The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

WELFARE REFORM COMMITTEE

Tuesday 27 January 2015

Session 4

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WELFARE REFORM COMMITTEE
2nd Meeting 2015, Session 4

CONVENER

*Michael McMahon (Uddingston and Bellshill) (Lab)

DEPUTY CONVENER

*Clare Adamson (Central Scotland) (SNP)

COMMITTEE MEMBERS

*Annabel Goldie (West Scotland) (Con)
*Joan McAlpine (South Scotland) (SNP)
*Margaret McDougall (West Scotland) (Lab)
*Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP)
*Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Margaret Burgess (Minister for Housing and Welfare)
Ken Macintosh (Eastwood) (Lab)

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

The Adam Smith Room (CR5)

Scottish Parliament

Welfare Reform Committee

Tuesday 27 January 2015

[The Convener opened the meeting at 10:04]

Decision on Taking Business in Private

The Convener (Michael McMahon): Good morning, everyone, and welcome to the second meeting in 2015 of the Welfare Reform Committee. Could everyone please ensure that their mobile phones and other electronic devices are switched to silent or airplane mode?

Our first item of business is a decision on whether to take in private item 3, which is a discussion on a proposal for commissioned research. Are members happy to take that item in private?

Members *indicated agreement.*

Welfare Funds (Scotland) Bill: Stage 2

10:05

The Convener: Our second agenda item is consideration of the Welfare Funds (Scotland) Bill at stage 2.

I remind ministerial officials that they are not permitted to participate in proceedings. I remind everybody that they should have copies of the bill, the marshalled list of amendments and the groupings of amendments. The groupings set out the amendments in the order in which they will be debated, and the marshalled list sets out the amendments in the order in which they will be disposed of.

I will briefly remind all those present of some of the main points of procedure so that we are all as clear as possible—this will also help me quite a lot.

There will be a debate on each group of amendments, and I will call members to speak in turn. Members who have not lodged amendments in the group but who wish to speak should catch my eye or the clerk's attention. Following the debate on each group, I will check whether the member who moved the first amendment in the group wishes to press or withdraw it. If they wish to press it, I will put the question on the amendment. If the member wishes to withdraw their amendment after it has been moved, they must seek approval to do so. If any member who is present objects, the committee will immediately move to a vote on that amendment.

If any member does not want to move their amendment when they are called to do so, they should say "not moved". However, any other member may move such an amendment. If no one moves the amendment, I will immediately call the next amendment on the marshalled list.

Voting in any division will be by a show of hands, and only committee members are allowed to vote. The committee is required to indicate formally that it has considered and agreed to each section of the bill, so I will therefore put a question on each section at the appropriate point.

Section 1 agreed to.

After section 1

The Convener: The first group of amendments is on general principles on respect for and the dignity of the applicant. Amendment 24, in the name of Margaret McDougall, is grouped with amendment 30. I call Margaret McDougall to move

amendment 24 and to speak to both amendments in the group.

Margaret McDougall (West Scotland) (Lab): I will move both the amendments in my name.

Amendment 24 would insert, under the heading "General principles", the following provision:

"In exercising its functions under sections 1 to 4 in respect of an applicant for assistance in pursuance of section 2, a local authority must take reasonable steps to facilitate the following principles—

(a) that the right to dignity of the applicant is to be respected,

(b) that the particular needs and choices of the applicant are to be considered."

The amendment ensures that, while

"exercising its functions under sections 1 to 4 in respect of an applicant for assistance in pursuance of section 2,"

a local authority must take all reasonable steps to ensure that respect for and the dignity of the applicant are taken into account, and that the needs and choices of the applicant are considered.

That principle is supported by organisations such as the Scottish Council for Voluntary Organisations, the Scottish campaign on welfare reform, the Scottish Churches Parliamentary Office, Engender and the Poverty Alliance, which, like me, believe that dignity and respect should be the cornerstone of our approach to welfare. It is crucial that we embed the principles of dignity and compassion in the proposed legislation at this stage.

Furthermore, in chapter 4 of the Scottish Government's document "Scotland's Future", there are numerous references to welfare and dignity, such as:

"the benefits system should be fair, transparent and sympathetic to the challenges faced by people receiving them, respecting personal dignity, equality and human rights".

Paragraph (b) in the proposed new section relates to that point, as it means that the applicant would have a degree of choice in the matter. I have spoken to some people about the issue, and I am sure that many others around the table will have heard about the experiences of constituents. Under the old system, someone could be provided with an item such as a cooker that did not fit into their kitchen or a washing machine that did not suit them, as they had disabilities and could not operate it. If they had a degree of choice and were able to go and buy an item that suited their needs, that would allow them an option.

The bottom line is that we are dealing with vulnerable people and people who have fallen on hard times. To uphold their dignity and respect, we must also uphold the choice and the needs of the individual. One size does not fit all when it comes to welfare.

Given the wide range of organisations that want dignity to be enshrined in the welfare system and the fact that the Scottish Government's own document highlights dignity and respect in the welfare system as a key tenet, I think that it is reasonable and responsible to include the principles at the front of the bill.

There has already been an example: in the Social Care (Self-directed Support) (Scotland) Act 2013, the general principles are on page 1.

That was amendment 24, which I move. On amendment—

The Convener: We are just dealing with amendment 24, Margaret. Are you also speaking to amendment 30 in the name of Kevin Stewart?

Margaret McDougall: No.

The Convener: We will come to your other amendment in another group. Kevin Stewart will speak to amendment 30.

Kevin Stewart (Aberdeen Central) (SNP): I share the belief that applicants should be treated with respect, and I would like to ensure that their dignity is preserved at all times. With the changes that have come from Westminster and the use of language that comes from that place, we have seen that folks are often not treated with the dignity and respect that they deserve.

I have some difficulty with Margaret McDougall's amendment 24 and the issue of choice. We would all like to maximise folk's choices to the nth degree but the reality is that we have a limited budget of £30 million-odd to deal with welfare cuts of £6 billion. The more choice that we put in place means that fewer people are helped. We have to balance everything out very carefully.

I wish that the Scottish Parliament had all the powers and budget to deal with welfare because we would deal with it differently from how it is being dealt with by Westminster. We have to recognise that we have limited abilities, room for manoeuvre and budgets. Amendment 30 recognises that. Although I would always like to go further, we must be aware of where we are at.

The Convener: I will open it to other members to comment.

Annabel Goldie (West Scotland) (Con): I have a lot of sympathy with both the intention and objectives of both amendments 24 and 30, but I have a technical concern. What is the sanction if a claimant feels that a local authority has failed to discharge its duties in accordance with the proposed provisions? I ask that question because I am not sure how a court would interpret it, and I do not want a local authority to be distracted from

the work that we all want it to be doing, by facing defensive legal actions that claim that the provision has been breached.

I therefore have two questions. First, are you satisfied about the ability of the court to interpret the proposals? Secondly, what is the sanction?

Margaret McDougall: Can I—

The Convener: Margaret, you will get an opportunity to wind up at the end of the discussion. I will come back to you after the debate. Ken Macintosh wishes to speak.

Ken Macintosh (Eastwood) (Lab): Thank you very much, convener—[*Laughter*.] They seem to have turned up the microphones since I left the committee.

I congratulate both Margaret McDougall and Kevin Stewart on amendments 24 and 30, and I speak in support of amendment 24 in particular. It is good that we are starting this morning's discussion with an overview of what the bill is trying to achieve and the principles underpinning it. In some ways the bill is a simple and pragmatic measure to replace the social fund, but it also offers the Scottish Parliament the opportunity to lay down the direction of travel, putting dignity and respect at the heart of our thinking on welfare.

As more powers come to the Scottish Parliament giving us responsibility for welfare, it is important to establish what sort of welfare state and what sort of society we wish to build in Scotland. It is important that those principles are part of the bill.

I support both amendments 24 and 30. Amendment 30 in the name of Kevin Stewart uses the words "respect and dignity", and I would be interested to hear what the minister makes of that.

I was slightly concerned that Mr Stewart did not support Margaret McDougall's amendment 24 and, in particular, that he seemed to hesitate over the word "choice". Treating people with dignity and respect is about allowing them to exercise choice. It is not about people choosing to make demands on the fund, because that would simply be about choice within the decisions that the local authority had already made. It is about choice in a local authority

"exercising its functions under sections 1 to 4 in respect of an applicant".

In other words, it is not about an applicant choosing to make demands; it is a requirement for the state to ensure that, in assessing their needs, it listens to the applicant's views and allows them to make a choice from the choices that are open to us as a society. It is an important word.

10:15

Not only is choice an important word; it is the word that the Scottish Government used in a previous measure. The reason why Margaret McDougall lodged amendment 24 is that it copies the wording and principles that the Scottish Government put in place in the Social Care (Self-directed Support) (Scotland) Act 2013. We thought that, if it was good enough for that act, it was good enough for the bill, too.

To reply to the point that Annabel Goldie made, as with any act the matter would be open to judicial review. If an applicant felt that their dignity and respect were not upheld by the way that they were treated, they would be open to take the matter to judicial review. That is a difficult course of action, but it would be the course and I have confidence—as I am sure Annabel Goldie does—in the courts' ability to interpret our legislation.

I certainly do not think that applicants are likely to abuse the sanction of judicial review. It is important that we state the principle and that, therefore, local authorities and others who implement the bill are aware of the principles and have the sanction of judicial review in the back of their minds. That will make them more focused on ensuring that we put the principles into practice.

For those reasons and because the proposed measure has been supported by the wider voluntary sector—the SCVO and the many others that Margaret McDougall quoted—it is important that we take the step. I recommend that we support amendment 24.

The Minister for Housing and Welfare (Margaret Burgess): It has always been a priority that welfare funds should be delivered in such a way that the dignity of welfare fund users is preserved. I agree with the committee's suggestion that we have an opportunity to take a different approach to welfare in Scotland. Regardless of the funds available, our services will be delivered with respect and understanding.

I have been considering the issue for some time, and we have been working with local authority practitioners through the series of decision-making workshops that we have been running to raise awareness of the challenges that some of the applicants to the fund face and to try to ensure that decision makers put applicants and their needs at the centre of their work.

On my visits to local authorities, I have seen the efforts that local authority staff make to ensure that applicants are assisted in a timely and appropriate way. That said, I appreciate how important it is to send a clear signal about the need to treat applicants with dignity and respect. I have thought carefully about the matter for some time and I believe that it is right to give priority to that aspect

of the fund by including appropriate reference to it in the bill. However, there are two similar amendments to consider.

Amendment 24, which Margaret McDougall has lodged, is laudable in its intention, but my concern with it centres on the impact that it could have on local authority resources. The reality of the situation is that, as Kevin Stewart said, there is a limited budget for welfare funds, which is coming under pressure. We have to acknowledge the demands on the fund and the opportunities for savings through local authorities bulk buying goods that they can distribute through it. That is alongside the added administrative burdens that local authorities would have to bear if we accepted amendment 24.

The guidance on the current interim scheme makes it clear that, if an individual has particular needs, they should be met, and I am determined that that will continue under the permanent arrangements. We will reconsider the guidance for the permanent arrangements to determine whether we can do more to ensure that, where applicants have a genuine need for a non-standard product, there is a clear understanding of how it should be provided.

Therefore, I support amendment 30, which captures the essence of what stakeholders have called for without bringing additional pressure to bear on local authority budgets. I urge Margaret McDougall to seek to withdraw amendment 24, and I ask the committee to accept amendment 30.

The Convener: We come back to Margaret McDougall to wind up the debate and to press or withdraw her amendment 24. Margaret, it is your opportunity to answer the questions that have been raised.

Margaret McDougall: Ken Macintosh answered Annabel Goldie's question on sanctions. The judicial review option is there, and the user can appeal, so I have no concerns in that regard.

Kevin Stewart and the minister have said that there are limited funds available to local authorities. We know that, but I am not asking for people to be able to demand an excessive amount so that they can go out and buy the very best items. I am saying that it should not cost any more to enable people to have choice. That would give people a little more respect: they could say, "This is what I need in my kitchen, as it suits my needs. This is how much it costs—will the authority please fund it?" If the cost was above a certain level, the local authority would be perfectly within its rights to say, "No—that is outwith our funding allocation, and you can't have it."

That choice should be there. Choice does not mean that things will cost more—at times, they might actually cost less.

I press amendment 24.

The Convener: The question is, that amendment 24 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

Ken Macintosh: Do I get a vote?

The Convener: No. You get the opportunity to speak, but not to vote.

For

McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Goldie, Annabel (West Scotland) (Con)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 24 disagreed to.

Section 2—Use of welfare funds: assistance for short term need and community care

The Convener: Amendment 25, in the name of Ken Macintosh, is grouped with amendments 26 and 28.

Ken Macintosh: As we know, the bill places no restrictions on the circumstances in which a local authority can decide to make an award in kind to an applicant; that is, in goods or vouchers, rather than in cash. Amendment 25 would not prevent councils from doing so, but would simply enable the Scottish Government to produce regulations detailing the circumstances in which a local authority could make a non-financial award.

The power could be used to ensure, for example, that local authorities take applicants' circumstances and preferences into account in deciding the nature of the award, and—following on from our previous discussion—to ensure that the applicant has more say and more choice in the process.

It is clear from the discussion on the previous group of amendments that all colleagues on the committee, and the minister, share my belief that the principles of dignity and respect should underpin our approach to welfare in Scotland. On the other hand, it is unfortunately clear in the evidence from witnesses who gave evidence to the committee that a more common experience for people who rely on state support at times of difficulty is that they feel judged and stigmatised, and are made to feel small.

Every bit as important—if not more so—than the principles that we state is how we put them into practice. We heard direct evidence that for people using vouchers or tokens in local shops the experience can be stigmatising and embarrassing, and can undermine applicants' sense of dignity.

In some circumstances, non-financial awards may be the most practical and cost-effective way of meeting applicants' needs. However, we also heard that such awards can be problematic and difficult. We heard, for example, that issuing vouchers instead of cash can undermine a family's ability to achieve best value by budgeting, spreading payments or shopping around for goods. Items that are awarded do not always meet the identified needs of the applicant and their household. Disabled applicants and other people who have very specific needs may be better placed than the local authority to identify and purchase items that meet their needs. For families in rural areas, the ability to find a shop that takes vouchers is likely to be limited, as well as stigmatising.

Surely our intention with our approach to welfare in the bill is to build up resilience by, at the very least, leaving as much choice as possible in the hands of the recipient. The minister and I do not get paid in furniture or tokens: if we were, we might feel offended or patronised, so why should we be surprised if applicants for welfare feel similarly? Are we trying to make people feel worse or give them a hand up in their time of need? The SCVO briefing put it well:

"For many, having cash to buy what they need is by far the best option—not least because it gives people some semblance of control and dignity at a time when they cannot control the factors which have led them into hardship."

Whatever our good intentions, what is also clear from the voluntary sector organisations that gave evidence is their concern that in-kind awards from the fund seem to have become the default position. Only half of all crisis grants and less than 20 per cent of community grant awards are made by way of cash, cheque or direct bank transfer.

If people are looking to furnish a flat and need a whole pack of goods, a community grant award might be the best option. Amendment 25 does not rule that out: I want to make it clear that the amendment would not disbar local authorities from providing support in kind rather than in cash. The amendment will allow the Scottish Government to specify the conditions that would need to be satisfied before a non-financial award could be made. Such an approach would not prevent local authorities from making awards in kind, but it would ensure that proper consideration was given to the needs of the applicant in each case, and that decision making was more transparent. It would also provide recipients with a clear basis on which to challenge unsuitable awards and any lack of consideration on the part of local authorities.

I move amendment 25.

Kevin Stewart: We heard a lot during the course of evidence taking and read a number of written observations about those issues. One of the key things that we need to put on record is that many of the folks who gave evidence were thankful for the in-kind contributions that they had received. The best examples are probably young folk who having left the care sector felt that the furniture packages that they received from local authorities were the best way to deal with their situation.

I return to a point that I made previously: we have a very limited amount of money to deal with cuts that amount to some £6 billion. My great fear is that if we restrict local authorities in their ability to strike deals to bulk-buy goods, we will help fewer and fewer people. The key thing is to help as many people in need as we possibly can.

I have some sympathy for the intention behind the amendments in the group, but I do not think that the bill is the correct place to address the issues. In some regards, we must allow local authorities their independence to apply common sense and logic to their day-to-day business in helping folks who are in need.

Annabel Goldie: I have no doubt whatsoever about the good intentions behind the amendment, but I return to my observations about amendment 24, in the name of Margaret McDougall. I want local authorities to have the widest possible latitude and discretion in how they meet need, but I am worried that amendment 25 would restrict that latitude and breadth of decision making. Amendment 24 aimed to ensure that the particular needs and choices of the applicant would be considered. Perversely, however, if that amendment had been agreed to, amendment 25 would then restrict the ability of the local authority to respond in that way. I am troubled that Mr Macintosh's amendment is inflexible and would restrict local authorities. I am therefore unable to support it.

10:30

Joan McAlpine (South Scotland) (SNP): As other members have done, I acknowledge the good intentions behind amendment 25. It is important to remember that the people about whom we are talking are facing absolute destitution. The pot that we have to help them is limited—I think that it is £38 million, against cuts of £6 billion—so if we do not use it cost-effectively, other people who face absolute destitution will be deprived of help. Although we would, in an ideal

world, have things be different, we have to be pragmatic.

I bow to the knowledge of my colleague Kevin Stewart who heard the evidence from people who told the committee that payment in kind often suited them. For that reason, I cannot support amendment 25, either.

Margaret McDougall: I support Ken Macintosh's amendment 25. I have heard the arguments against it, but choice does not have to mean more cost. Some of the bulk purchases are set, and that is it. However, we all know that sales go on and that there are opportunities to reduce the cost. Ken Macintosh also made a point about use of vouchers in rural areas. How much would it cost an individual to travel to a city so that they could use the vouchers, which they will not be able to use in local shops?

We are saying that local authorities should be able to consider each individual case by case, and to exercise discretion accordingly. I know that there will be cases in which a person who has had assistance in the past has not spent the money as they should have done. In such cases, the local authority would have reason to provide any further assistance in kind or in vouchers. However, we want to give individuals who are in situations such as we are talking about a bit more control over their lives, so that they can decide what they want and what is best for them. Therefore, I support Ken Macintosh's amendment.

Clare Adamson (Central Scotland) (SNP): I have listened to the arguments. On the view that choice would not cost more, I think that that flies in the face of evidence that was provided by the Convention of Scottish Local Authorities about some of the difficulties that might be involved, in particular with regard to some people's payment methods—the bank card or post office account.

The bill is intended to put the individual at the heart of the decision-making process. The examples that we have been given—the issuing of vouchers in rural areas and cookers that do not fit or are not suitable—point to failures in the process, rather than to something that should be included in the bill. I agree with my colleagues that the decision should be in the hands of local authorities, who know how best to provide the fund in their areas.

Margaret Burgess: There are a number of things to take into account when considering amendments 25, 26 and 28, which would, taken together, result in limits being placed on the circumstances in which local authorities could make non-financial assistance available to applicants.

I was interested in the evidence that the committee heard from users of the interim Scottish welfare fund, who came out in support of local authorities providing goods to fulfil community care grant awards.

We commissioned Heriot-Watt University to undertake an independent evaluation of the Scottish welfare fund, as part of our on-going work to improve the interim scheme and develop the permanent arrangements. That evaluation suggests that there is support for awards in kind, as long as they are appropriate to the applicant's needs. We heard that for someone who has children or who has limited mobility, having an item delivered—and installed, because local authorities can also provide such services—can be preferable to a cash award.

I recognise third sector organisations' concerns about provision of goods, but we must acknowledge the pressures on the fund and take the opportunities for savings that are afforded by local authorities buying in bulk goods that they can distribute through the fund. I am aware that bulk-purchased goods will not meet the needs of all applicants. That is why the guidance for the interim scheme makes it clear that an award should meet the needs of the individual. I am positive that that approach will continue. We will look again at the guidance in the context of the permanent arrangements, to see whether we can do more to ensure that there is clear understanding of how to support applicants who have a genuine need for a non-standard product.

I am not minded to change our approach in respect of community care grants. However, I have been giving thought to how awards for crisis grants are made. I do not think that the issue needs to be addressed in the bill, but when we consult on the regulations and the statutory guidance that will support the legislation we will explore ways of ensuring that the principles of amendment 25 are taken on board in respect of crisis grant payments.

I understand and sympathise with the intention behind amendments 25, 26 and 28, but the bill is not the correct place in which to address the issues that they raise. Therefore, I do not support the amendments in this group and urge the committee not to agree to them.

Ken Macintosh: I have been both slightly encouraged and slightly discouraged by the debate. First, I am slightly concerned that I perhaps did not explain, or that people misinterpreted, my proposed approach. Amendments 25, 26 and 28 would not restrict a local authority's ability to provide goods in kind. They would put the onus on authorities at least to consider giving a cash award first, and they would allow the Government to stipulate the conditions under which in-kind awards could be made. There would be no restriction of freedom whatever.

I did not follow Annabel Goldie's logic when she suggested that amendment 25 would restrict the choice that was sought in amendment 24. It would not do so. It echoes exactly the principles that we were trying to promote through amendment 24: choice, dignity and respect. My proposed approach does not contradict those principles—

Annabel Goldie: Am I allowed to intervene?

The Convener: It is a debate, so you can take an intervention if you want to do so, Ken.

Ken Macintosh: Why not?

Annabel Goldie: I was merely pointing out that if amendment 24 in Margaret McDougall's name had been accepted we would have created a paradox, because on one hand we would be saying to a local authority that it must consider the applicant's particular needs and choices—which might be for goods, services or particular support—while on the other, Mr Macintosh's proposed approach would restrict a local authority's ability to look holistically at a claimant's needs. That is the paradox that I identified.

Ken Macintosh: It is clear that Annabel Goldie has totally misunderstood the effect and intention of amendment 25: it would not do what she suggests. It would instead give the local authority the ability to take all the needs of the applicant into account, rather than patronising the applicant by deciding that the local authority knows best. I repeat that that is exactly how we can put dignity and respect into the bill in practice. If we mean what we say when we talk about respecting people in our welfare system, we must treat them as we would treat anyone else in society and give them an element of choice.

The approach is supported by the Child Poverty Action Group, Poverty Alliance Scotland, SCVO, Inclusion Scotland, One Parent Families Scotland and Barnardo's Scotland. We heard evidence from many people—Oxfam was very good in that regard—that in any society support is better given in cash because doing so builds resilience, dignity and respect. That is as true in Scotland as it is in any other country.

Amendment 25 does not insist that authorities give cash.

Kevin Stewart: Will Mr Macintosh take an intervention?

Ken Macintosh: Is that all right, convener?

The Convener: It is up to you.

Ken Macintosh: I am happy to take the intervention.

Kevin Stewart: You should also recognise that a number of witnesses, including folks who have access to the Scottish welfare fund, felt that the package of goods that they were offered was absolutely the right thing. We must take cognisance of the fact that, in the vast bulk of places, the approach is working well. The fact is that local authorities are being helpful in relation to what is offered.

The difficulty in putting common sense into legislation is that we cannot—

The Convener: Interventions are supposed to be brief, Kevin—not speeches.

Kevin Stewart: What Mr Macintosh is looking for is common sense, which I hope would apply across the board. As Clare Adamson said, COSLA seems to be well aware of the logic that needs to be applied, which is why it has its best practice group.

Ken Macintosh: If I may say so, Mr Stewart, I am looking for far more than common sense: I am looking to put dignity, choice and respect into the bill in terms of both principles and practice.

I will give an example. I was in Aberdeen yesterday, and I visited Instant Neighbour, which I am sure Mr Stewart knows well.

Kevin Stewart: I do.

Ken Macintosh: It is a fantastic example. It is an organisation that has been around for 30 years that supplies people with exactly the goods that we have been discussing—furniture packs, furnishings, floor coverings—and assists people when they are moving into a house. However, the local authority no longer allows welfare fund applicants to use Instant Neighbour, but instead insists on bulk purchasing brand new items from a place in Broxburn. I am sure there is nothing wrong with that, but the goods are cheaply made, mass-produced items and they do not last.

The effect is that Instant Neighbour ends up putting reconditioned goods into landfill, which is environmentally unsustainable, all choice is removed from the applicants and an organisation that has been around for 30 years—it is a social enterprise and it employs great people in Aberdeen—no longer gets to provide the service and no longer gets money going into the local economy. That is an example in which I question the decisions that have been made.

In any case, however, under my amendments, both choices would be open to local authorities. I have specifically stated that. In many circumstances—for example, a young man moving into a flat for the first time—what people want is not money but somebody to say, "Here's a pack of goods. Here are the furnishings, the plates, the crockery and the cooker that you need." If that is what they want, they will be able to choose that. They would be asked and their views would be taken into account. In the end, the decision would

still be for the local authority, but at least the person's choice would be considered. That is what I am suggesting.

A number of other points have been made. Both the minister and Mr Stewart talked about cost-effectiveness as though what I propose would somehow place extra demands on the system. It would in no way increase the demands on the Scottish budget but would operate entirely within the cash limits of the system.

In health and social care, we are moving to self-directed support specifically because we recognise that the personalisation agenda is very good for people's health and wellbeing. We have recognised that it is good for people's health to have more control over the carers that they employ. Why cannot we apply exactly the same principle to welfare? Margaret McDougall and I are not saying that we should give people extra money; we are asking only that they be given a say and a bit of choice. If that is good for people's health, surely it is good for their wellbeing, too.

I will end on a positive note. The minister acknowledged the spirit in which I moved amendment 25, and I agree with her that it is far more important for crisis grants than it is for community care grants. I was encouraged by her remark that she will consider putting the matter in regulations, so I look forward to hearing more at stage 3. That said, I hope that she will not mind if I press amendment 25 to a vote.

The Convener: The question is, that amendment 25 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
Goldie, Annabel (West Scotland) (Con)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse)(SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 2, Against 5, Abstentions 0.

Amendment 25 disagreed to.

Amendment 26 not moved.

The Convener: Amendment 27, in the name of Ken Macintosh, is in a group on its own.

10:45

Ken Macintosh: Thank you, convener—third time lucky. The effect of amendment 27 would be to include families facing exceptional pressure among the list of groups classed as qualifying persons for the purpose of a community care grant. The interim Scottish welfare fund, which was introduced by the minister and which the bill puts on a statutory footing, lists five categories of applicant who can be awarded a community care grant. Four of those categories are explicitly included in the bill. The only group of applicants that is left out, and which is not mentioned anywhere in the bill, is families facing exceptional pressure.

That would mean, for example, that individuals who are part of a family facing homelessness would qualify for an award, but someone looking after a disabled child would not. An individual at risk of ending up in prison would be given support, but somebody fleeing domestic violence would not. Given that people in the circumstances that I described would have been eligible for support under the original UK social fund, as well as under the current interim scheme, which ministers drew up to replace it, I am not sure that that effect is what the minister intended.

As members are aware from evidence to the committee, many people, particularly in the voluntary sector, believe that that omission from the bill could affect the health and wellbeing of some families who are already vulnerable. The Scottish Council for Voluntary Organisations, the Child Poverty Action Group and One Parent Families Scotland are just some of the organisations that highlighted their concern that the proportion of grants made to families with children is already relatively low. For example, the annual Scottish welfare fund figures for last year show that only 20 per cent of those applying for a community care grant are categorised as being a family under exceptional pressure. The statistics are not directly comparable, but figures for the United Kingdom social fund show that that compares with more than 53.5 per cent of the community care grant budget being spent on families facing exceptional pressure in the previous year. In fact, the figures strongly suggest that families are underrepresented among all the five current categories of community care grant claimant.

Measured by those who are in receipt of child benefit for example, possibly only around a fifth of all claimants are families with children. Carers Scotland is another group that is worried that the bill could make that situation worse, inadvertently or otherwise. It gave us direct examples. It quoted one carer who said:

"My husband's movement and coordination leads to a high number of breakages—crockery, furniture and fittings. I constantly need to fix or replace ... items."

Another described how

"The washing machine is on every day. It isn't designed for that sort of use and this means it breaks, but when it breaks I have piles of soiled laundry building up."

Those are the occasions when community care grants are needed. Those are the very families who have little or no savings to use to respond to unexpected expenses and for whom the bill is a lifeline. I urge members to support my amendment.

I move amendment 27.

Clare Adamson: I absolutely commend Ken Macintosh for his reasons behind amendment 27. We recognise the situations that he described. However, having examined his proposal, I do not feel that it is within the legislative competence of the Parliament to introduce another category. I hope that we will present a bill that is competent and can go through the process. Unfortunately, therefore, I will not be able to support the amendment.

Annabel Goldie: I am going to give Mr Macintosh some perhaps unexpected encouragement. I wanted to listen to the debate. I think that he has identified a category of circumstance that could be of great distress to an individual or family but is not covered adequately by the provisions as they currently define an exceptional event or circumstance. I have no idea whether it is ultra vires but—do you know what, Mr Macintosh?—I think that we should give it a shot, so I will support you.

Kevin Stewart: The debate has been very interesting thus far. I would be grateful if the minister could talk to us about whether the amendment would take section 2 beyond legislative competence. My understanding is that there is a complication in terms of the wording of the section 30 order that grants the Parliament the power to legislate in this area.

The last thing that I would want is for us to agree to amendment 27 and then for the entire bill to fall. I wish that we did not have to rely on section 30 orders and that we had complete competence in the area of welfare, but that is not the case at present. I would be grateful for the minister's comments in that regard.

Margaret McDougall: I support amendment 27. I do not understand how there can be a constitutional reason for not including the provision. It will add to the bill someone who may be a member of a family who would not be covered by the bill as it is drafted.

The Child Poverty Action Group is very keen that the provision should be added. I am sure that members will have received the same correspondence as I have, which mentions the type of families that would be affected by the change. They include lone parents with young children who need household items

"following the violent breakdown of a relationship";

a family in which the

"sudden deterioration in the condition of a disabled child justifies an award for a washing-machine";

and a family that is

"experiencing hardship as the result of a localised disaster and urgently needs the replacement of essential household items."

None of those families would be covered under the bill. If we included the further category as specified in amendment 27, it would include them all.

Joan McAlpine: I am very concerned about this issue. I want to support amendment 27, as it stands to reason that one would want to support families in such circumstances. If agreeing to the amendment would put the bill beyond the legislative competence of the Parliament, my natural instinct would be to say, "So what?", but that will not get us anywhere if the bill falls, which is the real risk.

I am torn on the issue, because I would like to support the amendment, but I do not want to do anything that would result in the bill falling. Like Mr Stewart, I would welcome some comments from the minister to explain why the amendment would put the bill outside the legislative competence of the Parliament, and what we will be doing to help those families that are clearly in exceptional need.

The Convener: I have a specific question on the issue of competence that I hope the minister will be able to answer. I would be grateful if you could clarify the situation. If the amendment was agreed to and the bill was deemed to be outwith the competence of the Scottish Parliament, who would bring that challenge? Only an external challenge would bring the bill into disrepute.

You can also reply to the debate.

Margaret Burgess: Okay—I will respond to your question at the end, convener.

I understand why stakeholders are pressing for families under exceptional pressure to be included in the bill. The term is a descriptor in the interim scheme guidance, but the Scottish Government does not have a free hand to make the same provision explicitly in the text of the bill for everyone who might benefit from welfare funds.

If we were to accept amendment 27, it would, in our view, take the provisions of the bill beyond the competence of the Scottish Parliament. Section 2 of the bill replicates the amendment of schedule 5 to the Scotland Act 1998 that was made by the Scotland Act 1998 (Modification of Schedule 5)

(No 2) Order 2013, which gives the powers to the Parliament to legislate in that area. It is commonly known as the section 30 order. In response to your question, convener, I say that anyone could challenge the competence of the Parliament.

Section 2 reproduces the wording of the section 30 order, which means that it gives the fund the broadest possible scope to operate within the reservation. I state clearly that there is no barrier now, nor under the permanent arrangements by virtue of the bill's wording, to prevent families under exceptional pressure from accessing welfare funds. Regulations and guidance will ensure that applications from that group continue to be given priority. The families in the examples that Ken Macintosh and Margaret McDougall have given are not currently excluded under the interim arrangements and will not be excluded under the permanent arrangements.

The bill sets out a high-level framework for welfare funds, but the details of how it will operate will be set out in regulations and statutory guidance. The current draft regulations, which we produced to give an indication of the areas that would be covered in regulations, include families under exceptional pressure as one of the five circumstances in which a community care grant can be paid. It is my intention to retain that in the regulations and to work with stakeholders such as the Child Poverty Action Group to ensure that the guidance for the permanent arrangements captures the concerns of stakeholders and deals with them effectively.

To compare the number of awards to families under exceptional pressure under the Department for Work and Pensions social fund with the number of such awards under the Scottish welfare fund, as indicated by Ken Macintosh, is not to compare like with like. There are significant differences between the guidance and monitoring framework for the Scottish welfare fund and that for the DWP social fund. The acid test is where the money is going. The Scottish welfare fund statistics show that, under the interim scheme, 38 per cent of households receiving community care grants contain children, but the comparable figure for crisis grants is 30 per cent. However, under the old DWP scheme, 32 per cent of households that were awarded community care grants in 2012-13 were households with children, and the proportion of crisis grant awards that went to such households was only 16 per cent. That indicates that we are effectively targeting families under pressure now, and it is my belief that we will continue to do so under the permanent arrangements.

I therefore ask members not to support amendment 27.

The Convener: I ask Ken Macintosh to wind up and to press or withdraw amendment 27.

Ken Macintosh: Thank you for what was a far more encouraging discussion, minister. It is quite clear that everybody round the table wants families facing exceptional pressure to receive support from the welfare funds available, whether that be community care grants or crisis grants. I was pleased to hear the statistics that the minister quoted, and I hope that they are more accurate than the ones that I was given by the SCVO, CPAG and others.

As far as I can work it out, the main argument, which I thought Joan McAlpine put perfectly, is that we want to support amendment 27 but are slightly concerned about its legislative competence. Joan McAlpine is tempted to say, "So what?" about that and support the amendment, which I urge her to do. The only real argument against amendment 27 is around its legislative competence. However, like Kevin Stewart, I question whether the entire bill would fall because of amendment 27—that just would not happen.

The minister did not address the key point. She said that anybody could bring a challenge. That is a theoretical possibility, but who is going to bring a challenge? Would it be the families who are being denied welfare? I do not think so. Would it be the local authorities or the Government? Who exactly would bring a challenge to provision for families under exceptional pressure being included in the bill?

Again, I do not intend to try to stop this, but the minister's current guidance has five categories that specifically include helping families under exceptional pressure. She assured us that she would include that in regulations. If the minister believes that she has the authority to put that in regulations and that it should be implemented by local authorities, what authority is she quoting? The only authority that this Parliament has comes through the very act that she is quoting. In other words, if it is outwith legislative competence for amendment 27 to be included in the bill, because it is not in the section 30 order, it is outwith the minister's legislative competence to put in regulations provision for helping families under exceptional pressure—there is no difference between the two situations.

We get our powers through statute and the minister cannot quote one against the bill and then quote the other to say that the provision is better off in regulations. If the argument applies for regulations, it applies for the bill. If the minister wishes to respond to that, I am happy to listen.

The Convener: The invitation is there, minister.

Margaret Burgess: I am not a legal person and I know that the legal people are unable to comment at this stage in the process, but what is in the regulations is a subset of what is in the bill, and I am told that that is the legally competent way to do this. I do not know whether I can say this now that I have moved various amendments, but I am willing to look at the provision again and set it out in more detail. However, I want to make it absolutely clear that we intend the Scottish welfare fund to help families under exceptional pressure and that we believe that the way to do that is to ensure that we have the bill right to meet the section 30 order and have the regulations right as well. It is our clear intention that families under exceptional pressure will be assisted from the Scottish welfare fund of the Welfare Funds (Scotland) Bill.

11:00

Ken Macintosh: I am very reassured by the minister's intentions and her words, but I hope that she will not mind if I put this to the vote and test it.

The Convener: The question is, that amendment 27 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Goldie, Annabel (West Scotland) (Con)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McDougall, Margaret (West Scotland) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 27 disagreed to.

The Convener: Amendment 1, in the name of the minister, is in a group on its own.

Margaret Burgess: Amendment 1 has been proposed in response to evidence that the committee heard during stage 1 raising concerns about the wording of section 5(2)(f). Section 5(2)(f) relates to the power to make regulations

"about circumstances in which amounts may require to be repaid or recovered in respect of assistance"

that has been provided through a welfare fund. Concerns were raised that that regulation-making power could be used at a later date to allow local authorities to administer loans through the welfare funds. That was never the intention and I have always been clear that awards under welfare funds should not be provided in the form of loans. Amendment 1 puts that intention beyond any doubt by specifying that local authorities may not use welfare funds to make loans.

I move amendment 1.

Ken Macintosh: The issue was flagged up to the committee and we put it in our report, and I am very pleased that the minister recognised the issue. I think that we are all pleased that the intention of the bill is to move from loans to grants and I think that we should support the amendment.

Amendment 1 agreed to.

Amendment 28 not moved.

Section 2, as amended, agreed to.

Section 3—Administration of welfare funds

The Convener: Amendment 2, in the name of the minister, is grouped with amendment 8.

Margaret Burgess: Amendments 2 and 8 are linked. Amendment 2 removes section 3, which relates to the outsourcing of welfare funds and joint working across local authorities.

The intention behind section 3 was to allow local authorities to outsource provision of welfare funds. I never envisaged the power being used to allow private sector companies to administer welfare funds. However, concerns were raised during stage 1 regarding the possibility of the provision of welfare funds being outsourced to the private sector.

As the Scottish Government response to the committee's stage 1 report pointed out, it is not possible to specify on the face of the bill that outsourcing should be restricted to third sector organisations only, so the options available to me were to retain section 3, which would leave open the possibility of outsourcing to the private sector, or to remove the provision. Given the strength of feeling that was expressed against private sector companies administering the welfare funds, I believe that removing the option to outsource is the right thing to do.

By removing all of section 3, references to local authorities jointly administering welfare funds are being removed from the bill. However, amendment 2 would not prevent local authorities from making arrangements to administer welfare funds jointly, as section 56(5) of the Local Government (Scotland) Act 1973 provides a general power for two or more local authorities to discharge functions jointly.

I move amendment 2.

The Convener: Does anyone wish to comment?

Annabel Goldie: Can I just clarify whether the effect of the amendment would also be to exclude charitable organisations?

Margaret Burgess: Yes, that would be the effect. The third sector charitable organisations argued that it was not something that they would wish to do. As I made clear, there is no way to separate it out. The option was to remove the section totally or not at all and there was clear strength of feeling that we could not leave it in as it could allow private organisations to administer the funds.

Kevin Stewart: I am pleased that the minister has lodged amendment 2.

Miss Goldie makes a point about the third sector. Although none of the committee members was in favour of any private company taking over the running of welfare funds, we did talk about the third sector. Eventually, we built into the report the fact that, as the bill stood, it might fall foul of European Union procurement rules. The best way to ensure that there are no challenges at all is to remove the provision. That still gives local authorities the ability to run funds jointly, which some smaller authorities may wish to do. It is right and logical that that is left in.

I am glad the minister has moved her position. If we had been left in a situation where the third sector could apply, we might have faced challenges from various bodies under EU procurement rules.

Ken Macintosh: I, too, welcome the minister's remarks and the fact that she has listened to the evidence and to the views of the committee. In this case, she listened to the minority of the committee and our recommendation, rather than just to the specific majority vote of the committee. I commend the minister for using common sense in this case.

Annabel Goldie: I seek clarification, convener. Has the Scottish Government obtained specific legal advice that the bill as framed would contravene European law?

Margaret Burgess: I do not have the specific advice on that point. We would have to look at the levels at which charitable organisations are able to bid under procurement rules. I have to say that the main reason why we removed the provision from the bill was the strength of feeling among committee members, the Parliament and third sector organisations when I indicated what I was doing at stage 1. The argument was strongly put that we should not have a provision in the bill that had the potential to allow outsourcing to the private sector.

The Convener: Minister, it is for you to wind up the debate.

Margaret Burgess: I have nothing further to add.

The Convener: The question is, that amendment 2 be agreed to. Are we agreed?

Annabel Goldie: No. There is a point of principle about the freedom of local authorities, so I do not support the amendment.

The Convener: There will be a division.

For

Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

Against

Goldie, Annabel (West Scotland) (Con)

The Convener: The result of the division is: For 67, Against 1, Abstentions 0.

Amendment 2 agreed to.

Section 4—Review of decisions

The Convener: Amendment 3, in the name of the minister, is grouped with amendments 5, 9 and 10.

Margaret Burgess: This group of amendments covers local authority reviews of decisions that they have made on welfare funds applications.

Amendment 3 creates a right of review of a local authority decision. That replaces a previous provision that provided that ministers may make regulations on reviews. Amendment 3 also allows ministers to make regulations setting out the circumstances in which a local authority decision on a welfare funds application does not have to be reviewed, how applications for a review should be made, and time limits within which applications should be made.

Amendment 9 is made in consequence of amendment 3. The substance of the provision that is removed by amendment 9 is recreated in the regulation-making powers that are provided by amendment 3.

The Delegated Powers and Law Reform Committee and the Welfare Reform Committee called for regulations that are made under the bill to be subject to affirmative procedure, given that much of the detail of how the welfare funds will operate will be set out in regulations and guidance. Amendment 5 changes the procedure for regulations that are made under section 4, which, subject to the amendments being agreed to, will relate only to reviews undertaken by local authorities, from negative to affirmative procedure.

Amendment 10 enables ministers to make provision in regulations setting out the procedure that local authorities should follow in reviews and applications for reviews and the timescales that would apply to them when carrying out reviews.

In summary, the group contains a range of amendments that are intended to clarify how the Scottish Government will approach setting out the framework within which local authority reviews should operate.

I move amendment 3.

The Convener: No members wish to comment. Do you have anything further to add, minister?

Margaret Burgess: I have nothing to add.

Amendment 3 agreed to.

The Convener: Amendment 4, in the name of the minister, is grouped with amendments 6, 7, 11, 13 and 15 to 22.

Margaret Burgess: The amendments in this group relate to the role of the Scottish Public Services Ombudsman in undertaking independent review of local authority decisions on welfare funds applications. The bill as introduced had few provisions relating to the role of the ombudsman. It was always our intention to come back at stage 2 with amendments following discussions with the ombudsman on how best we could set out its role in undertaking independent review.

Amendments 4, 6, 7, 11, 13 and 16 do not alter the content or policy intent of the bill, but they are necessary to reflect structural changes to accommodate the substantive amendments that set out the specifics of the ombudsman's role. Amendment 21 is a technical amendment that specifies the definition of the ombudsman for the purposes of the bill.

Turning to the substantive amendments regarding the ombudsman, amendment 15 creates a right to review, by the ombudsman, of a local authority decision on a welfare funds application. It sets out when, how and by whom an application can be made, and the timescales in which an application should be made. It provides for the ombudsman to determine whether an application for independent review has been made, and to make exceptions to the time bar on applying for independent review.

Amendment 17 requires the ombudsman to prepare a statement of practice setting out the approach that he intends to take in carrying out the review function under the bill. He must consult local authorities, and other persons as he considers appropriate, before preparing and publishing such a statement, and if any revisions are to be made to the statement of practice.

The ombudsman already has the power to consider a complaint about the way in which a local authority has dealt with an application. The new power to review that application will not change that. The ombudsman already has extensive powers to gather evidence in relation to complaints. Amendment 18 provides, amongst other things, that broadly the same powers will apply to reviews. That is important because the legislation means that the ombudsman will have two jurisdictions over the welfare funds. The ombudsman will be able to deal with complaints and reviews. In practical terms, if the ombudsman obtained information in relation to a review but did not have that power, it would be for him to use that information in relation to a complaint about the same application or vice versa. That would be particularly problematic if the same document contained evidence relevant to a complaint and evidence relevant to a review, or if the same people were required to give evidence in relation to both a complaint and a review.

On the theme of matching the ombudsman's current powers, amendment 19 replicates, for reviews of welfare funds decisions, the power that he has in the Scottish Public Services Ombudsman Act 2002, in relation to obstruction and contempt by people providing information in connection with a complaint investigation.

Amendment 18 also gives the ombudsman powers to hold oral hearings, and to make rules about when an oral hearing would be appropriate and about the procedure to be followed. The ombudsman would have powers to administer oaths at such hearings. Where the ombudsman makes rules in relation to hearings, he must consult local authorities and any other persons he considers appropriate, and must subsequently publish those rules. Although hearings are likely to be extremely rare, it is important that that option is available.

We have been advised by the ombudsman that the scheme does not need to comply with European Court of Human Rights requirements, but ensuring that hearings are available when needed, and also that rules are made about them, will ensure that the legislation meets that standard.

Amendment 20 requires the ombudsman to notify the applicant and the local authority of the result of a review. It also provides that the ombudsman may publish a report of the review. It does not require that in every case, but for unusual cases it will be beneficial for stakeholders to be aware of the ombudsman's view. The section also places limits on what information the ombudsman can publish, in order to protect the identity of those involved.

11:15

Amendment 22 provides for consequential amendments to the Scottish Public Services Ombudsman Act 2002, to ensure read-across between the powers that the ombudsman will obtain under the bill and the powers that the ombudsman currently has under the 2002 act. That includes powers relating to obstruction, defamation, reporting, disclosure of information by the ombudsman and confidentiality.

Amendment 22 also contains provisions on confidentiality, which will allow the ombudsman to use information that is gathered in consideration of a review in order to inform the investigation of a complaint and vice versa. The final part of the amendment updates the interpretation provision in the 2002 act as a result of the changes that are made to that act by the bill. Amendment 22 reduces the risk of there being a situation in which the ombudsman holds information but cannot use it and, indeed, needs to try to make a decision on the basis that it has not seen the information. It also means that local authorities have some clarity too, as they will know that a request from the ombudsman for information has the same status whether it is about a complaint or a review.

Although it is important for practical purposes to ensure that the information-gathering provisions are the same, local authorities should be reassured that the requirements in relation to what the ombudsman can take complaints about, and ensuring that local authorities have a chance to respond to complaints before a final decision is made, will remain.

I was pleased to note that during stage 1 proceedings there was support for the ombudsman taking on the independent review function for welfare funds decisions. Accordingly, I trust that committee members will support the amendments.

I move amendment 4.

Ken Macintosh: I have only one query, which is about the powers over obstruction and contempt that are listed in amendment 19. The Child Poverty Action Group flagged up the issue. CPAG felt that the powers to take a proceeding to the Court of Session and, where someone does not provide information, to consider it a contempt of court, were extreme for such a minor, rather technical matter. Under the old system—the social fund—there were no such powers.

If someone does not provide information and does not want to participate in the process, the local authority can make a decision anyway—it does not need to take action against a person. Under amendment 19, we are talking about threatening to take the matter to the Court of Session and contempt of court. We are dealing with vulnerable people, who may not understand the situation and who may be scared. The amendment seems way too heavy handed.

The minister seemed to make the argument that she was assured by the ombudsman that he needs the powers. That argument does not strike me as convincing. It is a bit like the chief constable telling us that the police need to wear guns at all times. That is not for him to decide; it is for us to decide. In this case, it is for the minister to decide.

Do we really need these powers? The social fund operated for years without any such powers and without difficulty. Why are we introducing such huge powers for the ombudsman when we already have concerns about that? I ask the minister to reconsider amendment 19.

Christina McKelvie (Hamilton, Larkhall and Stonehouse) (SNP): I come to this from the opposite point of view from my colleague Ken Macintosh.

One of the issues that I have at constituency level is the element of trust that people have in the system. I have met many people who feel that they have not had a fair hearing. I welcome the proposal to include the review function. The review is very important and it is just as important that it is done independently from the local authority. On the human rights aspect of the bill, anything that has an appeal mechanism appeals to me, because there should be such a mechanism to ensure that people get the fairest of treatment and that we rebuild trust in the system.

Duncan Dunlop gave evidence to the committee—although I was not able to attend the committee, I have caught up with the stage 1 evidence—and said that when people have been rejected once by a system, they do not have the trust to return to the system and have any confidence in it. They need to have that confidence, and that is what the amendments give.

I have a couple of questions about local authorities. Can they be compelled to give information to the ombudsman, and should that be the case? What would be the timescale for them doing so? In my experience, if people attempt to appeal or if they go to citizens advice bureaux or other organisations for support in reapplication or appeal, the length of time that it takes can put great pressure on them at a time when they might not be receiving any funds at all. Some local authorities that I know, although not all, might drag out that process in the hope that the person will drop the appeal. That is a concern that I have, coming from a different point of view from Ken Macintosh, on the need for the ombudsman to be there.

The Convener: Minister, do you want to wind up?

Margaret Burgess: I have a couple of comments. All those issues about the ombudsman came up at stage 1, too. We have been in negotiation for a considerable time with the ombudsman service about the matter. That is why the proposals are in the bill—we wanted to do some of this in regulation, but it was felt that, as the service is independent, that was not appropriate. Negotiation has been going on for a considerable time with the ombudsman, about its taking on this role as an independent decision maker to whom people who are making an appeal can go.

Ken Macintosh made a point about extreme cases in the Court of Session. I absolutely agree that that is not appropriate for some of the vulnerable people we are dealing with. The ombudsman requested that power on the basis that it required to have it because it matches the other powers that it has in some of its other functions. I am more than willing to go back and look at the matter again if the committee is saying that it is not happy with that particular power, but we have taken a long time to negotiate with the ombudsman to get it to agree to take on this role. The SPSO wants to be able to maintain its independence, and it wants its functions to be clear across the board with the services that it provides. That is why that proposal is in the bill. I accept that the situation seems extreme, and I would hope that the power would never be used in the circumstances that Mr Macintosh outlined.

On Christine McKelvie's point, the ombudsman is required to draw up how it will handle appeals, and it is very much aware that timescales require to be in place and that local authorities will be required to supply evidence if the ombudsman requests it. We think that some of that can be done fairly quickly by electronic means. The ombudsman is working on that now and will be looking at the timescales. It knows that its decision making must be quick, because often we are talking about vulnerable people who are in crisis, and about crisis situations.

Amendment 4 agreed to.

Amendment 5 moved—[Margaret Burgess]—and agreed to.

Section 4, as amended, agreed to.

Section 5—Welfare funds: further provision

Amendments 6 to 10 moved—[Margaret Burgess]—and agreed to.

The Convener: Amendment 29, in the name of Ken Mackintosh, is in a group on its own.

Ken Macintosh: The effect of amendment 29 would be to ensure that decisions on applications for crisis grants should be made immediately, where possible and, if not, by the end of the next working day. As committee members will know from evidence, under the interim Scottish welfare fund scheme local authorities have 48 hours in which to process a claim. However, under the previous DWP scheme, the deadline was 24 hours.

The issue first came to my attention when figures were presented to the committee that revealed that the interim fund was not meeting applicants' needs as timeously as the previous scheme. The point has been echoed by the SCVO, which urged the minister to take all necessary action to ensure that 24-hour processing times become the norm, and by Quarriers, which I think the committee quoted in its report. Quarriers is particularly worried that if a 48-hour deadline were to be applied, an application that is made on Thursday or Friday might not be processed until late on Monday, after the weekend.

I thought that the strongest evidence came from CPAG, which said:

"In the experience of our advisors, applications for crisis loans made over the phone were processed very quickly by the DWP. Delay was sometimes caused by difficulties getting through on the phone in the first place but, once connected, the process was generally very quick. Decisions were often made at the end of the initial phone call, with the claimant given an office from which an award could be collected on the same day. This also happens with some (though not all) SWF crisis grant applications."

The figures for the old DWP crisis loans system show that payments were made in two days—I am using the 48-hour backstop—in 98.5 per cent of cases, compared with 94 per cent for the SWF.

CPAG said, more anecdotally, that its advisers

"also suspect … that any lengthy delays processing crisis loan applications"—

that is, under the old system—

"are more likely to have related to the need to make a decision about whether the applicant would be able to repay the loan (rather than their eligibility/priority for an award)."

Repayment is not an issue in the new system, so it is counterintuitive to think that the new system should be slower than the old system. If anything, it should be the other way round.

CPAG concluded:

"there is no implicit reason that processing times should be longer in relation to crisis grants than they were for crisis loans. We are also concerned that the reference to a 48 hour time limit once all relevant information is received may lead some decision makers to request evidence when it is not needed."

In other words, although this is clearly not the minister's intention and she has made it abundantly clear that she expects all decisions to be made as soon as possible, the 48-hour backstop will become a target and will inadvertently have the effect of slowing down the process rather than speeding it up.

I urge members to support amendment 29, which would replace the 48-hour backstop with the original 24-hour timescale.

I move amendment 29.

Annabel Goldie: I would like clarification. Your proposition sounds quite technical, but if I understand it correctly it would bring the situation into line with the proven DWP approach, which has worked effectively with a 24-hour processing time.

Ken Macintosh: Precisely.

Kevin Stewart: We must be cognisant of the fact that the former system was a loans system and not a grants system. The local authority must manage its funding effectively and ensure that the proper checks have been made. If that does not happen, folks who should not get grants might receive them—and grants are not paid back.

We have to be very careful. The minister has said that she will do everything possible to ensure that grants are paid as timeously as possible; I hope that she will say it again today. I have spoken to folk in local authorities and I know that that is what they strive to do. I would be alarmed that we might, if we were to set a shorter timescale, end up with folks not getting the awards that they need and deserve.

Margaret McDougall: Ken Macintosh said that the DWP made decisions very quickly on occasions. I am not suggesting that decisions were always made quickly, but they could be made quickly. We are moving to a grants system from a loans system, so there would be no requirement to investigate whether the award can be paid back and, therefore, it should be possible to process applications more quickly. The limit of 24 hours should be met—it should not be extended to 48 hours.

11:30

The Convener: We debated this issue quite extensively at stage 1, when the minister was clear about her view that the proposal will be an improvement. I believe that the minister gave examples from her experience of working in the sector of the DWP taking up to three weeks to collate information and the 24-hour decision-making period kicking in only after that had taken place. The minister gave the impression that the provision in the bill will be quicker, and that the 48-hour process will allow decisions to be made more swiftly.

However, evidence that we have subsequently received indicates that the processes for collating information that are used by local authorities and the DWP are similar, and that going from a 24-hour period to a 48-hour period could extend the period because the decision-making process that existed under the DWP arrangements would not alter—it would be exactly the same, because collation of information could still take days. Obviously, you would not want it to take longer than that but, given that the time period for a decision kicks in only once the information has been collated, and the collation of information takes exactly the same amount of time—or more time, according to some evidence that we received—I cannot understand why moving from 24 hours to 48 hours would speed that process up.

Margaret Burgess: Amendment 29 seeks to impose a deadline on processing times. I know that some users of the interim fund suggested that local authorities were not processing applications as quickly as they should, which has led to a call to introduce a legislative requirement for processing.

We have been clear from the start of the interim fund that speed of processing is key because of the risk of harm to applicants. The guidance on the interim fund requires local authorities to process crisis grants as soon as possible, and it requires that urgent applications for living expenses be prioritised. The maximum processing time of two working days is to make it clear that long processing times are not acceptable. It is in no way a target or a waiting time.

We know that, under the interim fund, 64 per cent of crisis grants have been processed on the same working day and that another 24 per cent are processed the next day. I have spoken to staff who have demonstrated dedication and commitment in dealing with all crisis grant applications in order to process them within the day—especially on Fridays, so that applicants are not left in crisis for extended periods.

I am mindful that local authorities have a complex job to do in considering applications, assessing eligibility and need, gathering and recording evidence to support their decision and considering and organising the other forms of support that applicants might benefit from. That is more complex than assessing affordability for a crisis loan, which involves only consideration of whether the person could pay the loan back. In setting timescales, we need to recognise that a short target decision time could result in less scrutiny of cases and poorer understanding of applicants' situations.

The move from crisis loans under the social fund to grants under the Scottish welfare fund means that, as Kevin Stewart said, the funds will not be recoverable. Local authorities are therefore required carefully to balance their obligation to manage their budgets effectively and ensure that proper checks have been made, with a quick turnaround for applicants. They must be satisfied that they are awarding grants to those who need them most.

As the committee is aware, we are, with COSLA, monitoring the quality of the decisions that are made by local authorities, including processing times, as part of our quality improvement measures, and we continue to share good practice across local authorities. As we make the transition to the permanent funds, we will continue to work with local authorities, focusing on the importance of quick, sound decision making, with the aim of increasing the number of applications that are processed within 24 hours.

We will also carefully consider target processing times as the regulations are developed. I believe that any target or deadline for processing times should be in the regulations, not in the bill—the 48-hour limit that Ken Macintosh referred to is in the draft regulations. This will be an area on which we will consult actively, as regulations require a hard and fast timescale, rather than the more considered approach that we have in the guidance at present. As I have just outlined, this is a complex issue.

In summary, I do not believe that we should, in effect, set a timescale for processing applications in the bill, as amendment 29 seeks to do. Rather, I believe that we should think carefully about the issue and consult more widely as we develop the regulations and guidance that will be produced under the bill. For that reason, I urge the committee not to support amendment 29.

Ken Macintosh: I welcome some of the comments that I have heard in what has been a quite interesting discussion. Annabel Goldie revealed that the DWP did this better than the Scottish Government, which has to be a first for this committee.

The old social fund system does have a better record of paying out. We are talking about people in crisis, and I am sure that every MSP around the table has received calls on a Friday afternoon after the social work offices have closed, or has had people who are in desperate need coming in and asking, "Where do I go now?" It happens all the time.

The old DWP system was very prompt; in fact, I believe that there were originally no timescales associated with it and decisions were meant to be immediate. The 24-hour deadline was introduced to speed up the process. We are now seeking to introduce a 48-hour deadline, which could—whatever the minister's intention—inadvertently slow things down.

I am not sure that I followed Kevin Stewart's argument. It is interesting that he sounded more like George Osborne than John Swinney—in fact, he has done so all morning. He has talked about the importance of paying back grants, which I assume was a slip of the tongue. The awards will be grants, not loans, so they will not have to be paid back.

Kevin Stewart: That is exactly the point that I was making.

Ken Macintosh: In that case, I accept that it was a slip of the tongue, but I have to say that I did not follow his logic at all.

Kevin Stewart: Do you want me to give you the logic?

Ken Macintosh: I am happy for you to correct your previous mistake, Mr Stewart.

Kevin Stewart: One of the key points is that, previously, the DWP had a loans system and folk had to pay back the money. This is a grants system. As the minister has rightly pointed out, folks have to ensure that applicants are eligible, and they are dealing with the applications as promptly as possible. That is certainly the case in the local authority in Aberdeen that covers my constituency. If amendment 29 is agreed to, decision makers might well feel under pressure to reject an application from someone in need because they do not have all the information that they feel that they need.

Ken Macintosh: I fail to follow that argument. Mr Stewart often confuses assertion with argument, and in this case, I do not follow his argument at all. I fully accept that local authority officials are trying to do the best job they possibly can; I am sure that they also did so under the DWP. Theirs is a difficult job, and we should be trying to make it easier. If they do not have to assess the affordability of paying back loans, they will have one fewer criterion to meet and one fewer assessment to make. As Margaret McDougall and the convener have pointed out, the process should therefore be faster.

I absolutely recognise the point that the minister made several times that the system is there to address people's needs at the point of crisis, and I also recognise that she is very keen to ensure that that is done as speedily and timeously as possible. However, although I accept that that is the intention, I am slightly worried that the bill will not have that effect. I am very pleased that the minister is going to consult more widely and will consider the possibility of addressing the matter in

regulations, and I thank her for making that commitment, but I still believe that until we see that in practice the committee should express this view on the matter.

I press amendment 29.

The Convener: The question is, that amendment 29 be agreed to. Are we agreed/?

Members: No.

The Convener: There will be a division.

For

Goldie, Annabel (West Scotland) (Con)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 29 disagreed to.

Amendment 11 moved—[Margaret Burgess]—and agreed to.

The Convener: Amendment 12, in the name of the minister, is in a group on its own.

Margaret Burgess: Amendment 12 seeks to make subject to affirmative procedure regulations that will be made under section 5. Regulations under section 5 will, in conjunction with the guidance that we will produce under the legislation, set out the detail of operation of welfare funds, and the change has been made in response to calls from both the Delegated Powers and Law Reform Committee and this committee for regulations that are made under the legislation to be subject to affirmative procedure.

I move amendment 12.

Amendment 12 agreed to.

Section 5, as amended, agreed to.

After section 5

Amendment 30 moved—[Kevin Stewart]—and agreed to.

Section 6—Guidance

Amendment 13 moved—[Margaret Burgess]—and agreed to.

The Convener: Amendment 14, in the name of the minister, is in a group on its own.

Margaret Burgess: Amendment 14, which has been lodged in response to a recommendation that was made by the committee in its stage 1 report, seeks to add the Scottish Public Services Ombudsman to the list of bodies that Scottish ministers must consult before issuing, varying or revoking guidance that will be produced under the eventual act. As the ombudsman will have to interpret the guidance when carrying out its review function, it is right that it will have the opportunity to be aware of, and to comment on, any proposed changes to the guidance.

I move amendment 14.

Amendment 14 agreed to.

Section 6, as amended, agreed to.

After section 6

The Convener: I invite the minister to move amendments 15 to 22 en bloc.

Amendments 15 to 22 moved—[Margaret Burgess].

Ken Macintosh: Convener, can I object?

The Convener: I was going to say that the amendments can be moved en bloc, but I will separate out some that will be voted on en bloc and others that will be voted on individually. I was about to suggest that the committee agree to having a single question on amendments 15 to 18. Do members agree to that?

Members *indicated agreement.*

Amendments 15 to 18 agreed to.

Margaret Burgess: I am willing to look again at amendment 19 before stage 3 and discuss it with the ombudsman, as I outlined in discussion with Ken Macintosh.

The Convener: You can ask to withdraw the amendment, if you wish.

Margaret Burgess: I will do so. I am not saying that I will not bring it back at stage 3 but, at this point, I am willing to ask to withdraw it so that I can discuss it more.

Amendment 19, by agreement, withdrawn.

The Convener: Does the committee agree to take amendments 20 to 22 en bloc?

Members *indicated agreement.*

Amendments 20 to 22 agreed to.

The Convener: Amendment 31, in the name of Margaret McDougall, is in a group on its own.

Margaret McDougall: Amendment 31 relates to the production of an annual report. It requests that the Scottish ministers

"prepare an initial report giving information about the delivery of welfare funds."

That report should be put before Parliament on or before 30 June 2016, with subsequent reports being laid before Parliament on or before 30 June annually.

The initial report should include information on the amount that has been paid out from the welfare funds, the number of applications for assistance in pursuance of section 2 that have been received, the number of applications that have been rejected and the number of applications in respect of which financial and other assistance has been provided. That information is the bare minimum that the report should include, but the Scottish ministers could include additional information if they considered it appropriate to do so.

11:45

Amendment 31 is pretty self-explanatory. It would allow the Parliament to conduct proper scrutiny of how the welfare funds perform and their effectiveness. It seeks to promote openness and transparency. Ensuring that the statistics are kept on record and reported to Parliament annually would be good practice. In particular, in the light of this morning's discussion, I think that it would be useful for the data to include the number of cases in which financial assistance has been given and the number in which assistance in kind has been provided. The amendment would ensure that information on that formed part of the annual report and would enshrine the preparation of an annual report in legislation.

Consistent annual reporting would allow us to find out what was and was not working while keeping Parliament updated. I ask committee members to support amendment 31, even if they do so solely on the principle of following good practice.

I move amendment 31.

Ken Macintosh: I speak in favour of amendment 31. It is important that the minister and the Parliament have the opportunity to keep welfare funds under review. It is probably worth restating—it is sometimes difficult to tell that this is the case from our exchanges at stage 2—that the bill has received widespread support from colleagues from all parties and certainly from those in the Labour Party. The minister's approach has been broadly welcomed. She has acted transparently, and she involved the voluntary sector and others in making sure that the interim scheme was effective before the statutory scheme was drawn up.

The key point is to ensure that that approach continues. I do not doubt that the minister will continue to keep the matter under review, but there are all sorts of issues about gate keeping—I am talking about local authorities putting people off applying because the authorities do not think that they will meet the criteria, rather than assessing them formally. Another issue is who is drawing on the funds. There have been slightly different takes on whether vulnerable families can access the funds.

It is important not just that the minister commits to reviewing the operation of the welfare funds, which she has done, but that she does so formally. If she does so formally, the Parliament will have a role to play in the process. We should remind ourselves that we are starting out on a new path in Scotland. We are going to get more and more responsibility for welfare powers, so it is important that we set out the principles at an early stage.

The Government put in place the idea of having an annual report in its Welfare Reform (Further Provision) (Scotland) Act 2012. All that we ask is that the minister repeats that practice and provides for an annual report to be produced under the Welfare Funds (Scotland) Bill. I think that that would be welcomed by all sides and all those who are involved in the sector.

Joan McAlpine: I think that we all agree that we want the funds to be monitored, but I understand that the Scottish Government has already established a statistical—that is always a tricky word to say—monitoring framework that covers the information that amendment 31 suggests should be provided in an annual report. We all know that the Parliament will scrutinise the funds, as will civic Scotland, not least as the new welfare powers are devolved.

Clare Adamson: I agree in principle with Joan McAlpine. We all want scrutiny and openness in relation to what the Government does, but I understand that the information in question is already covered. I would welcome the minister's comments on that and on what local authorities and the Scottish Public Services Ombudsman might report on, given that they fall within the bill's scope.

Kevin Stewart: The committee and the minister might be aware that local government has recently put together a new suite of benchmarks, and I hope that the welfare funds can be added to that. We sometimes have the habit of possibly overbureaucratising things, which might lead to less scrutiny, because we see the same things time and again.

It is the job of the committee and the Parliament to ensure that the current monitoring is scrutinised regularly, and I am sure that the public will do likewise. As my colleague Joan McAlpine said, we will have to do that more and more as new welfare powers come to the Parliament. Unfortunately,

they are not all the welfare powers that I would like to come here.

Annabel Goldie: Amendment 31 seems to be a genuine attempt to provide transparency. We are talking about an important new system and none of us is sure just how it will work in practice, although we hope that it will work well. The amendment is a welcome proposal to assist us all in understanding how the system is working. Unless the minister can point to some impossible bureaucratic burden from the proposed timescales—although, frankly, with electronic data now available, I do not think that the issue is insurmountable—I am strongly drawn to supporting the amendment.

Margaret Burgess: On amendment 31, I tend to agree with the views that were expressed in the committee's stage 1 report, which recommended that on-going monitoring is preferable to a review clause. We have put a lot of time and effort into establishing the statistical monitoring framework, which already captures the information that the amendment suggests that we lay in a report before the Parliament. In fact, our latest quarterly publication, which contains significantly more detail than would the reports that the amendment proposes, was released this morning. It has 91 pages. There is a considerable amount of detailed information—a lot more than Margaret McDougall is asking for.

The current statistical monitoring, which we intend to continue under the permanent arrangements, provides an excellent mechanism for highlighting any issues that arise with the operation of the Scottish welfare fund. Some of the issues that were raised with the committee in stage 1 evidence came directly from the quarterly statistics that we publish. Third sector organisations have been actively scrutinising the published statistics and feeding back thoughts and concerns. We have responded to several ad hoc requests for further information to assist with scrutiny of the fund, and we will continue to do that whenever possible.

In conjunction with COSLA, we are undertaking a series of visits to local authorities to observe their casework. Those visits, alongside the statistical publications, should allow local authorities and the Scottish Government to respond to issues as they arise. The introduction of an independent review of disputed local authority decisions by the Scottish Public Services Ombudsman provides another mechanism for scrutiny of the operation of local authorities and of any patterns in complaints and reviews that indicate unintended consequences of regulations and guidance.

I envisage that the workings of the permanent arrangements will be the subject of on-going parliamentary scrutiny through the committee process and consideration of Scottish Government budgets. It is inconceivable that the operation of the permanent arrangements would not be the subject of scrutiny from civic Scotland and from the Parliament as it considers Scottish Government plans for implementing the new welfare-related powers that will flow from the Smith commission process.

I believe that sufficient opportunities for review exist through the Parliament, the Scottish Government's statistical publications and the invaluable input that we all have from the third sector, so an on-going requirement to lay an annual review before Parliament would not add significantly to our knowledge on how welfare funds are operating. Indeed, it might divert scarce resources from the established continuous improvement work that is taking place. On that basis, I ask Margaret McDougall to seek to withdraw amendment 31.

The Convener: I ask Margaret McDougall to wind up.

Margaret McDougall: I note everything that has been said, but the third sector wants the review and was disappointed that that was left out of the bill. It has said that the welfare fund is part of wider welfare reform mitigation activity and that it could form part of the ministerial requirement to report annually under the Welfare Reform (Further Provision) (Scotland) Act 2012. Section 4(5) of that act allows for ministers to include whatever information they feel relevant in the report. It is not asking much more to have a review.

The minister says that the information is already available and that I am not asking for anything more. In fact, I said that the Scottish Government could include what information it saw fit but that it should include the specific areas that I mentioned.

As I said, the third sector says that a review should happen. If the information could be looked at in one report, perhaps that would provide more consistency across local authorities. If the minister is not minded to support the amendment and we will not have such a measure, what will be the formal opportunity to scrutinise the Scottish Government?

The Convener: If the minister wants to respond, she can, but I remind Margaret McDougall that she is winding up.

Margaret Burgess: The opportunity to scrutinise would arise in a committee such as this. We publish quarterly statistics that are scrutinised by the entire third sector and anyone else who wants to scrutinise them. We are absolutely transparent about the Scottish welfare fund and we will continue to be transparent. We will have

continuous monitoring rather than a report once a year.

Margaret McDougall: If that means that the information would be brought to the committee regularly, that would suffice.

The Convener: Do you want to press or withdraw your amendment?

Margaret McDougall: I will press the amendment, to test it.

The Convener: The question is, that amendment 31 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Goldie, Annabel (West Scotland) (Con)
McDougall, Margaret (West Scotland) (Lab)
McMahon, Michael (Uddingston and Bellshill) (Lab)

Against

Adamson, Clare (Central Scotland) (SNP)
McAlpine, Joan (South Scotland) (SNP)
McKelvie, Christina (Hamilton, Larkhall and Stonehouse) (SNP)
Stewart, Kevin (Aberdeen Central) (SNP)

The Convener: The result of the division is: For 3, Against 4, Abstentions 0.

Amendment 31 disagreed to.

Section 7—Commencement

The Convener: Amendment 23, in the name of the minister, is in a group on its own.

Margaret Burgess: Amendment 23 is a technical amendment. It removes the scope to make incidental, supplementary or consequential provision in orders made by ministers to bring provisions of the act into force. If necessary, such provision can be made, in respect of sections 1 to 4, under section 5(3)(b).

I move amendment 23.

Amendment 23 agreed to.

Section 7, as amended, agreed to.

Section 8 agreed to.

Long title agreed to.

The Convener: That ends our stage 2 consideration of the bill. I thank the minister and her team, and the committee, for taking us through the amendments so swiftly—we finished ahead of schedule.

Our next meeting will be on 3 February, when we will discuss with David Mundell MP the Smith commission and food banks.

11:59

Meeting continued in private until 12:09.

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