



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# FINANCE COMMITTEE

Wednesday 12 December 2012

Session 4

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**Wednesday 12 December 2012**

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**FINANCE COMMITTEE**

**33<sup>rd</sup> Meeting 2012, Session 4**

**CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Gavin Brown (Lothian) (Con)

\*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

\*Michael McMahon (Uddingston and Bellshill) (Lab)

\*Elaine Murray (Dumfriesshire) (Lab)

\*Jean Urquhart (Highlands and Islands) (Ind)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Professor David Bell (University of Stirling)

Professor David Blake (Pensions Institute)

John Brownlie (Scottish Government)

Angela Cullen (Audit Scotland)

Mark McDonald (North East Scotland) (SNP)

Gery McLaughlin (Scottish Government)

Dave Moxham (Scottish Trades Union Congress)

Clare Scott (Lothian Pension Fund)

Dave Watson (Unison)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Committee Room 2



## Scottish Parliament

### Finance Committee

Wednesday 12 December 2012

[The Convener opened the meeting at 10:06]

### Decision on Taking Business in Private

**The Convener (Kenneth Gibson):** Welcome to the 33rd meeting in 2012 of the Scottish Parliament's Finance Committee. I remind everyone to turn off mobile phones, tablets, BlackBerrys and so on, and I apologise for starting the formal session six or seven minutes late, which is because of our pre-meeting briefing on the Scottish rate of income tax.

Agenda item 1 is to decide whether to take item 4 in private. Are members agreed?

**Members** indicated agreement.

**The Convener:** I should also say that we have received apologies from Michael McMahon, who is at a funeral.

## Demographic Change and Ageing Population Inquiry

10:06

**The Convener:** Item 2 is a further round-table evidence-taking session for our demographic change and ageing population inquiry. I welcome to the meeting Professor David Bell from the University of Stirling; Professor David Blake from the Pensions Institute; Angela Cullen from Audit Scotland; Dave Moxham from the Scottish Trades Union Congress; Clare Scott from the Lothian Pension Fund; and Dave Watson from Unison.

I will allow 75 minutes for this session, which will focus on the public pensions and labour force aspect of our inquiry. If any participants want to respond to a question or make a point, they should indicate as much to me or the clerks. We are not going to be speaking according to a rota; if someone wants to respond to comments that someone else has just made, they should feel free to do so. Some people might speak once or twice, others half a dozen times. The format is completely flexible and we want the session to flow.

I will ask Professor Bell to start off. Anyone who wishes to question Professor Bell or comment more generally should let me know.

**Professor David Bell (University of Stirling):** I will say a bit about pensions. Underlying all of this is, of course, demographic change, which is not a constitutional issue but something that will hit most of the developed and some of the less developed world over the next 20 to 30 years. The ratio in the population between those who are over pension age and those who are of what we might call working age—in other words, from 16 to 64—is going to increase substantially. Actually, I was talking about this issue in Inverness earlier this week. The first point that I should make quite clear is that the situation is not uniform across Scotland. In 20 years' time in the Western Isles, there will be seven people aged over 65 for every 10 aged between 16 and 64, which means that the age profile of that population will be highly imbalanced.

What we should talk about this morning is how we put in place a fiscally sustainable pensions system that provides adequate pensions to the increasing number of people in Scotland who will be beyond retirement age over the next couple of decades. Such a system must not put the public finances at risk but should, at the same time, manage to produce enough incentives for young people—who at the moment must be despairing of being able to set aside money for a pension—to make it sustainable.

That is in light of the fact that state pension provision in the United Kingdom is not particularly generous and private pensions are themselves under considerable stress for all kinds of reasons. Moreover, private sector pension provision in Scotland is generally a little bit weaker than it is in the UK as a whole. At least 60 per cent of the income of Scotland's pensioner population comes from the state pension—which as I have said is not terribly generous—and for single pensioners, particularly women, the figure is more than 70 per cent. The huge number of different pressures on our pensions system is going to grow substantially, and the difficulty for the Finance Committee is to ensure that provision is fiscally sustainable in future.

**The Convener:** How do you think we can do that?

**Professor Bell:** With regard to the adjustments that have been made, I am sure that we will come on to discuss life expectancy, which has been increasing at about the same rate in Scotland as in the UK as a whole. Of course, there are huge differences in life expectancy within Scotland. The best example of current inequalities is the famous train ride between Bearsden and another place six stops away—I have forgotten its name—on which, with every stop, male life expectancy falls by two years.

A key issue is healthy life expectancy. The difference between health life expectancy and overall life expectancy is the average period in which people can expect to have some chronic disease that might require regular social or medical intervention. We have talked a lot about preventative spend but, if we accept that life expectancy is going to continue to increase, we will need to find ways of improving healthy life expectancy. Our record is not good in that area. The last time I gave evidence to the Health and Sport Committee, another witness pointed out that, compared with England, Wales and Northern Ireland, healthy life expectancy in Scotland has been growing more slowly, which means that the gap is increasing.

**The Convener:** We have discussed on a number of occasions the fact that, although people might live an extra seven years, two or three of them might be spent in ill health, which will have a clear impact on Scottish finances.

Professor Bell mentioned intervention, which is also highlighted in Dave Watson's Unison submission. We as a Parliament all agree on the importance of early years intervention, but how do we reach the many people in their 40s, 50s and 60s who already have additional need for services? If we cannot reach them, what will be the implications for our ability to deliver good-quality and effective public services? After all, our

inquiry is trying to look at the service provision that will be required in 10, 20 or 30 years not through the prism of wishful thinking but according to the reality of the current situation.

10:15

**Professor Bell:** There are three major actors aside from the clients: the health service, formal social care provision, and unpaid or informal care. Supporting carers is a big issue and integrating the activities of the health service with the social care system is important. It is key to understand whether the change fund works—remember that £300 million has been set aside to improve the interaction of social care and the hospital service—because one of the key costs in all of this is unplanned admissions of older people into acute wards. Some social care or even unpaid care intervention earlier on could have prevented those unfortunate events.

Different things are going on in different parts of the country. In Highland, for example, the health system has in effect taken over caring for older people—it is no longer the responsibility of the local authority. We need a better way of learning what works because, when I look at the data on spend council by council—or indeed health board by health board—there seems to be huge variation in how much is being spent, which cannot be explained just by differences in the elderly population. Also, spend does not necessarily correlate very well with outcomes—whether people are happy with the service that they are getting in different parts of the country.

The Parliament could put pressure on the Scottish Government to ensure that lessons are learned about what works and are then rolled out to other parts of the country. When things are shown not to be working, people need to desist from those activities.

**The Convener:** Everyone else is being quite quiet—no one has asked to come in yet. I will just ask you one more thing while people ponder. You are saying that we should look at best practice across Scotland at local authority and health board level—not in terms of cost, necessarily, but in terms of quality of service related to cost—so that we can deliver improved services as we go forward.

We have been told that the cost of unplanned emergency admissions is up to £1.5 billion, which is 13 per cent of the national health service budget. People talk as if that money could be nabbed for other services, but is that realistic? Surely there will always be unplanned admissions. Potentially, how much of that money—with better practice—could be switched to other service provision, for example?

**Professor Bell:** We have reduced delayed discharge, which is the other end of the system, quite effectively. It is not the case that people are being kept so long in hospital just because there is no proper provision for them at home. That has been one consequence—I will not call it unintended, as it is possibly an intended consequence—of the free personal care policy. Aside from that, the Scottish Government has put a lot of effort into that end of the system.

We will never reduce unplanned emergency admissions to zero, but trying to understand why they are happening is the first step to at least moderating them. Trying to work out what interactions could have been put in place to prevent those admissions is where we need to start. That means that when you look at such things as the change fund, you have to understand and evaluate why some interventions are successful while others are not—I am not sure that that is being done tremendously effectively.

**Jamie Hepburn (Cumbernauld and Kilsyth) (SNP):** It is useful that Dave Watson is following me, because I am going to refer to the Unison Scotland submission. It made the interesting and useful point that:

“Whilst there is a tendency to concentrate on the negative aspects of the ageing population, UNISON believes that there”

are

“opportunities as well as challenges arising from the increasing number of older people.”

Will Dave Watson expand on that and set out what Unison believes the opportunities are? Perhaps others might want to respond, too. There is nothing specific in the submission, but it says later:

“The current trend in housing for the elderly is to move away from sheltered housing as such, to housing with care. This means that the use of 24 hour wardens is being removed and in most cases replaced with a telecare system, backed up with rapid response teams.”

Unison does not say whether that is good or bad, but perhaps that is one of the opportunities to which it referred. Will Unison say whether that specific change is good or bad and set out what the general opportunities of an ageing population are?

**Dave Watson (Unison):** The point that I wanted to make in the submission is that, often, the fact that Scotland's population is ageing is treated as all doom and gloom. The risk is that we will start to demonise the elderly and say that the circumstances are all their fault. Actually, it is good that people are living longer. Those of us who are facing older ages might all think that living longer is a good thing—I certainly do. We need to recognise that.

Older people contribute to our society and our communities. We just have to look at the voluntary organisations in my town to see that they are run largely by retired people, who also make a huge contribution to the economy.

We need to recognise that people are working later in life—sometimes, that is not through choice, but in other cases, it is. Older people have a big contribution to make.

I accept David Bell's point about what health economists call quality-adjusted life years—QALYs. Quality of life is more of an issue in some parts of Scotland than in others. We will talk later about pensions and life expectancy in Scotland, but our concern also relates to services.

It is often argued that the Scottish budget has two big areas of avoidable spend: the prison population and unplanned admissions to acute hospitals. When I was an expert adviser to the Christie commission, we looked in detail at some such issues and particularly at unplanned admissions, the cost of which is £1.5 billion.

I agree with David Bell that not enough work has been done on the issue, but it is interesting that looking at the data on the reasons for such admissions shows no consistency across Scotland. We saw statistics from studies that were done on general practitioner admissions, which showed huge variations between GP practices in the numbers of people who were admitted to hospital. When we asked the people who did the studies what the reasons for that were, the answer was that they did not know. The only statistical correlation was that, the nearer someone's GP practice was to a hospital, the more likely they were to be admitted to hospital. That does not seem to be a particularly analytical or care-based solution.

The reasons for hospital admission vary enormously locally. We looked at local initiatives that varied considerably from area to area. As we said in our response to the Scottish Government's proposals on care integration, we should be wary about a one-size-fits-all approach, because different areas need different solutions that meet different requirements.

I agree with David Bell that we need to learn from what is happening and to understand why such costs are being incurred. However, overall, we should be a little more positive about some of the changes, as well as considering the negatives.

**Professor David Blake (Pensions Institute):** I will comment on what Professor Bell said and then make an observation. If we want fiscal sustainability with ageing populations, we must substantially increase the effective length of working lives. Much more than is being done already, we must ensure that young people are

equipped to get into work as early as they can, and they must be able to stay in work for as long as they can. Once people reach their 60s or high 60s, they must be encouraged to remain in work. That is the only way in which we will have fiscal sustainability in this country or indeed in any other country on the planet. It requires an increase in healthy life expectancy, and we should create measures to address that.

My observation is that we are ignoring another phenomenon—well, you may not be ignoring it, but there has been no comment on it in the notes that I have seen—that is independent but happening alongside the demographic ageing across the planet. I am talking about globalisation, by which I mean the increasing mobility of labour, capital and products throughout the world.

We can no longer act in a bubble. The conversations have until now inevitably been very Scotland-centric, but there is no question that, if you start to raise taxes too heavily in this country, your workers will go to lower-tax countries. We can see that happening in Europe—for example, German and French workers who are overtaxed are coming to the UK, where the taxes are lower.

Although it is desirable for you to increase expenditure in order to increase healthy life expectancy, you must also take into account the globalisation factor. Globalisation—which, as I said, is happening independently of ageing—will in many cases magnify or even speed up the effects of ageing, although in some cases it might ameliorate the effects in certain dimensions. You cannot ignore globalisation in your analysis.

**The Convener:** Thank you. Interestingly, Professor Blake notes in his paper that around 63 per cent of those aged 50 to 64 in the UK are in employment, in comparison with 87 per cent in Iceland. Incidentally, Iceland also has the highest pension rate relative to average earnings, which stands at 115 per cent of average earnings, whereas the UK's rate stands at only 48 per cent.

**Elaine Murray (Dumfriesshire) (Lab):** In response to Professor Blake, I say that it is nice to think that there is an ideal society in which there are jobs for everybody, but in a recession there are not jobs for people as they get older and for young people coming into work. We are seeing a situation now in which youngsters are on zero-hours contracts and as such have no stable income.

I sometimes feel that the drive towards having everybody working later is simply due to the fact that employment support allowance is cheaper than a pension, and it is therefore cheaper to keep young people on the dole than to have old people retiring earlier. It would be wonderful if the world was as Professor Blake described, but how on

earth do we have a world like that in a time of global recession?

My other point is that, if we have everyone working until they are 80, they will not, although they might be very healthy, be able to do all the other things that David Bell was talking about that relate to supporting society and doing voluntary work. For example, they may not be involved in social enterprises or in childcare, which is another issue. If people are not getting support from older people and childcare is expensive, we will see a falling young population as younger people will not have children simply because they cannot afford the childcare. We will exacerbate the situation with regard to demographic change if we do not get it right.

**The Convener:** Professor Blake, do you want to come back in at some point? You do not have to do so right now.

**Professor Blake:** I will come back in later.

**Jean Urquhart (Highlands and Islands) (Ind):** I want to ask Professor Blake how he reconciles his statements on globalisation with the need to recognise localism and the differences between the two approaches.

We have just heard that 38 per cent of people in the Western Isles in the next 20 years will be over the age of 65 or over retirement age. However, we have other valuable studies—for example, a study by the Office for National Statistics showed that wellbeing and happiness are huge contributory factors to people living longer and being content with life.

That seems not to be part of the equation of globalisation, but people stay in their communities because they are happiest there, and those happen to be the areas where people live longest. There seems to be a message in that respect that is at odds with the idea of globalisation—not that I am denying that those things happen.

**Professor Blake:** Can I—

**The Convener:** I am sorry, Professor Blake—I will let in Jamie Hepburn first, because I think that he, too, wants to comment.

10:30

**Jamie Hepburn:** Yes, indeed. On Professor Blake's quite bold statement that French and German workers are coming to the UK because of its lower tax, I have to be honest and say that I have not been falling over too many of them in my constituency. Can you quantify that remark? After all, such a statement must surely be evidence based.



The Pensions Institute submission is very useful and interesting, but I wonder whether Professor Blake can explain the statement that, although

“Living standards”

are

“likely to fall in some countries with fast-ageing populations”,

the United States is

“likely to escape this fall”.

Why might that be?

**Professor Blake:** I thank everyone for their comments, which I will try to deal with in order.

First of all, I point out that globalisation is not a choice for us; it is a tsunami that is hitting us and which we are going to have to deal with and live with the consequences of. I perfectly understand the issue of localism and the value and benefit of wellbeing and so on, but they do not pay our rent or our taxes. The statements that have been made seem to give the impression that we can choose to be part of this. I just do not think that we can. We have to accept that these forces exist and try to deal with them and make them as friendly as we can to local people. However, I cannot see how, like King Canute, you can simply ignore them.

With regard to the point about French and German workers, in London, where I live, the financial services industry has huge numbers of such people, who are working here because the tax rates in those countries were too high. They could get jobs here and pay lower tax. They might not be coming to Scotland in the same numbers, although I have to say that I visit some Scottish hotels—Gleneagles, for example—that have lots of very well-behaved and very nice Germans in them.

As for growth rates, the fact is that ageing populations that do not show flexibility will have lower growth rates. The prediction in question was made in a paper by two European Union economists, who suggested that the growth rate in European countries and Japan will fall from an average 2 per cent per annum in real terms to 1 per cent per annum. The US will escape that fall because its labour markets are much more flexible.

**The Convener:** I also note that the United States is the only Western country with a positive birth rate of 2.1 children per woman—which, in fact, is higher than Mexico or Brazil. The large number of immigrants also changes the picture. As for the point about the number of French people in London, I believe that there are 400,000 of them in the city. Indeed, more French people than Scots live there.

A few people want to speak now, although I note that things are made complicated by the fact that we have four Davids among our guests. Thankfully, two of them call themselves Dave, which makes life a lot easier.

**Clare Scott (Lothian Pension Fund):** People might be living longer but even if they were only living as long as they were 10 or 15 years ago, they are still not saving enough to retire on. That is partly because of the closure of private sector defined-benefit pension schemes, which is all to do with accounting and volatility issues and the fact that companies do not want such a risk on their balance sheets.

The submissions refer to the Hutton review of public sector pension schemes. Lord Hutton said that there should not be what he called a “race to the bottom” with such schemes, which, despite the impression that one used to get from the media, are not gold-plated. Thankfully, that message seems to have gone away over the past year or so and there is recognition that we must keep a decent pension scheme in place for the public sector.

The savings issue is a massive one. Very few people are saving enough—they do not recognise how much they have to save to get a decent pension.

**Gavin Brown (Lothian) (Con):** Just a small point, convener. I was fascinated by Dave Watson’s comment that the nearer a GP practice is to a hospital, the more likely it is that a patient will be admitted to hospital. To what extent is that specific piece of work in the public domain? If it is not publicly available, is there anything that Dave Watson can give the committee to allow us to look at the issue in more depth?

**Dave Watson:** I am not sure whether the study has been published. It was certainly part of a presentation that was given to the Christie commission and it influenced the commission’s report. If the committee clerks requested it from the social work directorate in the Scottish Government, I am sure that the study would be available. There was also some link work on some of the schemes that tried to address hospital admissions by providing funding to support better care at home.

I did not address Jamie Hepburn’s other question which was about housing—apologies for that. I will not say that the specific change is good or bad. However, we have a concern about a number of the new interventions, whether telecare, emergency response teams, or self-directed care and personalisation, which is that they are leading to a degree of isolation. They are cutting out some of the socialisation aspects of care, particularly in arrangements for the care of elderly people. For example, day care centres are being closed to pay

for personalisation. Our members in social work are concerned that they are finding people who are staying in their own homes and not getting out in the way that they used to under a lot of the other provision—sometimes described as old-fashioned care—which people are now missing out on.

We should always be careful not to jump into some new idea because it is the big thing. There is a role for sheltered housing with staff who are on site and able to build up a relationship with the people who live there, as well as some of the other arrangements. We need a variety of care, but let us not forget about isolation.

**The Convener:** Good point.

**Dave Moxham (Scottish Trades Union Congress):** Apologies if this makes the discussion slightly scatter-gun, but I did not want the last word on tax and fiscal opportunity to be what it was.

We concede that there are competitive limitations to fiscal policy, but the United Kingdom is not in that position just now. I think that information has already been provided to this committee that shows where the UK sits in terms of overall tax responsibility. It certainly is not at the top of that pile.

It is also important to reflect that many of the countries that were given as examples, such as Germany and France, are raising taxes precisely to deal with some of the issues that we are having to look at here. They have similar demographic difficulties.

It is important that, while we focus on quality and efficiency of service delivery and take a view on the inputs and how to improve the health of people who are availing themselves of services and pensions, we also need to be realistic about the fact that that will cost more money. It seems wrong to come to the view that we cannot afford to pay any more money because of our current fiscal position. What we spend has to be part of the discussion.

**John Mason (Glasgow Shettleston) (SNP):** Clare Scott made an interesting point on pensions. There are a number of comments about pensions in the submissions. The point that people are not saving enough has been made. Unison made the point in its submission that increased contributions to public service pension schemes could lead to opt-out. That makes me think: should it not all be compulsory? If we all need to save more and there is a danger of people opting out, why not just take the option away? That is one question.

Audit Scotland made the following recommendation in its report, which I think was also referred to in some of the submissions. It said that we need

“a clear statement of the aims and objectives of the public sector pension schemes”.

I thought that we are pretty clear about what we are trying to do—save up for old age and things like that—so I do not quite understand what Audit Scotland means by that.

The report also suggests that we need more “experts to strengthen scrutiny and decision making”,

which always makes me a little wary. I do not know what it means either. I was involved in running the Strathclyde pension fund. There was a lot of expertise among those who ran the fund. It was democratically controlled by councillors, but the councillors were quite limited in what they could do. I have not seen the lack of experts that is referred to in the report, and I am not sure what is meant by the comment.

**Professor Bell:** I will make one simple point, which relates partly to globalisation and to the general financial crisis that we are in: the 2 per cent per annum growth rate that has been assumed to be a constant of the universe for 50 or so years can no longer be assumed.

Many of the future assumptions about the cost of pensions are based on how much they cost relative to gross domestic product. GDP is clearly flatlining in the short run. In the medium term and beyond, we do not really know what it will do. That point touches on our earlier discussion. I do not think that the Office for Budget Responsibility really knows what GDP will do either.

Therefore, we must be pretty careful and ensure that we organise the pensions system well so that it can deal with much slower growth than what we were used to. For example, people are being put off saving for pensions just now because they are incredibly expensive. Bond rates have been low and it is unlikely that they will grow significantly until the economy really starts growing again. It is a particularly testing time.

In a sense, I agree with Dave Watson. We should not be too negative about the effects of demographic change. However, there are certainly issues, such as the long-term growth rate, that go beyond demographic change and hit the affordability of all public services.

**Angela Cullen (Audit Scotland):** I will make a general statement and then respond directly to John Mason’s questions.

There is a dilemma with the fiscal sustainability of pensions. We published the report almost two years ago—it was published in February 2011, so the data relates to 2009-10—and in it we identified 1 million people in Scotland who had a direct interest in the six pension schemes. They were either current or future pensioners. Of those, 500,000 either were already pensioners or had

stopped working and had yet to draw down their pension. Another 500,000 were current employees in the public sector.

There were 1 million people, but two different issues: those whose pensions are protected because of what they have already paid in; and the proportion—potentially a large proportion—who will be affected by the new pension reforms. There may be some possibility of reducing the burden on the public sector, and the Public Service Pensions Bill that the UK Government has set out attempts to do that.

It is worth putting that in context. In 2009-10, nearly £3 billion was paid out in pensions in Scotland and public sector bodies paid £2.2 billion into pension schemes. That is a lot of money in the Scottish context and, as public sector budgets and the economy reduce, that £2.2 billion becomes a larger proportion of the available money.

10:45

It is worth noting that our report came out in February 2011, between the two Hutton reports—the interim report, which was published in September, and the final report, which was published in March. The recommendations that we could make to the Government were therefore limited, because we did not know what the final Hutton report would say.

Despite that, we identified a few areas for improvement. Our recommendation that there be a clear statement of objectives of the public sector pension schemes came out of the fact that the six schemes in Scotland are very different. They have a long history of development and have built up over time, reflecting the different needs of employers and employees. We found that contribution rates varied substantially. Employer contributions ranged from 11.5 to 25 per cent, and employee contributions ranged from 1.5 to 11 per cent. Our aim was to get the Government to set out the aims and objectives of schemes and to explain why there were differences in the schemes, because we could see no rationale for them.

On our recommendation that the Government “consider increasing the role of experts”,

we appreciate that there are elected members on the pension authorities’ committees and that the Scottish Public Pensions Agency has a big role in teacher and NHS pensions—two of the big schemes in Scotland—but we took the view that, as well as non-executive and elected members, pensions experts should be involved, in particular from the SPPA.

That has happened since the recommendation was made. The Government set up a programme

board in late 2011 to respond to some of our recommendations, and there is also higher-level strategic discussion at Scottish Government level, although there was a bit of a hiatus while people waited for the Public Service Pensions Bill to be introduced.

I hope that I have answered John Mason’s questions.

**The Convener:** Dave Watson said in the Unison submission:

“We have repeatedly warned that increased contributions will lead to greater levels of opt-out from public service pension schemes.”

Have you seen that happening?

**Dave Watson:** Not directly, yet. I am the lead negotiator for most of the big public sector schemes and I take the point that Angela Cullen was making. I am reminded that one in five Scots is directly or indirectly affected by the schemes, which places a big responsibility on everyone who is involved in the negotiations.

As we made clear in our submission, Hutton described projections that show the cost of public pensions as a declining share of GDP—I accept that David Bell’s point is valid and that that depends on GDP growing.

It is important to emphasise that post-Hutton a number of actions were taken as a result of the agreements that were reached in most of the main public service schemes in 2008-09, which increased contributions and, in some cases, retirement age. The change from using the retail prices index to the consumer prices index has had a big impact on the pension schemes, which we can see from the recent valuations of the funded schemes such as Clare Scott’s scheme—the Lothian Pension Fund—or the Strathclyde scheme.

As I said, there have been actions, but the Public Service Pensions Bill is not one of them and does not bring out the changes. In addition, of course, there is the UK Government’s tax grab. The Government’s increase in pension contributions has nothing whatever to do with pensions and in essence is all about raising tax from pensioners to meet the UK’s current budget deficit.

There is limited data on the opt-out arrangements. The reason is that there have not been contribution increases in the biggest scheme, which is the local government scheme, because there were no Barnett consequential and the Treasury’s tax grab did not apply. Interestingly, however, in one of the other pension schemes—not Clare Scott’s scheme—in the month after the chancellor made his announcement about increased contributions there was a big spike in the number of people who

opted out of the scheme, even though there was not going to be an increase in that scheme. People clearly thought that there was going to be an increase, and the reaction is a good indication of the impact on opt-out arrangements.

The impact on lower-paid staff in the next biggest scheme, which is the health service scheme, will kick in next April. We will look at the data next year to get a clearer picture on the changes.

The broader picture on opt-out concerns the valid point that Clare Scott was making about getting people into the pension fund. Auto-enrolment is part of the strategy for dealing with that, although it is aimed at the private sector, where in the main the same sort of schemes do not exist. The problem with auto-enrolment is that there are opt-outs from it—individuals and bigger companies can opt out in various ways.

The other factor with auto-enrolment is that the minimum payments to pension schemes are well short of what the pension industry thinks are necessary. As I have pointed out and referenced in my submission to the committee, the National Association of Pension Funds and others have produced reports that state that there should be about a 12 per cent contribution. However, from talking to our lower-paid members, who are seeing their real wages cut and the potential for increased contributions coming along and are still having to meet other costs, such as housing costs, I know that they are starting to ask whether pensions are their current priority. That is particularly true for those in their 20s and 30s. If your costs are going up, your wages are standing still and you are paying an average of 6.3 per cent into a pension fund, the temptation to use that money as last year's and this year's pay rise is pretty strong.

Added to that is the increase in retirement age. To be blunt, I have to say that there are times when I have addressed large numbers of low-paid workers in the west of Scotland about pensions and, knowing the life expectancy of most of the people in the room, I have looked out at them and wondered why some of them pay into a pension scheme. Some of them are beginning to work that out. Frankly, in large parts of the west of Scotland, the average life expectancy means that they will not collect their pension, and neither will their spouses.

When John Hutton came up to visit in connection with his report, he kept talking about broad averages for the UK, with life expectancy rising into the 70s, but that is not the case for large parts of our communities. That is a real issue, particularly at the lower-paid end of the scale. We have to recognise that aspect in our pension policies and retirement-age policies.

I slightly disagree with Angela Cullen about the need for standards. I am involved in negotiations on the big schemes in Scotland: local government and the health service. Those are different schemes, and the staffing groups are also different. The local government scheme has a large proportion of low-paid workers in it, with half the workforce earning less than £19,000 a year, while the health service scheme has a much more balanced range of workers, with some higher-paid groups as well. We need to design pension schemes to reflect the various staff groups.

I have negotiated pensions in the public and private sectors for 30 years, and the private sector schemes have not all been the same and have reflected the various groups that are involved. I agree with the point about the need for consistent advice on those points, but I think that the schemes need to reflect the needs of the members of the individual schemes.

**Jamie Hepburn:** My question is for anyone to answer, but it would be particularly helpful to get the perspective of the Lothian Pension Fund, the Pensions Institute and the STUC.

Pension funds look to maximise the income that they can accrue to pay out as pensions at the other end. When we were in Hawick, Eildon Housing Association—I think—said that it would be useful to access pension funds for the building of houses, which would give those funds a sustainable return on their investment. That would also have the added attraction of helping to stimulate economic growth. The Scottish Government said that it was interested in that issue. Are pension funds interested in the issue? Is it a good approach? Is it likely to happen?

**Professor Blake:** Before addressing the point about infrastructure, I would like to raise some points about savings, which were raised previously.

I agree absolutely with Clare Scott that we are not saving anywhere near enough for our retirement. As we said, one in five Scottish workers still has a pension with a very good public sector scheme, but that means that four out of five do not—and they are not saving anywhere near enough, taking into account the life expectancy differences.

I will comment on the question of compulsory savings. Every generation passes its mistakes down to the next generation. When we have a population structure that is like a pyramid—with a wide base of young people and a small number of old people—those mistakes are spread evenly and no one notices them. However, if we do not save enough for our retirement, we pass on a burden to the next generation. The burden becomes bigger as the population structure becomes a column or, in some cases, an inverted pyramid, as a big

problem is passed down to a smaller number of people. Intergenerational fairness and equity must be part of the calculation, but I have not seen that happen.

There is a lot of conversation about fairness within generations and whether poor people should be expected to save for a pension. That leads to the question that John Mason raised about whether there should be mandatory contributions. If auto-enrolment fails—and even if it succeeds—the contribution rates will be nowhere near adequate. We might be living in a world of low long-term real returns into the future, and contributions of 12 per cent will not be anywhere near enough. The requirement could be 15 or 16 per cent—a huge increase in savings compared with what is going on currently—and it could be very hard for people on low incomes to make those contributions while their real spending power is being reduced.

It is not an easy problem to solve, but we have to deal with the issue of intergenerational fairness. The vast majority of people in any generation must pay for their own pensions—they cannot rely on anyone else. The positive side of increasing pension savings is that we can get the virtuous circle of the pension savings going into and increasing the capital stock, which increases the productivity of the work force, their income and their savings. That then increases the capital stock for the future. The positive aspect is that the savings can be productively invested—infrastructural investment is clearly a case of that.

In general, the pension funds—even the public sector and local authority pension funds—are slightly wary of the political direction of investment. There has been a major danger of state confiscation of private sector pension assets, beginning in Argentina in 2000. Scarily, Hungary has confiscated private sector pension assets, and it has also happened in Portugal and Ireland. Therefore, there are major dangers in what could happen that we need to be careful about.

That said, I agree that pension funds should be investing in the long term, and it is sensible for them—with the right type of infrastructural investments—to engage in such investments. They do not like development projects and things that are uncertain, but once the infrastructural investment is in place they are quite happy to invest in projects because they can then see more secure returns. They do not like the initial development stage of projects, but if we can get around that we can start to build the virtuous circle of encouraging savings.

I think that we should consider mandatory minimum contributions for the vast majority of people because if auto-enrolment fails we will have another serious problem on our hands.

11:00

**Clare Scott:** I will respond to John Mason's questions about expert scrutiny. It was a recommendation in the Hutton report that there should be improved governance standards, and that approach is built into the Public Service Pensions Bill as well. We are waiting to see what will happen in Scotland as a result of the bill, which is still going through the UK Parliament.

I can comment specifically on scrutiny of and decision making in relation to the local government pension scheme. The councillors in the pension funds make up a large majority of the decision-making structure, and there are issues of continuity. For example, in 2007 our committee of five members was replaced and made up of brand new members. Pensions are complicated: a great deal of training and education is necessary for people who deal with them, and changes can cause interruptions to continuity. However, governance standards in the local government scheme are generally pretty good, especially when compared with the unfunded pension scheme. We have annual reports and accounts, there is a lot of scrutiny, and a lot of data are available. A lot more scrutiny is done of the local government scheme than of many of the unfunded schemes. Hutton's comments on governance extended to the unfunded schemes as well.

Having said that, I accept that standards of governance vary. Members should be aware of the study that was done a couple of years ago on the potential consolidation of the local government schemes in Scotland. That looked at consolidating 11 funds down to two or three, or maybe even one. The study concluded that there was no evidence base for doing that. I suggest that you need to be clear about the objective of consolidation. Is it about efficiency or better governance? Those are different issues and the answer comes down to the local control of the pension funds versus how the governance works.

Jamie Hepburn's question was about housing association investment. The local government pension scheme is governed by broader pensions law. The fiduciary duty of the councillors who are making decisions on the pension fund is absolutely crucial. They have to take off their councillor hats when they come to make those decisions because they are no longer councillors but quasi-trustees. They are not actual trustees because the scheme is not made in trust, but they have to act in the best interests of the beneficiaries of the scheme. As Professor Blake said, dealing with that conflict of interest is very important and schemes have to manage it very carefully. A great deal of training is required on that.

On housing association investment, I agree that income is important for any investment pension

fund, but the total return is key—capital return and income—so income is not the sole driver.

Conflict of interest is also an issue: what is the motivation behind any housing association or infrastructure investment? During the past few years, pension funds have generally been increasing their infrastructure investment. It is seen as in the long-term asset class and as giving some inflation protection, which is also good for pension liabilities.

One thing that concerns me about potential housing association investment is the local aspect. Funds need to be concerned about diversification, the risks that they are taking and whether they are being paid adequately for that investment risk. The trustees and the internal teams and investment managers of the fund have to take an investment decision that is in the best interests of the beneficiaries of the scheme.

**Professor Blake:** On a point of information, a number of reports have been made on investment governance and the structure of investments in local authority pension schemes. Some of those reports were commissioned by Scottish local authorities, and some have not yet been put into the public domain. A few weeks ago, we looked at the London schemes. The report of that is on the Pensions Institute website, but I am happy to leave a copy of it with the committee. It is about the issues around investment governance in the London local authorities. There are major problems and the situation could be improved. One of the problems is to do with the short-term nature of councillors who are quasi-trustees and how they are there to improve social amenities but end up requiring to put more money into the pension scheme while their advisers try to find ways of kicking the can down the road and delaying that. The committee might want to take that point of information into account.

**John Mason:** On Clare Scott's point, I think—if I remember correctly—that Manchester put aside part of its property portfolio to invest specifically in the area. In my experience, that was a problem for councillors. We were told that we had to invest to get the best possible return on the fiduciary side, but if we had asked the people who were going to get the pensions whether they wanted us to invest in Glasgow or in London, they would all have said that we should invest in Glasgow.

**The Convener:** A few people want to come in on that, but I will try to stick to the path because some folk have been asking to come in for the past few minutes. Angela Cullen will be followed by Professor Bell and Dave Watson.

**Angela Cullen:** I just want to clarify something that Dave Watson said about what we were suggesting; I am obviously not being very articulate this morning. We were suggesting not

that all the schemes should be the same, but that there were variances among the schemes, and that we need to be clear about the rationale for those.

For example, the average working life of teachers, police officers and firefighters is quite long in comparison with NHS and local government workers, but the average pensions in those three schemes are quite different. We were not suggesting that they are all the same, as they need to meet the needs of the different types of employee, but we need a clear rationale for why one scheme is different from another so that people can understand that.

**Professor Bell:** First, I am not the only person who has used the phrase “intergenerational equity” at the committee, which is good.

My point is simple. We are discussing very complex issues, and we often talk about our role in encouraging preventative spend. However, one key issue that we do not address very well in Scotland is financial literacy. We ought to think a great deal about that, because it involves such important issues. We need to extend the understanding of the complexity of those issues to all generations, as they cover a lot of areas, including payday loans, for example. Financial literacy should have a much higher priority than it does at present.

**Dave Watson:** I return to the issue of investment. We should be aware that the local government scheme is the only funded scheme that has money for investment, whereas the others are pay-as-you-go schemes.

With regard to local government schemes, we are talking about £20 billion in Scotland, which is a huge amount of money that is invested. As John Mason said, if we asked our members whether they would prefer the money to be invested in the Tokyo underground or in housing in Glasgow, it would be a no-brainer—although one scheme did invest in the Tokyo underground. Those are the sorts of choices that are available.

Clare Scott is right to highlight some of the difficulties in tackling those issues. We have been doing quite a lot of work on that, and we will publish a paper shortly on housing investment using local government pension schemes.

We have been working with housing associations and others on working up a scheme, and we are not alone in doing so. John Mason mentioned the Manchester scheme, on which some work has been done; the Royal Institute of British Architects future homes commission has published a report that highlights the issue; and the John Smith Institute has also done some work in that area.

There is an issue with governance. Government ministers sometimes pop up at conferences and say, "Wouldn't it be nice to have made more use of the £20 billion?" If I am at that conference, I usually pop up and remind them that it is not their money. If our members thought that Government ministers were directing the investment, they might take a different view on it, so there is an issue in that regard.

Lord Hutton talked about strengthening governance in the pay-as-you-go schemes. In local government schemes, the governance is not good either. In our view, the approach is contrary to the institutions for occupational retirement provision directive—which is a European directive on pensions governance—and it needs to be strengthened.

One advantage of strengthening governance is that we would get a broader view of pension investment and how we might use it. Governance would involve the scheme's members rather than just the councillors who predominantly make all the decisions at present. Pension funds in Scotland have started to move in that direction, but we can go further.

There is a big opportunity to get around the political interference issue because a much broader representative pension fund would be making those decisions in a similar way to what happens with our big private sector schemes.

It is possible to invest in socially useful things; the private sector funds in which I am involved have ethical investment policies. That does not reduce the income for those funds, but we have to get the right mix. I agree with Clare Scott that we need to find a balance between property, equities and the other arrangements to ensure that we get the same rate of return, but there is an issue with regard to switching investment to other things.

I have often said to Clare Scott and to colleagues that people do not understand how many things pension funds in Scotland own. I would put little EU-type signs on buildings that are owned by local government pension schemes in Scotland to demonstrate the value of pension investment to the Scottish economy, to return to Professor Blake's point. People are investing in pensions, but that money is being invested in the economy. When those people retire, that will produce revenue spending in the economy, which is important too, so it is a win-win situation all round. We can tackle the governance issues and get around some of the issues that are of concern to Clare Scott and her colleagues who have to manage the funds.

**The Convener:** No one has asked to speak at this point. We are just over 65 minutes into the session, and I said that it would be about 75 minutes long. I now give everyone the opportunity

to make any final points on the issues that have been raised—or on any that have not been raised—so far. Who wishes to go first? [*Laughter.*] I will keep staring at you all until someone does.

**Clare Scott:** I have one small point around encouraging people to save for retirement and pensions. At present, the benefits system is a disincentive to saving, because if people have a pension they lose benefits. That needs to be considered in its totality.

**Dave Watson:** I have one short point that I did not make earlier, on the migration issue. There are some positives in that regard. I am not convinced that the very highly paid French and German people who are popping into the City of London are entirely relevant to us, but there is a positive issue around migration, because one of the advantages of inward migration to Scotland is that migrants are generally younger people, which gives us a bit of balance. Scotland's population has been increasing for a number of years, for the first time in a generation. That is sadly not because of the American birth-rate issue, but because of migration to Scotland. That is a good thing in terms of getting the population balance right so that we do not get a continually elderly population, and we ought to recognise that.

**The Convener:** We were given some figures on that at one of our previous meetings. The UK's population is predicted to increase from 61 million to 79 million by 2050, while Germany's population is predicted to go in exactly the opposite direction, falling from 83 million to about 63 million. There is an issue in that regard.

Of course, when migrants get older they have to be looked after, so we may just be postponing the issue for a generation or two, and ultimately the crunch will come at some point.

**Angela Cullen:** To pick up on some of the points that were made earlier about intergenerational equity, I think that we should remember that pensions are a long-term issue and quick fixes are difficult. The timescale is long, as it runs for up to 60 years or more throughout a person's working life and their pension and retirement years. Employees today could still be drawing their pension in 2070, so it is worth remembering that we are talking about the very long term when we are making policy decisions and thinking about financial sustainability. The issues relate not just to the present, and the current recession, but to the next couple of generations.

11:15

**The Convener:** Professor Blake, do you wish to make any final comments?

**Professor Blake:** No, I am fine, thank you. I have said enough.

**Dave Moxham:** I have been quite quiet today, but I am quite happy.

**The Convener:** We opened the session with our committee adviser, Professor Bell, so I ask him whether he wants to add anything further.

**Professor Bell:** I have started to do some work on the state old-age pension and how it will look in Scotland in the future. Over the next 10 years—if I can introduce a lot of qualified optimism—it will not increase as a share of gross domestic product. Nevertheless, the flipside is that the state pension is not terribly generous.

I am struck by the fact that we really do not want the low paid to subsidise the pensions of the better off in society. If we can organise our system to ensure that that does not happen, it would certainly be of benefit—although it would add to the system's complexity.

**The Convener:** Are you suggesting, for example, that low-paid workers would perhaps make a 5 per cent contribution and higher-paid workers a 10 per cent or 15 per cent contribution?

**Professor Bell:** I mean in relation to their situation. Again, we would start to separate out risks, which means that there would be less pooling of risk. The point has been well made that many people in the west of Scotland will contribute to a pension and not get anything out of it, because the life expectancy there is so much shorter. There is literally 12 years' difference in the average life expectancy across the areas served by six commuter stations in Glasgow, so there are differences even within the west of Scotland. Some of the areas with low life expectancy are among the most extreme in Europe, including the accession countries.

**The Convener:** Thank you very much for that, Professor Bell. I also thank all our guests this morning. The discussion has been very interesting and stimulating.

We have a substantial agenda ahead of us, so I suspend the meeting until 11.25.

11:17

*Meeting suspended.*

11:25

*On resuming—*

## **High Hedges (Scotland) Bill: Financial Memorandum**

**The Convener:** Item 3 is to take evidence as part of our scrutiny of the financial memorandum to the High Hedges (Scotland) Bill. I welcome Mark McDonald MSP back to his old stomping ground on the Finance Committee, albeit that he is in the hot seat today. Mark McDonald is the member in charge of the bill. He is accompanied by John Brownlie and Gery McLaughlin from the Scottish Government bill team.

Mark, do you want to make a brief opening statement?

**Mark McDonald (North East Scotland) (SNP):** Convener, I have no opening statement. We will just go straight to questions.

**The Convener:** I will start the questions, all of which will be specifically on the financial memorandum.

We have had a number of issues raised with us about local authorities being able to fix different levels of fees. What is your thinking behind that?

**Mark McDonald:** Sorry, can you repeat that? I did not quite catch the question.

**The Convener:** Some local authorities have raised concerns about the ability to fix different levels of fees for different applications. What is your thinking behind having that flexibility for local authorities to fix different levels of fees?

**Mark McDonald:** As part of the initial stages of proposing the bill, I consulted with local authorities in England and Wales, where similar legislation has already been enacted. The evidence from there shows that the fee level varies from authority to authority and is based on each authority's calculation of the costs that will be incurred from enforcing the legislation. Those costs can potentially vary from authority to authority depending on, for example, the rate of pay for individual officers, the number of officers who might be involved and other factors that might be included. I have tried to encapsulate a broad range of where the fee levels might sit, but the financial memorandum is not prescriptive in any sense.

**The Convener:** Might not some people who have a problem with high hedges find the fee a bit onerous?

**Mark McDonald:** Undoubtedly, some people may view the cost for accessing dispute resolution as being difficult to bear. I simply reiterate that the bill is essentially an enabling measure, which will



provide powers for local authorities to use. It will be for a local authority to decide what fee to charge and how it wishes to administer that fee. For example, a local authority might choose to offer a discounted rate to pensioners, or it might offer the ability for the fee to be paid in stages as opposed to all in one go at the beginning. It is really for local authorities, first, to determine and decide the best way to ensure that the effects of the bill are cost neutral to them and, secondly, to ensure that they do not put in place unnecessary or unjustifiable barriers to people who want to access the process.

**The Convener:** Some local authorities do not believe that the bill would be cost neutral. For example, Angus Council states:

“there is no recognition of the cost to authorities of serving, monitoring and enforcing notices.”

**Mark McDonald:** Sure, I note that a number of the local authorities say that, but the financial memorandum is indicative rather than prescriptive. If local authorities consider that other costs need to be factored in, obviously that is a decision for them to take as part of their fee-setting process. Undoubtedly, elected members at local authority level will receive reports to their committees that say, “Here is the cost and here is why we believe that such costs will arise.”

The principle behind the fee-setting provisions is that the measure should wash its face in terms of the costs. I looked at the houses in multiple occupation legislation, where it is very clear that the HMO licence fees must cover the administrative costs but cannot be used as a revenue-raising mechanism. I approached the issue using that sort of principle.

The indicative fees are a result of discussions with local authorities in Scotland and in England and Wales. Some local authorities might consider that they have particular difficulties or individual circumstances that have not been captured within that. They will be free to factor that in when they set their fees.

11:30

**The Convener:** None of the responses has said that the bill will be revenue neutral—they all suggest that it will create an additional burden on local authorities. For example, East Renfrewshire Council, when asked whether the financial implications are accurately reflected in the financial memorandum, stated:

“No ... The Bill cannot do other than increase the staff time and resources involved.”

It continued:

“The more protracted enquiries are likely to entail legal costs, including time and Title searches.”

When asked what other costs might be incurred, the council said that there will be

“additional training, staff, equipment, and legal costs”

of pursuing people who might simply refuse to pay or who might be difficult to trace. In my constituency, where about 37 such cases are on hold, some owners just cannot be traced. Nobody seems to know who owns the properties.

Before you respond, I must point out in defence of the proposal that North Lanarkshire Council has said that

“administration costs of up to £500 look adequate considering there is no current charge for any time spent on this currently.”

I do not want to give the impression that everyone is being negative, but there are concerns. Even though South Lanarkshire Council was not as opposed as East Renfrewshire Council—which thinks that it will have a disproportionate number of cases—it states:

“the proposal does not take account of the costs of dealing with enquiries to local authorities”.

**Mark McDonald:** On this week’s “Sunday Politics”, Vincent Waters, the environment convener of East Renfrewshire Council, said first that the council welcomes the bill and believes that there will be a drastic drop in the number of complaints—he said that they will drop to a “tiny trickle”. From the elected member perspective, that local authority certainly seems to think that the bill will be helpful.

The English example bears scrutiny and perhaps gives us an indication of what is likely to happen. For example, the Royal Borough of Windsor and Maidenhead, which we would expect to be a fairly leafy area where hedges might be prevalent, had 300 plus inquiries when the legislation first came into effect. In the period from 2005 to 2011, it has had 20 formal applications to have disputes adjudicated on, but has had to take enforcement action on zero occasions. That means that, when notices are served, the owners comply with them.

That is borne out in almost all the local authorities that we spoke to, which are listed in the financial memorandum. South Tyneside Council had one case in which it had to take enforcement action but, beyond that, those local authorities gave no evidence of cases in which they had to take action. Such action is an option in the legislation south of the border, but it seems clear from the evidence that that does not happen as standard practice.

**The Convener:** I have one final point before I open out the discussion to colleagues.

Paragraph 81 of the financial memorandum states:

“the costs will ultimately fall on those involved in the dispute; both the applicant and the hedge owner.”

That will cause concerns. Some people will take the view that, although their next-door neighbour has unilaterally decided to allow his hedge to grow 20 feet high in front of their windows, they will possibly have to pay £400 or £500 to get the council to pursue him to get the hedge cut. Would it not be better if the person who has grown the hedge and decided not to participate in the dispute mechanism had to refund the costs of the application? It seems that whether someone is innocent or guilty—if we can use those expressions in this context—they will be out of pocket. If my next-door neighbour decided to grow a hedge, I would have to pay a few hundred quid to get it cut. An element of fairness is absent.

**Mark McDonald:** A complexity would be introduced if we tried to deal with that. Let us take a made-up example in which two individuals live next door to each other and there is a dispute over a hedge. If neighbour A applies to have neighbour B's hedge dealt with, the local authority agrees and serves a remedial notice, and neighbour B then complies with the notice and gets the work done, the local authority will not have to recover any costs of hedge maintenance or lopping. If the burden of the fee shifted, the local authority would have to pursue costs of a few hundred pounds, rather than a few thousand pounds, and that would perhaps be a less cost-effective use of time. I am wary of getting into a situation in which councils might have to pursue costs of a couple of hundred pounds simply because we have decided that the burden of the fee should shift.

**The Convener:** The opposite of that is that someone whose next-door neighbour is a pensioner and cannot afford a £500 fee can just decide not to cut their 20-foot high hedge because they will not have to refund the money. Alternatively, if they had to refund the money, they might decide that they do not want to involve the council and that they might as well cut down the hedge now because, ultimately, they will have to do so. That avoids the entire process having to be gone through.

**Mark McDonald:** The thing to bear in mind is that the vast majority of cases will probably deal with themselves once the bill comes into effect. The evidence from south of the border indicates that the vast bulk of cases are dealt with once such legislation comes into effect, without the need for formal complaints. A small number of intractable cases will have to go to some form of adjudication. I made it clear that it is for local authorities to determine what they do with fees, such as how they are structured; what discounts, if any, they offer, depending on individual circumstances; and whether to offer payment by stages, to allow people to access the process.

The bottom line is that, if I were a local councillor whose local authority was responsible for administering the scheme, and I was receiving complaints from constituents who could not afford to access the process, I would consider ways in which my local authority could make the process more affordable to access. The bill is an enabling one that gives the power to local authorities. I think that they will look carefully at how to deal with the situations that will arise and how they can avoid unnecessarily preventing people from accessing the process.

**The Convener:** I will open up the discussion to questions from other members.

**John Mason:** The convener has grabbed many of the obvious questions, so the rest of us are probably struggling.

The responses from East Renfrewshire Council and North Lanarkshire Council are different. I realise that they are both mixed areas, but many of us might think that East Renfrewshire is a better-off area so there might be more disputes and that North Lanarkshire would be the opposite. Will the situation be patchy across the country? I hate the term “postcode lottery”, but that could be used in this situation.

**Mark McDonald:** There will be variations from local authority to local authority. I do not imagine that there will be too many complaints in places such as Orkney and Shetland, for example. There will be variations, depending on the circumstances in local authority areas. The evidence from the campaign group Scothedge indicates that complaints are more prevalent in some local authority areas than in others.

**John Mason:** You said that individual local authorities will have freedom to come up with charging regimes. One local authority could decide that the average cost is £300 and everybody will pay that, but another could decide that the average cost is £300 and it will charge some people £200 and some £400, depending on their circumstances. Would that be possible under the bill?

**Mark McDonald:** The evidence from down south is that one charge is levied. I do not imagine that local authorities would look to charge people different fees based on individual cases.

**John Mason:** One argument has been that poorer people might not be able to afford the fee. If a council wanted to help poorer people, that would mean charging better-off people more.

**Mark McDonald:** It does not necessarily mean charging better-off people more than the fee that is set; it means considering ways in which the fees can be charged. A local authority might wish to offer a discount to those who demonstrate an inability to pay. That is not the same as having a

higher fee above the standard one. Councils might also wish to consider ways in which payments can be staged. I am not being prescriptive on how local authorities levy the fees. It would be difficult if we got into charging higher and lower fees as standard.

**John Mason:** Some local authorities have suggested that the investigative process and finding out who owners are could take ages and therefore cost a lot of money. I presume that, if a council could not find the owner, it would in some cases be cheaper for it just to cut down the hedge.

**Mark McDonald:** The evidence from south of the border is that the number of times that councils have had to take enforcement action because a hedge owner has not taken action is minuscule. In the example that you described, the local authority would still need to recover its costs, whether or not it chose to remove a hedge.

The evidence from professional tree officers is that they would not advise taking the approach of complete removal of a hedge, but a local authority would still need to find ways to recover its costs. The number of cases in which a local authority would have to take action would probably be virtually nil.

**Jamie Hepburn:** The possibility of asking my good friend Mr McDonald searching questions is too good to pass up. I am delighted to have the opportunity. I was intrigued to see that he had been in discussion with NATO, until I realised that it was the National Association of Tree Officers.

In the evidence that you have gathered from England, the fees vary quite a lot among the local authorities. I see that Sandwell Council has no fee for applications, whereas the Royal Borough of Windsor and Maidenhead charges £600. It is clear that the council with no fee has decided to soak up the costs. Of the councils that levy a charge, the lowest fee is £150, which Hartlepool Borough Council charges. I do not understand why the differential in the cost of cutting down hedges is so great. Do you have evidence to explain the variation?

**Mark McDonald:** The test that I have put in the bill is that costs can be covered, but such a provision is not necessarily in place in England. We took evidence from a number of authorities. When we spoke to officers at Hartlepool Borough Council and at South Tyneside Council, the point was made that, when the English legislation was introduced, a number of authorities advertised for high hedge officers, before they realised that such posts were not required, because the task could be comfortably dealt with by existing tree officers or arboriculturists.

There is some evidence that fees have been used to deter frivolous complaints. I do not want to

put such provisions in the bill, which should be about resolving disputes and ensuring that local authorities do not have to bear the costs of that. We live in times when budgets are tight. We might be talking about small costs, but they should be recoverable by authorities. Fees down south have varied quite widely but, if a mechanism ensured that fees covered only costs, I imagine that fees would not vary as widely.

**Jamie Hepburn:** I think that being a high hedge officer would have been a scoosh as a job, given the numbers of applications. One officer could do the whole of England.

You have more or less answered my next questions, but I will absolutely eke out the issue. You sound as if you are saying that the legislation in England allows councils to run the operation as a revenue-raising scheme when they get applications. Would not that be the case in Scotland? Is the bill framed such that councils could only recover costs and could not decide to raise additional funds on the back of applications?

**Mark McDonald:** The bill says:

“A fee paid to an authority may be refunded by it in such circumstances ... as it may determine.”

It also says:

“A fee ... must not exceed an amount which it considers represents the reasonable costs of an authority in deciding an application”.

A local authority could not charge more than dealing with a case would cost.

It is worth saying that, if we extrapolate from the evidence from south of the border to the number of cases that might occur in Scotland, a local authority would be unwise to try to use the activity as a revenue-raising mechanism, because the evidence from south of the border is that the initial flurry of inquiries reduces to a small number of complaints as time goes by. Trying to use the provisions to raise revenue would not be a wise move for any local authority.

11:45

**Jamie Hepburn:** I do not suppose that that would plug the funding gap that they are talking about.

I was surprised by how few applications there have been. It is also interesting to note that the cost that is levied does not seem to influence the amount of applications. I see in the financial memorandum that, where there has been no fee, there have actually been fewer applications than there have been in the place with the highest fee on the list that you have provided. Are you expecting a proportionally similar number of applications over a similar timeframe in Scotland?

Do you have any evidence about how many applications are likely?

**Mark McDonald:** We have some anecdotal evidence. I do not have it before me, but I would be happy to write to the committee with it after the meeting.

My colleagues might be able to say something about the matter.

**Gery McLaughlin (Scottish Government):** The Local Government and Regeneration Committee took evidence on the bill this morning and asked tree officers the same question. Their rough estimate of anticipated numbers in their local authority area is 12 cases.

**Mark McDonald:** We can provide the committee with evidence about the number of cases Scothedge has said it is dealing with. That might give a rough indication of the numbers at the initial stage, and what the numbers might look like later on.

**The Convener:** As I mentioned earlier, I have 37 cases, but only 12 of those are known to Scothedge—we compared lists—so the cases that you know about from Scothedge might just be the tip of the iceberg. As you said, there will be a big flurry of cases at the beginning. The real issue is how many there are later on.

**Jamie Hepburn:** As has been said, the costs might put folk off. Was there any investigation of capping of fees?

**Mark McDonald:** We considered the evidence. Wales has a fee cap. It seems that most people just charge the maximum possible, rather than take account of people's ability to cover costs. We are, therefore, unconvinced that capping fees would provide the level of protection that one might think it would.

**Jamie Hepburn:** It is clear that recovering costs from the owner has not been a big issue, but it could become one. The deputy convener identified circumstances in which it could be an issue. If the owner could not be found, and the local authority was struggling to recover the costs, what mechanisms will the legislation make available to local authorities to recover costs? Do you think that it will be a big problem?

**Mark McDonald:** I do not anticipate its being a huge problem. However, obviously, we have to factor in the possibility that it might be.

Various options are open to local authorities. Obviously, there is the use of the courts to pursue costs, which would involve the recovery of not only the costs of the work that had been undertaken but the legal costs. There is also the option of attaching a land debt to a property, where that debt sits on the property and must be repaid at the point at which the property is sold or the person

vacates the property. Those options would be available to local authorities in England as well.

**Jamie Hepburn:** That is interesting. I do not have as many cases as the convener, but my experience is that the problem tends to arise in situations in which people do not know who the owner of the adjacent property is.

There is a provision for an appeal to Scottish ministers, and a cost to the Scottish Government is associated with that. You very usefully set out what the costs are. Would both parties have that right of appeal?

**Mark McDonald:** That is correct.

**The Convener:** Your constituency does not have the lovely sea views that mine has, Jamie. That is the real issue.

**Jamie Hepburn:** It has the Forth and Clyde canal, which is very nice.

**Gavin Brown:** In its written submission, South Lanarkshire Council raised an issue that I want to explore. What is your view on the High Hedges (Fee Transfer) Regulations (Northern Ireland) 2012?

**Mark McDonald:** I will be honest; I do not know about the fee transfer regulations for Northern Ireland in detail. My colleagues might be able to assist me.

**John Brownlie (Scottish Government):** I would be happy to comment. We are aware of the existence of the fee transfer mechanism whereby the person who has complained has their fee refunded if the case is found against the owner of the hedge. From our most recent discussions with colleagues in Northern Ireland, though, the national body in Northern Ireland does not have any information about how successful that has been. You will be aware that the Northern Ireland legislation is the most recent piece of legislation on the issue in the United Kingdom. It was passed in 2011 so we do not yet have any information about how effective it has been or how it has worked in practice.

**Gavin Brown:** I have the regulations here. They came into force only in March this year, after the initial high hedges legislation. It says in the explanatory note:

"Once the remedial notice takes effect, after processing of any appeals, the council will refund the complainant's fee (if any has been charged) and may then levy a fee on the owner/occupier of the neighbouring land."

It struck me that that might deal with the point that the convener raised. Although it is early days in Northern Ireland, I wonder whether it is something on which Mark McDonald might reflect.

**Mark McDonald:** I gave my initial thoughts on the issue of a recovery mechanism. As I outlined,

there is the option in the legislation for fees to be refunded or part refunded where the authority deems that to be necessary. Although we do not yet have enough evidence to go on, I am happy to look at the Northern Irish example between now and stage 2 to see whether it might apply to the bill. However, I do not want to get into a situation in which a local authority has to pursue fairly small sums at what might be a disproportionate cost burden to the authority.

**Jean Urquhart:** Will the act apply after a reasonable investigation of the circumstances? In other words, rather than the start of the process being that the complainant is expected to pay a fee for this service, in the first instance the council would be expected to write to the neighbour reminding them of the act and saying that there is concern.

**Mark McDonald:** The initial stage of the process is that any individual who applies has to demonstrate that they have taken steps to resolve the dispute through other means, for example by writing to the neighbour. We are not explicit about this, but if they have been through mediation, as some people have, the option of last resort is to take an application to the authority. I would expect that most authorities would advise people of the process that they have to go through and the fee that would be levied.

The evidence from south of the border is that there is a checklist, and that if people do not meet all the criteria that need to be met in order for the matter to hit the application process, it goes no further so no fee is charged.

**The Convener:** That appears to have exhausted the questions from the committee. No, Elaine Murray has one.

**Elaine Murray:** Just because I am leaving the committee, I am being ignored.

**The Convener:** There was no indication that you had asked to speak.

**Elaine Murray:** You did not see me. That is because I am so short.

You have covered most of my points anyway. I had a question on the possibility of a fee transfer. The legislation in England has been fairly successful, and awareness of the legislation has resolved a lot of issues. I hope that it will work in a similar way here. If somebody is aware of the legislation and has continued not to bother to do anything about their hedge, it is a little unfair if the complainant, who has been unable to get a resolution from the neighbour, ends up being several hundred pounds out of pocket. Perhaps you would look at whether the Northern Ireland example would give extra impetus for people to resolve issues.

**Mark McDonald:** I am happy to do so. The Northern Irish example does not yet have the weight of evidence behind it due to its still being in its infancy.

It is worth putting on record that not every case that goes to a complaint will be found in favour of the complainant. There will be people who pay an application fee and go through the process, and the case will not be found in their favour. It is worth bearing that in mind. I am often accused by some of having a bill that is entirely anti-hedge. It is not anti-hedge; it is first and foremost about resolving disputes.

**The Convener:** I have a case in which a person feels that their neighbour has raised a spurious complaint, so I appreciate your comments on that.

In response to a question from John Mason you said that a council may decide to reduce the fee for pensioners and so on, and that it would not put the fee up for other people. How can that be cost neutral? The local authority would be out of pocket.

**Mark McDonald:** I probably did not explain myself very well. It is for local authorities to decide on the fee that they will charge to deal with the case load that they face. Each case will have to be assessed on its individual merits, and there will be some cases that are more difficult to assess. I am not suggesting that the fee would necessarily capture every single case. It will probably be an aggregation of the average amount of time that will be spent, and there will be variations within that. It may be that taking the approach that I suggest will still allow it to be a cost-neutral method, but that is for local authorities to determine.

**The Convener:** There are no further questions. We thank you for coming along.

**Mark McDonald:** It is good to be back.

**The Convener:** Are members content for me to write to the Local Government and Regeneration Committee, attaching a copy of the *Official Report* of today's discussion and the submissions that we have received?

**Members indicated agreement.**

**The Convener:** At the beginning of the meeting, the committee agreed to take the next item in private.

11:56

*Meeting continued in private until 12:01.*



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