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ECONOMY, ENERGY AND TOURISM COMMITTEE

Wednesday 6 November 2013

Session 4

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ECONOMY, ENERGY AND TOURISM COMMITTEE
30th Meeting 2013, Session 4

CONVENER

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

DEPUTY CONVENER

*Dennis Robertson (Aberdeenshire West) (SNP)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Fergus Ewing (Minister for Energy, Enterprise and Tourism)
Graham Fisher (Scottish Government Legal Directorate)
Claire Orr (Accountant in Bankruptcy)
Rosemary Winter-Scott (Accountant in Bankruptcy)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Committee Room 4

Scottish Parliament

Economy, Energy and Tourism Committee

Wednesday 6 November 2013

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

Bankruptcy and Debt Advice (Scotland) Bill: Stage 1

The Convener (Murdo Fraser): Good morning, ladies and gentlemen, and welcome to the 30th meeting in 2013 of the Economy, Energy and Tourism Committee. I welcome members, our witnesses—whom I will come to in a second—and those joining us in the public gallery. I remind everyone to turn off all mobile phones and other electronic devices, or at least turn them to silent.

Agenda item 1 is the continuation of our evidence taking at stage 1 of the Bankruptcy and Debt Advice (Scotland) Bill. I am pleased to welcome Rosemary Winter-Scott, who is the accountant in bankruptcy and chief executive of the agency the Accountant in Bankruptcy. She is joined by Claire Orr, executive director for policy and compliance with the Accountant in Bankruptcy, and Graham Fisher from the Scottish Government legal directorate.

Before we get into questions, do you want to say something by way of an introductory statement, Ms Winter-Scott?

Rosemary Winter-Scott (Accountant in Bankruptcy): Yes—thank you. I am pleased to have the chance to speak to the committee.

I start by restating one of the key aims of our bill, which is to ensure that

"Fair and just processes of debt advice, debt relief and debt management are available to the people of Scotland."

For us, fair and just processes are processes that eliminate duplication, enable efficient and consistent decision making and minimise costs. It is in the pursuit of exactly those ambitions that the bill proposes to move certain functions from the courts to the AIB. We believe that the transfer will support decisions that are fair, that can be made expediently and that come at less cost. The courts will be used effectively for the difficult cases that need judicial intervention rather than simply for rubber stamping the majority of cases.

We have good reason to believe that, because we have done this before. The committee will be well aware that, in 2008, we moved responsibility for deciding on debtor petitions from the courts to the AIB. It is fair to say that that has been managed efficiently, effectively and successfully and that no one would sensibly suggest that we should roll back the clock on that.

The good reasons why that has been a success are applicable to the matter at hand. It has been a success because many of my staff have up to seven years' experience in relation to Scottish statutory debt solutions and related matters. I have CPPI-qualified staff—that is, they have the certificate of proficiency in personal insolvency. In 2011 and 2012, individuals from among my staff were recognised as the top-scoring CPPI students in Scotland. It will come as no surprise to the committee that I absolutely stand by their ability to take on the new responsibilities and to carry out their work to the required standards.

My staff do not know everything—no one does. I believe that most sheriffs would recognise that they are not experts in complex accounting procedures. When they have to make a determination on such matters, some of them will probably seek advice, and my staff will do the same in administering the new functions. We are fortunate that we have access to specialist advisers, and we make use of their services when we need to. Of course, in the event that any matter is irresolvable and contentious, there remains the ultimate right of appeal to the courts.

All of that is normal practice. As the committee knows, the review of a decision by a member of the body that made the decision is also normal practice across Government and the public sector. Local authorities, the national health service in Scotland, the Scottish Government, Her Majesty's Revenue and Customs, the Department for Work and Pensions, the Student Awards Agency for Scotland and even the Scottish Parliament, on matters such as freedom of information, are all examples of bodies that carry out an internal review in certain circumstances before allowing an onward appeal.

For what it is worth, I am led to believe that when the Institute of Chartered Accountants of Scotland is asked to review disciplinary decisions about its members, the review is carried out by an internal committee, not a fully independent body.

Such arrangements are not new or unusual and, if adopted, they would by no means be unique to the AIB. I have, however, also ensured that there are appropriate boundaries in place internally, as there are in other bodies that carry out reviews, and reviews already take place in relation to decisions made under the debt arrangement scheme. We have conducted 21 DAS reviews so far, only one of which has resulted in an onward appeal to the court.

There are other advantages to having those functions come to us. One advantage is cost,

because the 20 DAS reviews that did not give rise to an appeal were carried out at no cost to the applicant. Another advantage is consistency. There are six sheriffdoms in Scotland, and it is a fact that different sheriffs have at times made different decisions in cases where the circumstances have been the same. Those advantages have been recognised by the Scottish Court Service, whose chief executive has written to the committee to say:

"The transfer of these functions will ... improve the efficiency of the process".

I agree entirely with that and I am confident that, in the fullness of time, the evidence will bear me out. Thank you.

The Convener: Thank you, Ms Winter-Scott. You raised an important issue that the committee is keen to ask questions about, which is the issue of self-review by your office, but we want to try to cover a number of other areas as well in the time available. I remind members to keep their questions short and focused in view of the time pressures on the committee. Similarly, if we can have short and focused responses, that would be extremely helpful.

I will start off the questions by picking up on the benefits of the minimal assets process that is being introduced, which is a slightly different issue from the one that you focused on. Having heard a lot of evidence on the matter, it is not entirely clear to the committee why, from the debtor's point of view, the MAP is better than the low-income, low-asset route that it is replacing. Can you explain why the MAP is an improvement on what currently exists?

Rosemary Winter-Scott: Yes. The LILA process was designed for those who could not make a contribution and had no assets. We have found, with hindsight, that the requirements around LILA mean that people can get into the process through it but still make a contribution. We are keen to refocus that as a minimum asset process that is literally for those who cannot make a contribution. As such, we are taking it out of the remit of the normal bankruptcy process by saying that those people can have an earlier discharge. If there is no expectation of someone making a contribution, there is no need for them to stay in the process. If it is a shortened process, there is no need for us to do the accounts through our normal process. We can therefore shorten and simplify the process. More of the up-front process will be done electronically, with automatic checks through registers. As such, the process can be cheaper. One of the big criticisms is that debtors in a state of extreme hardship cannot afford the £200 LILA application fee. We will be able to deliver the minimum asset process cheaper and therefore make it more accessible to such debtors.

The Convener: Thank you for that. We will probably have questions later on the level of fees being charged. Before we leave the question of the minimal asset process, one of the issues that came up in the evidence that we have taken is that quite a lot of witnesses were concerned about the fact that MAP debtors will be discharged after six months, whereas the period would be a year under the normal bankruptcy process. What was the rationale behind having those two different periods?

Rosemary Winter-Scott: We have said that there would still be credit restrictions on the debtor for a further six months. However, with regard to keeping people in the system, if we are not getting any contribution from a debtor, why cannot we say that those people have demonstrated that they cannot make a contribution? Let us rehabilitate that individual so that they can move back into society faster. We believe that that can be done within six months.

The Convener: Some of the evidence that we took was along the lines that the bankruptcy process is there to protect the debtor and the period of a year acts as protection but, by reducing that period to six months, some of that protection is removed. After those six months, the debtor is then potentially exposed to pursuit by other creditors.

Rosemary Winter-Scott: If such people have incurred further debts they will obviously be open to pursuit by further creditors. However, one would hope that they would not do so in that time, in the same way that they would not incur further debt were they still sequestrated.

I cannot think of the reference for this but it is clear that, basically, the debtor will have six months with a £2,000 credit limit. They cannot incur further debt and if they do, the extension would be extended further. We are trying to put in a level of protection with regard to their access to excessive credit while allowing them to get on with normal life.

The Convener: As no members have a follow-up question on the MAP, I bring in Dennis Robertson.

Dennis Robertson (Aberdeenshire West) (SNP): Good morning, Ms Winter-Scott. In your opening statement, you used the words "fair", "just" and "efficient" with reference to some of the administrative processes that the AIB wants to take on board and move away from the courts. The witnesses from whom we have heard do not share the view that that would be fair, just or efficient. Can you explain what matters will stop being administrative, before being sent to the sheriff court?

Rosemary Winter-Scott: We are seeking to take on board functions that we believe are administrative. However, we are absolutely adamant that there should still be the right of appeal to a sheriff. There will still be situations in which we will seek advice from experts in our organisation or the Scottish Government and/or, in some instances, direction from sheriffs. We are not taking that away; we are saying that the majority of such cases are administrative and not heavily complex, and that they can be dealt with by my office, just as we have taken on board the award of bankruptcy for debtor applications, which we are delivering effectively in Scotland.

Dennis Robertson: As I say, that view is not shared by some of the witnesses from whom we have heard. Do you have an example of what you consider to be an administrative process that may then go to the court?

From our point of view, there does not seem to be any clear guidance on which cases are considered to be administrative but which stop being considered as such, after which they then go to court. Will you give us clarity on that administrative process?

Rosemary Winter-Scott: We believe that all the propositions that we have included in the bill are administrative. However, there is the right of appeal to a sheriff—

Dennis Robertson: Who makes the decision at the end of the day? You have mentioned that you have a lot of experience and that a lot of qualified people work in AIB. Who makes the ultimate decision about when a process stops being an administrative one and needs to go to the court?

Graham Fisher (Scottish Government Legal Directorate): Further to Rosemary Winter-Scott's response, perhaps I can add that, as the Law Society of Scotland mentioned when it was before the committee, it is not straightforward or easy to say what is an administrative matter and what is a judicial matter. That is quite an important legal point.

Dennis Robertson: That is what we are trying to tease out.

09:45

Graham Fisher: I suppose that a good example in the bill is the power to cure defects, under which the power to cure clerical or incidental matters will move to the AIB, although the sheriff will retain the ability, under the power in section 63 of the Bankruptcy (Scotland) Act 1985, to make the more significant decisions.

It may help if I explain that a lot of bankruptcy matters currently with the sheriff are, properly, administrative matters, which have been given to the sheriff for reasons of expediency and to oversee that there are trustees. For instance, once a sequestration is in process, some of the matters to do with accounts and accounting are clearly administrative matters.

It is always a difficult balance. In some cases, the court can play a valuable role in addressing the legal issues, and in some cases a legal ruling must be made, but the bill will leave such issues with the sheriff. As Rosemary Winter-Scott said, the ability to appeal to the sheriff will always be retained, which is the important thing legally.

Dennis Robertson: That is fine, but are sheriffs suggesting to you that a lot of those matters should not go to the courts because they are administrative? Do they share your view that such matters should not go to them and that, if they did not go to them, it would free up time in the courts?

Rosemary Winter-Scott: That is the view of the head of the Scottish Court Service. You have seen his letter, in which he says:

"we support the transfer of administrative and non-contentious functions from the sheriff to the AiB as set out in the Bill. The transfer of these functions will allow decisions to be made at the appropriate level and improve the efficiency of the process, freeing up time in the court programme to deal with matters which require judicial consideration and decision."

Dennis Robertson: I return to the question of who in the AIB will decide to stop an administrative matter going to the courts.

Graham Fisher: The bill sets out what is administrative and what is not. In some cases, the decision to refer to the sheriff can be left to the AIB. Appeal is ultimately available against the AIB's decision. The bill has been drafted to take the more administrative functions from the sheriff and give them to the AIB.

The letter from the Sheriffs Association mentions a technical point about how appeal matters are described. Bankruptcy statute generally has not taken the approach of defining which matters are administrative and which are judicial, and we have followed that approach when developing the bill. However, that is a technical issue, which we could look at. We take the Sheriffs Association's views seriously.

Dennis Robertson: Will you provide guidance with regard to that technical aspect?

Graham Fisher: We can certainly look at that aspect again to see whether more clarity can be provided in the bill.

Chic Brodie (South Scotland) (SNP): Good morning. We will come later to other areas on which guidance has not been provided, but I have to say that I find the situation slightly unsatisfactory. We are being asked to make a

judgment—some recommendations—on what are, in effect, grey areas.

I can understand the SCS wanting to transfer some so-called administrative matters, given the cost-saving regime that it appears to be on, but I still do not understand who ultimately will make the decision about whether something is an administrative matter or a legal matter. Who will have the final responsibility for that?

Rosemary Winter-Scott: My agency and senior staff will: that is who will make the decision on matters relating to the transfer of functions that is proposed in the bill. We will retain the right to seek direction—if we feel we need to—from the sheriff and the courts.

Chic Brodie: Can I stop you there? You said, "if we feel we need to". At that point, a decision has to be made. Who will "feel" that that transfer is needed? At that break point, where will the decision be made?

Rosemary Winter-Scott: It will be made by senior staff within my organisation who have been trained in the area. We have an internal review process and also a policy and cases committee, which will look at difficult issues. We have expertise to call on in such cases.

Mike MacKenzie (Highlands and Islands) (SNP): I begin by quickly paying Rosemary Winter-Scott and her staff a compliment. When I have come into contact with the AIB in dealing with casework over the past couple of years, her staff have invariably been very helpful and professional. I hope that she will take that compliment back to her staff, and I am happy to place it on the record.

Rosemary Winter-Scott: Thank you.

Mike MacKenzie: Something is puzzling me, though. The committee has had representations from IPA—I thought that that was a type of beer, but it is the Insolvency Practitioners Association—and ICAS. They are the only people I have ever encountered who seem to want to go to court, and like it. They seem to be attempting to stand on some moral high ground. Can you explain why that might be? For instance, do they get fees for attendance at court? Why do they appear to be on this somewhat high moral ground?

Rosemary Winter-Scott: I have no idea—that is an honest view. They support a lot of the proposals in the bill, and I know that they have said that in evidence to you, but it almost seems that they always like to challenge certain aspects, and they have taken that route.

Mike MacKenzie: You mentioned the expense of going to court. I take it that, currently, a large number of matters are dealt with by the courts, including administrative matters. Can you give us a feel for the costs that are involved in that?

Rosemary Winter-Scott: I cannot do that on an individual case basis, but I note that there is potential that some cases that should be reviewed or appealed do not go to court because of the costs that are involved. We are opening up to debtors and creditors more scope for things to be reviewed by our having the process in place as the first stage, before the courts. At the moment, their only option is to go to court.

Mike MacKenzie: Can you help us a little bit further with court costs? Where does the money come from to meet them? Does it come from debtors or from creditors?

Rosemary Winter-Scott: It comes from the case. It comes from any in-gatherings that come from the debtor, so it will reduce the amount that goes to the creditor.

Mike MacKenzie: So, somehow or other, the debtor or the creditor will pay for the court. I take it that the proposal in the bill that the AIB deals with as many matters as it reasonably can will mean that creditors and debtors will see some savings.

Rosemary Winter-Scott: Yes.

Mike MacKenzie: Thank you.

Hanzala Malik (Glasgow) (Lab): My colleague makes an interesting point, but there are two sides to every coin. In this case, the other side is that people are perhaps challenging you more frequently and that is why people are going to court. It might mean that they do not have confidence in the service. You have made a great deal of how helpful you have been to certain individuals, but maybe you are not being helpful to people who are facing bankruptcy.

It is unfair to suggest that somebody is making something out of something else when they are not here to answer that allegation. More importantly, it reflects on the service that you provide that more and more people are challenging you. The questions that my colleagues have asked you about who makes the decision and when are important. If the decisions that individuals are making are being challenged, something is not right.

That is all that I want to say at this stage, convener.

Rosemary Winter-Scott: I do not think that somebody challenging something necessarily means that the decision is wrong. Even in procurement, we have noticed that an increasing number of organisations that are unsuccessful in the process will challenge it.

With the freedom of information legislation and the review of complaints, the Government has

encouraged the population to challenge and to question, and I think that that is right. I do not see it as an issue if people challenge a decision; it gives us a chance to revisit it and check that we have made the right one.

We often review a lot of the questions and queries that come in to the AIB from MSPs and MPs about particular cases, and in the review we send back a detailed response that explains the background to the decision that has been taken. That helps the individual to understand the situation further.

Hanzala Malik: We are going in circles, convener. I will just stand by my statement.

The Convener: Okay. I will bring in Margaret McDougall, and then Dennis Robertson wants to come back in.

Margaret McDougall (West Scotland) (Lab): You have raised the issue of the perception of the openness and accountability of the AIB. The public can access information from sheriff courts, but will that information be available from the AIB?

Rosemary Winter-Scott: We will keep a log of the decisions that we take in the same way as we keep a log of the decisions that sheriffs make. That information will be available to the general public. The individual will still have the right of appeal to a public court process, if they wish, after an appeal to us.

Margaret McDougall: Will that information include the number of cases that have been appealed?

Rosemary Winter-Scott: If you look at my website, you will see that we are publishing a huge and increasing range of information and data about all aspects of our work. We are keen to be open and transparent about what we do, and we will continue to expand the range of information that is available.

Dennis Robertson: Do you have the internal resources to cope with the additional workload, or do you envisage taking on more staff to deal with the additional process?

Rosemary Winter-Scott: I already have a policy and compliance team. I established it a number of years ago because I was keen to ensure that, when I am trustee, we place the same level of scrutiny on cases as we place when I supervise external trustees. That team already exists, it already conducts reviews of complaints, and it is audited. I anticipate that the team will need to be expanded by, perhaps, two members, but the work can be handled within existing budgets and within our existing headcount. We have scope within that.

Dennis Robertson: So there will be internal transfers into your team.

Rosemary Winter-Scott: There will be internal transfers within the team. The introduction of the bill will mean that, for instance, when we bring in the new process we will take applications electronically. We also anticipate that the new case management system will free up staff resource elsewhere in the organisation.

The Convener: I think that we have probably exhausted the subject of internal reviews, so we will move on to another topic.

Alison Johnstone (Lothian) (Green): I want to ask about the fee for the minimal asset process. It is currently £200 and there is a proposal to reduce it to £100. Last week, the Law Society of Scotland raised questions about the policy intent of the fee; it wanted to know what it is for. Citizens Advice Scotland reckons that the fee should be lowered, and Money Advice Scotland thinks that there should be a waiver for people who cannot afford to pay. What is the purpose of the fee? Should there be a discretionary waiver for people who simply cannot afford it?

Rosemary Winter-Scott: As with all Scottish Government agencies, the AIB has been under extreme budget pressure, which has required us to look at our processes and, in effect, seek to cover our costs. That is what we did with the introduction of the £200 debtor application fee, which is to cover the cost of the process. I accept that the fee is difficult for some debtors, but we are keen to bring down the cost significantly with the minimal asset process. We have estimated the figure to be £100 but, depending on the volume, there is scope for it to be slightly lower than £100.

My target is to make the process as accessible as possible. People who apply for the minimal asset process are having significant debt written off; we are taking away the need to make significant repayments to that debt, so something in the region of £80 to £100 is not insignificant. It is certainly in the region of what the United Kingdom offers with its debt relief order. In our fee structure, £200 for full bankruptcy in Scotland is still considerably cheaper than bankruptcy in England, Wales, Northern Ireland and even now Ireland. We are making it as accessible as possible but, with reducing budgets, my organisation has to cover its costs.

10:00

If I waive the fee for those people, the question is: who pays for them? Will we be charging people who have more money and asking them to pay more than the costs? The balance is a difficult one, so we are keen to introduce a new process

that is as slick and efficient as possible and gives the debt relief that individuals need.

Alison Johnstone: Do you have any information about how many individuals the fee prevents from engaging with the process?

Rosemary Winter-Scott: I do not. The LILA process gives individuals the option to pay the £200 in instalments. There is a range of options for individuals to make the payment.

Margaret McDougall: If an individual uses the instalment plan at the moment, they are not able to enter into the process until they have paid the £200.

Rosemary Winter-Scott: That is the case at the moment.

Margaret McDougall: The suggestion has been made in evidence that, if the fee was £100, it could be paid up front by another organisation and the individual could enter the process, which would stop their debts from accruing, but their debt could not be discharged until they had paid the £100 fee.

Rosemary Winter-Scott: When I met Citizens Advice Scotland, it was keen to look at options for the payment of a lower fee for a MAP. We have some concerns about potential conflict of interest for other organisations paying the fee up front for someone, but I am certainly willing to look at the options. The key for us is to get the system and information technology in place, and to get to a final estimate for the fee. As I say, I am keen to bring the fee down to below £100 if I can.

Margaret McDougall: When will we know what the fee will be?

Rosemary Winter-Scott: We have guaranteed that it will be £100 or less.

Hanzala Malik: Could the fee be as low as 1p?

Rosemary Winter-Scott: No. Realistically, we could not cover the cost of an electronic system for that sort of fee.

Hanzala Malik: You are not going to be able to cover it with a £100 fee either.

Rosemary Winter-Scott: We would do. The debt relief order covers the costs—

Hanzala Malik: Could you send me the figures for that, please?

Rosemary Winter-Scott: We can certainly do that. The debt relief order in England and Wales is £90 at the moment, and it is covering the costs of the process.

Hanzala Malik: I would like to see your figures as well, please.

Chic Brodie: Where did this figure come from? We have been talking about the £200 fee going down to £100, and then—with all due respect, Ms Winter-Scott—you have come along today and said that it will be £100 or less. I cannot recall any conversation saying that the fee would be less than £100. When was that decision made?

Claire Orr (Accountant in Bankruptcy): The financial memorandum explains that our assumption was that the figure would be around £100. We are currently developing our IT system and, as Rosemary Winter-Scott has said, the MAP process will be automated. We are looking to design the system in an efficient and effective way, so we are looking at minimising costs. The absolute maximum fee would be £100, and that is the figure in the financial memorandum. If we can do it more cheaply, it is certainly our intention to do so.

The Convener: The financial memorandum says that £100 will be the

"estimated cost per MAP case",

so I think that the figure is indicative rather than prescriptive.

Dennis Robertson: I suppose that that clarifies things. Given that we are talking about estimated costs, the absolute maximum will be £100. Perhaps it would be better if the financial memorandum said that the cost will be a maximum £100 or less.

Claire Orr: Things have moved on since the financial memorandum was written, and what you have suggested is certainly our expectation.

The Convener: Did you have another question on fees, Margaret, or can we move on?

Margaret McDougall: That was all I wanted to ask, convener.

The Convener: Chic Brodie will now ask about the common financial tool.

Chic Brodie: The CFT will be used to assess debtors applying for bankruptcy or to the DAS. However, at the same time that we have been told that there should be one mandatory tool, we have been told that the details of the scheme will be set out in future regulations. What exactly is going on with the common financial tool?

Rosemary Winter-Scott: A working group that involves all stakeholders, including ICAS and IPA, has been set up to look at which tool would be the most appropriate to become the common financial tool, and it is working in parallel with work on the bill. Claire Orr will be able to provide more details on the group's progress.

Claire Orr: The working group considered which tool should be the mandatory one and concluded that the common financial statement should be used for calculating the surplus income.

The regulations themselves will set out that the common financial statement will be used and will clarify the detail behind that. Because the tool already exists, is used in all debt arrangement scheme cases and from the end of November will also be used in the protected trust deed scheme, a lot of information about it is available and the regulations will simply set out the detail in due course.

Chic Brodie: So the scheme already exists.

Rosemary Winter-Scott: It is an existing tool.

Chic Brodie: So why are we told that

"Guidance on the Common Financial Tool will be produced although work on this has not yet commenced and AiB cannot definitively state what the guidance will contain"?

Claire Orr: We have an opportunity to look at the tool's application. Some parts of the sector have expressed concern that the tool contains a discretionary element, and we will be trying to ensure that, where there is any discretionary provision, there is clear guidance on how such discretion is applied.

Chic Brodie: How have you been able to use the system without such guidance?

Claire Orr: There is guidance from the Money Advice Trust on its application. However, because we are putting the system into statute as the Scottish scheme, we feel that it would be valuable to develop our own guidance. It will probably not be significantly different from existing guidance, but it is important that we look at—

Chic Brodie: But we do not know that, because you

"cannot definitively state what the guidance"

is going to be.

Claire Orr: That is correct, but we are still some time away from introduction. As we are looking at a commencement date of 2015 for the legislation, there is still a significant amount of time before the common financial tool will be used in sequestration cases and time to develop guidance.

Rosemary Winter-Scott: Can I say—

Chic Brodie: This is the third item—

The Convener: Let the witnesses speak, Mr Brodie.

Rosemary Winter-Scott: When we carried out the consultation, all stakeholders supported the move towards a single tool to assess the contributions of debtors in all approaches and to ensure that there is consistency and that debtors could make the same contribution and would know what that contribution would be, no matter whether they went into a debt arrangement scheme, a protected trust deed arrangement or a sequestration.

We took that on board and established a working group to consider the most appropriate method and, at that stage, to decide whether we should create and develop a tool ourselves or use an existing one. A lot of work was undertaken with that group of stakeholders, and the consensus view was that we should use the tool that is being used for the debt arrangement scheme.

Chic Brodie: Who was involved in establishing that consensus view?

Rosemary Winter-Scott: The working group.

Chic Brodie: So the working group's general view was that there should be only one mandatory tool.

Rosemary Winter-Scott: The general view of all stakeholders who responded to last year's consultation on our bill was that one tool should be used across all products.

Chic Brodie: On the basis of that consensual view, can you tell me how you believe that having only one tool will create transparency and consistency in the way that debtors are treated?

Rosemary Winter-Scott: There will be transparency and consistency because debtors will be able to see that tool. They will be able to go to a money adviser and see what their contribution is. It will be the same contribution whether they choose to go into debt arrangement schemes or choose a protected trust deed.

At the moment, if a debtor goes to a money adviser, they might say, "If you go into a debt arrangement scheme, this is what your contribution will be, because this is the tool, but if you go into bankruptcy, different tools could be used and the contribution might be different." I do not think that that is transparent or helpful to the debtor.

Chic Brodie: We might have to agree to disagree on that point. We are talking about debtors and creditors—primarily debtors. Giving them the option of reviewing a solution via another tool might be in their interests, might it not?

Rosemary Winter-Scott: There will be scope for someone whose circumstances change to look at a variation of the contribution with the tool. As Claire Orr said, the tool gives a degree of scope around the headings, in terms of what can be claimed as legitimate expenses. The tool is recognised in the market as fair—citizens advice bureaux and money advisers currently use it. All we are doing is rolling it out across all products.

Claire Orr: It might be helpful to remind the committee that, of the 129 responses in the consultation, everyone apart from four people

supported the common financial statement as the tool to be used. That was a fairly strong factor in considering it as the common tool.

Mike MacKenzie: Will you explain a bit more about the tool's inherent flexibility? I represent the Highlands and Islands. People in rural situations are often in quite different circumstances from people in urban areas. Is there sufficient flexibility in the tool to accommodate vastly different circumstances?

Claire Orr: There is flexibility in the tool and it is important to remember that some of the elements are discretionary. The trigger figures are just that; they are triggers for further consideration. It would be for the trustee to make a case if there were particular circumstances, and that case could be considered, as happens now; there is flexibility for the trustee.

We considered rural areas, but we heard no strong evidence to suggest that overall costs are higher, because higher costs in one area could be offset by lower costs in another.

Mike MacKenzie: You have explained how the tool has been in operation for some time in debt arrangement schemes, but you are taking it into new territory. You have a car, which you think is pretty good, but you are going to take it to the north pole, to the desert and up into the mountains. How much testing have you done on using it in those other circumstances?

Rosemary Winter-Scott: At the moment, under bankruptcy there is no stipulation as to which tool is to be used. There will be people who are using the tool in bankruptcy cases as trustees, and most others will be using the approach of StepChange Debt Charity Scotland, which used to be CCCS.

The tool has been tried and tested. Part of the working group looked at a sample of cases and analysed the impacts of different methods on the individual. The results in the data were that, ultimately, the method that was used made very little difference.

Mike MacKenzie: I am always a wee bit nervous with formulae. A lot of work and effort is put into developing a formula and it gets to the point where we say, "That's it. It's fit for purpose and we're going to roll it out." Then, a year or two later, we come upon circumstances that the people who constructed the formula could not conceive of or imagine, and discover perverse outcomes that none of us want. If such circumstances become apparent, is there any route for further modification of the tool?

10:15

Claire Orr: Yes. The tool and the figures are reviewed annually, which is an opportunity for the figures to be uprated each year, and that has happened in the past few years.

Because the detail of the tool will be in regulations, we will of course keep a close eye on what happens in practice. Regulations are relatively easy to change, so we would certainly seek to do that if the tool does not work as we intend.

Mike MacKenzie: Are the regulations to which you refer parliamentary regulations? Are they Scottish statutory instruments?

Claire Orr: Absolutely.

Mike MacKenzie: So, Parliament will have a further opportunity to look at the reviews.

Claire Orr: That is right.

Rosemary Winter-Scott: The bill will have a series of associated regulations that will specify such things. No doubt we will be back before the committee next year.

Chic Brodie: The ethos of the bill is to address the problems of people who require serious help. We have talked about the process and the central organisation. How is the AIB organised geographically? How do you interface with customers? Is there any way in which people can approach you, in geographical terms? Mike MacKenzie talked about rural areas; how do you address the front end and the people who need help?

Rosemary Winter-Scott: My office is based in Kilwinning and I also have staff in Glasgow. However, delivery of my cases is currently managed by three providers who have offices throughout Scotland, so we have representation across Scotland. We are also accessible by phone and email.

However, I do not have powers of advice. Under the bill, individuals will still have to go to an adviser before they can apply for products such as the debt arrangement scheme, the protected trust deed or bankruptcy, and they will need to source someone locally for that advice. I cannot give advice; I can only manage the process and once someone is in the process, we have staff at offices who can see individuals more locally if necessary.

Dennis Robertson: I would like clarification about the discretion aspect of the CFT. Will you be writing up guidance on discretion? Surely "discretion" is open to interpretation by any individual adviser.

Claire Orr: Yes; we aim to provide some guidance on application of the discretionary elements of the tool.

The Convener: In view of the time, we need to move on. We have not yet covered financial education, so I will bring in Mark McDonald.

Mark McDonald (Aberdeen Donside) (SNP): We had insolvency practitioners in alongside representatives from credit unions; it would be fair to say that their views on financial education veered from highly sceptical to supportive. The insolvency practitioners say that they are not against financial education per se, although their submissions say that they do not support its inclusion in the bill. The questions were about when financial education would come into play, who would provide it, and how it would work in general. The view is that the bill is particularly vague about how financial education will work. Would you like to put some meat on the bones?

Rosemary Winter-Scott: The work that we are trying to do with the bill is based on the concept of a financial health service. We all understand what a health service is: you go to a health service and it makes you better, but it also gives you education and support to manage your health.

We are failing some debtors because that education is not available, so I am keen that we develop a system of financial education that will be available if debtors wish it. Equally, it is evident that a person who repeatedly experiences bankruptcy needs to understand budgeting and financial management, so we need to help them by providing that education.

The training is being developed by Money Advice Scotland, which has expertise in the area. Recent research in Canada, which has been introducing financial education for some time and is making it compulsory—we are not making it compulsory across the board—has provided clear evidence and its recommendations state that some benefits are being seen.

We are keen to have financial education available as something that people can choose to take up, although in some circumstances it will be compulsory.

Mark McDonald: That does not clear the waters as much as I had hoped, because you have introduced the concept of financial education applying in some cases but not others. Where would the line be for where it would apply? Beyond that, how will it tie into the discharge process? The insolvency practitioners said that financial education should not be linked to the discharge process, as is implied in the bill. Can you clarify your remarks around financial education applying in some cases but not in others, and give a general view of how it ties into the discharge process?

Claire Orr: The bill sets out that the circumstances in which financial education would apply are in relation to people who have previously been bankrupt, in a trust deed or in a debt arrangement scheme. It would be for the trustee to consider whether the case's circumstances are such that the individual would benefit from a programme of financial education.

There is no penalty, as such, aligned to financial education, but the bill provides that people must co-operate with their trustee. If the financial education programme was not completed, that could be deemed to be non-co-operation with the trustee, so the trustee could determine to delay the individual's discharge until such time as they had completed the programme. The trustee would direct the individual to a money adviser who would make the course available. We are working on the basis that it would, as far as possible, be an electronic process, which would be hosted on the Money Advice Scotland portal and made available for people to complete in that way.

Mark McDonald: We have heard support for financial education, but we have to consider the concerns that have been raised, which include questions about how it will be funded and what sanctions would be in place if people chose not to take it up, even though it would be part of the process. You can lead a horse to water but you cannot necessarily make it drink. What will the funding mechanism be and what will the sanctions be?

Claire Orr: We have asked Money Advice Scotland to develop the module and a national standard to support delivery of the module. That will be done within the existing funding that we give to the matrix partnership for training and consultancy across the sector. There is no additional funding requirement for that development.

There is no specific sanction linked to financial education, but there is the possibility that discharge would be delayed, because not to complete the programme would be seen as non-co-operation with the trustee.

Mark McDonald: Questions were raised about cost effectiveness and whether you see benefit. The IPA alluded to the system in the United States and said that it demonstrates that the inclusion of financial education would not necessarily give you the positive outcomes that you might hope for. Will you comment on that?

Rosemary Winter-Scott: That is the case where financial education is mandatory for all individuals. We are making it mandatory only in some instances, when the trustee feels that it is warranted. Some people become bankrupt because of a failure in business or whatever, and not because of a lack of financial education, so there would be no additional benefit in forcing

them to go to financial education. We are trying to target the provision.

Mark McDonald: One witness suggested that the best approach would be to introduce financial education as part of the education system rather than as part of the insolvency and bankruptcy system. Do you have a view on that?

Rosemary Winter-Scott: I would fully support financial education being given a higher profile in the education system, but that would not remove the need for us to address the people who have left school.

Hanzala Malik: I am led to believe that the bill will make financial education and money advice a mandatory requirement.

Rosemary Winter-Scott: That would be the case only in some circumstances, as I explained.

Claire Orr: The bill will make advice mandatory, but not financial education, which will be mandatory only in certain circumstances.

Hanzala Malik: Right. How do you judge who does and does not need it?

Claire Orr: The trustee will use his expertise, but we are looking at particular criteria. A person's coming into an insolvency or debt solution for the second time in a short period might indicate that they could benefit from financial education. However, the trustee will have discretion to judge whether that is the correct course of action for an individual.

Hanzala Malik: I am sorry, but I am not clear on the approach for first-time people. The bill says that financial education will be mandatory. I am now a little confused.

Rosemary Winter-Scott: Before people enter into a process, they need advice, which is different from financial education later in the process. The advice is about which product is best for the person and how they can address their existing debt problem; education is about budgeting and managing finances in the future.

Hanzala Malik: Am I right that the decision will be made by a third party?

Rosemary Winter-Scott: It will be recommended that, if certain criteria are met, the trustee should make financial education mandatory.

Hanzala Malik: Is there any chance that we could see those criteria? I do not see them anywhere.

Claire Orr: They are in the bill.

Rosemary Winter-Scott: The criteria are in the bill. My team are pointing out to me that they are in section 2, on "Financial education for debtor".

Hanzala Malik: Who will cover the cost and what are the cost implications? Where would one get that education?

Claire Orr: As I said, the costs of development of the programme of education are already covered within existing budgets. We do not anticipate significant extra cost, because the module will be made available online. We are trying to minimise the additional burden on the sector by making the module available electronically rather than have something that money advisers have to spend a lot of time on.

Hanzala Malik: What happens if people are not savvy enough to use the online course?

Claire Orr: Pardon?

Hanzala Malik: If people do not have the skill to use the online system, what will happen?

Claire Orr: There will be the possibility of a paper-based module for people who cannot do it online, but in general we hope that it will be available electronically.

Hanzala Malik: Are you giving me a categoric assurance that there will be no cost implications?

Claire Orr: I am not giving a categoric assurance.

Hanzala Malik: That is what I am looking for.

Claire Orr: I am suggesting that we are working hard to minimise the costs. At present, the development costs of the national standard for money advisers and the module are being met within existing budgets.

Hanzala Malik: If you cannot give me a cast-iron guarantee that there are no cost implications, the question that remains is this: where will you find that additional resource if it is needed?

Claire Orr: We would look to the money advice sector to see clients in the way that they do now. We will also seek to work in partnership with organisations such as credit unions to see whether they can have a role in the delivery of the programme.

Hanzala Malik: The sector has said that it will need more resources; it will provide the service. How do you square that circle?

Claire Orr: We are working to minimise additional costs by making the programme available electronically. Organisations might not have to see individuals personally if they can make provision for access to the learning module.

10:30

The Convener: I think that you have made your point, Hanzala, and we need to move on. Margaret McDougall wants to come in.

Margaret McDougall: I was going to make the same point about funding and resources. It sounds, from what you are telling us, as though money advice offices have elastic budgets and they will be able to provide the service at no additional cost to them. That was not the information that the sector gave us last week.

The Convener: If there are no further points, I think that we have covered everything on my list.

Chic Brodie: Could I ask about conflicts of interests?

The Convener: I am conscious that we are getting towards the end of our time, so please be quick.

Chic Brodie: ICAS and the IPA have raised issues about the areas that have been devolved and how the AIB will ensure that there is no conflict of interests. How will you measure the efficiency of your organisation's outcomes? You have given us a list of organisations that do internal reviews, and that might be a subject for the committee to review in the future, but I am intrigued that you believe that by reorganising your staff and moving the review team into another part of the same building, you will ensure that there is no conflict of interests. I assume that those people will be using separate coffee machines.

Rosemary Winter-Scott: As I have said, the compliance team has already undertaken reviews of work, of complaints, and of the cases in which we are trustee, and it has been challenging staff. There is no issue about whether that team will always comply with staff; it will challenge staff. We have developed that kind of culture. In all cases, there is the ultimate recourse of appeal to the court.

Chic Brodie: Yes, but the bill seeks to minimise such impacts. There will be a review of the guidance on the difference between administrative and judicial matters, and there will be guidance on fees and on the tool that is to be used. If we are to be sure that there is no conflict of interests, we will need more than guidance. What rules will the AIB apply?

Rosemary Winter-Scott: Obviously, a review will have to be undertaken by different staff to those who conducted the original case, and those staff will revisit it. It is in our best interests to ensure a fair and just process of debt relief and debt management. That is the principle of my organisation, and that is the culture that we are developing.

Chic Brodie: When you talk about processes, you mean those that—I quote from your letter to the committee—

"eliminate duplication, enable swift and appropriate decision-making and minimise costs for all parties—debtors, creditors and the public purse."

I have known decisions that have eliminated duplication, enabled swift and appropriate decision-making and minimised costs, but they have been anything but fair and just. What rules will the AIB introduce—apart from moving the other staff out of the building totally—to ensure that there is no difficulty for the review team in assessing decisions that have been made?

Claire Orr: We are already carrying out reviews of work. So far, there have been 21 reviews under the DAS regulations, and one of those has required an onward appeal to the sheriff. That suggests that we have made available to people a process of second consideration, and in only one of those cases did the individual feel the need to pursue the case through to the sheriff court.

Rosemary Winter-Scott: When ICAS or the IPA are looking at disciplinary issues for their members, they have as significant an impact on the individual as the decisions that I would make, or that my team would make on my behalf. Those cases are reviewed internally in the same way that we would review.

The Convener: I am conscious that the minister is waiting for us. I just want to quote what the Sheriffs Association said in its letter to the committee:

"The Association views with concern many of the proposals which should not be regarded as solely administrative in nature but involve issues of the rights and obligations of both debtors and creditors and indeed possibly third parties."

Can you give us an unqualified assurance that

"the rights and obligations of ... debtors, creditors and ... third parties"

will not be diminished in any way as a result of the transfer?

Rosemary Winter-Scott: Yes.

The Convener: Okay. We need to call it a day at that. I thank Ms Winter-Scott and her colleagues for coming along. We will have a brief suspension to allow for the changeover of witnesses.

10:35

Meeting suspended.

10:40

On resuming—

The Convener: We reconvene after that short intermission, and I welcome Fergus Ewing, the Minister for Energy, Enterprise and Tourism in the Scottish Government. He is joined by—again—Claire Orr and Graham Fisher. We also welcome Chris Boyland, head of strategic reform at the Accountant in Bankruptcy. Minister, do you want to make an introductory statement before we start our questions?

The Minister for Energy, Enterprise and Tourism (Fergus Ewing): Yes, thank you convener. I welcome the opportunity to work with the committee and all stakeholders on a bill that is certainly not straightforward. I particularly look forward to working with the committee as a team—of sorts. [*Laughter*.]

I am pleased to be here to talk about this important bill. The committee has heard from the Accountant in Bankruptcy references to our vision of a financial health service for Scotland. Our proposals and the bill mark a significant step towards making that vision a reality by moving our policy on debt relief towards a wider, preventative agenda; by working to improve the financial capability of vulnerable individuals in the greatest need; and by helping to prevent recurring debt problems. I will talk briefly about how we are going to achieve all that.

We have made a commitment to the mandatory provision of advice by an approved money adviser. There is a general consensus that advice should be taken before a debtor seeks debt relief—namely, bankruptcy or entry into a protected trust deed. We are also making provision for a targeted course of financial education, which is being developed by Money Advice Scotland. Its aim is to help the debtor to develop his financial capability and to equip him with the skills and knowledge to make more informed decisions relating to budgeting, bank accounts, financial planning and access to credit. Debtors may not have had that capability before and they want it—and we want to help them to acquire it more readily.

We will put in place a single common financial tool that will ensure transparency and deliver a consistent determination of the contribution that a debtor is able to make. We will attach a statutory debtor undertaking to the application form for bankruptcy, as we want to support those who can pay to repay their debts. We believe that, if the debtor is to do that, they must be clear about their responsibilities in relation to their bankruptcy. That is another important reform.

We will deliver technological improvements to the process and will make efficiency savings as a result. There will be a new online portal for electronic applications, which should speed up the process and reduce advisers' workload. We will also introduce a new minimal asset process—MAP—that is designed to help less-well-off or vulnerable debtors such as those who have income only from benefits. Debtors who enter that product will be able to access debt relief more quickly and at a lower cost. We will give individuals an initial six-week moratorium on diligence, which will allow them much-needed breathing space while they consider what they need to do next.

In addition, we are transferring certain functions from the sheriff courts to the AIB. I have listened to some of the discussion about those proposals and I would welcome a useful, constructive discussion with the committee and stakeholders on those points. Nevertheless, I echo what the Accountant in Bankruptcy has told you. I strongly believe that the proposals are fair, will lead to greater efficiency and will cost less to the taxpayer.

The bill is designed to ensure that appropriate, effective debt relief mechanisms that are fit for purpose in the 21st century are available to the people who need them. That is a laudable ambition, and the bill gets us a good way closer to being able to achieve it. I look forward to working with you on the bill.

10:45

The Convener: Thank you for that introductory statement, minister. You probably heard much of the previous evidence session. The questions that we direct to you and your officials will be similar to those that we asked the Accountant in Bankruptcy, with one or two additional questions reflecting the areas of concern that have been identified in the committee's stage 1 scrutiny and the evidence that we have taken from stakeholders.

I remind members that, as ever, their questions should be short and focused. Short and focused answers would also be helpful in getting us quickly through the broad range of topics that we want to cover in the time that is available.

One of the major areas of concern that the committee has identified—it is also an issue to which you referred, minister—is the transfer of functions from the courts to the Accountant in Bankruptcy and the question of self-review by the AIB and her staff. Nobody seems to have a problem with purely administrative functions being transferred, but there is some concern about the transfer of functions that might have a legal aspect to them. Is there a need for greater clarity and perhaps to issue guidance so that people are clear about the difference between the two types of function?

Fergus Ewing: I do not think so. The explanatory notes and policy memorandum to the bill set out our aims very clearly indeed. However, we need to engage a little bit more with stakeholders and the committee to ensure that we are getting it right, as we believe we are. We have, for example, received a relatively short note from the Sheriffs Association and I will offer to meet it to discuss its concerns. It talks about "unintended consequences" but does not spell out what those are. You make an important point, and I want to work closely with the committee and stakeholders to ensure that we have got it right.

Let me set out some background to the proposals, as I perceive it, having been involved as the minister since 2007 and having been in practice in the area in the 1980s and 1990s. The transfer of certain processes in bankruptcy law will not begin with the bill, but began some time ago. Under the Bankruptcy (Scotland) Act 1985, applications for bankruptcy were dealt with by the sheriff courts or the Court of Session. The Bankruptcy and Diligence etc (Scotland) Act 2007 saw that responsibility move, in certain cases, to the Accountant in Bankruptcy. At the time, there were concerns that a legal matter was being transferred to an administrative body, but I do not think that anybody now has those concerns. On the contrary, the administration of those matters by the Accountant in Bankruptcy has been incredibly efficient. That is demonstrated by the fact that it is able to deal with the administration of LILA cases at a cost of £200 and the fact that its net expenditure has reduced by 42 per cent from £4.8 million in 2009-10 to £2.8 million in 2011-12. As a Government agency, the AIB has been doing the work very well and very efficiently, as Mike MacKenzie alluded to in his evidence.

The Convener: I am curious to know why you suggest that Mike MacKenzie was giving evidence. I thought that he was here to ask questions.

Fergus Ewing: I take what committee members say as important evidence, convener.

There is an important principle here. No rights are being taken away and no resolution of rights will be finally determined by the Accountant in Bankruptcy. The debtor will still have the right to go to court for appeal or review—that is the fundamental principle to understand. We are not saying that someone's life, future or decisions will be determined by a Government agency. The Government agency will deal with certain processes that are largely administrative and if the person is not happy, they will be able to have their case heard before the sheriff. That fundamental principle is paramount.

It is important that that principle applies, and I make it clear that if the bill as drafted in any way fails to obtemper the principle, we will amend it. We will tidy up the bill if we need to do so. However, I am not persuaded that that is necessary. That is the first substantive point to be made. The transfer of functions is not new: it has already started, it is working well, and there is no fundamental removal of the right of access to the courts. I hope that members agree that that is a fundamental point in relation to the bill.

As the Accountant in Bankruptcy said, Eric McQueen, from the Scottish Court Service, has said that he favours the transfer of the functions. He speaks on behalf of all the administration of the courts. He favours the transfer largely because the functions are of an administrative nature and are matters that can be dealt with more efficiently by the Accountant in Bankruptcy. I say with all respect to the sheriffs, who perform an excellent job in Scotland, that the functions are not of sufficient complexity to merit the use of a sheriff's time, which might more fruitfully be spent on more serious issues, given the courts' work and the considerable pressures that they face. We are doing our bit to ease up the pressures and allow the courts to focus on legal matters of considerable importance.

I do not think that this point has been made yet. The reforms in the bill, such as the provision for debtor contribution orders under section 4, will make a process that currently could be characterised as partly or primarily legal—that is, the assessment of contribution under section 32 of the Bankruptcy (Scotland) Act 1985—more administrative. The bill will make the common financial tool mandatory, which means that there will be a set process of rules and guidance that will govern the determination of a debtor's contribution. The matter will cease to be one of almost total shrieval discretion, as it is under section 32 of the 1985 act, and will become more of an administrative process. I think that that is a hugely valuable reform, which will make the contribution more capable of, susceptible to and appropriate to determination by the Accountant in Bankruptcy.

We do not like to blow our own trumpets in Scotland, so the Accountant in Bankruptcy did not do so, but I can do that for her. As Mr MacKenzie said, the agency has acquired considerable expertise over 10 years, in a number of areas of massive complexity. Many members of this committee have written to me about difficult and complex cases in which the Accountant in Bankruptcy has given an effective response. The Accountant in Bankruptcy is no stranger to complexity. Her officers are doing such work every day, and they will be able to do the work more efficiently, more cheaply and probably quicker. The approach is sensible.

The Convener: You said that you plan to meet the Sheriffs Association. As you rightly said, the association's letter was fairly short, but it expressed serious concerns. Will you report back to the committee on the outcome of your meeting? Is it likely that it will take place before we complete stage 1?

Fergus Ewing: I determined this morning, because of the concerns that previous witnesses and the committee expressed, that it would be appropriate for me to ensure that I fully understand the Sheriffs Association's concerns. The letter is very brief indeed. I will offer a meeting, and if the association takes me up on the offer we will endeavour to have the meeting prior to stage 2. Of course I will report back to you, as a fellow team member.

Hanzala Malik: I am pleased that you are in a position to blow trumpets, minister, but let me tell you what the reality is for my constituents, which is far from meriting any blowing of trumpets. There are vast holes in what is being proposed, and one of the biggest is the cost of money advice and financial education.

We have been told that the voluntary sector will take up that extra challenge, but it suggests and states in its evidence that it does not have the resource to do that, and no one has been able to tell us where that resource will come from.

The other issue that I face is that many of my constituents who face bankruptcy are not computer savvy and they need additional support, but no one has identified a clear path for them. The fact that money advice will be mandatory means that everybody must have it. I am not sure whether we will allow bankruptcy to happen before the mandatory advice kicks in so that the debt does not continue to accumulate or increase.

However, we are saying that financial education is mandatory only in certain circumstances, but it has not been explained to me exactly who will decide that, where the line will be drawn, who will make the final decision, and whether that decision will be challengeable.

Those are just some of the points that I wanted to raise. If the minister's answer is long, I will not get another chance.

Fergus Ewing: I will try to answer all the points that have been raised, but please come back to me if I fail to do so.

I think that Claire Orr said quite clearly that the circumstances in which financial education would be mandatory are set out in section 2 of the bill, which is entitled "Financial education for debtor". I will not read from that section, as it is a bit dry, but my understanding is that it sets out what we determined, which is that it should not be mandatory for all debtors who have been sequestrated to undergo or receive some form of debt education. Rather, we felt that only some debtors in some circumstances would benefit therefrom, and that the trustee in sequestration would be the person who is best able to determine who that would be, by applying various principles that are set out in proposed section 43B(2) of the Bankruptcy (Scotland) Act 1985, which section 2 of the bill will insert.

For example, it is plain that there is a problem if somebody was bankrupt five years before and is bankrupt again. If they had learned from the first sequestration, they would have avoided being bankrupted again. I think that everybody would agree that it would be sensible for some education to be given in those circumstances. The same applies if there has been a protected trust deed within the past five years or the debtor has participated in a debt management programme. There is comparable reference to provisions in England in case there has been a move across the border—if the debtor has effectively gone through a debt relief situation south of the border and come north of the border.

The overwhelming response from consultees was not that every single debtor must have mandatory education prior to discharge from sequestration; it was that it should be selective, and that there should be a mandatory element in selective cases, for very good and obvious reasons.

I go back to Mr Malik's opening remarks.

Hanzala Malik: Who will pay for that education?

Fergus Ewing: The total costs of the bill are estimated in the financial memorandum. From memory, the total additional cost to the taxpayer from the bill is estimated at between £75,000 and £85,000—in fact, it is between £75,271 and £81,271. The actual total additional cost to the public sector that the bill will require will be about 10 times greater than that, but because most of those costs are already met in the public service, the actual net additional cost will be relatively small.

Mr Malik's point is not so much about what the extra costs will be to the Government, but about what extra burden there will be on the money advice sector, which is not, of course, part of the Government. In response to his first question, the Scottish Government recognises the marvellous work that is done by citizens advice bureaux, Money Advice Scotland and the Convention of Scottish Local Authorities. Indeed, I regularly visit CABx, take part in CABx events, exchange views with them, and hear from them what we need to do more of. I think that that is the case for all members—we all rightly tend to do that. We are

therefore aware of the pressures that they are under.

11:00

The feedback is that those pressures result substantially from welfare reform proposals and payday loan pressures. Unfortunately, we are not in a position to deal with those matters, much as we would wish to.

However, we have made provision to assist the money advice sector. The Scottish Government has provided an additional £7.9 million for advice and support organisations, to help those who are affected by welfare reform. Of that, £5.1 million has gone towards the new £7.45 million making advice work grant funding programme, which we have established with Money Advice Scotland; £2.5 million has gone to Citizens Advice Scotland, to help bureaux across the country; and, last year, £300,000 went to help to relieve immediate pressures in those organisations.

Those payments are for the generality of the pressure that those agencies face, but anyone would be bound to accept that the Scottish Government has made a fairly substantial effort towards funding those organisations. We would like to do what more we can, and we are constantly reviewing the position. The taxpayers of Scotland—through us as their stewards—are providing assistance to Money Advice Scotland to continue the excellent work that it does. I hope that that is appreciated.

Hanzala Malik: I appreciate the fact that many voluntary organisations are being supported and that there are challenges, but my point is that we are relying more and more on those organisations to deliver something that they say that they cannot deliver. If they cannot deliver, yet we say that they are delivering, something is not right—something does not add up. With all due respect, all that I am saying is that we need to find a solution, which is not there at the moment. If providers say that they do not have the resource to meet the new demand, something needs to be done.

Fergus Ewing: I will be a little more specific. We have clear information on the additional burden on the money advice sector, which I hope will assist the committee in considering matters further. Before we decided that mandatory advice would be required before entry into sequestration, we wanted to ascertain the likely additional burden on the money advice sector. An analysis was done and, as paragraph 25 of the policy memorandum says, the AIB estimated that advice is not taken in only

"between 6-8% of current applications".

Under the LILA and apparent insolvency routes, people in about 90 per cent of cases get advice. To put it simply, in only about one tenth of cases of that sort—which form the majority—is no advice given. In that respect, the additional burden will be relatively modest.

Another point relates to an important reform to which I have already referred. It will have a substantial and beneficial impact, particularly for debtors and debtors' families who face the misery of debt—Mr Malik was right to talk about that. There will be a moratorium on diligence, which will give debtors six weeks of protection while they seek advice. That copies a provision that applies broadly under the debt arrangement scheme, which is a debt management scheme option.

We are making the protections for debtors consistent across the range of debt law. That means that debtors will have an additional period of relief at the time of maximum stress when they are really up against it and thinking, "What on earth do I do? How do I pay the bills? How will I feed the children?"

We are seeking to address the issues as best we can. The moratorium in particular will make a significant impact for the better and will perhaps address the concerns that Mr Malik is right to express and which I am sure that members across the committee share.

Chic Brodie: You made the point about the impact that welfare reform is having on the theatre of debt and said that the taxpayer is substantially supporting help for the problems that debtors face. It is a shame that we cannot apply a financial levy to payday lenders, for example, to mitigate some of that tax spend.

I know that you have regular meetings, but how do you envisage the AIB or the Government monitoring the workload of bodies such as Citizens Advice Scotland or Money Advice Scotland to ensure that we address the fundamental needs of debtors and, indeed, creditors?

Fergus Ewing: I should, incidentally, refer to StepChange Debt Charity, which helped almost 12,000 people last year through its free helpline and helped 6,000 people about an individual debt solution. I should not omit it from the roll-call of those significant organisations that are playing a part.

We are in virtually constant contact with the money advice sector, so we hear almost immediately if there are any significant changes.

Mr Brodie is right to refer to the impact of payday lending. I recently attended a working meeting in Inverness with the head of the local CAB, credit union representatives and local

authority people. They told me that the growth in payday loan problems was pretty close to astronomical, particularly among young men and women.

That is a scourge of our times, and I wish that we had the power to do more, although I welcome the steps that the UK Government has taken, as I said to Jo Swinson last week when I met her briefly in London. We had a useful discussion about the progress that has been made but, with all due respect, we need to do more. The difficulty is that the payday loans problem is putting additional pressure—to go back to that issue—on the money advice world, so we are closely monitoring it.

On the more narrow question about monitoring the workload as a consequence of the bill, we envisage that feedback forms will be built into the financial education module that will allow individuals who have undertaken it to comment on how useful it has been and what they have learned. Money Advice Scotland will collate the feedback and report it back to the AIB. That is a welcome step in a new initiative for part of a financial health service in Scotland.

Margaret McDougall: If I understood you correctly, minister, you said that 10 per cent more people are likely to use money advice as a result of the bill but there will be no resources to follow that.

Fergus Ewing: That is not really what I said. I said that a relatively small proportion of those who seek debt relief will not already be getting advice.

We also expect that the other provisions that we will introduce, such as the moratorium on diligence, will provide much more practical help for the individuals involved to ease the pressure that would, in some cases, lead them to seek advice from multiple sources. That is what happens in practice—it certainly happened when I was giving advice.

We have already provided funding of £7.9 million to the sector. It is perfectly open to the Labour Party, the Conservative party or individual members to lodge amendments to the budget bill if they wish to make separate, additional provision on the matter. That is a perfectly legitimate step for any member to take. However, I suggest that the modus operandi that we have at the moment is about right. Nonetheless, we keep such matters constantly under review, precisely because of the increasing pressures on the money advice sector, which we fully appreciate.

Alison Johnstone: I will ask about the increase in the duration of payment contribution orders from three to four years. Last week we heard from witnesses who were representing money advice non-governmental organisations, the Law Society of Scotland, creditors, Lloyds Banking Group and the Consumer Finance Association, and not one of them was in favour of the increase.

Euan McPherson from Lloyds said:

"bankruptcy is about wiping the slate clean and 36 months is an adequate payment period."

The witness from Citizens Advice Scotland pointed out that the bill "was not consulted on" and that

"it seems to be a bit out of left field".—[*Official Report*, *Economy, Energy and Tourism Committee*, 30 October 2013; c 3488.]

Minister, can you elaborate on the reasons for extending the payment period and on the evidence that it will increase returns for creditors? Can you explain why the proposed increase was not in the consultation?

Fergus Ewing: We think that 48 months is about right and that there should be consistency across the piece. Using the common financial tool, debtors who have been assessed as being able to make a contribution will be required to make payments throughout the payment period, which is—as has been said—48 months, although the bill makes provision for it to be varied.

It is wrong to say that the Government did not consider alternatives. Other repayment timescales were considered, and respondents to the consultation initially favoured a five-year minimum period. I can share those consultation responses with Alison Johnstone. She did not allude to them in her opening remarks, so it would be useful for the record if we write to the committee with details of the consultees who did not say what she said but in fact said somewhat the opposite.

The Scottish Government consulted further with stakeholders on the repayment period with regard to whether five years was an arbitrary timescale and stakeholders agreed that fixing the period at four years would better balance the needs of debtors and creditors.

It is fair to say in general—and this is repeated at paragraph 3 of the policy memorandum—that bankruptcy law always involves a balance between the interests of debtors and creditors, and we have always sought to approach it in that way. The balance has shifted as times and mores have changed, and as debt problems have changed—and have, frankly, got worse. We want to live in a country in which debtors repay their debts and the money goes to the creditors wherever that is appropriate.

Members have—quite rightly—debated the common financial tool and whether we are choosing the correct path in basing the tool on the common financial statement. The debate centred on whether we should use the tool developed by StepChange Debt Charity, which I have

mentioned. It has a slightly different model, and we are working closely with Lord Stevenson, Gillian Thompson and Sharon Bell from the charity.

We have chosen the common financial tool for a number of reasons, one of which is that it is slightly more generous to debtors. The common financial statement will be the basis of our common financial tool when it is introduced—as we anticipate—in 2015, if the bill is supported by the Parliament and becomes law. That will lead to a slightly more generous system for the debtor, which is right, particularly for debtors with family and children whose needs do not change.

Although the period is 48 months, the method of assessing contributions will be more consistent, because it will be based on one set of guidance rather than being calculated in accordance with section 32 of the 1985 act, which could permit a number of widely different conclusions. I am afraid that that is what has happened in a few cases that have been brought to my attention, although we have no overall statistical information on how consistently the act has been applied.

The system will also be slightly less harsh to debtors overall, which will mean that there are likely to be fewer defaults, with all the problems that those entail. If debtors fail to make the payments, that triggers enforcement action, with all the corresponding unpleasantness and pressure. It would not be that different from sending round sheriff officers if we were able to say, "Well, you've broken your deal, so we are now going to take you to court."

Considering the matter in the round, I think that we have struck the right balance. However, given that Alison Johnstone has raised the issue, I make it clear to members that we will look closely at all those issues during the bill process. I am more than happy to do that if she wants to make any further representations to me specifically on the contribution period.

Alison Johnstone: I would like to clarify that, last week, the witness from Citizens Advice Scotland said:

"it seems to be a bit out of left field and it was not consulted on, but it is in the bill",

and Euan McPherson from Lloyds said:

"The proposal was not in the consultation."

That is the lack of consultation to which I was referring. The witnesses last week made it clear that they were concerned. The witness from Citizens Advice Scotland said that:

"The AIB did not appear to have done any research to show that the longer period would increase returns to creditors."—[*Official Report*, *Economy, Energy and Tourism Committee*, 30 October 2013; c 3488.]

He also expressed concern about breakages. I just want to make it clear that there are those who do not share the view that the longer period will increase returns to creditors and who believe that it could make life extremely difficult for debtors.

11:15

There was also general agreement on the discharge of bankruptcy. Currently, discharge of bankruptcy is automatic, as the minister will know, but the bill proposes to change that. Rachel Grant of the Law Society said that the introduction of automatic discharge by the Bankruptcy (Scotland) Act 1985

"was seen as a huge step forward that would stop people ending up in bankruptcy in perpetuity".—[*Official Report*, *Economy, Energy and Tourism Committee*, 30 October 2013; c 3489.]

ICAS also believes that automatic discharge should be retained to minimise bureaucracy and CAS has concerns about the definition of better co-operation that is required for discharge under the current proposals. Can the minister clarify the intent of the policy behind the removal of automatic discharge? Do you have any views on the increase in bureaucracy that will be caused by that?

Fergus Ewing: To address the first part of Alison Johnstone's comments, I am happy to hear more representations. I am aware that the 48-month period was not unanimously supported. However, we will write to the committee with further details on that. I have already alluded to some of the information that I think is relevant, so I hope that the committee will consider it.

Turning to the second point that Alison Johnstone made, it is very important to us that the financial health service has two aspects: rights and duties. There are rights for a debtor to be treated fairly and to have basic information about their debts. I am told that, at the committee's session in Irvine, an awful lot of debtors said that nobody had ever sat down and explained to them how finance worked. They had a basic lack of understanding about how to run their finances.

As well as the rights side, there is the duties side. Somebody who is sequestrated has a duty to co-operate with the trustee, which most debtors do. However, if they fail to do so, it is already the case that there is required to be an application disapplying the automatic discharge provision so that the trustee can, for example, continue inquiries to ascertain whether assets have been concealed or undertake other actions that they require.

Annex A of the policy memorandum shows the form of statutory undertaking that the debtor will have to sign. The statutory undertaking sets out a

range of things that the debtor is acknowledging that he or she must do—for example, not incur credit of more than £500 without informing the lender or creditor in advance; disqualification from holding certain offices; and a duty to tell the trustee about all assets. That undertaking must be signed.

We want to ensure in the financial health service that there is co-operation from the debtor. My understanding is that the principle that I have just enunciated received broad-based support in the course of the consultation and that the emphasis on co-operation was supported by many of the consultees.

In our view, the removal of automatic discharge is not a retrograde step. With the introduction of the new case-management system there will be the facility for the trustee to make an application for discharge electronically. Therefore, in so far as the arguments relate to an increase in labour costs, those will be minimal.

I did not remember these figures earlier, but 109 out of the 129 responses to the consultation were in favour of the co-operation of a bankrupt individual being linked to their discharge. I am not sure whether the Law Society was one of the 20 who were not in favour, but we will look into that and come back to the committee on it.

Certainly, perhaps for the commonsense reasons that I have sought to elucidate, it is right that the debtor co-operates and that there is more emphasis on that. It is a minority who do not co-operate, but they spoil it for those who do. It is therefore right that we look at that. The response to Alison Johnstone's very reasonable question is that that is one of the reasons why we are proceeding with automatic discharge.

Alison Johnstone: Citizens Advice Scotland is concerned that there is no definition of co-operation and it felt that it might be helpful to have a bit more information about that.

Fergus Ewing: I think that I am right in saying that, generally speaking, there are not definitions of all these words, the ordinary meaning of which is fairly straightforward—if I am wrong, I can come back to you.

In relation to the question of non-co-operation, the bill does not change the action that a trustee is required to take when the debtor fails to co-operate, preventing the trustee from carrying out their statutory duties. Section 64 of the 1985 act, I have just been reminded by Claire Orr—I should not have forgotten, really, because I used to use that act quite a lot and I certainly remember it—already requires the debtor to take every practical step, in particular to sign documents, to enable the trustee to carry out his duties.

The practical point is that the matters in respect of which the debtor has to co-operate are set out in the statutory undertaking in annex A to the policy memorandum. About 10 or 15 issues are set out where the debtor is signing, "I will co-operate; I will tell you what my assets are; I won't hide them; I will tell you if I move address."

If the debtor signs that document, as they will be required to do—it has been happening as a matter of practice but not as a matter at law, as I understand it, and not in a statutory form—there can really be no excuse for the debtor not to co-operate. In the absence of a statutory undertaking there is no clarity, but the undertaking provides clarity about all matters of substance that the debtor must co-operate on.

The word "co-operation" is in the statute already. It has already been the subject of quite a lot of judicial determination. Certainly, in a few court cases that I was involved with in which there were bankruptcy offences it was considered whether the bankrupt did or did not co-operate in relation to other statutory offences in bankruptcy.

I will go away and consider whether we need a specific definition of "co-operation", or indeed of any other terms that the committee feels may lack clarity, but I hope that I have given a sufficient answer this morning on that issue.

Alison Johnstone: Another area on which there was common agreement from last week's witnesses was a willingness to ensure that those discharged from bankruptcy could have a bank account. There was a lot of fairly positive discussion around that from everyone on the panel. Did the Government consider including provisions to help bankrupts either to keep open or to open a bank account after they had been discharged?

Fergus Ewing: I am glad that Alison Johnstone has raised that point because it is extremely important. I am aware that some stakeholders have expressed their views on it, as Alison Johnstone rightly set out.

We are aware of the proposed changes for England and Wales, which are set out in paragraph 16 of schedule 5 to the draft deregulation bill, to protect banks from late claims by trustees on bank accounts. We are quite clear that the stakeholder opinion is in favour of something being done in Scotland.

We still have to consider a couple of things before we can come to a view on an amendment to the bill. We need to consider, for example, whether the provision would be within scope and within competence, because matters relating to banking, as I understand it, are generally reserved. I am expecting further advice on the matter. As soon as I have it, I would be happy to

see whether there is something that we are usefully able to do as part of the stage 2 bill process. I undertake to come back to the committee shortly after we have been able to get advice and have had an internal consideration of that advice.

Alison Johnstone: Thank you.

The Convener: That would be very helpful because the issue has come up in evidence and it is of interest to the committee.

Chic Brodie: Minister, earlier you mentioned a financial tool and the guidance around it. You will be aware from the questioning this morning and from the submission from the AIB that the guidance around the common financial tool has not yet been produced—work on it has not yet even commenced—and that the

"AiB cannot definitively state what the guidance will contain."

It is inevitable in these circumstances that one talks of processes, structures, services and so on. Given the intent that you have expressed several times today, which I share, will you ensure that debtors and creditors will be at the heart of the guidance, not just on the financial tool but on some of the other issues that we have discussed, and that it will not be subsumed as a result of the internal operation taking primacy?

Fergus Ewing: I would like to give a broad yes in response to that question. Of course we do not want this to cause problems—quite the opposite. I am extremely confident that the common financial tool will bring clarity, consistency and transparency. That is the policy objective as set out in paragraph 34 of the policy memorandum. It will do that because there is no guarantee of consistency at the moment. That is almost inevitable because of the way in which section 32 of the 1985 act is set out—it admits widely varying interpretations. The purpose of the common financial tool is to provide greater consistency.

Mr Brodie is quite right to say that the common financial tool has not yet finally been devised; I think that that is an opportunity. However, it will be based on the common financial statement, which has been devised and, indeed, is used. The British Bankers Association approves it and, as Claire Orr said, it is used in relation to DAS, so it is tried and tested—there is already a car, to use the metaphor that Mr MacKenzie used in his questioning on the common financial tool. He asked whether it would be a car that could go to the desert and to the Antarctic. Without being unduly flippant, if it is to be a car, we will ensure that it is Vorsprung durch Technik.

Hanzala Malik: It needs wheels though; without wheels it will go nowhere.

Fergus Ewing: In all seriousness, I would like to address the point that Mr MacKenzie made earlier. I will want to be sure that the common financial tool takes account of the differing circumstances of people throughout Scotland, including people in rural Scotland and the Highlands and Islands. For example, the costs of transport—the costs of getting to and from work—need to be measured in a sufficiently flexible way to cater for people who might live a long distance away from their work. I will personally ensure that issues of that nature are raised, and I am very grateful to Mr MacKenzie for having raised that extremely important issue.

Some years ago, a measure was introduced—I think that I had something to do with it—to exempt from a person's assets for the purposes of bankruptcy a car of modest value up to a certain level, which is now £3,000. That was precisely so that people who require a car to do their daily business and to live their lives would not be stripped of it when they were stripped of their status and made bankrupt. We want to look at the issue in a practical way, not a bureaucratic way. I would be grateful to work with the committee as a team and to hear of any other areas that it feels that the common financial tool should be devised to cover so that it reflects all the circumstances of people's lives throughout the country.

The Convener: We have dealt with a range of subjects. Does any member who has not asked a question want to do so? As no one does, we can call the session to a halt.

I thank the minister and his officials very much for coming along. The committee will produce its stage 1 report in due course.

11:28

Meeting suspended.

11:33

On resuming—

Subordinate Legislation

Overhead Lines (Exemption) (Scotland) Regulations 2013 (SSI 2013/264)

The Convener: I reconvene the meeting and remind members that we are still in public session.

Under item 2 on the agenda, we have before us a negative instrument, so members can move a motion to annul it if they are so inclined. If no member has an issue that they want to raise in relation to the regulations, are members content with their coming into force?

Members *indicated agreement.*

The Convener: Thank you very much. We will report to the Parliament accordingly.

11:34

Meeting continued in private until 11:51.

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