OFFICIAL REPORT
AITHISG OIFIGEIL

Economy and Fair Work Committee

Wednesday 13 September 2023

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Wednesday 13 September 2023

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ECONOMY AND FAIR WORK COMMITTEE
22nd Meeting 2023, Session 6

CONVENER

*Claire Baker (Mid Scotland and Fife) (Lab)

DEPUTY CONVENER

*Colin Beattie (Midlothian North and Musselburgh) (SNP)

COMMITTEE MEMBERS

*Maggie Chapman (North East Scotland) (Green)
*Murdo Fraser (Mid Scotland and Fife) (Con)
*Gordon MacDonald (Edinburgh Pentlands) (SNP)
*Ash Regan (Edinburgh Eastern) (SNP)
*Colin Smyth (South Scotland) (Lab)
*Kevin Stewart (Aberdeen Central) (SNP)
*Brian Whittle (South Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Dr Alisdair MacPherson (Law Society of Scotland)
Katie McLachlan (Association of Business Recovery Professionals)
David Menzies (Institute of Chartered Accountants of Scotland)
Barry Mochan (Insolvency Practitioners Association)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Economy and Fair Work Committee

Wednesday 13 September 2023

[The Convener opened the meeting at 09:32]

Interests

The Convener (Claire Baker): Good morning, and welcome to the 22nd meeting in 2023 of the Economy and Fair Work Committee. Agenda item 1 is a declaration of interests by each of our four new committee members.

First, though, I thank Jamie Halcro Johnston and Graham Simpson for their contribution to the committee and their work on our inquiries. I wish them well in their new roles in their new committees.

I am pleased to welcome Murdo Fraser, Ash Regan, Kevin Stewart and Brian Whittle to the committee. I invite Murdo Fraser to declare any relevant interests.

Murdo Fraser (Mid Scotland and Fife) (Con): Thank you, convener.

There are three items in my entry in the register of members' interests that might be relevant to the work of this committee. First, I am a member of the Law Society of Scotland, albeit that I do not currently hold a practising certificate. Secondly, I have an interest in two residential properties in Edinburgh that are let as long-term residential homes and from which I receive rental income. Thirdly, I receive occasional and usually very small amounts in royalties from a book that I wrote a number of years ago.

The Convener: Thank you. I now invite Ash Regan to declare any relevant interests.

Ash Regan (Edinburgh Eastern) (SNP): Thank you, convener. I have no interests to declare.

The Convener: Thank you. Kevin Stewart, do you have any relevant interests to declare?

Kevin Stewart (Aberdeen Central) (SNP): I have no relevant interests to declare, thank you, convener.

The Convener: Thank you. Finally, I invite Brian Whittle to declare any relevant interests.

Brian Whittle (South Scotland) (Con): Thank you, convener. As recorded in the register of members' interests, I am a director of a small business consultancy, which, from time to time, I do a little bit of work for outside parliamentary time.

The Convener: Thank you.

Decision on Taking Business in Private

09:33

The Convener: Our second item of business is a decision to take item 5 in private. Are members content to do so?

Members *indicated agreement.*

Bankruptcy and Diligence (Scotland) Bill: Stage 1

09:33

The Convener: Our next item of business is a stage 1 evidence-taking session on the general principles of the Bankruptcy and Diligence (Scotland) Bill. The bill aims to make changes to the law around bankruptcy and diligence by implementing various stakeholder-led recommendations. I thank all those who replied to the committee's call for evidence. We are grateful for the submissions, which will help shape our consideration of the bill.

I welcome Dr Alisdair MacPherson, who is a committee member of the banking, company and insolvency law sub-committee of the Law Society of Scotland; Katie McLachlan, who is a licensed personal insolvency practitioner in insolvency and restructuring, from the Association of Business Recovery Professionals, known as R3; David Menzies, who is director of practice at the Institute of Chartered Accountants of Scotland; and Barry Mochan, who is a board member at the Insolvency Practitioners Association. As always, it will be helpful if members and witnesses keep their questions and answers as concise as possible. I will open with questions to Alisdair MacPherson, but I will give everyone the chance to address them.

The Government is adopting a three-stage approach to reforms in this area. I mentioned the responses that we have had to the bill; many talk about other areas that go beyond what is in the bill and other improvements that they would like to see in this field of work. The Government has argued that it is trying to strike a balance between regulatory and statutory duties. Alisdair, does the Law Society have a view on whether the Government has got that balance right? Does the bill cover the areas that should be statutory, and do you agree that other areas that people are arguing should be included in the bill are better suited to regulations?

Dr Alisdair MacPherson (Law Society of Scotland): Good morning. Thank you for the invitation to speak to you today.

As you have noted, I am representing the Law Society of Scotland. You might also have noticed that I have submitted, along with Professor Donna McKenzie Skene, separate written evidence, and I am happy to speak to that later if you wish.

Overall, the Scottish Government has got the balance right. As you have noted, we are in the process of reviewing the wider area of law—by "we", I mean the Scottish Government and stakeholders—and the bill and proposed secondary legislation are the culmination of stage 2 of that review. Looking at the bill in conjunction with certain other measures that could be made by way of secondary legislation, I think that the balance is right, but that will depend on those other measures being introduced—hopefully at around the same time as the legislation is introduced.

The Convener: There is an argument that there should be a sense of urgency; we are in a cost of living crisis, with pressures on people's household incomes, and the Government could be doing more in this area. Although the statutory legislation before us contains provision for a mental health moratorium, the other parts of the bill represent fairly technical and minor adjustments, so it could be seen that the Government is not taking strong enough action.

You have mentioned the regulations, but do we have any confidence that those will be imminent? The argument is that they could happen more quickly, but it looks as though we are dealing with the statutory legislation more quickly and that the areas on which people actually want to see action are the ones that we are waiting on.

Dr MacPherson: The proposed secondary legislation would do things such as increase certain monetary thresholds in the legislation to take account of inflationary pressures. That is my understanding of what is planned or proposed. To some extent, that will help alleviate certain debt and bankruptcy matters.

One of the major difficulties is that this area is incredibly complicated. By its nature, bankruptcy and insolvency law requires difficult policy choices, because there is not enough to go around to please everyone. Therefore, unfortunately, certain parties have to lose out in comparison with others.

The contentious nature of the area means that any proposed reform that goes beyond mere technical amendments can lead to a fair amount of controversy, pushback and conflict. Therefore, to my mind, there are some advantages to making changes such as this and those that are proposed or which might happen through secondary legislation, where they are less likely to be controversial or where they can deal with certain immediate pressures. However, there is also value in taking a wider holistic view, because there are also the negative consequences of adopting a more ad hoc approach or responding to immediate circumstances.

The Convener: Thank you. Katie McLachlan, do you want to comment on the balance between statutory legislation and regulation?

Katie McLachlan (Association of Business Recovery Professionals): Good morning. Thank you for having me along today. As I am representing R3, I will be speaking on its behalf.

Broadly, R3 is very much in support of the bill and the contents thereof, particularly the mental health moratorium. Its stance is that it is a positive step in supporting people who are suffering from mental health and debt problems. However, the regulations that underpin that and the mechanics of how it all works will be important with regard to the balancing of the debtor and creditor interests. The details of how the moratorium will actually work are very important to R3.

The Convener: Thank you.

David Menzies, what are your views? There are arguments around whether the bill lacks a sense of urgency, given that we are in a cost of living crisis. As I have said, many of the responses that we have had are pushing for more than the bill offers. Is that a fair comment?

David Menzies (Institute of Chartered Accountants of Scotland): Good morning, committee, and thank you for the opportunity to give evidence.

Like Alisdair MacPherson, I think that the bill broadly strikes the right balance. We in ICAS have long argued for a fundamental review of bankruptcy law in Scotland, and we are pleased to see that such a review has been committed to as part of the overall three-stage approach.

We know that a fundamental review of bankruptcy law needs to take place; however, it will not be a quick process. As Alisdair has said, a lot of hard thinking will need to be done and controversial decisions might need to be made. I am thinking about, for example, how the family home is dealt with; those sorts of areas are difficult to wrestle with from a policy position. Bankruptcy law impacts not just on bankruptcy law, but potentially on housing policy, health policy and a myriad Government areas, and such a process takes time. However, certain things need to be addressed now.

Legislation that immediately addresses some of those areas—for instance, around the cost of living crisis—has already been put in place. The bill moves to the next step. We have dealt with the real emergency stuff that we needed to deal with as part of the cost of living crisis—and that should hopefully be a temporary position, as unwinding that crisis should not go on for years and years—and the bill considers that interim stage between what is absolutely necessary to urgently address cost of living matters and the longer-term review.

Broadly, the balance of the bill is right. Some technical aspects could still be dealt with. We suggest, for instance, that the Government considers certain amendments at stage 2, particularly around insolvency practitioners who are basically stuck in a case. There will be debtors who are non-co-operative or simply cannot be traced, and the IP cannot be in the office in perpetuity. Such things, which are non-controversial and do not really need to be left to be considered in the third stage of the approach, could be addressed in the bill.

The Convener: I invite Kevin Stewart for a supplementary.

Kevin Stewart: The witnesses seem to agree that the balance in the bill is about right. Mr Menzies, you talked about the necessity for a fundamental review. Often, politicians in this and other places are keen to have everything in the bill—that is, in primary legislation. Would it be better, during the course of that fundamental review, to consider what should be in primary legislation and what should be in regulations? After all, regulations provide a much easier way of changing things in order to take account of, say, the cost of living crisis that we are going through. Given that, should we, in the course of that fundamental review, look at more flexibilities instead of setting things in stone in primary legislation? I turn to Mr Menzies first—the others might like to comment, too.

David Menzies: The terms of reference for stage 3 of the approach are still to be considered and drafted. I agree that it would make sense to look at the underpinning structure of legislation and where the powers should be. This is always a difficult thing to get right as far as the scrutiny of the legislation and powers are concerned, but I broadly agree that part of the terms of reference should be a consideration of what should be contained in primary legislation and what it is appropriate to set out in secondary legislation.

The Convener: I will bring in Mr Mochan, as Katie McLachlan and Alisdair MacPherson have already addressed this subject.

09:45

Barry Mochan (Insolvency Practitioners Association): Thanks for inviting me this morning. I echo the views of Alisdair MacPherson, Katie McLachlan and David Menzies. The IPA broadly supports the bill and where it is going.

Your point, convener, about the urgency of this, given the cost of living crisis, is correct. More and more people will be seeking financial help over the next 12, 18 or 24 months. I am conscious, though, that I would rather have us get this right instead of bringing something in quickly and potentially having to amend it. However, we support the provisions in the bill for a mental health moratorium, as it will assist individuals who really need that help quickly. Again, the IPA broadly supports the bill.

The Convener: With regard to the bill's timescales, there seems to be support for the bill, with many people being largely happy with it as it is. However, if more significant work needs to be done on it, that will take time. You recognise that people are living through a difficult situation; while we wait for the solutions to come, some are having to live through the current situation. Are you confident that, given the timescales involved, people will benefit enough from this? I am taking into account the fact that you want things to be thorough and you want the right kind of legislation, but is there also a recognition of the need for effective change in this area to support people in very difficult situations?

Barry Mochan: I think that there is—I think that the move in Scotland from the six-week to the six-month moratorium has assisted greatly. It gives the chance to sit down and speak to individuals.

As for the length of the timescales, we were discussing that issue just before we came into the meeting. I suppose that you are right: how long is a piece of string? If we can bring the timescales forward and get the bill correct, that will be great. There are aspects of the bill—for example, the issue of the family home—that I think need further discussion, but there might be other provisions that we can move forward with more quickly. I suppose that time will tell.

The Convener: Thank you. I call Colin Smyth.

Colin Smyth (South Scotland) (Lab): Good morning, panel. I will kick off with questions on the mental health moratorium, starting with ones on the mental health moratorium working group's recommendations for eligibility criteria. The group has recommended that only people who are subject to compulsory mental health treatment should be eligible for the moratorium. That is quite a narrow definition—narrower than the criteria in England and Wales, which cover non-compulsory crisis treatment. Do the witnesses have a view on that recommendation by the working group? If you do not agree with it, what do you think the eligibility criteria should be?

Katie McLachlan, you mentioned the moratorium in your opening comments, so do you want to start the ball rolling?

Katie McLachlan: Of course. In Scotland, we are slightly different. As Barry Mochan said, we have a six-month moratorium available already, which offers quite a long period of protection for people.

Eligibility is such a sensitive area and it has to be handled with care, because mental health is such an important topic. Again, though, we have to balance the rights of creditors against rights of debtors, and to make sure that whatever is launched is not open to abuse or misappropriation. It definitely needs to be very carefully considered.

As long as we have the six-month moratorium, people who are not eligible for the mental health moratorium could still benefit from that, so it is not the case that there is nothing there for those people—they still have something to rely on. Certainly, though, it is a contentious area and something to be considered.

Colin Smyth: Do you have a view on whether the criteria that are being recommended by the working group should be narrower?

Katie McLachlan: To be honest, I think that it is probably the right recommendation. The non-mental health moratorium is also available and it offers really good protection. The mental health moratorium should be targeted at people who are in the most severe need of that sort of support.

David Menzies: I will come in on that question. First, can you clarify that you are talking about the mental health moratorium working group, as opposed to one of the stage 2 working groups?

Colin Smyth: Yes, that is right.

David Menzies: There is a difference in approach between those groups. The stage 2 working group that looked at a mental health moratorium recommended a slightly wider scope for the moratorium than the mental health moratorium working group came up with. I can sympathise with both views. It is a really difficult question, and I think that some of it comes down to how the scheme will end up being designed overall.

The working group looked at the mental health moratorium on the basis of the standard moratorium that we currently have in place, which is a six-month period. That six-month period was brought in as part of the temporary cost of living measures that the committee has talked about. I guess that there is a question around whether the period is always going to be six months, or whether it is possible that there will be a review and it will drop back to six weeks, 12 weeks or some other period.

Where the mental health moratorium working group has currently landed is acceptable: it is looking at it in terms of severe mental health crisis. As Katie McLachlan said, anyone else currently has access to the wider moratorium for six months.

I would have concerns if the provision was that narrow in scope and the standard moratorium was potentially a much shorter period. We all know that people with mental illness and overall vulnerabilities do not necessarily have the capacity to deal with debt issues, or to deal with them in a timely manner. That is part of the reason why they end up in debt in the first place.

It is about striking a balance, and how confident you are that the standard moratorium will remain at an acceptable period for people in a less-than-a-crisis situation to be able to access debt advice and work that through, because that may take longer than it normally would.

Colin Smyth: You have strayed into my second question, so I am just going to go for it now. The six-month period was extended from six weeks. Do you think that that should be changed now? Presumably, based on what you are saying, the two are connected, so should the mental health moratorium period be the same as the standard moratorium period? What should that period be? The six-month period has been in place for some time, and a number of respondents to our call for evidence said that the mental health moratorium should be six months, while others said that that was too long. Do you have a view on that?

David Menzies: Again, that is one of those thorny issues that goes back and forth. As Alisdair MacPherson alluded to earlier, there are two sides to every insolvency: there is the debtor who has the debt and the creditors who are owed the money. It is about trying to find the right balance, and it comes down to the same thing with the moratorium. What is the right period, and the right balance between somebody being allowed to try to recover their debt and somebody being able to try to fix it?

The very nature of debt and insolvency is that you are never going to get all your money back—it is about maximising that, in this instance. In some ways, six months is potentially too long, but it is where we are at the moment because the debt advice sector, in particular the free debt advice sector, is backed up, and it is very difficult for people to get appointments.

We can reduce the six-month period, but that would mean more resources going into debt advice. We need to realise that it is not just the free debt advice sector—the insolvency profession, as a commercial entity, still gives free debt advice. Again, some of the messaging from Government, both in Scotland and UK wide, which says that free debt advice from the charity sector is the best advice, is not necessarily conducive to people accessing the advice at the right time.

There needs to be a much more collaborative approach across the debt advice sector, from both the commercial insolvency practitioners and the charities, to simply give debt advice, and the right debt advice at the right time.

Colin Smyth: That is very helpful.

Barry Mochan, you mentioned the six-month period in your previous comments. Do you have a view on what the period should be for the mental health moratorium, and on the eligibility criteria? The working group's recommendation is that it should only apply to those who are subject to compulsory mental health treatment. Is that the right criteria?

Barry Mochan: In all fairness, I would agree with David Menzies, which might skew from the IPA's view. At the time when the period was increased to six months, I was not sure whether that was too long or not. We have a number of individuals who are coming in for advice and help, and it is harder to get the information out of some than others. A lot of people go into the six-month process and will deal with the problem in that period, so they do not actually utilise the full six months.

With regard to dealing with an individual who comes to the door looking for advice and who has mental health issues, there should perhaps be a longer moratorium for them, potentially, to enable them to get to grips with what is going on.

Should the two periods run parallel? I really do not know. You would need to take guidance from somebody who deals with the mental health of individuals on a daily basis to see what they believe would be a good timescale for those individuals to enable them to get to the root of the problem. As David Menzies said, some people may not understand the debt position that they are in due to the circumstances.

I believe that the six-month period is working well just now, but one could argue that it may be slightly too long.

Colin Smyth: Do you have a view on the criteria for the mental health moratorium? The working group recommends that it should apply only to those who are subject to compulsory mental health treatment. Do you think that that is too narrow?

Barry Mochan: My personal view is that it might be too narrow, depending on who comes in and who you are looking to help. However, I think that we need to take guidance on the criteria with regard to what we would increase the scope to. Katie McLachlan spoke about the potential—again, I stress the word "potential"—misuse of the moratorium, how long it would be for and who would access it. Based on that, there is a chance that if we leave the criteria at that, they might be too constrictive, but I think that we would need to discuss it.

Colin Smyth: Alisdair MacPherson, do you have a view on that?

Dr MacPherson: With regard to the standard moratorium time period, I think that, for now, six months is a suitable length. As was mentioned earlier, we are in the midst of a cost of living crisis—there are inflationary pressures and people's household finances are under a lot of pressure.

For now, I think that six months is suitable to address that; it can obviously be revisited later down the line when the economic situation has—I hope—improved somewhat.

With regard to the scope of the proposed mental health moratorium, I can see arguments in both directions. Having a narrow scope gives more certainty—one is referring to existing pieces of legislation, and there is a narrow set of circumstances that are clearly identifiable. However, there are other parties who we may think are worthy of equivalent support who are somehow left out. Of course, for them, as for everyone else, the standard moratorium is available, and it is a lengthy period of time.

If we do not have a narrowly confined definition of who would qualify for the mental health moratorium, it will leave open questions about what exactly constitutes a serious mental illness or condition—

Colin Smyth: At the moment, in England, the criteria are slightly wider than what is proposed here. Is there any suggestion that that does not work?

Dr MacPherson: In England, I think that they are only marginally wider. Essentially, it is mental health crisis care.

One of the existing issues with the legislation is that, on the surface, we do not know exactly what is proposed. We obviously have a bit more detail about that now, but I think that there is going to be a large level of alignment—certainly in what is proposed—with what exists in England.

Section 1(1) of the bill refers to debtors

"who have a mental illness."

On the surface, that suggests that the scope could potentially be very wide. That comes with its own difficulties in definitional terms.

As David Menzies mentioned, and as I mentioned earlier, it is a question of balancing the interests of different parties. One person's creditor is another person's debtor, and it can have a knock-on implication if someone is trying to recover money. If you make the eligibility criteria very broad, there is the potential for misuse.

Of course, we want to ensure that those who are deserving of support actually get it. The Law Society of Scotland very much supports the notion of giving regard to those who are suffering from mental health crisis episodes, and to some extent, what is proposed will address that. However, I can see arguments in both directions. The real focus should be not on particular types of mental health condition, but on what exactly the purpose is. What exactly is the legislation trying to achieve? If it is focusing on those who are receiving some sort of compulsory care, they are obviously incapacitated in such a way that they cannot make decisions and should not be subject to debt enforcement action by creditors, and so on.

That raises questions about others who have certain incapabilities, and whether or not there should be enforcement action against them, but that is possibly a side issue.

Colin Smyth: I am sure that my colleagues will have questions on those issues.

The Convener: Before I bring in Maggie Chapman, I have a point to make. What we are looking at in considering the bill is simply agreeing to the principle of a mental health moratorium. We are not agreeing the detail of it. Some of the correspondents said that it was difficult to give an authoritative view on the bill because they do not know what the scheme will actually look like.

10:00

You have mentioned the breathing space scheme in England and Wales and the working group seems to be heading towards a model that is very similar to that. Why do we not just introduce the breathing space scheme so that we all know what we will be voting on? Are there any problems with that scheme? Alisdair MacPherson, you seem to be familiar with it: are there problems? Are there likely to be any changes to what we have in Scotland? We seem to be holding up progress and I am not sure what the point of that is.

Dr MacPherson: This is a situation in which one jurisdiction is copying from another. The standard breathing space scheme in England and Wales is in some way equivalent to the moratorium that has existed here for a longer period of time. When that moratorium was being introduced in England, the mental health breathing space scheme was also introduced and we are now playing catch-up with that.

You could view that positively and say that we are learning from one another. However, although we are learning lessons from how things are done in England, we need to devise something that is suitable for our circumstances. We have already heard that we have a different length of moratorium period. The introduction of a mental health moratorium here would happen within a different setting and there must be regard to that.

As far as I understand it, the mental health breathing space scheme in England and Wales has not been used as much as was anticipated. I have not heard any particular complaints about it. There is at least one case now dealing with it to some extent. We should definitely have regard to what is happening in England and Wales, but we should devise a solution that is appropriate for circumstances here.

The Convener: David Menzies, do you want to comment before I bring in Maggie Chapman?

David Menzies: The fundamental difference between the mental health breathing space scheme in England and Wales and what the mental health moratorium working group here is looking at is the time difference. In England and Wales, there is a 30-day period that can then be extended by another 30 days. The mental health moratorium working group is also looking at the idea of two stages, but the first stage would, in some ways, be timeless, because it would last as long as the person is in mental health crisis treatment. That seems to me to be a far more sensible approach. It certainly gets round the issue that had to go to court in England and Wales.

This should not be a simple lift-and-shift matter. As Alisdair MacPherson said, we should learn from experiences down south and make some tweaks.

Maggie Chapman (North East Scotland) (Green): Following on from Colin Beattie's question about the mental health moratorium, one question that has come out of some of the responses is about the gradation of levels of protection. There can be an initial freeze of any action, whether for six months or under the mental health moratorium. What is your view? Should there be gradations? David Menzies spoke about the initial period potentially being indefinite. What would that look like in the second period, or further periods?

David Menzies: As I understand it, the mental health moratorium working group has suggested that the second period should be aligned with the standard moratorium. The concept would be that someone could have a mental health moratorium while they are in the crisis period, and could then move into the standard moratorium.

That goes back to the question of how settled we are on that second period being six months, or whether it might be less. If it were to go back to the original moratorium period, which was set out in legislation as six weeks, it would be difficult for people who are still mentally ill but are not in crisis care to access proper debt advice.

The unlimited time period is a way of having a freeze; the second part is about progressing to a decision about how to deal with the situation. That takes us back to the question about having a standard moratorium.

Maggie Chapman: I suppose that there is a balance; if the six-month period changes, we would probably need the flexibility to adapt the mental health moratorium. That raises the question of primary versus secondary legislation.

I know that Brian Whittle wants to come in on the issue of support. The mental health moratorium working group also recommended that applications should be made through a money adviser. What do you think about that in relation to the capacity of advisers and to gatekeeping? There is also a question around the capacity of somebody who is suffering from mental health issues to navigate that process. Dr MacPherson, do you want to kick off with that?

The Convener: Maggie Chapman mentioned the adviser; there is also a recommendation that there should be a form from a mental health professional that should be signed by an adviser. We are talking about capacity, and the recommendations are quite intense in relation to who needs to support the application.

Dr MacPherson: That is right. I see justification for that, because if you receive that separate entitlement on the basis of your status as someone who is receiving crisis treatment, I can see that, in order to uphold the integrity of the system, you may need to have that third-party verification from a mental health professional. Indeed, because of your incapacity, in that scenario, you would ordinarily need someone such as a money adviser to make the application on your behalf, because you would not be in a position to do it yourself.

That comes with consequences for the advice sector, which is already significantly burdened—arguably, it is overburdened—as things stand. I suspect that you may hear evidence from one or more people who work in that sector, and they would be far better placed than I am to say what capacity they have to take on such functions.

There may also be difficulties when someone is receiving crisis treatment and has not had any contact with a money adviser. In that scenario, how will an application be made? That is a potential difficulty. Say someone goes into crisis treatment, but no application for a mental health moratorium is made and a creditor takes action to enforce debts. When it later transpires that that person was in crisis treatment at that point, is that enforcement action unwound somehow, or is there a retrospective effect? Precisely how that would work is a bit unclear at the moment.

Maggie Chapman: What is your recommendation for clearing that up and ensuring that people who do not know that they can get that advice or are not signposted to money advisers can get that help?

Dr MacPherson: That is one of the wider issues. We are focusing on the possibility of a mental health moratorium, and it is right that we pay more attention in this specific context to people with mental health conditions, but, more broadly, a mental health moratorium is obviously not the answer to everything—it is not a panacea. That will often come very late in the process; by that point, people may have incurred lots of debt, possibly in part because of the mental health difficulties that they suffer from.

There should definitely be a wider process of education, perhaps with interventions at an earlier stage, but it is difficult for me to say what the precise details of that should be. Certainly on behalf of the Law Society, it is tricky for me to come up with a formal answer.

Maggie Chapman: Or a clear recommendation?

Dr MacPherson: Yes.

Maggie Chapman: I get that.

Katie McLachlan, I turn to your reflections on capacity issues for the debtor and the system. I call it “gatekeeping”, but perhaps that is not appropriate language.

Katie McLachlan: As everybody has mentioned, it is unfortunate that cost of living crisis debt is such a problem across the country. The free advice sector is very busy with that, so its capacity needs to be considered.

It is useful to reflect on the uptake of the mental health moratorium in England as that has been place for a number of years. Around 2 per cent of the entire moratorium applications in England were mental health moratoriums, so it is a relatively small percentage. That is not to say that the figure will be the same in Scotland, but it should be there or thereabouts; it should not be drastically different. I would not expect the numbers to be huge—certainly not to begin with.

Education will be an important issue. People who are in mental health crisis and experiencing debt probably do not keep up to date with the latest bankruptcy legislation and probably do not know that we are here discussing a mental health moratorium. You would hope that mental health advisers and professionals would be a little more abreast of all that, but that is not to say that every mental health adviser will know that this is an option for people. After all, what you do not know, you cannot benefit from, so it is important that mental health advisers get educated, clued up and know that this is something that they can discuss with their patients, and that they can signpost them to money advisers who can then give them tailored advice. That will ensure that the most people possible can benefit.

Maggie Chapman: I ask David Menzies for his views on those issues. On Katie McLachlan's point about education and awareness, are there things that the commercial insolvency sector needs to do to ensure that it is aware of the processes and that it can highlight them to anyone who might come to it?

David Menzies: First of all, the issue of access and gatekeeping is a tricky one. Fundamentally, you have only two options: a gatekeeping process, which needs some form of application; or, for those in a mental health crisis, an automatic moratorium. I do not know enough about whether that infringes too much on people's human rights. Moreover, it could be that somebody in this situation might not have debt issues, but a mark would still be put against their credit file.

Such issues suggest that an application process is the right route. However, as everyone has said, the top priority for someone in a mental health crisis is not their debt. Therefore, the question is: how do they navigate to the debt adviser system? I do not quite know how you square that circle.

As for the commercial side of things and insolvency practitioners' ability to work with vulnerable people, we put a lot of effort into that. In fact, ICAS recently launched the vulnerable persons toolkit, which is a set of resources and guidance that is available not just to our insolvency practitioners but to our wider accountancy membership to help members identify people with vulnerabilities. Some of that might be to do with mental illness, but there is a whole range of other vulnerabilities.

I think that there is an acute awareness of such vulnerabilities, particularly mental illness. Our sector is taking real steps to help our IPs work with those people so that they access the right advice, understand the advice and access it at the right time.

Maggie Chapman: Barry Mochan, what are your views on the capacity and gatekeeping issues?

Barry Mochan: It is hard to make a recommendation. As David Menzies said, with people who are in crisis, should we make a broad-brush report? Should we automatically include that information, which could impact their credit rating? That would be a worry.

The only other way is through a gatekeeper, but do, say, local citizens advice bureaux, welfare rights organisations and the local free advice sector have the capacity to deal with such things? As Katie McLachlan mentioned, I do not think that we would be talking about an influx of people, but you never know, and what is the capacity for dealing with that?

It is hard to join the dots on the issue. There probably needs to be further discussion on the best approach for the client. Is it best for someone in the mental health profession to take such decisions, or is it best to take the matter back to money advisers and give them the opportunity to be the gatekeepers and to put in people's applications on their behalf?

Maggie Chapman: That was interesting. I will leave it there, convener.

Brian Whittle: Good morning. A couple of things have popped out from Maggie Chapman and Colin Smyth's discussions with the witnesses. The process that leads to debt recovery tends to be rather protracted and results in what you might call an increasing level of urgency in the interaction between creditor and debtor, which, in and of itself, is stressful—perhaps for both parties but certainly for the person in debt.

10:15

There is the idea of a gatekeeper and of how we assess those who are in debt. Should the bill include provisions on how debtors might receive financial advice and at what stage they might receive that? Should we be better at ensuring that debtors understand what advice is available to them? I put that to Barry Mochan.

Barry Mochan: Are you asking about when they should get financial advice?

Brian Whittle: Yes.

Barry Mochan: That is really tricky. They have to reach out for that advice. I am not sure when we would see debtors prior to them requiring a moratorium. Maggie Chapman mentioned education. There might be an issue related to the individuals who provide mental health care. Perhaps the IPA and ICAS could further educate them so that they might be able to spot people with debt problems and signpost them towards help. I am not sure how we would catch people.

The worry is that the application of a moratorium might put a black mark against someone's name. I am not saying that that would have a future effect, but how do we signpost people towards advice?

We have spoken about a six-month moratorium and about individuals requiring time to find out exactly where they are with their debts and what help they need. As an insolvency practitioner, when I put information forward as part of a solution, I ask an individual to provide three months' worth of bank statements and payslips, a council tax letter, information about their creditor level and so on. That is a lot of information that might be harder for someone who is in crisis care to obtain within a certain period. I am not sure how you would get people to financial education more quickly.

Brian Whittle: Many people who find themselves in that situation hunker down and do not look for advice. Is there room in the bill to address that, Katie McLachlan?

Katie McLachlan: There is a real hole in the process, which may be why moratorium uptake rates in England are fairly low. Education is not the top priority for people who are in mental health crisis. They will be burying their heads in the sand. They are probably not even opening creditor letters by that point and probably not addressing demands for payment. If we can put something into legislation that might fill that gap and lead people to a solution, rather than them having to get to it by themselves, that would be all the better.

We are talking about a very small group of people who are receiving crisis treatment and who might be eligible. The more we can do for those who are most at risk the better, because they are not in a position to do that for themselves. We should be educating the people who are dealing with debtors' mental health issues in order to help them get the financial advice that they need. That is really important.

Brian Whittle: I will broaden out the discussion to include legal capacity. We have talked about those who are under compulsory orders and those who do not have legal capacity because of a power of attorney, which can, itself, be quite tricky to obtain. It strikes me that mental health is a sliding scale, but that we have been focusing on things that we can identify in black and white. We can identify those who are under a compulsory order or who are under a power of attorney, but mental health is a sliding scale. How does the bill address that?

Dr MacPherson: That is exactly right—I was seeking to make that point earlier. In terms of the definitional question, you are right—we are essentially adopting an approach in which we can say that particular people fall into a category without any doubt whatsoever, but the further you move along the spectrum, the more difficult it becomes to say where the entitlement to a moratorium should end, because the spectrum is pretty vast.

In answer to the question about advice and education, I suppose that we can look at it in two categories. There is the matter of general financial and debt advice or education for the wider population, so that people have a basic, standard level of knowledge about what they are able to access and what they can do to manage debt. Then, there is the more targeted, bespoke educational advice for someone who is entering into difficult territory when it comes to debt. In an ideal world, we would have a heavy focus on both categories, and a lot of money and resources would be dedicated to that. However, at the moment, the circumstances are such that I perfectly understand that it is very difficult to devote a lot of funding and finance to such education.

It is very tricky to identify the precise point at which targeted advice should be provided or at which you are, essentially, starting to mandate that someone should receive it. Therefore, in practical terms, I am not sure how that would look in the context of the legislation. I appreciate the sentiment but, in practice, it is very difficult to achieve that.

Brian Whittle: David Menzies, I will throw something else into the mix as we try to complicate this as much as we can.

One of the things that concern me about some of the responses that we have had is that we seem to be almost driven to put something in legislation by the fact that the advice sector is stretched. Where is the balance to be struck? I think that we all agree that the best scenario is earlier intervention that prevents people from getting to that position. However, we are discussing the matter as part of a bill, so that is obviously not the case. What is your opinion on how we deal with that in the bill? Should we deal with it in the bill?

David Menzies: First, it is worth reflecting that, when it comes to personal insolvencies in Scotland, the vast majority of the debt is either consumer debt, such as credit cards, bank loans, store cards, or Government or quasi-Government debt, such as His Majesty's Revenue and Customs or local authority and council tax debt. That makes up the bulk of debt in personal insolvency. With regard to the education process, it is about what each of those constituent parts is doing on education and signposting to debt advice. Most of the consumer debt side of things is covered by the Financial Conduct Authority and there is already quite a lot of legislation in that field, which has recently been strengthened by the FCA's consumer duty. In that sector, quite a lot of advice is already given, including early warnings and attempts to resolve the debt position. My concerns are more on the HMRC and local authority side of things. Some work needs to be done on how those bodies look at vulnerable individuals and how they signpost things.

Alongside that, under current legislation, everyone is required to be provided with a debt advice and information pack before an enforcement action is taken. We have long argued that just providing somebody with a leaflet does not help them. Particularly in this day and age, we need to look much more at how people communicate and receive information. Rather than simply giving them a leaflet, we need to look at alternative communication channels.

Lots of things could be done without legislative intervention. My encouragement would be to focus on that rather than simply putting more and more into legislation, which might not achieve what it needs to do.

More widely, for some people, particularly those who are affected by the mental health crisis, the question is whether they will ever get out of their debt situation. Should there just be an automatic debt write-off in some of those situations? Again, that would be based on the adviser's advice. When they look at someone's position, they could just say that the debt is never going to be written off, other than through an insolvency, because there is no prospect of income coming in or assets being realised. Things such as that could be put in legislation; I think that legislation would be required to take those sorts of steps. It is about getting the balance right between what can be done voluntarily in society and what needs legislative provision.

Brian Whittle: Before I get into lender responsibility, I will hand over to you, convener.

The Convener: Kevin Stewart has a supplementary question.

Kevin Stewart: I will come back to Colin Smyth's point as well, because ICAS and the Law Society of Scotland have said that limiting access to the mental health moratorium to people in crisis treatment might be unduly narrow. Mr Smyth mentioned non-statutory crisis treatment. I will ask the panellists from ICAS and the Law Society this question, but we may also wish to pose it to the Minister for Social Care, Mental Wellbeing and Sport. How do Dr MacPherson and Mr Menzies define non-statutory crisis treatment? Could you do so? Would you attempt to do so?

David Menzies: The very short answer is no. We are not experts in that area. I was part of the wider stage 2 working group that looked at the mental health moratorium. We very much recognise that we are not the experts on that. As far as the moratorium working group was concerned, it was convenient to tag that on to well-defined pieces that are in other legislation, but the wider piece is more difficult to define in legislation, and therefore there is a challenge with that. We are certainly not the people to make that definition.

Dr MacPherson: Perhaps unsurprisingly, I concur. As you will appreciate, when the Law Society provides written responses, they are often the product of the views of a number of different representatives. In fact, on this particular topic, we had input not only from the sub-committee that I am part of—the banking, company and insolvency law sub-committee—but from the mental health and disability sub-committee. That sub-committee raised some of the issues that you mention about the scope and spectrum of conditions that should be covered.

Going back to what we discussed earlier, I think that, in part because of the uncertainty that there was on the face of the bill about how wide or narrow the scope would be, there are certainly advantages to tying it into existing definitions. However, as I said, I can see arguments in the other direction as well.

Kevin Stewart: I am not surprised by those answers, which is even more reason why we should go to the Minister for Social Care, Mental Wellbeing and Sport to see whether she could come up with a definition for a non-statutory mental health crisis.

The Convener: I am sorry, but we might discuss that in private session. The issue that we face at the moment is whether the bill should include the principle of a mental health moratorium, but we do not know the detail. Would there be any merit at this stage in writing to the minister? It is unclear whether the Government intends to include anything beyond what is statutory, but we can discuss that when we come to private session.

Murdo Fraser: Good morning, panel. I will move the discussion on a little bit from the mental health moratorium to look at some broader issues that are also addressed in the bill. I will start with you, David Menzies, because you mentioned in passing the issue of allowing the trustee in bankruptcy to be discharged in circumstances where the debtor cannot be found or is unco-operative. Can you say a little more about that issue and why you think that that is an important reform?

David Menzies: Yes. First, it is not about the Accountant in Bankruptcy being the trustee in those situations; it is about the private trustees. Currently, for the trustee who is not the Accountant in Bankruptcy to obtain their discharge, they need to go through a process and administer the case and suchlike. As you correctly say, there are situations where the debtor has simply disappeared off the face of the earth and we are not able to trace them. Alternatively, you can identify where they are, but they are completely unco-operative and will not provide any information.

In those circumstances, under the current legislation, the trustee must remain in place until the debtor obtains a discharge. However, the debtor cannot obtain a discharge if they cannot be traced or are unco-operative. We end up in a situation where the trustee is in place in perpetuity, which comes at a cost because, as a regulator, I still expect the IP to do regular case reviews and attempt to trace the debtor and so on, and there comes a point where that is just futile.

Currently, no avenue exists for that IP to get that discharge, although it has widely been identified and accepted that the trustee should obtain a discharge in those situations and that a safe haven scheme should perhaps be in place, whereby it goes back to the Accountant in Bankruptcy to act as trustee and be the keeper of the case—the Accountant in Bankruptcy is not under the same regulatory expectations as our private trustees, so they can put the case on the shelf and not incur additional costs. It would be sensible to include that point in the bill at this stage in order to address that issue.

10:30

Murdo Fraser: Thanks—that is very helpful. I am seeing nods from the other witnesses—do you agree with that view? Everybody is nodding, so we will take that as a yes.

The second thing that I want to ask about is an issue that Money Advice Scotland raised in its written evidence. There is currently a rule that debtors can access a minimal asset process bankruptcy only once every 10 years. Money Advice Scotland has suggested that that rule should be relaxed. Does anybody have a view on that issue?

David Menzies: That has been a long outstanding debate. Again, it comes back to balancing things. There is an element that we can accept, which is that some people get into debt—indeed, people are seeing more and more that their income is not enough to cover their outgoings and the basic cost of living—and in the current status, with the cost of living crisis, people will get into debt in perpetuity. I can therefore see why the legislation says that we do not want them to continually go into bankruptcy and out the other side and nothing happens with that. There is a safeguard there, too, in that, in certain situations, you need to take some responsibility—you cannot just run up debt willy-nilly and expect it to be written off.

It is important to recognise as well that that rule does not prevent people from accessing bankruptcy; it just means that they go into full bankruptcy—for want of a better word—instead of the minimal asset process bankruptcy. People can still access bankruptcy, but there is a safeguard in place, which is broadly appropriate.

Murdo Fraser: Does anybody have a different view?

Dr MacPherson: I do not have a strong view on that particular point; I can see both sides of the arguments. As David Menzies has said, the standard bankruptcy or sequestration is available for someone who re-encounters debt difficulties following the minimal asset process bankruptcy. It would depend on what the precise justification was for changing that 10-year period and on what it would be changed to. The suggestion is that it would be changed to five years to align with the standard period. Is that right?

Murdo Fraser: I would have to check what Money Advice Scotland has said. It just mentioned the relaxation of the 10-year period.

Dr MacPherson: I have some sympathy for the position. In the circumstances of recent years, it is understandable that people who have gone through a minimal asset process might have found themselves in debt problems once again. I could see the attraction of using that more streamlined procedure again, when people are not at fault in any way for the circumstances in which they find themselves. However, on the basis of what David Menzies has said, I can see that that could be contested and that it might therefore be worth our waiting until stage 3 of the process.

Murdo Fraser: Bearing in mind that we are talking about minor adjustments, is there anything else with regard to bankruptcy reform that is not covered by the bill that it would be helpful for the bill to cover?

Dr MacPherson: There is something that was mentioned in the Law Society of Scotland's response and which I also referred to in the response that I provided along with Professor McKenzie Skene—it might also have been referred to in responses from other bodies. It relates to recall of sequestration—recall of bankruptcy. There is relatively recent case law that provides that, if, in essence, someone is seeking recall on the basis of having paid off their debts in full, that debt would not include interest—statutory interest from the start of sequestration to the point of recall. That has been relatively controversial and perhaps slightly unexpected in some quarters.

Our position would be that, if a change along those lines were to be made in the context of the bill, it would have to be done in a relatively non-controversial way by, to some extent, solidifying that case law but giving some regard to creditors. The problem is that, if the recall comes significantly later than the start of sequestration, creditors could be losing out by not having interest, so they lose the opportunity cost that would come with the charge of that on the relevant debts.

Therefore, one possibility would be to say that, for the first six months of a sequestration, someone can pay their debts in full without interest being charged but that, thereafter, interest would have to be paid in order for the recall to apply. I think that that would achieve quite a nice compromise position that would be in line with the existing case law. I will not go into the precise details further than that, unless you would like me to do so.

The Convener: Further to that, what is the current situation? You said that that has been confused by a recent case?

Dr MacPherson: Yes. The current situation is basically that statutory interest is not chargeable on debt. Therefore, if, at any time after the sequestration has commenced, a debtor seeks to have the sequestration recalled on the basis of having paid their debts in full, interest is not included in that. They do not have to have paid interest on the amount that applied from the commencement of sequestration onwards.

However, at the first instance in the case, I think that Sheriff Holligan said that he realised that that might be particularly unfair to creditors if the sequestration has gone on for a long time. Therefore, in order to give a more concrete answer, we could specify in the legislation that after, let us say, six months, interest would have to be paid in order for the debts to be considered to have been paid off in full and therefore have the sequestration recalled. I think that that would achieve a nice balance between debtors and creditors. Obviously, we want the debtor to have the ability to take themselves out of the process, and preventing that just because they cannot pay interest in the initial period would perhaps be a bit unfair to them. However, if it goes on for a long time, the creditors might start to feel unfairly treated. I do not know whether others have views on that.

Katie McLachlan: As a private trustee, I have dealt with quite a few debtors who have been in a position where there could be a recall after three or four years. It would be great to have some clarity on it, because, as the trustee, our primary duty is to the creditors, to maximise their return. Paying them interest maximises their return, but we have a duty of care to the debtor, and recall for them is probably a better outcome. Therefore, legislation and definitive guidance on what should be done in that situation would be really useful, so that should be looked at.

The Convener: Brian Whittle has a supplementary question.

Brian Whittle: I will follow on from Murdo Fraser's question about what could be in the bill. Dr MacPherson's response leads me back to the issue of those who lack legal capacity, how they are currently treated in law and whether they should be liable for interest and charges on loan payments in such circumstances. Is that something that the bill could deal with?

Dr MacPherson: The interest issue that I just referred to is probably a bit different from the one that you are referring to, because you maybe have in mind the context of a moratorium. I agree that, in the context of a mental health moratorium, there should be no interest or charges on debts. I do not think that the level of debt should increase in that way while someone is going through mental health crisis treatment. There was previously a suggestion that such charges and interest should not apply in relation to a standard moratorium either, but my understanding is that that was rejected by the Scottish Government, because it would add greater complexity to the process. Someone can correct me if I am wrong on that particular point.

I would perhaps have some sympathy for stopping interest and charges in that situation as well, but that argument would be strengthened if the standard moratorium were a shorter period. If it is six months again, we are starting to get into the territory of possible unfairness to creditors in that scenario.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Good morning. I would like to explore a couple of areas. The first is about the arrestee duty of disclosure. The bill would require a person or body that receives an arrestment request to inform the creditor where it is unsuccessful. That will add to the existing information disclosure process for a successful request. A number of respondents raised concerns about the increased burdens and costs on arrestees. I was particularly struck with NatWest, which said that it receives about 70,000 arrestment requests every year, the vast majority of which fail. That is just one business, but if we look across the whole field at all the banks and other institutions that would be involved, the amount of paper that would be flying back and forward would create a burden, not just for the arrestees but possibly also for creditors, who would be receiving all the responses.

I have two questions. First, do you agree with the concerns about the extra burden that will come into the system? Secondly, it has been suggested that requiring arrestees to respond only to proactive requests for information from creditors would be a more proportionate way forward.

I ask Barry Mochan whether he has a comment on that.

Barry Mochan: I will need to pass that to the other guys, on the basis that I was thrown into the deep end only last week and, to be honest, I have not discussed that element with the IPA. I apologise, but I will need to come back to you on that.

Colin Beattie: In that case, we will pass it across to David Menzies.

Barry Mochan: Sorry, David. [*Laughter*.]

David Menzies: I am afraid that I will give a similar answer. That particular area of law is much more legal than insolvency, which is what I specialise in, so, unfortunately, I am not in a position to give any insight into that particular point.

The Convener: I think that we have a note that said that ICAS and the Insolvency Practitioners Association were not going to particularly comment on the diligence reform, so we can maybe focus on Katie McLachlan and Alisdair MacPherson.

Colin Beattie: Let us move on to Katie then.

Katie McLachlan: R3's stance is the same—that area is outwith the scope of its members and specialism, so there is no comment from me either.

The Convener: Alisdair, it is down to you.

Colin Beattie: No pressure here. [*Laughter*.]

Dr MacPherson: Can I perhaps pass that to Murdo Fraser? [*Laughter*.]

Okay—I do have a view on that, on behalf of the Law Society. We support the proposal on the duty of disclosure. If an enforcing creditor has a schedule of arrestment served and has no response, they do not necessarily know whether that is because it has been lost in the system somehow, because there is actually nothing to arrest or because it falls below the relevant protected amount. Therefore, it is helpful to have that information.

I understand the concerns of banks and other bodies that are served with many thousands of schedules of arrestment. In any event, the banks will be doing the search. They will try to identify whether the person holds a bank account, so they are going through that process anyway, and they will have access to the relevant forms. The key thing is to enable the information to be disclosed to enforcing creditors in the least onerous way possible to the banks. If it is done by way of some simple electronic communication, I do not think that that should be too much of an issue beyond the work that they are doing already.

I appreciate that there might be some risk if there is a significant cost to banks as a result of their not taking that upon themselves but, in essence, passing it on to others. On behalf of the Law Society, I support the proposed change, but it is about achieving that in the least onerous way possible to address the concerns that you mention.

10:45

Colin Beattie: Would it add to the burden on creditors? They will receive all these pieces of paper—whether it is done on actual paper or electronically—back from the banks and so on, which will add considerably to their admin.

Dr MacPherson: The enforcing creditor, in essence, wants the information to know how they should proceed and to make decisions. If it is then disclosed to the creditor that the party has no account with that bank, the creditor can go to another bank or seek to enforce in another way. Alternatively, if the creditor finds out that the bank account balance is below the protected amount, they might just decide to write off the debt and not proceed any further, because the person does not have enough assets to pay off the debt.

The Convener: Therefore, if a creditor receives nothing back from the bank, there is just an assumption that there is not enough money but there is no confirmation that that is the situation. Is that how it operates at the moment?

Dr MacPherson: Yes, indeed. The assumption is either that there is not enough money in the account or that the person does not have an account with that particular bank. Of course, this is not just about arrestment in relation to bank accounts, but that is the most common type of property or asset that is arrested.

The creditor will not necessarily know whether something has just been lost somewhere or whether there has been a problem communicating the information. Therefore, the creditor would want to know that information. It will not be a huge amount more paperwork for creditors, because the enforcement process for them would still be the same; it is just that what they will get back in return will be enhanced, because, on the basis of the measure being introduced, in the first instance, they would get information that would give them more details about what has happened in the event that property is not arrested.

Colin Beattie: At the moment, even if the amount in an account was very small, would banks not advise the creditors about the account anyway?

Dr MacPherson: They could do so, but there is not a requirement on them to do so. With regard to the forms and what is required to be reported, the banks would not have to report, if the request was unsuccessful. In fact, they might be reluctant to do so, because that would give a creditor information about their client that they would not be required to give.

Colin Beattie: I will move on to information disclosure orders. The power to make regulations in relation to information disclosure orders is legislated for already in the Bankruptcy and Diligence etc (Scotland) Act 2007. That power has not been utilised, but the Scottish Government is now proposing to take that forward. The intention is that creditors would be able to seek information about a debtor’s assets from third parties. It is argued that that will improve transparency so that creditors can identify who can pay and so forth.

There are recommendations about how information disclosure orders could work in practice, and there would be a requirement for the creditor to use some sort of agent—perhaps a solicitor or sheriff officer. However, the debtor would not be informed of the action, in case they moved their assets, so it would be done in the background. Initially, disclosure orders would cover only private bodies rather than public sector bodies. It seems strange to me that it would not include public sector bodies, because that would seem to be quite a wide area that is not being tapped into. What are your views on including public sector bodies and the appropriateness of implementing that power?

I will give Barry Mochan another chance to come in.

Barry Mochan: I think that I will go back to my previous answer—[*Laughter*.] I apologise again.

David Menzies: It is exactly the same from me, I am afraid. The whole area of diligence is outwith our scope of knowledge.

Colin Beattie: Katie, is there any chance that you can answer that?

Katie McLachlan: Likewise, R3 did not provide a comment on that.

Colin Beattie: Alisdair MacPherson, welcome back. [*Laughter*.]

Dr MacPherson: Thank you. I could see where that one was going.

We support the introduction of information disclosure orders. As you said, they have been sitting on the statute book under the Bankruptcy and Diligence etc (Scotland) Act 2007 for a long time now without being brought into force by way of regulations. I agree, in that I do not quite understand why public bodies should be exempt from the orders. I suspect that there is some reasoning or justification for that but, from our perspective, we support the introduction of information disclosure orders to as wide an extent as possible.

Various safeguards can be put in place with regard to accessing the right type of information. This is all part of a transparency and information-driven approach to diligence, to better enable parties to make accurate decisions and to help the debtor, on one side—through certain types of disclosure as regards things such as the debt advice and information pack—and, on the other side, to help the creditor to enforce debts that are due to them. We support that provision.

Colin Beattie: Transparency might not be so much for the debtor, in this particular case.

Dr MacPherson: I agree. That is why I said that it is always a bit of a balancing act—you try to reach a balance whereby, in some areas, you are focused on giving more information to the debtor to enable them to access the best possible solution, but you also have to focus on enabling the creditor to enforce when it is reasonable for them to do so. This provision would achieve that balance, so we are fully supportive.

The Convener: I have a final question, which is about inhibition. The bill proposes to add inhibition to summary warrants—that they be linked. The Scottish Government plans to lay regulations to add inhibition to the options that are available for enforcement after a summary warrant, and the example that we have been given is around local authorities and council tax debt. Would you welcome inhibition being added to the list of options?

Dr MacPherson: I do not have a particularly strong view on that point. There is justification for enhancing the tools that are available to a creditor when enforcing. As you have noted, a summary warrant is a procedure that local authorities use to enforce debts that are payable, including council tax arrears. Inhibition is a type of diligence that is known as a freeze diligence, which places restrictions on a party’s ability to transfer land and buildings—what is known in Scotland as heritable property. In many cases, the provision might not have much of an impact; if parties do not have that type of asset—if they do not own a house—its application would be quite limited. However, I do not have particularly strong views on that point.

The Convener: That brings us to the end of this morning’s session. I thank all the witnesses for participating in our first evidence-taking session on the bill. If you would like to contact the committee on anything further following this session, please feel free to contact the clerks.

10:52

Meeting continued in private until 11:31.

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