but at least there will be no chance of those houses being lost to the sector over time.

As time has gone on, the issue from our perspective has been the discount. If people in our community want to buy a house that they have lived in at the full market value and become owner-occupiers, that is fine, but that is not what happens in reality. What happens is that the discount gets used and people move the property into the private rented sector and, as Andy Young said, double the rent. That problem has never been addressed over the past 30 years.

Alex Johnstone: The proposal to abolish right to buy includes a three-year notice period. When we discussed that with officials last week and asked them the reason for it, they cited human rights as one of the issues. Given that a right is being taken away, they believe that a three-year notice period is appropriate. What are your views

on the notice period? Do you believe that it is a human rights issue?

David Bookbinder: I am not a lawyer, but I think that there are probably human rights implications when an existing right is taken away. I can understand why ministers have been keen to ensure that they are acting reasonably in this situation so that tenants have a chance to plan ahead and consider their options.

We believe that a period of two years would enable tenants to consider whether they want to buy and to progress the purchase if they so wish, while still allowing the Government to be seen to act reasonably in terms of human rights implications. A period of two years rather than three would also give landlords more stability and certainty about future finances, and it would perhaps also limit the period in which there might be some peaking of sales. We believe that two years would be a reasonable period.

Rosemary Brotchie: The proposed notice period is excessive. I do not think that it is necessary to give tenants that long. It could be quite damaging, and not just from the point of view of the peaking of sales, which David Bookbinder mentioned. We also know—this has been evidenced before—that when the right to buy has been restricted or limited, companies out there almost prey on vulnerable tenants to persuade them to purchase the property when that might not be the right thing for them to do financially or in terms of their security. If we give people too long an opportunity to decide whether to purchase, we might see some detrimental effects on tenants.

We need to give people long enough to make an informed decision on whether to purchase their rented property, but three years is too long for that. We have suggested that six months to a year might be more appropriate, given that, as the bill proceeds through the committee and the Parliament towards receiving royal assent, the issue is likely to get a fair deal of press coverage. It is going to be common knowledge, and I think that people will be considering from now on whether purchasing is the right thing for them. We therefore agree with CIH Scotland that a three-year notice period is too long.

Andy Young: It is probably worth pointing out that three quarters of the respondents to the consultation also thought that three years was too long. I agree with Shelter that a year seems more appropriate.

It puzzles me slightly that the Scottish Government seems to be a bit concerned about legal challenges to the provision. The situation with the right to buy is so complex and multilayered that there are lots of other situations within it that are probably more open to legal challenge than the notice period. For example, the right to buy for people who live in areas that have pressured area status has, in effect, ended. I would have thought that that would have provoked more of a chance of legal challenge.

Alan Benson: I echo what has been said. I am not a lawyer so I cannot comment on the human rights issue. However, I agree with what Rosemary Brotchie said on behalf of Shelter, which was that three years is too long. We reckon that the period should be one year, as we have said previously. The vast majority of our members feel that that is an appropriate timescale.

Alex Johnstone: As Andy Young pointed out, people who live in pressured areas will not get the right to buy unless that status is lifted prior to the end date. Does the bill adequately address the position in which individuals in pressured areas might find themselves? Is it necessary for the bill to look further at the situation of people who would like to buy but who live in pressured areas and will remain there until the right is gone?

Andy Young: To be honest, I do not think that you could legislate for every little connotation of the current right-to-buy situation. For me, it would be quicker and cleaner just to draw a line under it.

Alex Johnstone: Is there a danger that, if we try to legislate for every area, we will create anomalies that will then be exploited through the courts?

Andy Young: Possibly.

Rosemary Brotchie: Pressured area status has been brought in for a significant and important reason. On the point about the committee possibly undermining that by trying to alter the abolition, the consensus in the consultation was that the sooner the right to buy is ended, the better.

Alex Johnstone: I will come at the right to buy from an entirely different angle. Another issue is that, regardless of whether you approve of it, right to buy has been an income stream for social landlords—money has come in as a result of properties being sold. Will losing that income stream have any implications for social landlords?

Andy Young: It is likely that the worst affected will be the larger stock-transfer type of organisations. The indications are that the abolition of right to buy will have either a positive or a neutral effect, so the organisations are really not concerned about loss of receipts at all.

Rosemary Brotchie: I cannot comment on the landlords' perspective on the issue. However, even if the right to buy is removed, landlords will still be able to sell if they choose to do so. Such sales will be planned sales; landlords will be able to plan for them and sell the stock that they think is appropriate for selling. If a landlord needs to raise

income and considers that selling off stock is the best way to do that, they will not be precluded from doing it by the abolition of right to buy.

Alex Johnstone: Okay. Thank you very much.

The Convener: If you want to have a shorter notice period—a year, say, rather than three years—might there be any difficulties in that? Even if the period is three years, do you envisage a rush of tenants wanting to buy within that three years—or one year? Has there been any indication from tenants that that might be the case?

Andy Young: The honest answer is that we just do not know. There is always a danger that, if we make the notice period a year, there will be a stampede. I cannot see that happening in reality, but it is of course a risk—there is no question about it.

Rosemary Brotchie: As I said a few minutes ago, the committee will need to consider what an appropriate time is to allow people to take advice and consider the implications properly. The issues are not limited to the purchase price and the cost of the mortgage; they also include maintenance costs. Shelter Scotland sees cases in which people have bought rashly, without taking proper advice. They have not fully considered all the costs of running and maintaining an owned house, and they have got into difficulty and trouble later on.

We have spoken about the impact of the cost of houses in the private rented sector that were previously bought under the right to buy. There is a significant repair and maintenance implication with homes in blocks where some flats are owner occupied and others are owned by social landlords. Owners can potentially find themselves with very significant bills for common repairs, which they had not anticipated. We would encourage anybody who considers purchasing a right-to-buy property to take proper advice.

We are aware that a number of companies are pretty much urging people to buy before it is too late, and we want to limit the impact that such companies might have on tenants.

The Convener: What kind of companies?

Rosemary Brotchie: They persuade tenants—they facilitate a mortgage, potentially so that they can buy the property to let it out. That is called mortgage to rent: tenants are persuaded to purchase their property, which the company then purchases and lets back to the tenant. We have seen that problem in the past, and it can be seen across the owner-occupied sector.

The Convener: Would that situation be helped by reducing the notice time?

Rosemary Brotchie: Potentially, yes. If we allow a longer time period, there is potential for such companies to build up more of an inroad into tenants who may not be considering their options quite as carefully as we would like.

The Convener: As regards housing associations, and as far as borrowing and relationships with the banks are concerned, do you think that the right-to-buy measures will assist with the situation, as you will not have a depletion of your stock and assets?

Alan Benson: I said earlier that it is much easier to do our own internal business planning if we know that our asset base is not at risk. That is bound to help. Over the years, the right-to-buy numbers have reduced significantly, but it is still an issue for us: we want to be able to plan ahead, knowing the amount of stock that we have and budgeting accordingly. In that respect, the measure can only help.

The Convener: If there are no further questions on right to buy, we will move on to part 2 of the bill, on social housing.

Mark Griffin (Central Scotland) (Lab): What are the panel's views on how the bill would amend the reasonable preference provisions in relation to allocation policy for social landlords?

David Bookbinder: It is a modest tinkering with the reasonable preference criteria. For many years now, very sensibly, the criteria have covered people coming out of homelessness and people living in unsatisfactory housing conditions—which include almost any kind of circumstance that people might find themselves in. Those criteria remain, with a very slight amendment to clarify that such people would of course have to be in housing need. There is also the welcome addition of people who are in social housing who are underoccupying, and we all understand the reasons for that.

The amendment to the reasonable preference criteria is modest and very sensible. It is not a radical change, but I do not think that any of us felt that there was a need for radical change.

10:30

Rosemary Brotchie: Shelter Scotland has long argued that the reasonable preference groups in the current legislation are outdated and out of sync with current social housing allocation practice. We therefore think that the move is positive, in that it will give landlords scope to prioritise groups in a way that reflects local need.

However, we want to ensure that the use of the provision is monitored. The Scottish Housing Regulator or groups such as Shelter Scotland should keep an eye on how the reasonable

preference categories are being identified locally, to ensure that housing need is being met on an on-going basis.

Andy Young: David Bookbinder nailed it when he said that the effect should not be overegged. In practice, we do not think that the measure will make an awful lot of difference to housing association allocation policies.

Alan Benson: We agree that the measure is a modest change. However, the term "unmet housing needs" in the bill could do with a bit of clarification.

Mark Griffin: I think that we all understand the reason for including the provision on underoccupied properties, which is to do with the effect that there is on many tenants. However, will the removal from the existing criteria of large families and overcrowded properties have a negative impact on some larger families or people who are struggling in houses that are too small for their needs?

David Bookbinder: No, not at all. A large family might not in itself be in any housing need. If such a family is in housing need, I believe that the situation will be covered, because I cannot imagine an allocation policy that would not include overcrowding under the criterion of unsatisfactory housing conditions. Therefore, in practice, I do not see that change making any difference.

As Rosemary Brotchie alluded to, it is fairly outdated to have large families as an isolated category in the reasonable preference provisions because, in itself, that has no relation to housing need. I am sure that, if such a household is in housing need, it will be covered by the allocations policy under unsatisfactory housing.

Mark Griffin: The bill gives the Scottish ministers the power to make regulations on the categories of people that should be included in allocation policies. Is that power necessary and, if so, what categories of people should be specified?

Rosemary Brotchie: The three key groups that are currently identified in legislation are homeless households, those living in unsatisfactory living conditions and, as we said, those with unmet housing need. That covers the broad range of people who would be given any kind of reasonable preference. However, I echo the point that the term "unmet housing needs" is a little woolly and could do with clarification.

Mark Griffin: The bill will allow social landlords, for the first time, to take into account an applicant's age, although that cannot affect the overall policy to give priority to certain household types. What are the panel's views on that? How could that assist in allocations?

David Bookbinder: I will unashamedly go first on that question, because CIH Scotland specifically sought the measure.

Over the years, local authority and housing association landlords have told us that if, for instance, they wanted to house five or six older households in a group of non-specialist ground-floor houses, where the location seemed particularly suitable and for other sensitive allocations reasons it seemed the right thing to do, they could not lawfully do that—they could not say that those five or six houses would go only to older people.

We therefore think that the measure is genuinely sensible, especially taken alongside the bill's strong reminder that all landlords have to comply with equalities legislation, which means that they cannot discriminate against any group, whether that is younger people or other groups. We are pleased with the measure.

Rosemary Brotchie: This might be one of the few areas in the bill on which there will be disagreement. We do not agree that the measure is necessary. It was not consulted on, so we did not have the opportunity to respond to it in the consultation process.

We think that the current legislative framework already allows sufficient flexibility for landlords to take such issues into account where there is a real need for them to be taken into account. The fundamental principle of social housing allocation should be that it is based on a framework of need and the circumstances that households are in, not on the characteristics of households. The homelessness legislation and the 2012 commitment made that change in principle, and we would not want to see the characteristics of households being used as a reason for preferring one group over another in housing allocation.

As David Bookbinder said, it is not the policy intention that the allocation rules could be used in a discriminatory way, and we want to be certain that they are not used in a discriminatory way. We do not see any reason to have age listed in the bill as a specific reason for allocations being made.

Andy Young: Consideration of age should help with sensitive lettings and it should help to avoid what we might call lifestyle clashes. However, because age is a protected characteristic, as was said, I wonder how the provision will operate in practice.

That is partly what I meant when I talked about the Government seeming to be frightened of a legal challenge in relation to the three-year notice period. With that in mind, it is a little contradictory to include in the bill the measure on taking age into account, which I think is wide open to legal challenge at some point.

That said, I understand why the measure was included and we support it, although in practice I wonder how readily it will be used.

Alan Benson: We support the measure. I think that it concurs with the proposals that we put forward in the Government's pre-legislative consultation. The new provision would help social landlords to make greater use of sensitive lettings and promote greater tenant sustainability. We think that it is a good measure.

Mark Griffin: I have one last question. Do you have any comments on the bill's provisions relating to qualifying periods for joint tenancies, subletting, assignations and successions?

David Bookbinder: We are pleased to see those provisions. Without overdramatising the extent to which abuse occurs in those areas, I suggest that most landlords have experienced cases of people who move in the day before a relative dies or something like that. The protection measure is therefore welcome.

The measure that gives the landlord an ability to refuse an assignation when the person who would benefit is not in housing need must be welcomed at a time when social housing is in such short supply. We also very much welcome, in the provisions for succession, assignation and so on, the requirement for the prospective beneficiary of succession or assignation to have told the landlord at the time that they were moving in that, from that point, they lived there. That is a significant measure.

Andy Young: Despite the perception, queue jumping is probably not as widespread as some people might think. That said, it is right that loopholes should be closed. I am pretty sure that our two organisations wanted to go further when it came to assignation: we wanted to remove the tenant's right to assign a tenancy and, instead, confer a power on the landlord to allow assignation if necessary. Nevertheless, we agree with all the provisions.

The Convener: Let us move on to antisocial behaviour as it is dealt with in part 2.

Mary Fee (West Scotland) (Lab): I have some questions about the Scottish secure tenancy.

The bill contains provisions that would allow landlords to create a short SST or convert an SST to a short SST when the tenant or applicant has a history of antisocial behaviour. Do you think that the proposals are appropriate and proportionate?

Rosemary Brotchie: Shelter Scotland certainly believes that antisocial behaviour, which we know can blight communities and cause misery and distress to individuals and neighbours, should be tackled quickly and effectively. However, we have concerns about the way in which section 8 is drafted—particularly about what constitutes antisocial behaviour, as it is defined—and about what evidence would be required for antisocial behaviour to result in somebody losing their tenancy or security of tenure.

We want to ensure that, to be effective, that section of the bill ensures that there are sufficient checks and balances so that the provisions cannot be used inappropriately and would not unfairly penalise vulnerable tenants.

David Bookbinder: I think that the measures are proportionate. Social landlords are heavily regulated, of course. It is a question of whether the system and the law trust landlords to use measures sensitively.

The exasperation that is felt by most landlords whom we come across is usually to do with long-standing and very difficult cases, not isolated incidents in which somebody is causing too much noise, for example. We are talking about protracted cases that have gone on for a long time, perhaps because of a lack of witnesses or a lack of satisfactory evidence as a result of people being afraid to come forward.

The measures do not in any way solve all those issues, but they give landlords additional options. We strongly believe that landlords have an interest in using the measures only when they really want to and when they have struggled to take action, and that they will protect the majority of tenants who live around the property in question from extreme distress and upset.

Any consideration of antisocial behaviour measures should involve consideration not only of the impact on the alleged perpetrator's rights but of the impact on the rights of people who live around and in the community to enjoy their property peacefully.

Andy Young: I do not necessarily disagree with Shelter Scotland. Clarity on what antisocial behaviour is and what the evidence test is for going through the process would be welcome—we flagged that issue up at quite an early stage in the consultation. That said, we agree with the measure.

Alan Benson: We agree that giving more flexibility to landlords is a good thing, but the briefing note that we have issued to our members says that one consequence of the bill is to talk through the implementation issues with housing staff. Some practicalities of how such a power would be used in practice have to be worked through. We have a fair way to go to bottom that out.

Mary Fee: If the Government produced guidance on how that particular provision should be used, would you like to see anything in

particular in it? Does the guidance need to be quite specific and detailed about what evidence can be used and the length of time that people need to go back in examining the evidence?

Rosemary Brotchie: We would certainly be interested in seeing whether there will be a check or balance in the primary legislation to identify what the burden of proof would be to penalise somebody under section 8. That is not to say that we do not take antisocial behaviour very seriously, but the means to address it should be effective and should not create unintended consequences.

David Bookbinder: We would favour advisory good practice guidance that, for instance, gives examples of behaviour that it might be appropriate and might not be appropriate to take into account. Legislating for every single circumstance in the bill or in regulations would be very risky.

I will give a quick example, if I may. A measure in the bill suggests that, in respect of somebody possibly being suspended from receiving a housing offer because of antisocial behaviour, the ministers will have the power in regulations to set the maximum period that people can be suspended for—it seems perfectly reasonable that ministers could do that—and to set how far back a landlord can go in considering the behaviour that has taken place.

Again, we think that the issue is a matter of good practice. CIH has good practice guidance out on suspensions, and there are situations in which it would not be reasonable for landlords to go back many years and penalise somebody for behaviour a long time ago. However, if you legislate for that—by, for example, naming on the face of the bill or in regulations the maximum period that landlords can go back—you are legislating for something that we think would be better left to landlords' discretion, because there might always be odd cases in which it is appropriate to go back a decent amount of time. We have to be careful not to overlegislate for every type of circumstance when it comes to antisocial behaviour.

10:45

Rosemary Brotchie: We need a slightly stronger definition in the bill. Just as we can use such an example to show how such a measure could be unfair to landlords, we could probably point to an equivalent example in which such a measure could be used to unfairly penalise a tenant. We have to accept that people can reform and improve their behaviour over time.

We also have to acknowledge that the bill sets the definition very broadly—it could include somebody who is just living in that household, not the tenant themselves. It could even include somebody who is just visiting the household. There is a concern that the definition might be open to misuse and might be used inappropriately in some circumstances.

Mary Fee: The bill also makes provision for protection for tenants who are on short SSTs. Is any other protection required for tenants who are on short SSTs, or are you content that what is in the bill is adequate?

Rosemary Brotchie: We certainly welcome those measures, particularly the increase in the period of time for which somebody can have an SSST, which enables them to have the support that is required to progress to a full, secure tenancy.

Andy Young: A landlord having to give a tenant a reason for ending a short tenancy is a positive move as well.

Alan Benson: Yes.

Mary Fee: Thank you.

The Convener: I will go back to the earlier discussion on taking into account an applicant's age. Is it correct that allocations could previously be made in terms of age? As MSPs, one of the major issues that we deal with is antisocial behaviour when younger people have been moved into a block that was traditionally a block for older people. Is being able to allocate based on an applicant's age going back to what used to happen?

David Bookbinder: For as long as I can remember, it has not been possible to take age into account when allocating. I would have to double-check and get back to the committee on whether that was because of the Housing (Scotland) Act 1987 or the Housing (Scotland) Act 2001. I rather think that it goes back to the 1987 act, but I will happily clarify that for the committee. The age-related provision in the bill will remove that prohibition on taking age into account.

Rosemary Brotchie: You may be thinking of a situation, convener, in which landlords can already make decisions about how they allocate their property because of the type of property that it is. Clearly, if landlords have a block of adapted property or property with particular characteristics that make it more suitable for particular types of occupants, they can already distinguish people from others on a waiting list and allocate them to that property if it is suitable. As I said before, I think that there is already sufficient flexibility in allocations and that the addition of age as a category is therefore not required.

David Bookbinder: The existing provision that Rosemary Brotchie refers to relates to accommodation that is specially designed—for older people, for example. The whole idea of the new provision is to enable a degree of flexibility in

relation to mainstream, ordinary accommodation that is not specially designed. That is where the barrier is at the moment.

The Convener: On the antisocial behaviour proposals, do you think that tenancy agreements will be written up differently or rewritten to be more specific about what constitutes antisocial behaviour in the view of the landlord?

Andy Young: Possibly. It depends on what comes out at the end of this process: I think that the tenancy agreement will be based on whatever guidance you give to us.

On your previous question, convener, I go back further than David Bookbinder and you are right—councils and housing associations used to advertise blocks for the over-55s, for example. That seemed to be common. I am not too sure quite what happened when someone turned from 54 to 55 years old—although I am about to find out. Landlords could not do that now under the Equality Act 2010, so we cannot turn the clock back.

Gordon MacDonald (Edinburgh Pentlands) (SNP): I will continue on the subject of antisocial behaviour. The bill intends to make evictions simpler in cases in which an individual has been convicted of illegal activity that affects the community. How will that address some of the problems that social landlords currently experience when they seek to evict tenants who have a Scottish secure tenancy and who have been convicted of antisocial behaviour?

David Bookbinder: That particular provision about eviction after conviction will apply only in a small number of cases. The cases in which it could apply are likely to be protracted and difficult ones in which a criminal case is being built up at the same time as the landlord is trying to build a case to recover the property. Generally, those would be very serious cases. The landlord will often struggle in that situation, because witnesses can be afraid to come forward. If there is a conviction in those cases, it will help. So we should not exaggerate the number of cases in which the measure will help, but the cases in question are usually quite serious.

The wording of the provision means that, in theory, a landlord, if so motivated, could choose to evict someone who has been convicted for a relatively minor offence that does not harm or distress other people, such as a small possession of drugs case that does not involve anyone else. The CIH feels that landlords are not interested in using the provision to evict that kind of person, but they are interested in using it for long-running and serious cases in which other people have been harmed significantly and for a long time.

Rosemary Brotchie: Shelter Scotland absolutely understands why landlords are seeking the change, and why MSPs might support it, but we urge a bit of caution. David Bookbinder talked about the ability to assess the nature of the offence. To take away sheriffs' ability to assess reasonableness in the pursuit of an eviction would be a significantly detrimental measure. We argue strongly that a sheriff should still have the option of considering reasonableness in considering an eviction under the power.

For certain types of offence or certain characteristics of the person whose eviction is sought, an eviction might not be reasonable. Part of the reform of a person or of someone changing their behaviour might be to maintain a secure and stable home. We therefore recommend that reasonableness is retained and potentially that tenants should have a right of appeal against such evictions.

Andy Young: I point out that social landlords' record on evictions has improved significantly in the past three or four years. We are not in the business of evicting people; it just does not make any sense at all on any level. Obviously, I disagree with Shelter on that.

I understand the point about reasonableness, but my understanding is that a sheriff would still have to consider proportionality, if not reasonableness, which is more of an issue in such cases. It might be worth checking that out—perhaps we can come back to the committee on the issue.

Alan Benson: The measure in the bill is welcome, but we are talking about a very small number of cases. There is a wider discussion to be had about what social housing providers can do in the general context of antisocial behaviour and criminality. There might be a concern that everything seems to be falling at the door of the landlord. The interface with the police and other services is important.

Although the measure is welcome, ultimately, we always see eviction as a failure. The main issue for landlords is that there should be levers that ensure that people engage with us, because if people engage with us properly a lot of issues can be prevented. However, there are extreme cases in which landlords have no alternative but to seek recovery.

Gordon MacDonald: On the small number of cases in which eviction must take place, the Legal Services Agency said in its written submission:

> "The general view of the solicitors commenting on the Bill is that we have grave concerns concerning the balance of rights and powers adopted particularly to those accused, or guilty of, anti-social conduct or behaviour."

It went on to say:

"All are entitled to somewhere to live and should not be pushed into a homeless underclass. Where are they to go?"

Does the proposed power strike the correct balance between the rights of tenants and landlords?

Rosemary Brotchie: I concur with what the agency said, to the extent that people who are convicted of a criminal act and whose conviction might lead to a prison sentence will need somewhere to live when their sentence ends. There is a significant problem in Scotland with homelessness among people who come out of prison. We need to consider the longer-term implications of the approach.

We need to get the balance right between the rights of neighbours and communities, given the impact that antisocial behaviour has on them, and the rights of individual tenants who might have perpetrated antisocial behaviour. Landlords are often in a tricky situation in that regard. We want to ensure that the balance does not swing one way or the other and that the right checks and balances are put in place, to ensure that the courts can make an assessment on an eviction case in such circumstances.

David Bookbinder: If members were discussing this issue with a group of tenants who had, over a long period, been affected and had their lives blighted by serious and intimidatory antisocial behaviour, it would not be satisfactory to say, "Look, we could do something, but we would just be moving the problem somewhere else." That is not a satisfactory response to such tenants.

Gordon MacDonald: The CIHS said in its submission:

"Serious ASB will always be very challenging to deal with, as in most cases there are few, if any, speedy remedies."

What impact is the bill likely to have on social landlords' ability to tackle antisocial behaviour? Will the bill help to tackle the causes of antisocial behaviour?

David Bookbinder: I am not sure that the bill seeks to tackle the causes of antisocial behaviour. As Alan Benson suggested, there are wider issues, which are to do with how people behave and how other agencies, not least the police, deal with antisocial behaviour.

Overall, the measures are welcome. There will be some additional tools for landlords. However, we live in a society in which—quite rightly—someone is innocent until proven guilty. It is exasperating for tenants to find that landlords cannot suddenly remove an alleged perpetrator from their property, but of course that cannot happen. We have strong tenancy rights, particularly in Scotland.

The bill contains measures that will help landlords. However, in the publicity that surrounds the bill as it goes through its stages and becomes law, let us not overegg to the public the extent to which it will help landlords to solve every antisocial behaviour case quickly, because that probably will not happen.

Rosemary Brotchie: It is evident that antisocial behaviour is not a tenure-based issue; it is found across all housing tenures. We talked about the impact of the right to buy on the creation of mixed communities. There are instances of antisocial behaviour blighting communities where there are private landlords or owner-occupiers. We want to give social landlords proportionate and effective powers to deal with antisocial behaviour, but the problem is not about housing; it is about how people behave in society.

We need a strong response, with significant and appropriate powers to deal with such situations; we also need to consider what support can be provided to individuals and communities. Landlords should give just as much consideration to that as they give to how they can end tenancies in such situations.

11:00

Andy Young: To be honest, landlords see their relationship with agencies such as the police as far more important and influential in dealing with antisocial behaviour than anything that is in the bill.

Alan Benson: I reiterate that it is good that the bill might provide additional tools for landlords, but the basis for that should always be to allow us to engage with people who carry out antisocial behaviour and with other agencies that can support us to find a suitable remedy.

As we said in our written evidence, we know of cases in which tenancies have been recovered. What happens is that the problem is moved within the same area to the private rented sector. Rather than the remedy being to recover the housing, it would be much better if the behaviour was tackled. From our perspective, perhaps there are unrealistic expectations of what housing providers can do.

We need an interface with other agencies, and their full support. As a housing association director, I hear all the time about the bun fight on whether the problem is a police one or a housing one. There is not enough co-ordinated and joined-up work to deal with such issues without the recourse of recovering the tenancy.

The Convener: We will move on to part 3, which is on private rented housing.

Jim Eadie (Edinburgh Southern) (SNP): The bill makes provision to transfer certain types of civil court actions in relation to the private rented sector from the jurisdiction of the sheriff court to the jurisdiction of what will be a newly established first-tier tribunal. What are your views on that? Will it significantly improve the quality of and access to justice for landlords and tenants?

Rosemary Brotchie: We have certainly recommended that and supported it strongly. Over the past 10 years, we have seen a continuing problem with access to justice for private tenants and, indeed, landlords in the sector. The private rented sector now houses a significant number of households across Scotland—double the number that it was 10 years ago—and we know that 26 per cent of tenants in the private rented sector have children. Increasingly, the sector houses people for much longer periods; it is becoming less about providing transitional tenancies.

There are big problems with private renting. There are conflicts between landlords and tenants and unresolved issues, particularly around repairs. We think that access to justice is a significant problem for tenants, who might want to improve the condition of their tenancy or challenge their landlord in certain circumstances. We would welcome the introduction of a private rented sector tribunal to try to overcome some of the problems that there have been with the court system in the past little while.

David Bookbinder: I echo everything that Rosemary Brotchie said and add that all the advantages that a tribunal system would bring to the private rented sector, including that it would be less adversarial and more user friendly, would apply equally if we had a tribunal system in the social sector. I realise that that is a bigger issue, but if you were going to come on to that—

Jim Eadie: We are coming straight on to that, but first I would like to hear the panel's views on the transfer of jurisdiction in the private rented sector, please.

Andy Young: I do not think that I can add anything to what Rosemary Brotchie said on that, but we want some sort of full housing tribunal pilot that deals with social cases, too.

Alan Benson: We think that that would be a sensible measure.

Jim Eadie: That brings us seamlessly on to the next point, which is about extending the tribunal system to the social rented sector. The Chartered Institute of Housing has made the case that the transfer to the first-tier tribunal should apply also to the social rented sector. Can you outline your reasons for that and, if you have costed that proposal, say what the cost implications of such a move would be?

David Bookbinder: It would be a much greater move in terms of volume and cost. We are not arguing that the bill should be amended to take on board social sector cases, because we appreciate that a lot of costing work would need to be done. However, it is hard to find an advantage of the first-tier tribunal that does not apply across the sectors. We are aware that some changes will be made to the sheriff court system in the coming years and we acknowledge that the Scottish Government would want to consider the impact of those changes on the system, whether they reduce delays and whether the system can be made more user friendly. We are simply asking that the option to apply the tribunal system to the social sector is not closed off forever.

Rosemary Brotchie: I do not disagree with anything that David Bookbinder has said. As I said, we supported the move to take private sector cases out of the sheriff court as the first stepping stone, particularly because there is such a degree of unmet need for dispute resolution in the private rented sector. Tenants and landlords avoid it as far as possible. We see the consequences of that in the way that the private rented sector works at the moment. We know that repairs cases are not dealt with as effectively as they might be because access to the PRHP is perhaps not as easy as it should be for tenants—

Jim Eadie: Will you explain what PRHP stands for?

Rosemary Brotchie: I beg your pardon—it is the Private Rented Housing Panel, which is an existing tribunal specifically for dealing with repairs cases. One of the reasons for that is that tenants do not have the security of tenure that they might need in order to pursue such cases. Although we welcome the introduction of the tribunal for private rented sector cases, we think that it should be accompanied by increased security of tenure for tenants to enable them to use the new access to justice most effectively.

Jim Eadie: I want to be clear about what you mean by that. Are you saying that the scope of the tribunal should be extended?

Rosemary Brotchie: Do you mean in terms of the social rented sector?

Jim Eadie: Yes.

Rosemary Brotchie: That is certainly something to look at in future but, in the first instance, private rented sector cases should be the priority, and the new tribunal should be accompanied by an increase in security of tenure

for tenants, to enable them to use that access to justice most effectively.

Andy Young: I would not argue with anything that has been said. I particularly agree with what David Bookbinder said. We talked earlier about access to justice. One of the biggest complaints to me from our members is about swift access to justice. The current sheriff court system appears to be unfit for purpose in respect of social housing cases.

Alan Benson: Andy Young just stole my thunder. I was just going to say that the current system, as it applies to the social rented sector, is not fit for purpose. In fact, it penalises tenants. I look at spreadsheets all the time, and see rent arrears cases where the legal fees are as high as the rent arrears because of the length of time that the processes take. That issue should be looked at seriously in future. Since the Scottish Parliament was re-established, there has been a lot of talk about whether there should be a housing court to deal with some of those issues. The current sheriff court system is definitely not fit for purpose.

Jim Eadie: Ms Brotchie, you mentioned the Private Rented Housing Panel. Sections 23 to 25 of the bill make provision to expand access to the panel by enabling third-party applications by local authorities to enforce the repairing standard, which is the condition standard and legal obligation that landlords have to meet in order to rent out their property. I presume that you agree with that but, in responding to the point, could you refer to your earlier comments about the bill perhaps being in need of strengthening in relation to safety and electrical safety?

Rosemary Brotchie: Certainly. You are right that we support the proposal for third-party reporting. The number of cases that are taken to the PRHP by tenants to challenge their landlord over the basic condition of the property is minuscule in comparison with what we know is significant disrepair throughout the private rented sector. Shelter sees cases every day. Some of the most significant things that people call us about are problems of disrepair and damp with their private rented property. Sometimes, those problems are severe and significant.

Tenants in such situations often do not want to challenge their landlord, because they fear retaliatory eviction and will not take them to a tribunal if they have only a six-month short assured tenancy. In some cases, tenants might get only a month's notice if that secure period has ended. To deal with disrepair in the private rented sector, local authorities must have powers to take action against private landlords in such circumstances. However, the powers must not be implemented in a way that creates conflict between the landlord and the tenant and inadvertently leads to the ending of a tenancy, which, as I have said, is a much bigger problem.

Private tenants' security of tenure is just not good enough to allow the sector to improve and to continue to meet housing need as it is at the moment. In short, although we welcome the introduction of third-party reporting, we believe that we need to consider what happens to tenants in those circumstances and whether they will be forced to move on from their tenancy.

We also ask the committee to consider strengthening the bill with the introduction of stronger regulation of electrical and, in particular, carbon monoxide safety in privately rented homes. Provisions on increasing electrical safety standards in the private rented sector might be considered, but we would also like the committee to consider the possibility of making the installation of carbon monoxide monitors or alarms mandatory for all private tenants.

Jim Eadie: That was helpful, but I want to understand where you think the gap in the bill is so that we can address it. The Private Rented Housing Panel can issue repairing standard enforcement orders to ensure that landlords bring properties up to the appropriate standard. As I have said, that is a legal obligation. Would not that be the mechanism for ensuring that the additional electrical safety standards that you have mentioned are met?

Rosemary Brotchie: Absolutely. However, although such orders are the mechanism for achieving standards, we are also looking for additions to the repairing standard to cover the specific issues of electrical safety and carbon monoxide alarms, in order to prevent unnecessary deaths.

Jim Eadie: Could that be achieved through an amendment?

Rosemary Brotchie: It certainly could.

Jim Eadie: We look forward to seeing such an amendment. Do the other panel members have anything to add?

Alan Benson: The repairing standard is very basic; we concur that it needs to be strengthened for the private rented sector. A parallel can be drawn with the social rented sector, which has to comply with the Scottish housing quality standard and for which a whole system of regulation is in place. That is absolutely fine, but the fact that the private rented sector has no equivalent must be addressed urgently. After all, the crisis in the quality of housing lies in the private sector and not in the social rented sector.

David Bookbinder: Over the past couple of years, CIHS and a number of other housing

bodies have been working closely with the Electrical Safety Council on trying to get better electrical safety standards reflected in the repairing standard, including regular safety checks by qualified persons. We realise that the fact that such a provision has not been consulted on creates issues for the Scottish Government, but we very much want the Government and Parliament to keep the matter in mind, so we ask—if it is not possible to put such a measure in the bill—that it be considered at the earliest possible opportunity thereafter.

On the very welcome move with regard to third-party reporting to the Private Rented Housing Panel, if, unfortunately, a tenant has to move on either because of difficulties or because they simply have to—of course, I echo Rosemary Brotchie's hope that it does not lead to that—the local authority will, if it so wishes, still be able to pursue action through the power. That course of action does not exist at the moment, so I welcome the proposal in the bill to ensure that a tenant's moving on does not stop the local authority pursuing the landlord.

Rosemary Brotchie: We mentioned just now the difference between repair in the private rented sector and in the social sector. I agree with most of those points, but we also seek a strengthening of the right of tenants who are placed in temporary accommodation to access to good-quality accommodation and good standards. That would be a simple amendment to an existing regulation that provides measures on unsuitable accommodation for certain categories of tenants who are placed in temporary accommodation. It should be extended to cover the condition of the accommodation in which they are placed.

11:15

Jim Eadie: I received a petition from Shelter Scotland before Christmas on that issue, so I am aware of it and look forward to further discussions on it.

Do the witnesses have an opinion on the Scottish Government's view, as outlined at paragraph 131 of the policy memorandum, that

"Proposals for court reform … and increased use of mediation will provide the opportunity to improve outcomes for social sector cases while they remain with the courts"?

David Bookbinder: I think that that is a reference to reforms of the civil court system. The jury is out—if you will excuse the pun—on what the impact of the changes will be. CIHS has always been a supporter of mediation where that is appropriate; I am sure that every organisation that is represented here is, too. There are, of course, cases in which mediation might be particularly difficult. The idea of mediation is that people volunteer for it rather than their being coerced into it, so it will not be appropriate for every case. However, more use of mediation and reform of the court system can help the social sector

Andy Young: Mediation is a useful tool; there is no doubt about that. It is also well used in the social sector. However, access to mediation is a bit of a problem at the moment; I understand that it is quite patchy throughout Scotland, which should be examined.

Patrick Harvie (Glasgow) (Green): I am sure that I am by no means alone among members in seeing an increase in the volume of issues that are raised with me in relation to the private rented sector, so I appreciate the opportunity to contribute to the committee's discussions.

There has been a general welcome for the bill's measures on the private rented sector. Do the witnesses have views about areas in which the bill could have gone a little further? Rosemary Brotchie mentioned security of tenure; the bill could have addressed that. We know that the Government is undertaking some further work and there could be moves down the line, after the bill is passed.

From the issues that constituents have raised with me, it seems to me that the vulnerability that insecure tenure creates is most damaging when it also relates to other issues. That might be the small minority of illegal evictions, harassment and aggressive or threatening behaviour by landlords, or the much more common things that would never—to be realistic—go to a panel or tribunal because people just put up with them, such as minor repairs not being done. It could relate to the proliferation of alternative ways of getting around the tenancy deposit scheme, failure to comply with that or using so-called advance rent to replace deposits. It could also relate to discrimination against housing benefit claimants in the private rented sector.

Would the witnesses like the Government to take additional measures or make further progress in the bill, or in policy at the same time?

Rosemary Brotchie: I am a member of the Government review group that has been mentioned, which is considering how the private rented sector tenancy currently operates. That group's considerations so far have identified a very significant range of problems in how the tenancy works for landlords and for tenants.

One of the conclusions to which we are coming—I do not speak for the group; this is my point of view—is that the current tenancy regime is working very informally. In the vast majority of cases, tenancies are not set up correctly and the protections that should exist for landlords and

tenants are not properly enforced. In fact, because landlords and tenants do not choose to use the court system because of all the reasons that we have just mentioned, most often, tenancies are ended with a no-fault ground at the end of the period.

Tenants themselves tend not to want to pursue the landlord or to seek changes or improvements to their property; they would rather just move on. It is a fluid and transitory sector. It does not need to be, however. Many people rent from private landlords because they want the flexibility to stay for a few months and then to move into owner occupation or move on. Sometimes, they want to try out an area. It is absolutely not the case that we want to see the end of that. Security of tenure does not necessarily mean recreating a longer-term sector.

However, we want security of tenure to exist so that tenants who face problems can challenge their landlords. If they wished to do so and if their doing so were appropriate, they could turn to the local authority for help. It is to some extent a matter of rebalancing the power between landlords and tenants in such situations.

Patrick Harvie: On some of the other issues that I mentioned, such as failure to comply with the tenancy deposit scheme, we know that the Government is not able to put a figure on compliance, but I am sure that Shelter will be aware of many cases of landlords or letting agents working their way round the provisions by claiming not to be charging a deposit, although they are in fact charging a deposit in all but name. Are there provisions that we could be considering that would improve the operation of existing systems that are not working as they were intended to work?

Rosemary Brotchie: Yes. The onus is on the tenant to take the landlord to court over non-protection of their deposit, and the penalty on the landlord is up to three times the deposit. There is almost an incentive for tenants to pursue such cases, but not many of them take that action. That being moved to the tribunal would be very welcome, but we would be interested to consider other options for addressing that problem.

Patrick Harvie: Do you have concerns about discrimination in the private rented sector against housing benefit claimants now, or about how that might increase with the housing benefit changes that are coming through? Is there anything that we could be doing to address that issue?

Rosemary Brotchie: I, as you and everybody else round the able has, have over the past few months heard of cases of landlords deciding wholesale not to accept tenants who are in receipt of housing benefit. That is not a new problem; it has existed many times in the past. I am sure that everybody is familiar with adverts saying “No DSS”.

We are concerned about the availability of private rented accommodation at the levels that people on housing benefits can afford. There will be continuing uncertainty, as we move towards the introduction of universal credit, among landlords who might not be prepared to take the risk. We are certainly concerned about the situation, and we would welcome measures to try to address it.

David Bookbinder: CIH Scotland and CIH across the UK are concerned at reports of private landlords pulling people who are in receipt of housing benefit out of housing. It is hard to see how any Government can legislate to tell people who to house and who not to house. One obvious reaction from us is that, if more people are going to be excluded from the private rented sector who might have turned to it in the past, that increases the importance of there being an improved supply of social sector houses. The current target is to build 4,000 a year. I know that times are difficult, but the more we can do to increase that target, the more we can offer an option to people who may not now have the private rented sector to turn to.

The Convener: We have touched on the subject of letting agents, and there has already been legislation concerning them. Do you agree that regulation of letting agents is required? If so, why?

Rosemary Brotchie: We whole-heartedly agree that regulation of letting agents is necessary. I do not know of anybody who does not agree with that. Even the sector itself is calling for regulation.

We get a disproportionate number of calls to our helpline from tenants who are having problems with their letting agent. As you may know, we have been running a campaign over the past little while on charging of unlawful fees to tenants by letting agents. However, that is not the only problem that we see. Some letting agents engage in a wide range of management practices that are counterproductive to ensuring that there is a secure and stable private-sector experience for tenants.

We would like regulation of letting agents and we want to ensure that it is effective and, especially, that there are sufficient powers to enforce change in the sector. As we have seen with landlord registration, it is all very well to have a list, but we need to ensure that regulation has teeth and can enforce change in practice among agents in practice.

The Convener: How do you propose the regulatory regime should work in practice?

Rosemary Brotchie: The proposal in the bill is that the Scottish Government will set up a register

of letting agents and that, to be accepted on to it, an agent will have to accept a code of practice and pass a fit-and-proper-person test. The nature of the code of practice and the dispute resolution that will surround it need to be looked at carefully to ensure that they will be effective.

The Convener: Do you believe that provision needs to be beefed up, over and above what is in the bill?

Rosemary Brotchie: We do not know the detail of what will be in the code of practice because that is for secondary legislation, but we will be interested to see what it covers. On dispute resolution, again the bill introduces powers rather than sets out in detail how it is will operate. We encourage the committee to look for assurances from the Government about how dispute resolution will operate in practice.

The Convener: Would you expect to be consulted on that?

Rosemary Brotchie: Yes, we certainly would.

The Convener: Okay.

We move on to part 5, which is on mobile home sites with permanent residents. Does anyone have any comments on that? Perhaps only Shelter will want to comment.

Rosemary Brotchie: I do not have any detailed comments on the provisions in the bill, I am afraid. We acknowledge that there is a need for reform and we are glad that the Government is acting on that need.

The Convener: Does Shelter get calls from people on mobile home sites?

Rosemary Brotchie: We get such calls occasionally. Park homes are not a big concern. In rural Scotland, there is a problem with people living in caravans on unlicensed sites, but that is not what part 5 of the bill covers.

The Convener: Okay. Part 6 is on private housing conditions, on which we have already touched, in particular in relation to local authorities' ability to pay a missing share and recoup that from the private part of a block, usually. Do you have any views on the provisions on that?

David Bookbinder: I merely say that it appears that there are welcome clarifications or modest amendments to the existing powers. Probably, the broader issue here is not so much a legislative one but a question of what resources hard-pressed local authorities are able to use to exercise the powers. Money is usually involved, which presents challenges for local authorities at any time, and especially at present. However, that is not something that the bill can tackle.

The Convener: We will certainly ask about that when we have the local authority representatives in.

Do you have any comments about the bill's miscellaneous provisions? Are there any other issues that you want to raise, while you have the chance?

Rosemary Brotchie: There is an area that has not come up in which we would like to see an additional power that is not currently in the bill. What is termed the section 5 referral process is the process whereby local authorities make referrals to housing associations to house people under the homelessness duties. Currently, there is mixed practice across Scotland regarding whether the section 5 referral process or a more informal nomination practice is used.

As we have said to the committee in relation to previous bills, we believe that there are strong arguments for making it mandatory across the board for local authorities to use the section 5 process to secure housing from social landlords. That would increase transparency and enable local authorities to see where registered social landlords in their areas are providing more help. It would also enable tenants to understand why they have been refused, which is not the case when the current more informal approaches are used.

11:30

David Bookbinder: Rosemary Brotchie is right that local authorities use a variety of mechanisms to work with registered social landlords to house homeless people. Sometimes, the mechanism is section 5, and at other times, it is a more informal arrangement, as she said.

It strikes the CIH that a local authority that is dissatisfied with RSLs' contribution to its achieving its homelessness objectives can, if necessary, use section 5 referrals, if informal nomination arrangements are not working well. It feels like Shelter is asking to mend something that is not broken, if local authorities are happy with how things are working.

Andy Young: The proposal seems to move away from the person-centred approach that we have moved on to, and it does not sit comfortably with me. It is almost as if Shelter wants to monitor what RSLs are doing rather than worry about the outcome for homeless people, which must be first and foremost in everybody's thoughts. If a different mechanism from section 5 referrals works best for an applicant, surely to change that would be ludicrous.

Rosemary Brotchie: Shelter is not clear whether that approach is working best for applicants. As I said, RSLs play a large role in

housing homeless people in some areas but do not in other areas.

To answer David Bookbinder's point, I think that the section 5 referral process is sometimes seen as a big stick in the allocations process. It need not and should not be that. It is not a complicated or overly burdensome process, but it increases transparency and makes the figures measurable, so that we can see the contribution. That should also help partnership working.

To answer Andy Young's point, we do not suggest the removal of informal nomination arrangements, under which personal contact between a person in a local authority and somebody in a housing association facilitates availability of a house. However, we want that to be backed up with the section 5 process. The two things do not have to be at either end of a spectrum; they can work hand in hand. That would improve the situation for many homeless people across Scotland.

The Convener: I thank all the witnesses for their helpful input.

11:33

Meeting suspended.

11:38

On resuming—

The Convener: In the second panel of witnesses on the bill, I welcome Paul Brown, chief executive officer of the Legal Services Agency; Michael Clancy, director of law reform at the Law Society of Scotland; and Garry Burns, prevention of homelessness caseworker at Govan Law Centre.

Adam Ingram: Good morning, gentlemen. The Scottish Government's vision is

"that all people in Scotland live in high-quality, sustainable homes that they can afford and that meet their needs".

To what extent does the bill support that vision?

The Convener: Who would like to start? I call Michael Clancy.

Michael Clancy (Law Society of Scotland): Thank you, convener. I am probably the least qualified member of the panel to answer Adam Ingram's question.

It is important to have a vision in housing provision. As the committee will see from our paper, the Law Society of Scotland does not comment on the policy behind the Government's views on the issue. However, solicitors buy and sell houses for people all over the country, and we try to do our bit in helping to make that provision a reality for people. Beyond that, I am not really sure that I am qualified to comment on Government policy in that kind of context.

Paul Brown (Legal Services Agency): I absolutely buy into the vision. Abolishing the right to buy and tackling tenemental repairs are important initiatives. I think that my colleague Garry Burns concurs with our view that there is a major problem of homelessness and that, in some respects, the bill will make that worse. The Legal Services Agency advised 256 rough sleepers in Glasgow between 12 April 2012 and 11 April 2013, but that figure soared between 12 April 2013 and 11 December 2013, which is a period of much less than a year, to 355 rough sleepers. We think that the number will double this year from a baseline four or five years ago of very few rough sleepers.

There is a major problem, and we are concerned that some of the approaches to managing antisocial behaviour in general and to allocation policies will make the position more difficult, particularly in Glasgow. We understand from Glasgow City Council press releases that one of the reasons why it has a homelessness problem is the difficulty in getting housing through registered social landlords. We are concerned that there appears to be an implicit strategy behind the bill that people who are accused and sometimes guilty of antisocial behaviour are going to be thrown on to the tender mercies of the private sector, which is the opposite of what one would expect. The private sector has none of the resources required to deal with people with mental health or behaviour problems. However, the policy seems to be to further exclude such people from RSLs and local authority housing stock. We are concerned about that.

The Convener: Does the position that you have described not relate particularly to Glasgow? Overall in Scotland the number of applications for homelessness assistance has fallen by about 13 per cent over the past year. I get the feeling from newspaper articles and so on that there is a passing-the-buck situation that relates particularly to Glasgow because Glasgow City Council does not have its own housing stock. As part of our evidence taking for our homelessness inquiry, we went to Glasgow and met Glasgow Housing Association and another organisation. They said that they were very proud of the work that they had done in Glasgow. However, we now seem to be finding that Glasgow City Council is reneging on its obligations to the homeless.

Paul Brown: Glasgow City Council states that it cannot get the housing from RSLs—I am not privy to what is the true situation. We heard in the earlier evidence session about section 5 referrals by the local authority to registered social landlords, but there is basically not very much compulsion on

RSLs, because they can turn down a referral if there is a good reason for them to do so. There is therefore a lack of alignment between a local authority's obligations and the ability to provide housing. If there has been a stock transfer, the people who have the housing do not really have the obligation to provide housing for people who are homeless, but the local authority does—that is a mismatch. I suggest that the allocation policy for all public sector organisations, including RSLs, should be aligned with the public policy to provide accommodation for people who are homeless. The two things need to be aligned, or the mismatch will continue.

11:45

It is wonderful law. The homelessness law has improved enormously—there is no question about that—and it is something of which we can all rightly be proud. However, there has to be a means to implement it, and it appears that there is not.

Glasgow City Council has announced that it will provide 60 new beds for temporary accommodation. That is great—I do not know where it got the money from—but, given the numbers concerned, it does not look to me as if that will get it very far.

There needs to be a change in the way that housing is allocated, to give more priority to people who are vulnerable to homelessness. A proportion of them will inevitably be people who have had behaviour problems in the past. We cannot have a situation where there is nowhere for them to go. I appreciate that people who have behaved in an antisocial manner need to be controlled, but that cannot be done in a way that results in their becoming a homeless underclass. One suspects that the fantasy that people have is that those people will go off to London or something. The point is that they are not going to go away; they are here to stay and we need to have a joined-up policy.

The Convener: My point was that it seems to be a particular problem in Glasgow. As far as we can ascertain from the dealings that we have with our local authorities and housing associations, they work together in the rest of the country. The letting is done on a cross-social-housing basis. There seems to be a particular problem in Glasgow because the council does not have its own social housing stock. I think that we should move on.

Adam Ingram: I will ask Garry Burns to pick up on that, given his experience. One of the outcomes that the Scottish Government is seeking from the bill is to encourage sustainable communities. Could you talk to that in response to what you have heard already?

Garry Burns (Govan Law Centre): I echo what Paul Brown said. I agree that Glasgow is a specific case as it has the worst homelessness in Scotland, but the figures do not always tell the true story. Hidden homelessness is not happening only in Glasgow; it is happening in every community. I have worked with enough local authorities in this job and in my previous job to know that there are significant barriers to everybody who presents to a local authority. That has to be investigated. Sometimes local authorities will do everything they can before they take somebody on as a homelessness case. I dealt with a case like that just at the end of last week. I will not name the local authority, but it did everything that it could rather than take the client on as a homelessness client. The people involved were a couple—the young person involved was 16 years old. The local authority was just bashing them back and forward. The idea that this happens only in Glasgow is not completely true.

If we are to have sustainable communities, something has to be done about private landlords. Our work with private landlords represents probably about 30 per cent of my case load. Some private landlords are charging very high rents. More and more people are coming to my organisation saying, "I can't afford my rent. What am I supposed to do?" We cannot really offer them a solution. They cannot present as a homeless family because technically they have a tenancy. We are quite reluctant to tell them to ramp up rent arrears, because then they will have a big debt and they will have to go through an eviction process. Unaffordable private rents are a significant problem. There is a very simple solution to it, which is that the Scottish Government has to do something about rents in the private sector.

Also, with regard to tenancies in the private sector not being fit for purpose—

The Convener: I will stop you there because we are getting into detail that we might come to when we look at the private rented sector. We are just taking a broad-brush look at this at the moment. We will certainly come back to the detail of what you were saying.

Adam Ingram: In general terms, you are saying that we need to do more than what is in the legislation to create the kind of sustainable communities that we are looking for.

Garry Burns: Absolutely.

Adam Ingram: My final question is about the consultation process for the bill. Are you content with it? Were there deficiencies?

Garry Burns: I have had a look at the consultation process. We got a lot of the material quite late on, so it has been difficult to look at it thoroughly, but I think that there are a lot of tenants' voices missing. There is talk about changing age criteria in relation to reasonable preference, but I do not see that any young people or young persons' organisations have been consulted. In my experience, inserting provisions to do with age would not be to the detriment of anybody apart from young people, so if you are changing the process, the voice of young people's organisations such as Barnardo's and Save the Children, which have homelessness places all over Scotland, would be positive in informing the debate. However, that part of the consultation document says that the Government did not consult on that issue. If the consultation paper itself says that it did not consult on it, that part definitely has to change.

I would also like to see more tenants' views on the process. A lot of the policy looks to me as if it has been written for and on behalf of the registered social landlords, without taking account of tenants' voices.

Adam Ingram: Witnesses on a previous panel of tenants' representatives suggested that they were actually quite pleased with the pre-consultation consultations that they had had, but I take your point about some of those things coming late on the scene.

Garry Burns: The ones who are excluded from getting into tenancies by the bill have not been consulted. It is easy for a tenant to say that that is a good idea because it means that they will not get somebody who has had an antisocial behaviour order or who has been evicted living next to them, but those people also deserve housing. Instead of listening to only a select few tenants, there should be a wider debate that includes people who have chaotic lifestyles, because there are enough organisations working with them to allow us access to them. That would allow us to ask them, if they are going through homelessness or into different tenancies or in and out of places, what they think could help them to sustain a tenancy, as opposed to telling them how not to get housing.

Paul Brown: I entirely agree with Garry Burns. I suggest that the membership of the affordable rented housing advisory group should have been markedly wider. There are no lawyers represented on it who specifically represent homeless people. Shelter is represented, but it bore the full weight of representing that constituency. No organisations representing people with mental health problems are represented, and that is one of the areas that we are talking about when we consider some aspects of antisocial behaviour. The membership should have been broader. I entirely agree that young people do not have a voice in established tenants' organisations or housing associations in general, so an effort needs to be made there.

Michael Clancy: The general point about consultation is that it can always be done better. The Standards, Procedures and Public Appointments Committee is currently looking at the legislative process, and it will probably receive comments on consultation, which is something that we should look at in the round.

Garry Burns made a point about reaching those constituencies that are not among the so-called usual suspects. Doing that is a challenge to Parliament and to Government, and we can make efforts to address that by using social media and thinking out of the box. If the box is a committee room, you can go out into the community. It is a question of getting to those who are affected by legislation. As a long-time consultee and responder to consultations, I have no doubt that it is easier for organisations that have dedicated staff and resources than it is for individuals or for underresourced organisations.

Adam Ingram: That is helpful. We will move on to the detail of the bill. Part 1 is about the abolition of the right to buy. Do you have any comments to make about the proposed abolition of the right to buy, particularly in relation to the impact on tenants' rights?

Michael Clancy: I think that that is another one for me. Having listened to some of the earlier questioning and having read last week's *Official Report*, I know that questions have been raised in the committee about whether the abolition of the right to buy is compliant with the European convention on human rights. If one looks at the provisions of the convention that engage with property rights, such as article 8, which says that

"Everyone has the right to respect for his private and family life, his home and his correspondence",

and article 1 of protocol 1, which deals with

"the peaceful enjoyment of ... possessions",

one can see exactly how it could be concluded that the provisions abolishing the right to buy are compliant with article 8 and protocol 1.

A case in 2001 called Chapman v the United Kingdom—33 EHRR 399—says in effect that article 8 does not give the right to be provided with a house. I have tried to track down a 2004 case relating to Northern Ireland that spoke of the right to buy there not engaging article 1 of protocol 1, which says:

"Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law."

When we stack those up, the abolition of the right to buy is being done by law and in accordance with what is considered to be the public interest. Although the way in which the abolition of the right to buy is being done would not prevent someone from taking a case that their human rights have been contravened, I would agree with the comment made last week by a Government official that it is unlikely that such a case would be successful.

Adam Ingram: The length of time for the process to extinguish the right to buy has been stipulated at three years. We have heard from others that one year might be sufficient. Do you have a view on that?

Michael Clancy: It is a personal view only—I did not consult anyone back at the office on this. I think that three years is quite reasonable. It gives people a reasonable time in which to decide whether to exercise the right to buy.

Adam Ingram: Do any of the other gentlemen have views on the matter?

Garry Burns: We support it.

Paul Brown: We support it, too. It is a bold and important reform.

The Convener: Part 2 of the bill is on social housing.

Mark Griffin: Does the panel have any comments on provisions in the bill that are aimed at increasing the flexibility that social landlords have in allocating properties, particularly relating to the changes to the existing reasonable preference provisions and the inclusion of age as a factor that social landlords are able to take into account?

Paul Brown: My view is that RSLs' obligations in the allocation of housing need to be aligned with local authorities' obligations to provide housing, particularly where there has been a stock transfer. I have no difficulty with increasing flexibility but within the context that the flexibility needs to be constrained by enabling the local authority to meet its obligations to people who are homeless.

What I would be concerned about is that the increased flexibility may well make that more difficult. It also gives the message, if you see what I mean—rather than necessarily what is in law—that it is public policy that RSLs should be able to decide their own priorities without regard to the needs of the wider community.

I entirely accept that the old section 20 of the 1987 act was out of date and, to an extent, was not terribly helpful in referring to "reasonable preference", which does not really mean all that much. I would be in favour of something much clearer and more specific, basically requiring RSLs to have their policy aligned with the needs of allocation to homeless people. That would be along with other issues, of course. It is not an easy issue, but it needs to be highlighted.

12:00

Garry Burns: When it comes to reasonable preference, one danger is to do with removing the category of overcrowding. We would be concerned if that were to be removed, as overcrowding is certainly an issue in Glasgow and, I guess, in other local authority areas. Removing people living in overcrowded houses as a category for reasonable preference would not be a great idea.

I will go back to the issue of age, although I have already touched on it. Young people are experiencing significant changes with regard to housing benefit—those that have already happened and those that are going to happen. To start to take away their right to social housing at a time when their rights have been eroded significantly is not the best move. Young people should have exclusive rights within housing. Some young people cannot stay at home—some young people do not have great families. There is some help from social work, and there is some policy. By consulting other organisations, we can figure out a way of getting young people into decent housing. If they can get into decent housing, they can get into college or go to work. It would be a good idea for the Scottish Government to do that.

When it comes to the tolerable standard, some definition is needed. There is quite a lot in the policy before us that says that the Scottish Government is going to come back and define the term. Removing the tolerable standard would not be a good idea either, as it means people living in accommodation that is not tolerable. If they cannot move because of that, I do not see how they can do so otherwise.

The problem is that, given that RSLs are set up to help housing, if the tolerable standard becomes so bad, people would then go to statutory homeless, which creates more problems and leads to more money having to be put into social housing anyway. To remove the tolerable standard as a way of facilitating social housing taking on a new tenant would be a bad idea.

The Convener: Do you wish to discuss issues around antisocial behaviour, Mary?

Mary Fee: Thank you, convener. I have some questions about Scottish secure tenancies. The bill contains provisions that would widen the circumstances in which landlords can use short SSTs where there is a history of antisocial behaviour. I am interested in the panel's views on whether those proposals are appropriate and proportionate. Do the witnesses have any

concerns about the type of evidence that a social landlord would need to have to make use of those powers?

Paul Brown: We have considerable concerns about the overall direction of travel regarding antisocial behaviour in the bill.

Starting with the allocation provisions, there is codification of the means whereby allocation of housing will be delayed for a minimum period, set by the landlord, in cases where someone is held to be guilty of antisocial behaviour. There is no real way of protesting about that under the bill. A summary application is no more than an article 6 fig leaf, because the number of people who will have sufficiently easy access to legal advice and representation in order to submit a summary application will be no more than one a year. I imagine that that is the case; I have never been consulted by anyone on that area.

The point is that there are groups of people in some areas who will not be allocated any social housing for a minimum period—we do not know what that period will be. Their access to any ways to dispute that will be limited. They may then be allocated a house. Perhaps they have not gone down that route, but they are allocated a house, and antisocial behaviour is committed or alleged to have been committed.

The demotion process is very vague. Previously, if someone already had a secure tenancy, the demotion to an SSST was subject to a case having gone through a criminal court. That was very clear, but the new demotion process is much more vague and, although we entirely approve of the idea that people get reasons for it, there is no easy way of protesting about it. Again, it is a summary application—we seem to be having a summary application fest here. Anyway, that will not cash out in real terms in applications to the court, because it will just not happen.

Someone might be accused of antisocial behaviour without the matter having gone through any court process, and their tenancy could be demoted to an SSST; then, that SSST can be brought to an end. Again, there is a summary application process. A full judicial process to evict the person is not easily available.

I am concerned about the potential for misuse and about the difficulty that people who have chaotic lives or mental health problems, or whatever it may be, will have with getting an opportunity to get an outside court—as that is the forum that society provides—to consider the matter.

I would prefer either that the demotion was made more restricted, going back to the old criteria, or, if the new criteria are to be left in, that the landlord be required to raise a summary cause action so that they, rather than the tenant, have to take the matter to court. The issue is getting into the court. No doubt we will discuss later whether a court or a tribunal is best, although I am not too bothered about that particular question. The point is to provide another bite at the cherry—an opportunity to go to a court and get the forms of advice, assistance and representation that are provided through that route, which is currently much easier than taking the initiative to make a summary application.

Garry Burns: I think that a solution is being designed for a problem that does not exist. SSSTs can be used at the moment anyway, if there has been antisocial behaviour. In cases involving families or individuals in which antisocial behaviour is taking place, there will be other issues and other things going on. There might be mental health problems, addiction issues or both; other things could be going on in the family.

Tenants do not want to lose their homes. Some tenants might be acting in a way that is not great for everybody else, but we feel that it is a matter of working with such tenants, instead of threatening them, which is what we feel that the measures will do. We have to keep an eye on the wider community, but if we are going to make it easier to get people with issues out of a property, we have to be concerned to ask where they will go. Once people have been put out of their social housing, where do they go? They go to the council for accommodation and the council is obliged to accommodate them in temporary accommodation, which costs a lot of money. They may well end up in a private flat.

If people have issues, those issues do not disappear when they move into a private flat. Whatever issues they had that created the ASBO go with them into their new tenancy, wherever they go. ASBOs as they are used now are sufficient as a tool, but for people with behaviour that needs to be changed for the wider community, why not include in the policy a statutory obligation on the local authority to put support services in place? Most councils will not provide tenancy support unless there is homelessness. If we are helping folk with homelessness, why not help folk who are struggling in tenancies and keep the SSSTs as they are now?

Mary Fee: Would it be helpful if the Government issued specific guidance to landlords on how the powers should be used?

Paul Brown: I think that the procedure and the rights need to be tightened up. It is not just a matter of guidance. There will be human rights challenges.

Mary Fee: Specifically with this?

Paul Brown: Yes.

The new demotion criteria relate to how the defender—the tenant, a member of the family or visitor—has acted within a period of three years. The landlord might have records, but if somebody was accused of having done something two and a half years ago, most people would not have a record of that and getting evidence of that sort of thing would be a very complex matter. If one wanted to test the fact, it would be by way of summary application. However, there is no test of reasonableness; the court will not be told, "You have to look at reasonableness." In the 2001 act, reasonableness is defined in various ways in a situation where someone is evicted from a secure tenancy.

I would suggest that in order to be human-rights compliant, you will probably need to have a test of reasonableness for most of these disputed issues. The test of reasonableness can be explained in more detail either in statute or in guidance, but if one does not include the test, people will try proportionality challenges, which are not quite the same thing. If landlords want certainty and clarity, it is much better to say that their decision making has to be reasonable, rather than leave things to proportionality.

The course of conduct in a demotion situation might not be proven by way of a criminal court or through an ASBO. However, if it has been so bad that demotion is obviously reasonable, the defender's lawyer will tell them that the demotion is perfectly reasonable and if they do not go along with it, they will get evicted. They will not get legal aid either and the sheriff will be very annoyed if a defence is attempted that is obviously absurd.

One has to trust the process to some extent, rather than leave things to good practice on the part of landlords. I think that good practice among landlords is probably general, but mistakes are made and there are prejudices—sometimes witnesses are prejudiced. These things need to be tested properly and I do not think that the way that this issue is dealt with in the proposals provides for that fully.

Mary Fee: Does Garry Burns have any further comments?

Garry Burns: No. I could not add anything that Paul Brown has not already said.

Mary Fee: There are provisions in the bill that would provide further protection for tenants, particularly those with short SSTs. Do you think that any other type of protection is required? You have talked at length about issues that you have, but could something specific be added that would help?

Paul Brown: To protect tenants?

Mary Fee: Yes.

Paul Brown: I am concerned about the new proposed recovery of possession procedure for secure tenants. Section 15 removes reasonableness from the test for antisocial behaviour. It says that if someone has been convicted of various offences, there is no defence to the action for eviction—apart from the proportionality route. I think that that was accepted in the earlier session. It seems a bit absurd to have people know that proportionality may be raised but not to explain it in statute in a way that is accountable and clear. The rule of law should give people a clear indication.

If someone went to see their lawyer and said that they wanted to defend their eviction but they had attacked their next-door neighbour with a hammer, the lawyer would tell them that the eviction was perfectly reasonable and they would not get legal aid. However, if more explanation was provided about the behaviour that led to the eviction, such as that it happened some time ago and that social work, the general practitioner and everybody else said that the individual had been rehabilitated, there would be a reasonableness test argument, so the test should be retained. It would be a mistake to let things fall to proportionality challenges, because they are much more complex and it would be much more expensive for landlords, who would instruct advocates and go for appeals left, right and centre. It would be much better to have it put into the bill.

We can be proud of the way in which the reasonableness test has been understood, of how the courts generally apply it, where it exists, and of the way in which it has been explained in statute. That principle should be built on, rather than there being an attempt to remove it for hard cases, which would be a mistake.

12:15

Garry Burns: The way to improve all tenants' rights is to bring private sector tenancy rights more in line with social sector tenancies, because it is a lot easier to get somebody out of a private let. There are examples of people who have been in their homes for four, five or six years, or even longer, and who can be out of there relatively quickly because of certain ways in which the landlord can raise actions. Sometimes not a lot of evidence is required for those actions to get somebody out, and the period can be as short as six weeks to two months. That is quite unfair, particularly where families are involved. If someone has been in a tenancy for five years, that is their home and they think that they will be there for a long time. We should bring things in the private sector more into line with the social sector.

Across Scotland, there are some good third sector agencies and legal services that provide help for citizens, but there seems to be a bit of a mismatch in how that happens. In places such as Glasgow and Edinburgh, there are services all over the place for people who are going through an eviction and there is a lot of expertise on how to stop evictions, but in smaller local authorities there does not seem to be the same knowledge about how to access services.

We have come across that because there have obviously been a lot of issues with the bedroom tax and Govan Law Centre has been in the media, so we are getting phone calls from all over Scotland. Although the bedroom tax is a specific issue, other issues have also come up, because there are not enough services that are independent of the local authority and of Government. That is important, because sometimes agencies that get funding from Government or from local authorities might not be great at challenging the local authority that funds them, although they should do, based on their remit.

To recap, we need more independent agencies that can fight for people's rights across Scotland, and we need to make private sector tenancies stronger for tenants.

Mary Fee: What is Michael Clancy's view?

Michael Clancy: I am afraid that I am inexpert in this area and must defer to the two experts on either side of me.

Mary Fee: I suspect that I know the answer to my next question, because we have touched on the eviction process and the bill simplifies that process. Do you think that it balances the rights of tenants and landlords, or does it swing too much in favour of one or the other?

Paul Brown: I reckon that, for the most vulnerable tenants, quite a lot of rights could be removed by the bill, and I have concerns about that. I do not understand why landlords appear to fear the legal process so much. I appreciate that there are sometimes problems, but we have heard evidence that they do not like the arrangements and that they seem to think that they do not get their remedies. That is not our experience at all. RSLs and local authorities in Scotland raise thousands of actions, sometimes on quite modest grounds, and they frequently get the remedy that they seek. I am not talking about rent arrears cases, but they frequently get the remedy that they seek in other cases. I am concerned about the way in which the changes to the SSST regime can result in naive tenants and members of their families losing their homes, or losing a lot of security, without really understanding what is going on.

I am not in any way saying that all tenants should always stay in their homes. There are times when people need to be evicted and I am not querying that, but it is a question of getting the balance right, which I appreciate is not always easy.

Garry Burns: Any erosion of tenants' rights or any policy that makes it easier for a landlord to evict a tenant should be avoided at all costs. It should be more difficult to evict, although I echo what Paul Brown said—we are not saying that tenants have a right to their home no matter what they do.

I return to my original point about most people to whom eviction happens. People with SSSTs who have received ASBOs will often have mental health issues or addictions. However, there can also be a breakdown in the relationship between the tenant and the landlord, which can sometimes be really personal. When there is that personal relationship, housing associations—just like any organisation—can dig in their heels. That is not to say that that is the practice of all social landlords—of course it is not—but relationships like that can be so close that when there are a lot of pressures on social landlords, such as the bedroom tax and so on, a lot of them break down. The problem is that it might not be in the best interests of vulnerable tenants to give social landlords extra powers to evict.

The Convener: Moving on to part 3, on the private rented housing sector, Jim Eadie has some questions.

Jim Eadie: I kick off by asking whether panel members have information that they can provide about housing cases, particularly those in the private rented sector, that are currently dealt with by the sheriff courts. What are some of the problems in relation to equality and access to justice?

Garry Burns: One of the significant barriers is the private landlord. We deal with illegal evictions—a rough estimate is about five or six a month. By that, I mean a landlord changing someone's locks or removing their property from their home and putting it out on the street.

The police refuse to get involved in that. Without a court order, forcing a lock is a criminal act; it is not a civil matter. Landlords are doing that routinely. The problem is that the people they are doing that to tend to be young and female, and they tend to be mothers. There is an element of bullying there, and an element of people not getting their rights.

I have spent days talking to the police when that happens and no action is taken. The person gets fed up because she is out on the street and cannot get into her house and get her child's clothing,

toys and bedding. She is having to go to her mother, when the relationship broke down years ago. It is important that there is stronger advice and terms for the police to take action on such situations.

Jim Eadie: Are you saying that in such cases, when a criminal act has been committed, the police refuse to intervene?

Garry Burns: Not in every case.

Jim Eadie: You have experience of the other side of the situation.

Garry Burns: In almost every case, I have had to spend a significant amount of time with the police, going through different types of officer to get the sergeant so that I can report the landlord's action as a crime. Even when it is reported as a crime, the police ask questions such as whether the tenant has paid rent. That is not the issue. The tenant has been evicted illegally and the police are not there to make judgments on rent. Usually the police do get involved but, unfortunately, it can take a significant amount of time, during which the tenant has nowhere to go. In quite a lot of cases, the police have not really done their job. As I understand it, there have never been any prosecutions, despite significant evidence that a crime has been committed.

Private landlords do not like their tenants getting their rights. They get quite huffy when you phone them up. They say, "Why's the tenant going to a law centre?" You tell them that it is to get their rights. That is not the case with all private landlords, because some are decent, but private landlords need to know what they are doing. You get landlords putting in a handwritten note telling their tenants that they need to be out of the property by, for example, 12 o'clock on a certain day in August. I phone them up and tell them that that is not really a proper notice to quit and they come back to me and ask why, and say that they are going to put the tenant out. I tell them that if they do that, they are breaking the law.

Private landlords have the right to put people out—of course they do—but they need to do it legally. I love it when they do it legally because it means that somebody is not out on the street, terrified because they are homeless.

Jim Eadie: Do the other witnesses have any perspective on that issue?

Paul Brown: Our experience of private rented sector cases is that they can be very complex. If the short assured tenancy is created and ended properly, there is no defence, but sometimes it is a lot more complex than that. In the case of long-running tenancies that predate the assured tenancy regime, we are looking at an earlier statutory regime. I would agree that there is a problem of landlord education.

There is also a problem—it is to some extent in the bill—about repairs in certain sorts of stock. If the tenant has only a short assured tenancy, they do not really feel confident enough to take repairs issues up because they think that the tenancy will just be brought to an end and that is them out.

There is also an issue about common parts. The ideas about how tenemental repairs may be made easier will help private rented sector tenants, too. However, as I think Shelter was saying earlier, the long-term aim has to be to look at the assured tenancy regime and to increase the rights and security of short assured tenancy tenants. That would be worth looking into.

Jim Eadie: Do you have any other perspective that you can share with the committee on your experience of how cases in the private rented sector are currently dealt with by sheriff courts?

Paul Brown: We have little experience there, because very few tenants consult us. We have done some unlawful eviction cases, which can be very difficult if the landlord is intransigent. There is an education issue there. My impression is that some sheriffs quite enjoy the very complex cases, because they are getting their teeth into complex legal issues. However, those are quite few and far between at the moment.

Jim Eadie: I will move on in that case, unless Mr Clancy has anything to add.

Michael Clancy: Your question was also about access to justice. That can frequently depend on eligibility for legal aid, especially for tenants. Although there may be a wider eligibility for advice and assistance these days, legal aid availability is more restrictive. That is an area that needs examined. Matching eligibility and availability is a continual problem.

Jim Eadie: What are the views of the panel on the proposals contained in the bill to transfer certain types of civil court actions in relation to the private rented sector from the sheriff court to the first-tier tribunal?

Michael Clancy: The Law Society is in favour of the way in which the Tribunals (Scotland) Bill is proceeding. It is currently at stage 2. Tribunals, on the whole, have a different ethos from that of the courts. They are more accessible and more user friendly, and they can be more specialised. They are relatively less adversarial, and they are relatively more inquisitorial in the way in which they do their business. They are also quite informal. All of that adds up to a balance in favour of tribunals. Under the Tribunals (Scotland) Bill, a first-tier chamber for housing, land and property questions is envisaged.

There are two reservations, which we talked about just before the evidence session began, relating to legal aid. Although legal aid is widely available for courts—schedule 1 to the Legal Aid (Scotland) Act 1986 has a list of courts for which legal aid is available—there is a much shorter list of tribunals in that schedule. Employment tribunals and the Lands Tribunal for Scotland are included there, as are one or two others. We must be careful about the issue of ECHR compliance when it comes to shifting cases off to tribunals. In the past, one would have access to legal aid when going to a court. For a tribunal, one might not have direct access to legal aid—although advice and assistance would be available in those circumstances. That is one reservation.

Jim Eadie: You raise an important point about access to justice through legal aid. Do you have a sense of whether transferring the jurisdiction from the sheriff court to the newly established tribunal would be cost neutral, or whether there would be a cost implication attached? If it is the latter, how much might that be?

Michael Clancy: My capabilities in arithmetic and mathematics are so limited that I cannot answer that question just now.

Jim Eadie: I do not believe that for a moment. I do not believe that there are any limits to your capabilities.

12:30

Michael Clancy: You are charming as ever, Mr Eadie, and also overly optimistic. However, I shall take that question back and ask our access-to-justice team to look at it and see whether we can write to the committee at a later point during stage 1.

I was going to reflect on the fact that, under section 70 of the Tribunals (Scotland) Bill, there is a provision for Scottish ministers to make regulations for tribunals to charge fees. That, too, could be a barrier to using tribunals, which we must watch carefully. Of course, in court circumstances, there are already fees charged by the court for various steps in the process, so we just need to be aware of those possibilities.

Jim Eadie: That is helpful. Could the other panel members address the issue of legal aid and fees?

Paul Brown: Provision of legal aid for the tribunal process is crucial. There will be non-compliance with article 6 of the ECHR if that is not the case, and it would also make life difficult for the tribunal itself if none of the defenders in eviction cases in the private rented sector is represented. A proportion will have difficulties, such as communication difficulties, and will have no idea how to gather and deploy evidence or legal arguments. We are talking about a family losing their home, which is the removal of a fundamental freedom—with the obligation to pay rent and so forth, of course—so legal aid is crucial.

On the cost, I would have thought—I am taking a risk here—that the number of cases will not be great because most tenancies are short assured tenancies, and if they are properly created and brought to an end there will not be much of a defence for an eviction case. It would be a different matter if the tenancy regime was changed, and it would be an enormously different matter if registered social landlords' tenancies and secure tenancies go through a tribunal process. I would imagine that the cost would be very high indeed, because of the sheer numbers.

There are positive advantages to a tribunal in terms of programming, having an expert panel and the perceived informality of the process—although sometimes it is no less formal than the courts. However, I doubt whether it really ends up being cheaper where there is a substantive defence. At the moment, the Private Rented Housing Panel would not be used to having a case that would last two or three days, with scores of witnesses. When that happens, I cannot imagine that it is going to be cheaper for landlords or for anyone else. That is my guess, anyway.

Garry Burns: We would be concerned about not having a solicitor representing a tenant at a tribunal—the whole point of tribunals, as I understand it, is that there should not be—and about not having a sheriff. I am not so sure that sheriffs lack the specialism that the briefing says they lack. You can go to see a sheriff for small amounts and they can make decisions on whether or not you have bought a dodgy sofa—are we saying that it is more important for a sheriff to decide on that than to decide on your home? Our concern is that a person's home is vital; you cannot do anything in life without a strong home. So long as it does not have the power to evict, the tribunal could be a good forum, but only as an arbitrator. If it comes to making a decision on an eviction, we feel that that power should stay with the sheriff courts, as it is at the moment. We may disagree about that, but we are from different organisations, so that is fine. We do not think that it is a great idea to move into the tribunal system.

Jim Eadie: That is helpful. Perhaps we can pursue the need for clarification that you have highlighted.

Michael Clancy: Yes.

Jim Eadie: In response to an earlier question from Mr Ingram, you mentioned the level of rents in the private rented sector. Could you say a little more about that?

Garry Burns: The level of rents in the private sector just now is very high in comparison with the social sector. Brick by brick is the best way of looking at it: potentially, the rent for a two-bedroom house in Glasgow can be about £600 a month; the neighbours could be paying about half of that if they are in the social sector, for the exact equivalent flat. We do not see that as fair, and we think that the Government should take a role in dealing with that. For a lot of people, particularly those on the minimum wage, most of their income goes on housing costs. When most of a household's income goes on housing costs—I was there myself not too long ago—it is not nice. It is not nice to pay half your wages to somebody else who is making quite a lot of money—and it is often the case that they are providing a poor service.

Everybody is talking about housing benefits. The housing benefit bill is astronomical, but a lot of it relates to the private rented sector.

Jim Eadie: What is the remedy that you suggest the Scottish Government should adopt?

Garry Burns: For the Scottish Government to do a review, looking into the matter at a deeper level. I appreciate that this might not be the greatest format, but there should be a big review on rent. If there is a legal way to proceed with this—we suggest that there is—and if there is a fair and just way to do it, what we are essentially talking about, to put it in a brutal way, is capping rents. I think that there is a way for the Scottish Government to consider that, potentially using legislation to protect people from having to pay exorbitant rent out of their income and at the same time protecting the public purse. That rent gets charged to people who are getting housing benefit to pay it, and they need a top-up with their £70-a-week benefits to pay off the rest of it.

People are in abject poverty. Solving high housing costs would free up a lot of money and would make Scotland a far fairer society.

Jim Eadie: I have a final question on this area. Do you think that the Government's proposals for court reforms could achieve similar outcomes, in terms of efficiency and access to justice, to those that are envisaged through the transfer of jurisdiction from court to tribunal?

Michael Clancy: The court reform programme is broad and wide ranging. It has already begun in some respects, following on from the report of Lord Gill. There are other reports involved, too, including that of Sheriff Principal Taylor. It is a very big programme to improve efficiency in the courts and to ensure that the right level of court deals with the right level of matter.

As we can see from earlier consultations on the draft courts reform (Scotland) bill, proposals to raise the threshold for the jurisdiction of the Court of Session and to push cases into the sheriff court will mean that there will be more cases in the sheriff court. If one considers the civil justice system as a whole, the inclusion of reforms to tribunals along with reforms to the courts is a very sensible idea. I refer not just to the structural aspect with regard to the Scottish Court Service and the Scottish Civil Justice Council but to the more operational aspect. From our point of view, shifting jurisdiction from the sheriff court to the tribunals—not just in this area but in other areas, too—will perhaps allow for those cases that cascade from the Court of Session to the sheriff court to get dealt with more efficiently there.

I hope that that answers your question, Mr Eadie.

Gordon MacDonald: Should social rented sector cases also be transferred to the first-tier tribunal?

Garry Burns: We are in opposition to that for the private rented sector, so it follows that we will be opposed to it for the social rented sector. I will not add anything further.

Paul Brown: I did not realise that this would be such a hot potato. I would like to submit some more detailed written representations later. The fundamental issue is not between a tribunal and a court—it is about the resources that go into the provision of the court or tribunal facilities; ensuring that the judges, whether on a tribunal or in a sheriff court, know about the subject matter beforehand; and ensuring that there is legal aid. In the past—it is less the case now—there was an idea that a case going to a tribunal meant that it was not necessary to have representation and that, if someone did have representation, they did not need to be all that expert.

That idea is probably going, although it has not entirely gone. We hear stories about people being represented at employment tribunals, with very large sums of money involved. A lot of what happens can be intimate and upsetting for people, who could be represented by people with no knowledge or experience of that form of remedy at all. Sometimes they are solicitors, but the point is that sometimes they are not. If the case is approached with a degree of seriousness, if proper, full legal aid is provided—not some edited version—and if the right messages are given about the seriousness, importance and power of the tribunal, I am fairly neutral on the matter.

We at the Legal Services Agency appear before a wide range of tribunals and courts. Some of my colleagues are mental health tribunal chairs, in fact, and they have huge powers. I do not have any difficulty in principle with that route, as long as people do not think that that is an easy, cheaper approach. Landlords appear to think that that

would be the case, but it will not be. If there is a tribunal with three experts, they might spend a lot longer on difficult cases than a sheriff court would. I am not against such a transfer, but it needs to be done with one's eyes open.

Gordon MacDonald: The rest of the questions that I was going to ask have been covered.

The Convener: Mark Griffin has some questions on other matters relating to the private rented sector.

Mark Griffin: What are your views on expanding access to the Private Rented Housing Panel by enabling third-party applications by local authorities to enforce the repairing standard?

Paul Brown: Great.

Garry Burns: Brilliant.

Michael Clancy: You have a consensus there.

Mark Griffin: Okay—that was an easy one.

I will move on to the subject of letting agents. The Law Society's submission had a high focus on that. Do you agree that the regulation of letting agents is required? If so, why?

Michael Clancy: We agree with the regulation of letting agents. The policy intention is a clear one, and we support it. We have an issue, however, with the way in which the regulatory scheme is being set up, the extent of the regulation of letting agents by Scottish ministers and the functions that the Scottish ministers would perform as regulators. Those are our issues—as well as the inclusion of solicitors in the regulatory scheme.

Mark Griffin: So you would hope that solicitors would be excluded from the scheme.

Michael Clancy: In the scheme under the bill, Scottish ministers are to establish a register of letting agents, and it will be a criminal offence not to register yet to act as a letting agent. In order to be on the register, someone has to be

"a fit and proper person",

which amounts to their not having been convicted of an offence involving dishonesty, violence, drugs or firearms or a sexual offence, and not having practised unlawful discrimination under the Equality Act 2010 or otherwise contravened the law on housing, landlord and tenant law or the law relating to debt. Not having been convicted of any of those things adds up to someone being a fit and proper person. However, there is no mention in section 30 of qualifications or training, nor of any consumer protections that would apply.

12:45

Ministers will provide a code of practice that will apply to letting agents, but our view is that solicitors already have to undergo a fairly extensive fit-and-proper-person test and are already regulated by the practice rules and code of conduct approved by the Lord President of the Court of Session. They also have an independent complaints body, the Scottish Legal Complaints Commission, to which complaints should be sent and which can award compensation of up to £20,000, stipulate the repayment of fees and expenses and take other action against solicitors. However, none of that seems to apply to letting agents under this bill. We have reservations about the robustness of the regulatory system under the bill as it applies to letting agents on their own and think that the scheme should not apply to solicitors, who already have a very robust and structured system of regulation that we believe is a significant improvement on what is in the bill.

Mark Griffin: Do the other panel members wish to comment?

Michael Clancy: Convener, if you do not mind, I would like to put on record some comments about certain drafting points in the bill.

We have already had discussions with the bill team and have offered to give them all the assistance that they might want from us. We certainly want to continue that dialogue, but I should note that, with regard to wording such as contravening

"any provision of ... the law relating to housing, ... landlord and tenant law, ... the law relating to debt",

which can be found in section 30, it is quite difficult to find out what that means. I am not really sure how we find out what it means to contravene

"the law relating to housing"

or, indeed, what one might say about that and how it might be interpreted. Given that that is one of the strands of the fit-and-proper-person test, we need to look very carefully at that.

With regard to the business of being a letting agent, I also draw your attention to the definition of "letting agency work" in section 51, which refers to

"things done by a person",

who is not defined,

"in the course of that person's business in response to ... instructions which are ... carried out with a view to a landlord who is a relevant person entering into ... a lease"

so that

"an unconnected person may use the landlord's house as a dwelling".

That strikes me as being quite limited—in fact, it sounds like it relates only to the landlord's own

house—and one would want to look carefully at that wording to ensure that it is broad enough to achieve the intention.

Moreover, the same section states that a letting agency would get instructions to repair, maintain, improve, insure or otherwise manage a house. Without being too flippant, I would suggest that that could mean that someone who is repairing a house—a roofer, say, or someone who knows about drainage—or a person such as a painter and decorator who maintains a house could be described as carrying out "letting agency work". We have to be very precise about how such provisions are worded and how the bill fits together to ensure that we capture those who are actually doing letting agency work, not those who are not.

In my submission, I point out that a private member's bill, the Private Landlords and Letting and Managing Agents (Regulation) Bill, is currently going through the Westminster Parliament. I do not know how far it will get, but you never know—it was high up the ballot in the House of Commons. By modifying that bill's definition of letting agents' work, we might be able to improve this bill.

A significant point is that that English legislation is being treated as an amendment to the Estate Agents Act 1979, which does not apply to solicitors. Again, I reinforce the point that we as a profession already have a group of client protections and an adequately robust code of conduct. We should be aware that in this area we would be creating an unlevel playing field across the UK but, of course, that situation might change after September.

The Convener: If no one has any comments about parts 6 or 7 or wishes to raise any other general issue, I want, finally, to ask the witnesses whether they have any comments about part 5, which relates to mobile home sites with permanent residents.

Michael Clancy: No.

Garry Burns: No.

Paul Brown: No.

The Convener: As members have no further questions, I thank the witnesses very much for their evidence. We look forward to receiving the further details that one or two of you have said you would like to send in.

We will now move into private session.

12:51

Meeting continued in private until 13:11.

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