



OFFICIAL REPORT
AITHISG OIFIGEIL

Economy and Fair Work Committee

Wednesday 27 September 2023

Session 6



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ECONOMY AND FAIR WORK COMMITTEE

24th 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:

- Andrew Fraser (Society of Messengers-at-Arms and Sheriff Officers)
- Cheryl Hynd (City of Edinburgh Council)
- Roderick Macpherson (Society of Messengers-at-Arms and Sheriff Officers)
- Elizabeth McCrossan (City of Edinburgh Council)
- James Withers (Independent Review of the Skills Delivery Landscape)

CLERK TO THE COMMITTEE

Anne Peat

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Economy and Fair Work
Committee

Wednesday 27 September 2023

[The Convener opened the meeting at 09:15]

Decision on Taking Business in
Private

The Convener (Claire Baker): Good morning and welcome to the 24th meeting in 2023 of the Economy and Fair Work Committee. Our first item of business this morning is to decide whether to take items 5, 6 and 8 in private. Are members content to take those items in private?

Members indicated agreement.

Bankruptcy and Diligence
(Scotland) Bill: Stage 1

09:15

The Convener: We now move to our next item of business. This is our third evidence session on the Bankruptcy and Diligence (Scotland) Bill. Today, we will hear from creditors. I welcome Andrew Fraser, president, and Roderick Macpherson, honorary secretary, at the Society of Messengers-at-Arms and Sheriff Officers; and Cheryl Hynd, council revenues manager, and Elizabeth McCrossan, senior transactions officer, at the City of Edinburgh Council. Questions will be directed to your organisations, so it would be helpful if you could decide among yourselves who will answer.

I will start. One of the proposals in the bill is to require banks and others who are subject to an arrestment request to provide information about why arrestment has been unsuccessful. We have heard some evidence from banks that that would be too onerous a duty to place on them. If there was a requirement for banks to share such information, would that be helpful? I put that to the City of Edinburgh Council first.

Cheryl Hynd (City of Edinburgh Council): I will respond to that from an efficiency of process point of view. I have listened to some of the evidence that was given at previous committee meetings. At the moment, we do not know whether a customer is with a particular bank. Banks might have an order sent to them regarding a person who is not their customer. If we were aware, when an order has failed, that that was because the person was not their customer, our debt partner could streamline its process. At present, it uses something that is almost like an algorithm to gain knowledge of the local area and of the banks that customers in those areas tend to use. That knowledge is built up over time.

From my point of view, that approach would probably be more efficient because you would be asking the appropriate bank. The other side of the coin is that it would streamline the process if we knew that an arrestment had failed because there were no funds in the bank. When knowledge is built up over time, we only ask the banks that we know those customers are members of, not three or four different banks.

The Convener: Would local authorities tend to put in a lot of requests at the same time? The banks spoke about the volume of work that that would create because they get bulk applications.

Cheryl Hynd: We use a debt partner to do arrestments on our behalf. I spoke about its

knowledge at the start. It would know that customers in a particular part of Scotland, for instance, tend to use a particular bank and that would be the first bank that it would request the moneys from. I do not know whether that answers your question.

The Convener: That is helpful. As a supplementary question to that, is going through a collection agency a successful process? If you are dealing with people who have resources in the bank, is it a useful tool?

Cheryl Hynd: It is. Our debt partner chooses which form of diligence is most appropriate for a particular customer. The levels of earnings in the bank have increased, so that in itself helps to protect the debtor. Knowing that someone does not have the funds would mean that you would not keep asking the same question and would perhaps use a different diligence route to engage with those customers.

To be clear, we undertake a lot of engagement before we pass a case to our debt partner. Early engagement is always the first step for us, and making sure that our citizens have access to assistance, so that we can help them with their debt before it gets to that stage. Passing information to our debt partner is quite far down in our process.

The Convener: I will come to our other witnesses. Do you have any views on what the proposal would result in? Would it lead to additional costs? Do you have any concerns about the proposal?

Roderick Macpherson (Society of Messengers-at-Arms and Sheriff Officers): Thank you for inviting the Society of Messengers-at-Arms and Sheriff Officers. You introduced us as representing creditors, but we do not. We are the officers of court. We have huge experience of creditors, large creditors and party litigants who come to the offices of our members wanting to have documents served or decrees enforced. Some of our members work very closely with councils, such as are represented here, but we do not represent creditors.

The Convener: Apologies for that inaccurate description.

Roderick Macpherson: Thank you.

I had wanted to tell you that I might be one of a small number of people who have given evidence in front of a Scottish parliamentary committee in two different centuries—thank you for inviting us for a very long time—but I discovered by looking at my 25-year diary that I turned up on 11 January 2000. We as a society are very grateful for the involvement that we have had from the very earliest days of the Scottish Parliament.

The Bankruptcy and Diligence etc (Scotland) Act 2007 created a revolution in the law of arrestment. Before then, arrestment was an inchoate diligence; it did not of itself transfer the arrested fund from a debtor to a creditor. However, the work of the Parliament on that legislation created what many of us think was a huge step forward in allowing for the automatic transfer of arrested funds through arrestment.

One of the things that is lacking from the changes that were made in 2007 to the primary statute, the Debtors (Scotland) Act 1997, is that, although arrestees, which are usually banks, have to let the arrester—the creditor—know within three weeks how much has been arrested, they do not have to tell them if nothing has been arrested. Of course, from a creditor's point of view, they want to know what has been the outcome of that particular arrestment. At the moment, an officer of court will tell them that, if they have not heard otherwise within three weeks, nothing has been arrested. I think that many creditors would prefer to be told that nothing has been arrested and to get as much information as the law provides for the arrestee to disclose in those specially privileged circumstances of an arrestment being served lawfully.

Colin Beattie (Midlothian North and Musselburgh) (SNP): The debt advice and information package is a key tool for communication with debtors. Are there ways in which its use could be improved? I put that to Cheryl Hynd first.

Cheryl Hynd: I mentioned early engagement at the start. For us, that is about collaboration among as many agencies as possible, including our advice shop, and about making the website as accessible as possible and arming people with information about what they can do should certain things happen.

Most of our communications, whether via email or letter, have links to those support mechanisms for citizens. Our advice shop—the one that is within the council—and citizens advice bureaux have links to information that we have to support citizens. In addition to the debt advice pack being provided to people, early engagement means that people get access to as much information as possible, including about benefits that they could potentially access or reliefs and exemptions that they are not claiming that they could be due.

The key message that we want to get across is that we should be assisting people before an issue gets to the stage where it becomes overwhelming, and we should be making sure that everybody speaks to each other in order to get the best for citizens.

Colin Beattie: We are looking at where there are gaps in that information flow. Where are the gaps? How could the information flow be improved?

Cheryl Hynd: The gaps could occur where someone is not able to speak to someone. We are talking about early engagement, but maybe people are not in a place to be able to engage. Part of the bill has to do with the mental health moratorium. I guess that the information flow could be improved by talking to other agencies and making sure that, in addition to the particular professional role that they play, they are also signposting folk to the available help in the early stages. To me, it is all about education and making sure that we all have as much information as possible to assist citizens.

Colin Beattie: I want to get in my head what dimensions we are talking about here. How many arrestments do you deal with in a year, roughly?

Cheryl Hynd: I would probably need to get that information directly from our debt partner, but it is a very low number. It did a piece of work for us when the levels changed from £500 and upwards, to see what the implication would be, but arrestment is not the first action that it would go to. In relation to our case load, the percentage of bank arrestments is low.

Colin Beattie: Roderick Macpherson, do you want to comment?

Roderick Macpherson: Perhaps I could suggest that Andy Fraser could.

Andrew Fraser (Society of Messengers-at-Arms and Sheriff Officers): First and foremost, the information that is contained in the debt advice pack must be improved. Although to you or me it is possibly a small leaflet, getting people who are in debt to read it and to make use of the information in it is a challenge in itself.

We would support people receiving the advice packs at the outset of a court action. It is often the case that they only receive it after a decree has been granted and the die has been cast, as it were, and they are possibly not in a good state of mind to deal with it. Having all the information at the start of an action would be much more useful to them.

Colin Beattie: You mentioned that it is not a big booklet but that people have a block against reading it.

Andrew Fraser: Yes.

Colin Beattie: Is there a way past that?

Andrew Fraser: That is above my pay grade. It is my opinion, and the opinion of many officers of court, that the debt advice pack itself has to be improved and has to be more concise.

Colin Beattie: You said “more concise”. You were talking about a fairly modestly sized leaflet a few minutes ago.

Andrew Fraser: It is.

Colin Beattie: How can we make it more concise?

Andrew Fraser: I do not have an answer for you about that but, in the real world, getting people to read something like that is sometimes a challenge.

Colin Beattie: In your experience, that has been a recurring problem.

Andrew Fraser: Yes.

Colin Beattie: That is interesting.

I will move on to something else. The Scottish Government intends to use regulations to introduce information disclosure orders and to add inhibition to the options that are available under a summary warrant. Do you support the introduction of information disclosure orders? If so, how will they improve the diligence landscape for creditors? I will come back to Cheryl Hynd on that one.

Cheryl Hynd: Inhibition is one method of securing funds. In terms of the detail on that, I ask Elizabeth McCrossan to comment. She is one of the technical people in the team and has looked into that in some detail. She also has a law degree. I am very impressed that she knows more about the bill and about inhibition.

09:30

Elizabeth McCrossan (City of Edinburgh Council): I cannot speak to the policy journey behind the bill. What I can speak to is the customer-facing interactions that I have every day.

I know that we have moved on from the discussion about the debt advice and information package, but I will just add something on that. It is only a 16-page pamphlet, but nowhere does it mention how a person would go about applying for a moratorium. It does not alert them to the fact that a moratorium exists currently; that is mentioned only briefly on page 15. The wording of the pamphlet could certainly be improved on.

Putting that aside, as far as obtaining a certificate of resources is concerned, I think that that would be very useful to creditors, although we have some measures in place already when we conduct due diligence before deciding what action to take against a debtor. We have resources such as Registers of Scotland and the credit agency reports that we can access. They are not always very thorough in terms of telling us how much somebody has in their bank account, which might

certainly be useful because that could be relayed to our sheriff officer partners before they even consider doing a bank arrestment, for example. Why go to the cost of conducting a bank arrestment if there is no money in the bank account? If we know that information ahead of time, that could be very useful.

However, I am a little bit concerned about privacy issues. If a creditor or anybody else has the right to ask how much a person has in their bank account, could a person not raise objections about that being a breach of their human rights, their right to privacy and so on?

It is a good idea and it would be useful for creditors, but I do not think debtors would like it very much.

Colin Beattie: Do the sheriff officers have a view?

Roderick Macpherson: The disclosure of information is the biggest improvement possible in the work of the Parliament so far as the effective use of diligence is concerned. Provision for it is set out in part 16 of the 2007 act. It was enacted that there would be a system for the disclosure of information in circumstances in which parties who had gone to court and had obtained their decrees wanted information that would allow them to enforce their decrees or their documents of debt. Since 2007, no system has ever been commenced for the disclosure of information.

I mentioned that we are not the creditors' agents. Officers of court are neutral between the parties, but when a party litigant comes to our office and says, "I have been to court. I have gone through every step in the procedure and the sheriff says I am entitled to be paid this and now you're telling me that, because I do not know where my debtor has a bank account, because the debtor doesn't own a house, because the debtor isn't carrying on business and has no business assets, there's nothing that you can do at the moment to enforce my decree." From that point of view, I can certainly say that there is a great longing for a system of disclosure of information because, in the old days when there were only the clearing banks, when people wanted to carry out a bank arrestment, they would ask the sheriff officer to arrest with the main banks.

There are so many banks now that it is impossible to think that people would pay all those different fees for arresting with different banks. If the debtor does not choose to voluntarily make payment, whether a creditor who has obtained a decree will be successful depends on the quality of their information. Therefore, to have a system of controlled access to information about where bank accounts are maintained would be a fundamental

step for Parliament to take to allow for the precise enforcement of decrees.

Colin Beattie: There is one final issue that I want to raise. What impact will the addition of inhibition to the summary warrant options have? Will it make things better or worse for debtors who own their homes?

Cheryl Hynd: At the moment, we have inhibitions in place, and we remind citizens that they are in place, because they can choose to pay funds at any stage. Sometimes, people do not pay until they leave a home, which might be in sad circumstances because someone has died and that is when the asset is sold. That is a long, protracted period. For me, it is a case of supporting a person to be able to continue to pay for services and so on. It can be a long time between lodging an inhibition and renewing it, but people in that position are reminded annually that they do not need to pay until the asset is sold.

On balance, we know that there will be funds there, but councils need to collect moneys for services. A balance needs to be struck, because if we do not collect funds, we will not be able to provide other services such as bin collections and so on. We have to strike the right balance between appropriate diligence action and collection. Inhibitions serve a purpose, but they are not a catch-all if someone owns their home.

Elizabeth McCrossan: Personally, I am not very happy with the idea of an inhibition being sought simply on the back of a warranted account. I do not have statistics to hand, but I am sure that we have many thousands of accounts that are currently at the warrant stage, which have been passed to sheriff officers for collection. Seeking an inhibition is like a next step forward. It is usually a warrant that is given within the wording of the decree itself that is awarded to the creditor. Our usual practice is that, once we have a decree, we immediately look to obtain an inhibition, but there is no point in doing that if the person does not own any heritable property. There would be a huge cost in allowing our sheriff officers to make that decision if they were charged with trying to find out whether the debtor owned heritable property that an inhibition would have an effect on. I feel that the warrant stage is a little bit too early in the process for that to happen.

An inhibition is quite an advanced type of diligence. We enter that stage only after we have done due diligence. We check things such as the make-up of the household and whether, for example, there are young children in the home. We would not necessarily want to encourage someone to sell their property in order to settle their debt but, with an inhibition in place, doing that acts as a form of security, in a way. If the person is financially able to move to a smaller property, say,

that inhibition would still have effect, because it is a personal diligence that applies to the individual and not to the property that they currently live in. I am quite actively involved in obtaining inhibitions, but I feel that it is a bit too early in the process to seek an inhibition simply on the back of a warrant. There are other interventions that can be made before we get to the stage of seeking an inhibition.

Colin Beattie: Perhaps I can ask the sheriff officers if they have a view.

Andrew Fraser: First, you do not require a specific warrant to serve an inhibition—it can be served in any *ex facie* decree. Inhibitions are not used randomly. Elizabeth McCrossan is quite correct to say that they would not be used in a lot of cases. Many people who owe council tax might be council tenants who do not own any heritable property. However, it is a further way to seek security over a debt. I think that the use of inhibition would be supported across our profession as another option, given how limited our powers are at the moment.

If I may, I would like to come back to the question about information disclosure orders. Roddy Macpherson mentioned the fact that, with the powers that we have at the moment, we have reached a position where there is no longer access to justice for creditors. That has become more and more apparent, given the implementation of the simple procedure rules, wherein more and more party litigants are raising their own court actions. They no longer have a solicitor to guide them and they often do not seek any help from Money Advice Scotland or a citizens advice bureau. They go through the courts and arrive at our doors. We go through the process and help them as much as we can. I can assure you that dealing with somebody who has no idea or perception of legal process is extremely time-consuming. As Roddy Macpherson said, we are the first people to tell them, “Without a bank account or employment details, we can’t recover your debt.”

I ask members to walk a mile in another man’s shoes and put themselves in the position in which they have a decree against somebody. In this country, we have reached a stage where, without information disclosure orders, decrees from our courts are unenforceable because of lack of information. If information disclosure orders are introduced, the next step has to be for HM Revenue and Customs to be accountable when it comes to obtaining people’s employment details. As far as we are aware, there is no other country in Europe where a court decree after a hearing is unenforceable.

Murdo Fraser (Mid Scotland and Fife) (Con): Good morning. I want to ask about other aspects of reform. This is a very narrowly focused bill, so

there are issues that are perhaps not covered by the bill that we have heard raised by other witnesses. Specifically, we have heard calls in relation to minimal asset process bankruptcy. At the moment, individuals can apply for minimal asset process bankruptcy only once every 10 years. Calls have been made for that period to be reduced, perhaps to five years, or for the time limit to be removed altogether. Does anybody have a view on that as a potential addition to the bill? If you have no view, that is absolutely fine.

Roderick Macpherson: Our society has no view on that.

Elizabeth McCrossan: Perhaps I could add my personal point of view on that. I would be concerned about allowing someone to apply for a minimal asset process bankruptcy every five years. I do not mean this condescendingly, but we all know that there are people in the world who have never learned how to deal with their financial affairs. It might be an educational thing or it might be to do with their upbringing or whatever. There are certain people who will apply for a minimal asset process bankruptcy and simply run up new debt. They would be able to run up new debt very quickly to quite a high level within five years, and they could then apply again.

09:45

How many times would they be allowed to do that? For every application that is made, that is debt that is written off. For a local authority that is very reliant on recovering debt income as much as possible, that would be a huge loss when there are other measures that might help, such as encouraging the person to make a payment arrangement. I think that every five years is a bit too—

Murdo Fraser: Thank you. That is very helpful. Are there any other areas of bankruptcy reform, whether within or outwith the bill, that you think should be highlighted? I am sorry—I realise that that is a very open question.

Roderick Macpherson: In our submission, our society has mentioned a very narrow aspect. However, it is a very practical point because, with a bankruptcy action, it is necessary to serve the document on the person personally—at least, under the first deliverance of the accord, only personal service is acceptable. At present, the law provides a very narrow window for the service of a bankruptcy petition—it must be served no more than 14 days before the hearing and no fewer than six days before the hearing. I think that most sheriff officers find that quite an extraordinary position to be in. We can understand that, for such an important appointment as a bankruptcy hearing in court, the person receiving the document should

have plenty of time. Therefore, we can understand there being a minimum period of six days. However, why should there be a requirement that the person is not given too much time? I do not think that there is any other circumstance in which we are in the position of being unable to serve a document until a certain date has arrived.

Our submission mentions the difficulties of covering rural areas and the islands of Scotland and having to arrange a visit that fits within a period of eight days, given that the journey can often be followed by the news that the person is on holiday and will not be back for another week. That makes us suggest to the committee that it might look to widen the period in which it is competent for a bankruptcy petition to be served.

Murdo Fraser: That is a very practical point—thank you for raising it. Do our witnesses from the City of Edinburgh Council have anything to add?

Elizabeth McCrossan: No.

Cheryl Hynd: No.

Murdo Fraser: That is fine.

Colin Smyth (South Scotland) (Lab): Good morning to the panel. Can I raise a number of questions about the mental health moratorium working group? The working group has recommended that only those in compulsory treatment should be able to access a mental health moratorium, which is quite a narrow criterion. It is narrower than the definition in England and Wales. Does any of the panel have a view on that approach that they would like to share with the committee?

The Convener: We will come to the City of Edinburgh Council first. In replying to Mr Smyth's question, could you address how you would deal with a debtor who had mental health problems at the moment?

Cheryl Hynd: There is a moratorium that people can access at the moment, regardless of whether they have mental health issues; it covers everybody. I am aware that the mental health moratorium is narrower and is for a particular group of people. I am not in a position to comment on the criteria, because I am not a mental health professional, but for us, once a decision has been made, it is about the support that is in place for those citizens and our other citizens so that they can access information and make choices. Sorry—I have lost the thread of what you asked there, Colin.

Colin Smyth: Following up on that point, you talk about the standard moratorium that is in place at the moment. That provides a six-month window, which has increased from the six weeks that it was previously. There is a big debate as to what that timeline should be now. Is six months an

appropriate period for the second phase of the mental health moratorium, which our witnesses last week said should be the case? In the work that you do, do you detect that that period of time is sufficient?

Cheryl Hynd: Because I was coming here today, I had a meeting with colleagues from our advice shop to see how often they have recommended a moratorium for our citizens over the past year. The time that they recommend that someone go for a moratorium is when there is diligence action on the horizon, rather than automatically at the beginning. I know that some agencies automatically apply for the moratorium for a citizen, but it is not necessarily the case that they need it at the beginning, so that would probably eat into some of their time for making an appropriate decision on their direction of travel.

Is six months a long enough period of time? Having listened to the evidence at some of the previous committee meetings, I wonder whether, if someone is in a mental health crisis, they are even in a position at that time to be able to listen to the information that is given to them and to then start the timeline. Without statistics to be able to back that up, I am loth to say anecdotally. I think that there needs to be evidence to say, "This is why and here is the access," and lots of other channels need to be looked at to see whether there is a blocker in a particular advice sector or whether it is because they are not able to access appropriate services in the national health service that will get them in a place where they are able to speak about things.

That is a bit of a non-answer, because I think that it needs to have facts around it to allow us to make effective suggestions for people.

Elizabeth McCrossan: I realise that the moratorium that is currently available is designed to serve a particular group of people, who are mostly people who are not in any mental health crisis but who are just unable to deal with their debt. The six-month moratorium gives them a period to consider what statutory debt solutions they might choose to follow, such as entering a debt arrangement scheme or signing a trust deed. That six-month period is to give them time to consider all those options.

The new moratorium is based on a completely different premise. It is for people who are unable mentally to deal with their debt. As we all know, there is a huge range of conditions that could be considered mental illness, from basic anxiety to depression to all-out psychosis. A period of six months to help somebody to deal with those issues may seem rather short because, in my own experience of dealing with mentally ill patients, it can take an awful lot longer than six months to

resolve some of these anxiety issues. Some of them may even last a lifetime.

In England, there is the extra provision of a 30-day breathing space at the end of the moratorium period. To my mind, that would not work, because the initial phase of the moratorium of six months is to help somebody seek medical assistance to get over their mental health issues, if they ever do. The idea of adding on 30 days in England was that, once people have been removed from the moratorium, they will have time to get their financial affairs in order. If you have built up debt over 10 years, for example, you will not be able to get your financial affairs in order in 30 days, so I do not think that that extension is very useful.

It would be much better, in my view, to have people in the background during the moratorium period who can assist with the financial aspects of the person's difficulties while they are receiving treatment. It could be as simple as perhaps increasing powers of attorney. It would be great if somebody could have power of attorney to handle the person's financial affairs. I realise that a person has to have the mental capacity to grant a power of attorney in the first place, but many people will have that capacity if they have not quite reached a severe level of mental distress. The two aspects can then be dealt with at the same time during the moratorium.

I also have a bit of an issue with the compulsory treatment order being a requirement to access the moratorium. I try to put myself in the shoes of a person in this situation: I would perhaps consider it humiliating or insulting. It smacks a little bit of the sentences that are handed out in some criminal cases where people are subject to drug rehabilitation orders, for example. It smacks of a coercive system that may not always be appropriate. Most of our debtors are decent people who are very keen to pay all their bills and pay their council tax. They might just have come across a brief period of instability; perhaps they have had a bereavement in the family or they have been ill. The last thing that that person would want is to be subject to a compulsory treatment order. It smacks of somebody being sectioned and detained in a mental institution for a period. I just have a bit of a problem with that whole concept.

Colin Smyth: Somebody in that circumstance would be in phase 1, which would last as long as the compulsory treatment, but somebody who has not had a compulsory treatment order would have only the six-month period. Is your concern that that six-month period may not be long enough for somebody with a mental health problem to deal with their debt?

Elizabeth McCrossan: That is true. When people are receiving treatment for mental health issues, I believe that it can take an awful lot longer

than six months to resolve those issues. It might even take a lifetime. Perhaps there is an option to extend the moratorium period to allow them to continue with their treatment but only while there is provision in the background, say, for somebody with power of attorney to keep their financial affairs running while they are receiving the treatment.

It comes down to dignity. If I was that person, I would feel ashamed and humiliated if I thought that my debt was left sitting untouched for six months. If the moratorium period was extended, that debt would still be sitting there—it would not be going anywhere. However, if there was somebody else in the background, through the money adviser system perhaps, who could take over the role of making a payment arrangement, for example, or applying for direct deductions from benefit if the person was entitled to benefit, at least the debt would be being addressed. That is all to the benefit of the debtor who is going through this crisis and who needs somebody to be taking care of their financial affairs on their behalf.

10:00

Maggie Chapman (North East Scotland) (Green): Good morning to the panel. Thank you for joining us this morning.

I want to continue Colin Smyth's line of questioning about the mental health moratorium. Earlier, Cheryl Hynd highlighted the importance of early engagement with the debtor and of the people the debtor speaks to being able to signpost them to appropriate information.

Given what we have heard—and Elizabeth McCrossan's comments were helpful—how do we make sure that you have the tools that you need to support the people who are at crisis point, whether it is in the pre-moratorium phase or in the moratorium phase itself? What are you looking for in this legislation to enable you in terms of information, powers or capacity for direct engagement with the debtor and the creditor, which might be the council or might be someone else?

Cheryl Hynd: For me, it is about education, and you cannot put that into a bill. It is about making sure that people have the information and—it might seem small—that we have appropriate processes to efficiently use the resources that we have to support these citizens and that everybody does it in a collaborative, joined-up way.

I talked about early engagement. As a council, we have lots of touch points with our citizens daily. We work closely with our advice shop and we will put a referral through if we need to for one of our citizens. The advice shop will then take them through the appropriate support that is there for

them. We also have a collaborative group with our Citizens Advice Scotland colleagues that makes sure that we do things in a joined-up way. Also, it is a subject that the Institute of Revenues Rating and Valuation, which we are part of, talks about. The Improvement Service is there as well, making sure that all 32 councils talk about it, offer support and do it in a joined-up way.

It is about as many people as possible having conversations. You do not necessarily need to put something in legislation. It is about education and making sure that the information is clear and concise—to go back to Andrew Fraser's point about the debt pack. Also, there are different media. When we are doing training, it could be through a video, because a lot of folk access information in that way rather than having to read it. It is about making sure that folk have access to information in a way that they understand and, if they are not able to do that, that the support is there for them.

Maggie Chapman: Thanks—that is helpful. The mental health moratorium working group has recommended that the six-month moratorium period could kick in after some of the medical treatment for crisis care, but that would involve stopping debt enforcement, freezing interest and stopping creditor contact. How would that affect your current engagement with debtors? What would change in how you are able to interact with them?

Cheryl Hynd: It is about having appropriate systems to record that information. We are not in a place to decide whether someone fits the criteria, but we would be part of the process. I assume that we would receive some form of notification to say that a citizen is experiencing this and that they are in the mental health period. We would then have systems in place that would put on hold any contact with that citizen for a set period.

Maggie Chapman: Thanks. Roderick Macpherson, how would the moratorium, and the timing of it, affect the people you interact with, whether they are in arrears or creditors?

Roderick Macpherson: Our profession is sensitive to and supportive of the work of the Government in looking to create a mental health moratorium. In our submission, we briefly said that you need to create a system that works in practice. It needs to be clear for the officers of court, so that we understand exactly the situations in which people find themselves. It also needs to be equitable among the different stakeholders.

I would make one little point. A person with a mental ill health diagnosis who, from a certain way of looking at what the mental health moratorium should involve, would certainly qualify, may have granted a power of attorney or they might have a

guardian or business advisers who can assist, or they might possess great wealth. In terms of being fair to all the stakeholders, we present this point: if a party has the power of attorney, the attorney's job is to ensure that the assets of that hypothetical person are dealt with as that person would have wished to have them dealt with, and that debts are paid as that person would have wished debts to be paid.

Therefore, if a system were to miscarry to such an extent that it could be said that the debtor has £1 million on deposit at the bank and the creditor happens to be a small tradesperson who has been through court and has a decree for £500 and that creditor is prevented, because of the moratorium, from ever being paid, that would be far from equitable. There are some grey issues to be considered about what is fair between the different stakeholders. However, we are mindful of and appreciate the stress that a person may end up feeling in a debt situation.

We also call to your attention the fact that different stress levels are involved in the different diligences that the law has provided. The most stressful of all would be the execution of an exceptional attachment order, which was made law in 2002 and would involve, if necessary, the forcing open of a dwelling house and the officer of court going in and valuing and removing assets from the house. These procedures are so rare that I can say that, in all the time since 2002, I have never carried through an exceptional attachment order—they really are exceptional. Nevertheless, the fact is that, if someone is anxious about what might happen if sheriff officers come to call—this is all part of the reason for having the mental health moratorium—the exceptional attachment order is definitely at one extreme on the spectrum of intrusiveness.

However, I ask you to consider the effect of the bank arrestment. It involves no visit to the person's house; rather, it involves a visit by the sheriff officer to the bank and a letter from the bank to the person, reporting that an arrestment has been carried out and that a certain sum of money has been attached. You know, of course, that Parliament has set a level of deductions that can be taken: there needs to be a protected minimum balance of £1,000 in a bank account that is not being operated for business purposes.

In my extreme scenario of the debtor with mental health issues who has £1 million in the bank, the act of an arrestment to allow the tradesperson to be paid the £500 out of that sum on deposit is on a completely different level of stress from the prospect of a sheriff officer coming with the power of entry and going into a house in the exceptional circumstances provided by the law since 2002 for exceptional attachment orders. To

be fair to all the stakeholders, I am sure the committee will bear this in mind.

Maggie Chapman: Thank you; that is useful. You started your comments by saying that the system has to work in practice. If we were to have gradations of levels of fairness within the mental health moratorium, it might become unwieldy. I am also mindful of those extremely hard cases not necessarily being a baseline for how we make our laws.

I have one final question around that process of interaction between money advisers and debtors and creditors, which might best be answered by Cheryl Hynd or Elizabeth McCrossan. Will the level of debt repayment necessarily change as a consequence of the mental health moratorium delaying payments? Will that be the consequence?

Cheryl Hynd: The level of engagement will not change, because, at the moment, we work effectively with our citizens, in my opinion and also in our advice shop's opinion. Taking a joined-up approach and making sure that people, regardless of what stage they are at, have access to information is the key. It would not delay anything, because people are supported effectively at the moment. There are early-warning signs before someone's debt reaches a certain point, so there will have been lots of interactions with us and they will have received support, possibly from key workers.

Brian Whittle (South Scotland) (Con): Good morning. Thank you for being here. I have been listening intently to the answers that you have given to my colleagues. I want to ask about the mental health moratorium working group's recommendation that a mental health moratorium would be applied for via a money adviser.

It struck me that what we do not talk about is the creditor, and, in certain circumstances, the creditor may be the one who is perhaps being hard done by. In the scenario that Mr Macpherson set out, about somebody sitting with £1 million in the bank and a tradesperson looking for £500, which happens often, it strikes me that it is hugely unlikely that that person would seek a money adviser. I am not quite sure that that scenario would arise.

My concern is around the fact that the moratorium has to be applied for through a money adviser. Does the money adviser sector have the capacity to deal with that? Do the advisers have the necessary skill set? Are they trained with the ability to recognise people in a poor mental health situation and to access mental health services?

We are making laws and regulations based on ideal situations, and this is far from an ideal

situation. Cheryl Hynd, in practical terms, does the sector have that capacity?

Cheryl Hynd: Having spoken to my colleague yesterday, I can say that the issue is whether the staff have the experience from a professional point of view to identify set criteria for the moratorium. That group of staff would need to be comfortable with their skill set and their training if they were to be able to make appropriate decisions and effectively assist these citizens. In my opinion, it would be a mental health professional who would decide whether a given person met the criteria and say where to go from there. Not every person in a mental health crisis has debt. I suggest that the situation would be dealt with on a case-by-case basis.

10:15

I asked my colleague yesterday how many referrals she had made in the last year for the normal moratorium—that would include folks who are potentially suffering a mental health crisis. She said that the number was fewer than 10. I know that, in evidence that you heard in your meeting of 13 September, a colleague mentioned that, in England, the figure for mental health moratorium applications was 2 per cent of the entire moratorium applications.

I cannot comment on whether the capacity exists, because that depends on the size of the case load. The issue is mainly around the training that is required to ensure that they are in a position to identify those citizens as meeting those criteria. However, at the moment, everyone receives assistance, regardless of their mental health.

Brian Whittle: Thank you; that is helpful. My concern is that mental health is on such a sliding scale. We have a significant rise in poor mental health. In my experience, people with poor mental health can be good at hiding it. People go to college or university for three or four years to be able to recognise people with poor mental health. My concern is that we are saying that money advisers will be charged with recognising that—that is the point that I am trying to push here. Should they have the ability to call in mental health experts? Where do we sit with comfort on that particular issue?

The Convener: I think that the proposal is that someone would have to be in receipt of treatment. That is why the choice is whether to restrict access to the moratorium, because of the difficulty of defining who should get it.

Roderick Macpherson, do you want to add anything?

Roderick Macpherson: Briefly, Mr Whittle is right about my example of a person with £1 million in the bank—that is an extravagant figure to mention. However, I would think that people with substantial amounts on deposit would still look for a money adviser, particularly when the money is spoken for—for example, when it has perhaps been earmarked for dealing with funding for a care home. People with a largish amount on deposit are still mindful of the money running out in all sorts of situations.

Getting back to the previously mentioned example of the decree granted for a payment of £500, we need to think about what is equitable if the consequence of there being a mental health moratorium is that it is impossible to proceed with asking for that £500 to be paid.

Kevin Stewart (Aberdeen Central) (SNP): Thank you. I will be brief, convener. Ms Hynd and Ms McCrossan, I am pleased to hear you use the term “citizens” rather than “customers” because it annoys me when councils refer to citizens as customers.

My question is about front-line staff, who are immensely important in terms of picking up difficulties. Are your front-line staff in Edinburgh trauma informed? Have they had trauma-informed practice training? That can often be immensely useful for picking up mental health difficulties that folks may have.

Cheryl Hynd: It is certainly one of the tools in our box. We have an extensive training programme to enable our staff to recognise issues, regardless of whether the point of contact is face to face or on the phone. For example, our staff undergo training on Alzheimer’s. We have an annual training programme that gets added to, depending on the feedback: we may feel that we are not getting there on a particular aspect or something new may come through telling us to support our citizens more effectively. One size does not fit all. You have to use different skill sets, depending on whether the contact is front facing or over the phone. Yes, we take that forward as part of our training.

The Convener: Brian Whittle, did you have another brief question?

Brian Whittle: Yes. I have a quick one, if I could. The financial memorandum to the bill argues that there will be no significant costs to local authorities as a result of a mental health moratorium. I can see hidden costs there. I wonder what your consideration is of the bill’s potential cost to councils.

Cheryl Hynd: From a council point of view, being able to effectively collect and spend funds is key. As I said previously, there needs to be a balance between collection and taking into

account individuals’ circumstances and their ability to pay.

The hidden costs, I guess, are unknown at this time. Perhaps this is my lack of knowledge on the state or the maturity of this—those costs could start to unravel. Budget-wise, the council needs to be mindful that we are spending public funds, so we have to consider what the impact would be of supporting citizens effectively and delivering the proposals for them. I cannot really comment on what potential hidden costs could be. Sorry, I cannot answer that.

The Convener: Thank you. Murdo Fraser mentioned minimal asset process bankruptcy and the reduction in the time limit for that as another policy area we may want to explore. Another area that has been raised with the committee is bank arrestments. The protected balance for bank arrestments went up to £1,000. It is proposed that the protected balance for wage arrestments should also go up to £1,000. Does Edinburgh want to comment on the impact that the changes to the bank arrestment made and whether, if there is a case that wage arrestments should be increased to £1,000 you would support that?

Cheryl Hynd: I do not have an opinion on that one.

Elizabeth McCrossan: The sheriff officers use a schedule to determine how much can be taken from someone’s earnings based on their earning level. I do not have the figures to hand, but I am sure that consideration could be given to what that person’s income supports. Does it support only them? Does it support their household or their family? Do they have young children? I do not know whether there is room there for flexibility in how much is arrested or whether they have to stick strictly to the figures that are on the schedule. I am not quite sure who produces that schedule, but it is based on a certain percentage of earnings.

The Convener: I do not know whether the sheriff officers have a view on that. I understand that around £550 is protected for wages arrestment. For banks, it is £1,000.

Andrew Fraser: It is certainly £1,000 for banks. Although that was put forward and it is a nice round figure, I certainly have not seen any statistical evidence to say that that is the correct figure. It may well be the correct figure but, to our knowledge, no statistical evidence supports that £1,000 figure and, therefore, whether it should be the same for earnings arrestment. Is it the right figure? Who knows? Certainly, it seemed to run through that £1,000 was accepted.

Talking about whether earnings arrestments can be varied is complicating matters. You can say, “Yes, I am a married man and I support two or three children and a wife and a house and,

therefore, I should have £X allowed to take home in my pay and only a smaller amount arrested.” What happens if you are not married but you support kids outwith your family home? What happens if both of you work, or if you work and your partner, wife or husband has a larger income? Rather than dictating and trying to work out how to vary an earnings arrestment, there certainly has to be one figure. That is the only workable answer in that respect. Whether that should be £1,000 is an enormous debate that was not properly had at the time that the bank arrestment was changed.

The Convener: Thank you very much to the witnesses. I will briefly suspend the meeting while we change over the panel.

10:25

Meeting suspended.

10:31

On resuming—

Skills Delivery Landscape

The Convener: Our next item of business is an evidence session on the independent review of the skills delivery landscape report by James Withers. I welcome James Withers to the committee. I would be grateful if members and the witness could be as concise as possible with questions and answers.

The report was published in June. How do you feel about the Government’s response to the report and will you update us on whether there were any discussions with the Government over the summer about implementation?

James Withers (Independent Review of the Skills Delivery Landscape): Sure, okay. Good morning, everyone. Thanks, convener, for the invitation.

The report was published back in May. I met the Minister for Higher and Further Education; and Minister for Veterans last week, to get an update as to where things are. I characterise my view of where things are by saying that I have been pretty heartened by the response. There have been some initial moves around commitments to a single funding body and the future of skills planning. From my perspective, it was quite good to hear that before the recess, so that there was not a vacuum over the summer.

My sense is that the Scottish Government ministers are taking their time to consider all the implications of what I have set out in the report. I am conscious that I have landed them with a significant reform job. I made some criticisms of the skills system as it stands, and its complexity means that the reform itself will be complex.

I will keep my answer concise. I felt that reforms were needed in delivery elements—big structural reforms in how the whole system is set up. More than that, however, we need cultural reforms in how we think about a learning system as a whole. We must try to move beyond what I concluded was a chasm—a false divide—existing between education on the one hand and vocation on the other. The reform job is significant and will take a few years. My gut feeling is that the response has been heartening in terms of support for the direction of travel, but it will take some time to work through the detail.

The Convener: Thank you. I recognise that the report made a point of saying that it is not a rear-view mirror—it is not an appraisal of past performance—but you mentioned significant critiques of the system and a real need for cultural reform and big structural reform. Are those

reforms overdue? Has there been a lack of direction and leadership from the Government or other agencies? It is a critical report and the structural reforms that are outlined are fairly significant. Are those overdue? Has there been a lack of attention from the Government in those areas?

James Withers: The review was evidence-led. I have had 15 or 20 years' experience of the skills system, but through the fairly narrow lens of a business and an employer. It became clear to me when starting the work how complex and broad the system is and how complex the customer base is. Among the hundreds of people I interacted with during the review, I did not meet a single person, either with delivery responsibilities within the system or as a customer of the system, who felt that it was working optimally.

Given the scale of economic transformation that is coming to Scotland—and, I suppose, the world—in terms of the race to net zero, digitalisation, automation and the impact of artificial intelligence, even if the system were working optimally, I do not believe that it would be fit for the future. There has been a lack of leadership from the Government and the system has been allowed to evolve. Systems evolve naturally, but they do not reform themselves.

There is no clear description of what “good” looks like for the system. When I started the review, my first question was whether, if we were going to build a system for 10 years' time, we had agreed on what “good” looks like. In reality, there were many different definitions, depending on what part of the skills system you were in.

There has been too passive an approach by the Government over the years to allow the system to reform. It needs much clearer leadership and a much clearer vision if all parts of the system are going to work collectively. They are not doing that, in my view. They all work within their individual areas and they do not view themselves collaboratively as working as a single system.

As a final point, there is a terrific amount of good in the system. I met none but passionate individuals who were keen to make a difference in skills delivery. However, the way in which the system is structured and set up has embedded fragmentation.

Colin Beattie: You note that setting out how to implement your recommendations was beyond the scope of the review. Nonetheless, you have been immersed in and have a good in-depth knowledge of the system. What is the biggest single barrier to successfully realising the vision for Scotland's skills system that you have outlined?

James Withers: There is not a single agreed vision or definition of success for the system.

There is no north star that everyone is pointed towards. Those involved in colleges and universities, or those involved in the delivery of apprenticeships and training, will have different views of success. Even strategic guidance letters—that goes to Government—are focused on individual agencies and what they are expected to deliver. That makes sense, but it does not treat the agencies as though they are part of a coherent system.

Saying that implementation was beyond my remit sounds like a little bit of a cop-out, but I took a whole-system view. My concern was that I could see, from previous attempts to reform other parts of the public sector, that it is easy to go down rabbit holes of short-term efficiencies and head counts. My view was that I needed to step back and look at the system as a whole and think about what it should try to deliver for the customer base. The downside of that approach is that it does not get into the nitty-gritty or the practicality of how you move functions between one part of the public sector and another.

To your question, a clear definition of success is critical. For me, the system has to consider itself as a single learning system, not a system that is built around a huge fork in the road where you go down either the education and learning route or the vocation and skills route, because that is leaving people behind.

Colin Beattie: You say that there is no single barrier to the realisation of the vision, but that it might be different for component parts. If that is so and if the vision is different for the component parts, will that not lead to fragmentation? There should be one vision. The barriers should be fairly self-evident within that. How do you avoid the fragmentation that comes with having your universities here and your Skills Development Scotland there and so on? How do you see that coming together?

James Withers: I suppose that this is where the structural reform comes in. I saw five clear moving parts to that. As things stand, we have funding split across two different agencies. We have qualifications split across at least two different agencies with others feeding into that. We have university and college qualification development set up entirely separately from our apprenticeship framework. It is not a surprise to me that apprenticeships remain distinct from the core learning system. They are over there, shoved into a separate agency with separate annualised uncertain budgets, caps and numbers. They are not embedded in the heart of the system.

It is my view that there should be a single funding agency covering all post-16 learning. There should be a single qualifications body—a new qualifications body—that should take a view

beyond what happens at schools, into apprenticeship development and other vocational training.

Then enterprise agencies need to take a crystal-clear lead on business support. At the moment, if you are a business looking at workforce development, you might go to your local enterprise agency or Jobcentre. You might go to a local authority. You might go to SDS. Having clarity on what different agencies have responsibility for across the entire system is critical.

The system is incredibly complex and I heard a lot of evidence from people bewildered by the complexity. I was not inherently concerned about complexity. The system needs to be complex because the customer base is incredibly complex with people of different ages, aspirations, backgrounds and barriers and from different parts of the country. The issue is not complexity. It is a lack of clarity and confusion about who is doing what, even within the system itself. I did not meet anyone within the skills system who had an overview of every moving part.

Colin Beattie: To bring you back to the original question, what barriers are there to realising the changes?

James Withers: The barriers to realising the changes, aside from being clear on the vision that we are trying to achieve, are probably similar to other elements of public sector reform. It needs time and tolerance. I am not entirely sure those two things are offered often in public sector reform because of the desire to see benefits quickly. The benefits of this will not be seen particularly quickly. They will be longer-term. The lack of short-term wins and benefits will be seized upon by those in the system who are opposed to change. That is a critical barrier and it will require a strong ministerial and political stomach and, hopefully, cross-party support to drive it through.

I see the barrier as political rather than a lack of ability to build a system. That can be done. Other countries have systems that work in different ways. I did not see anything in place elsewhere for Scotland to lift, but I have no doubt that we have the building blocks to build a skills system that will be a competitive advantage for Scotland. The barriers are most likely to be similar to those in other areas of public sector reform.

Maggie Chapman: Good morning, James. Thanks for being here this morning and also for all the work that has gone into this report.

I want to pick up on your points about the possible complexities of our future economy. You mentioned net zero, artificial intelligence, digitisation and all that. As you have outlined, one of the challenges is that nobody has an overview of all the moving parts.

So many different streams and possibilities are coming into the net zero skills and training space. I heard what you said to Colin Beattie about how implementation is not your game, but how can we ensure that we get an implementation that aligns? As you were speaking, I was reminded in some ways of the work of Mariana Mazzucato and the challenge-based and mission-based, rather than Government-department-based, approach. How can we move into that overall systems-based approach that takes account of the different ages, demographics and geographies in the net zero space at the moment? What do we need to look at?

James Withers: There are some real challenges around the net zero space. Almost every day I was involved in this, I heard reference multiple times to “green skills”. You then ask what these green skills are, and there is a gap. There is a real need to understand what we are talking about in that sense.

We could have a good go at it but, because of the scale of the change that is coming, no one can predict with real accuracy what our economy and society will look like in 10 years. We therefore need to focus on a workforce that is agile. Whether they are called microcredentials, metaskills or whatever the jargon might be, the ability to build in the core building-block skills of problem-solving, communication and innovation, will be critical.

I predict that we will have multiple different types of jobs that will require to be filled by multiple different types of people. My concern about the skills system at the moment is that there is something of a war going on between those who advocate for full-time education—the so-called golden pathway to university—and those who ask why we warehouse people in years of endless university education when we need to knock them into the workplace as soon as possible. In reality, we will need both.

10:45

However, the skills system is set up in a way that agencies advocate for those different parts. I met them all and they could all make a compelling case for why we should take funding from one part to and give it to another. I could have taken an easy step and said, “We need more money for apprenticeships”, but if you move money from one part of a fragmented system to another, you are still left with a fragmented system.

A difficult onus that I have put on the Government is the need for better prioritisation. Scotland probably needs to set two, three or four national priorities for skills development. We should ask all regions to respond to that. I have

copped out by not naming those priorities but ministerial, political and parliamentary leadership should come in to identify them and there will be judgment calls to be made on that. Beyond those top two or three priorities, the regions and local areas need to be released so that they can crack on, and they should be given greater autonomy and control over funding to determine the potential priorities for their areas beyond the bigger national priorities.

Maggie Chapman: Can I unpick that a little bit and ask you to name what might be a priority area? Is there a danger of replicating the same kind of compartmentalisation and silo effect that currently exists by doing exactly that and saying “You over here can do this. You over there can do that”, when we need them to talk to each other? We need to break down all those silos.

We see it in macroeconomic structures such as the European Union, where specialisations of economic activity led to weaknesses. How do we ensure that we do not reproduce that in the skills space, net zero, AI or whatever it is, in Scotland more generally?

James Withers: It is a risk. Most people support prioritisation until they realise they are not a priority or they pick the wrong priority; that is absolutely a risk.

There is a tension within the system around what should be done nationally and what should be done regionally. I am sure that that is true across a number of areas of public sector delivery. Scotland will have some competitive advantages, opportunities or distinct workforce challenges that will require a national approach, and the execution of that national approach might be tweaked slightly differently in regional areas.

I will take the college sector as an example. I have to say that I was blown away by it. I had an outdated view of the college sector and, until I did this, I had not spent much time inside our colleges. They are a phenomenal asset and yet they are so often constrained. The national agency will need permission to determine whether it can shift some apprenticeship places from one framework to another. Those places are often rooted in communities and connected to businesses and schools. It strikes me that if these institutions are there, receiving not far short of £1 billion a year, we can trust them to determine some of the priorities beneath the big national big-ticket items.

Maggie Chapman: Okay. I have a quick final point on your point. The definitions of green skills and low-carbon or net-zero jobs have been a frustration for many of us. They are not necessarily just in construction or energy or those kinds of industries. We can talk about care work and the more vocational elements that you

highlighted. Is that an opportunity for us to bring together the golden pathway that you describe, in a way?

James Withers: Yes. There is a real need for more work-based learning opportunities from as early an age as possible. My remit was not to look into schools but I felt that I could not do the review without looking at careers services in schools and how foundation apprenticeships work. At times, I worked fairly closely with Louise Hayward, who is also doing a review of qualifications.

It struck me that I did not see a distinct divide between vocation and education. I will take a graduate apprenticeship—a poor name that does not describe what it is—or a degree apprenticeship, as they call them south of the border, which is a better name for it, as a classic example. You bring the worlds of work and tertiary education together through a single fantastic vehicle. The fact that universities down south will do more in a single year than all Scotland combined suggests that we have greater potential in that area. That is an example of how you can bring the two worlds together and not see them as somehow separate.

Brian Whittle: To follow on from Maggie Chapman talking about the green economy, I will also throw in the blue economy, if you do not mind. We all recognise the massive opportunity in skills development for the blue economy in Scotland, but I am concerned that we are not weaving those skills and that potential for our pupils into our schools. For example, the construction industry needs an extra 22,500 tradespeople and engineers by 2028 if we are to hit the Government’s 2030 targets. In reality, that will not happen.

I believe that, when we talk about green skills, we are speaking to a lot of people who think we are talking about people planting trees rather than software engineers and what not.

I am also pleased to hear you talk about the further education sector in the way that you do, but our FE sector has unfilled apprenticeship places and our engineering companies are screaming for engineers. We do not bring the two together. That is where I am going. Did you look at how we can weave future needs into our education system at the earliest possible opportunity?

James Withers: Yes. It is a critical area and it is where I saw the potential to embed a truly national careers service.

It was interesting that, when I spoke to colleges, some were overwhelmed with demand from people who want to go into the beauty industry or hairdressing. When I met the commission on land-based learning, I found that it did not have that same demand from people who want to go into

forestry. There is a whole piece around that. You cannot be what you cannot see. Everyone goes to the hairdresser and people see them as real, but not everyone has experience of an engineering firm or jobs.

I recommended that SDS should lose a significant number of its functions while recasting itself as that careers agency, which is not the same as it doing everything, but it provides momentum to embed it into communities and local areas. That means providing greater opportunity to see the career and economic opportunities for individuals. There is a gap between the career options that people see when they are at school and the opportunities that exist in the workplace. If they could see that, it is more likely that they will eventually be that. That disconnect is challenging.

My final point is that this whole area around skills has felt a little bit like death by review. There has been the Muir report, and Graham Smith did brilliant work on careers. I have done my review, and what Louise Hayward has looked at on the future of the qualification curriculum is interesting. Beyond individual subject highers and other qualifications, there could be a general Scottish diploma or a baccalaureate for Scotland. The third part, which is work-based or community-based learning, would provide opportunities for raising greater awareness of the future in engineering and green jobs as well as blue economy jobs. That disconnect exists.

I spoke to school pupils who still viewed the careers service as the place where they are sent if they are failing academically. That is where our system is still failing. An agency that has our future skills needs as an arrow focus stands more chance of getting that right, as challenging as it is.

Brian Whittle: I am at a loss with the idea of how a national framework devolves down into the local economy. The obvious one is the transition from oil and gas to a green economy, although I imagine that that will be predominantly in the north-east, where the decisions on that will be made.

On Monday, I was with a group that works with children who were disenfranchised from school but who now go to school two days a week and go to the group three days a week. It is a complex landscape out there. How do we create a national framework that allows all that good work still to happen?

James Withers: I have talked about national prioritisation and so I will not mention that again. I have suggested that the function of skills planning sits within the Scottish Government and comes out of a mix of the Scottish Funding Council and Skills Development Scotland. That requires a consistent regional template and approach to skills planning,

not to have regional skills planning done by the Government. Scotland is not big enough to justify having lots of different frameworks for how we do skills planning.

The question is about where we do that skills planning, and that is not easy to answer. My instinct says that our eight city region areas might be the vehicles for that, but they need to get a proper representation of people around the table. I heard from some colleges that were not around the table, and small and medium-sized enterprises also often feel that they are not at the table. However, if they are the right geographic areas, city regions are the best model that I have seen yet for that skills planning. If we can trust those partnerships—which in many cases do not have a constitutional body as such but are collaborations of people—with steering billions of pounds of capital investment, we can trust them with the skills planning that sits alongside that.

Colin Smyth: Good morning, James. I am interested in the boundaries of city region deals, given that my area, the Borders, is in two, including in one in the north of England, but I will not go there at the moment.

I want to highlight the issue that you raise about the cluttered landscape where several organisations often have overlapping responsibilities and there is no one-stop shop for the customer base. You do not suggest decluttering the number of players in the landscape. Instead, you recommend building collaboration into the design of the bodies. How do we do that, given the fact that we have been here before with the enterprise and skills review in 2016 and interagency competition is probably worse now than it was before that review?

James Withers: You are right. I suppose that there was no bonfire of agencies within my review. It was about getting much greater clarity into their roles and so, in a sense, giving Skills Development Scotland a much narrower, tighter, clearer focus on careers. It does brilliant work in delivering that at the moment, but I felt that there was an inherent conflict in Skills Development Scotland's ability to deliver impartial skills advice while at the same time being the advocate and delivery agent for apprenticeships, which are only one part of the skills system. To provide proper impartial advice on skills to people of all ages, you need to have no skin in the game on any part of that particular system.

In a sense, it might be naive to call for that collaboration between the agencies to just happen, but I come back to my point about being crystal clear about what the whole system is trying to achieve and then getting people in their lanes. Funding should be dealt with by one body, qualifications by another and careers by another,

while business support is led by one body and skills planning is led by yet another. That requires an inherent amount of collaboration and I am not sure that amalgamating all that into a giant agency would necessarily deliver that collaboration. It is a cultural point more than a structural point about ministers being robust in holding agencies to account for how they deliver that skills system.

My review took it as read that the three education institutions that the Muir report had recommended were established were set up and that ministers had announced that. If I had gone for real amalgamation, I would probably have had to stretch well into areas that reviews had covered previously. My view was that, if we could achieve the prize of clarity first, that would address a huge number of the issues with the current skills system. That is not to say that, in 10 years, someone's door will be chapped and we will be asked whether we should amalgamate agencies if their roles are clearer.

Colin Smyth: There will still be agencies that will effectively have overlapping responsibilities. That is the nature of South of Scotland Enterprise. Even local authorities will still have an element of overlapping responsibilities.

How far do we need to go? Do we need to change those responsibilities? Can we put in place any other mechanism to ensure that somebody at least takes the lead? Often the experience in regional economic partnerships, for example, is that several organisations have similar responsibilities but nobody takes a lead. What mechanism do we need to put in place to make sure that somebody is delivering and taking the lead on that when they have that overlapping responsibility? Some of those responsibilities are quite general and they are not often specific.

11:00

James Withers: The Government is responsible for ensuring that skills planning happens. The population of a regional skills plan is devolved down to a city region, but the prize of greater autonomy over funding and establishing educational provision in an area are won by demonstrating a clear regional skills plan and, crucially, a clear delivery plan. That plan sets who will do what and when. Having clarity on who does what would win you the prize of greater autonomy over funding, which largely does not exist at the moment. My hope is that that acts as a catalyst to provide greater clarity as to who does what.

However, I completely accept that there will be overlapping responsibilities between what an enterprise agency does and what a local authority does. My point was that the enterprise agencies should be the first port of call for workforce

development in business because SDS has that responsibility at the moment. Scottish Enterprise has a broader responsibility for business innovation, but where is the line between workforce development and business innovation? It was becoming too blurred. Even the enterprise agencies would say that there was neither clarity nor sufficient collaboration in how they worked with Skills Development Scotland to work through that. In a sense, without that good collaboration, the overlaps become barriers rather than good opportunities for strategic collaboration.

Murdo Fraser: Good morning. I will go back to some of the answers that James Withers gave to Maggie Chapman on apprenticeships. Your report has a lot on apprenticeships and apprenticeship funding, and you have expressed your view on graduate apprenticeships, which are an exciting development for people who want to experience work and also get a qualification.

One frustration that I find when I speak to employers is that they offer apprenticeships but feel that they do not get any funding support from the public sector. When I speak to Skills Development Scotland about that issue, they recognise it and they say that apprenticeship places are oversubscribed.

I hear what you say about funding, but is it fair to say that apprenticeships have become the poor relation in the skills landscape? Do we need to do more to level up the funding for apprenticeships?

James Withers: This is where the parity of esteem question comes in. Apprenticeships have been the poor relation. I say that not so much as a statement on funding, although there are real issues around funding levels and the ability to meet the demands, but as a statement on how we view apprenticeships.

Let us consider the foundation apprenticeship, which is another vehicle that is brilliant—it has a terrible name, but we will put that to one side. A level 6 foundation apprenticeship has the same parity of esteem as a level 6 higher, but we call them different things and they are treated differently by different people. Pupils and parents have the perception that a foundation apprenticeship is one of the better second-best options if someone does not go to university. There is a cultural issue around how we perceive apprenticeships.

We have the ability to do more by not hiving off the whole apprenticeship system into a separate agency with separate funding. That cements the separation of apprenticeships from the learning system. They should be absolutely embedded into the heart of qualifications development in the same way as secondary school qualifications and

other forms of vocational training qualifications are.

The funding should sit in the same agency. I would like to see universities having the freedom to utilise the core funding that they get from the Scottish Funding Council to deliver degrees through either apprenticeships or full-time study. Why do we have that separated off, capped and uncertain? It is not surprising that they are seen as something separate that you can do if you do not follow the mainstream. If we want to change that and make apprenticeships part of the mainstream, we need to put them into the heart of it.

There are some real challenges around funding. It was not for me to take a view on the future of tuition fees but, when you have £1 billion going into funding free tuition, it massively limits your ability to do other things. The amount that is spent on skills is £3.2 billion, and it would be good to provide greater flexibility to use funding. Crucially, in local areas, if there is demand for apprenticeships, giving institutions greater freedom, trust and autonomy to build provision and use funding might start freeing things up. We need more apprenticeships and we need more work-based learning.

It was too simplistic for me to say, “Put more money into apprenticeships,” because the current system would deem that as taking money from university or college full-time education provision to put into apprenticeships. That would continue the spirit of fragmentation, and the two worlds are too divided.

Murdo Fraser: That is helpful.

On funding, did you look at all at the apprenticeship levy and how that is allocated? I hear from UK-wide employers that south of the border, there is much more transparency around the apprenticeship levy and how employers can access it. In Scotland, the levy seems to go into the block grant. I have asked parliamentary questions to try to understand how much of the apprenticeship levy money goes into actually funding apprenticeships. Trying to understand that is like getting through treacle. Were you any more successful in understanding where that funding goes?

James Withers: In all honesty, I did not spend much time on the apprenticeship levy. I viewed it as a policy question, so I ducked it, in a sense. In my experience—going back to my old job in businesses—who pays the levy and where it goes is certainly cloudy at best.

My wider concern about the apprenticeship levy is that it has probably dented the business community’s faith in the wider skills system. If we can provide a clearer system and a stronger career system, which truly emphasises the

opportunities across a whole set of industries and different types of roles, we can build greater employer engagement in the system.

At the moment, there is good employer engagement in apprenticeship development frameworks. SDS and the Scottish Apprenticeship Advisory Board have done that well, but that is only one part of the system. Building a better business voice in shaping the entire learning system will, I hope, help to overcome some of the scars that there are in the apprenticeship levy system. Certainly businesses in Scotland that have paid into it do not have a huge amount of faith that they have got value back out of it.

The Convener: Kevin Stewart, would you like to ask a question?

Kevin Stewart: I have a brief question about the green skills aspect, which we have touched on already. Many of the jobs and courses that we have fit well with the green skills agenda. From talking to an oil and gas company last night at Scottish Renewables, I know that a direct move could be made from the work that they do now in oil and gas to the work in renewables.

Does the skills sector—whether that be SDS, the colleges or the universities—recognise that that is the case and that some of the adaptation that needs to be undertaken is pretty small indeed?

James Withers: The delivery parts of the skills system broadly understand how that adaptation and that economic evolution will manifest. The use of data, labour market intelligence and business intelligence is still too weak to understand exactly what that will look like. There are good models out there that could be expanded.

The Glasgow city region intelligence hub uses good data—which is not just churned out of a computer but informed by businesses on the ground—on the skills requirement and the provision that is needed to meet that. A lot of labour market intelligence that is done centrally still does not speak to particular sectors and does not necessarily seem that accurate. I remember looking at that in my old job in food and drink. Again, greater responsibility, power and autonomy for regions and places to determine how to respond would be better.

Broadly, there is an understanding that evolution is taking place and that there are probably some quick wins and steps that be taken to tap into that. I have done a whole-system review of this area, and pilots could be done to trial different things in different places that could, I hope, provide a model to follow.

Kevin Stewart: You mentioned the Glasgow aspect of data gathering. In my own patch in the

north-east of Scotland, Opportunity North East does similar things.

The intelligence and the data are good, but are some of our institutions talking enough and—this is probably more important—are they listening to businesses about their future needs?

James Withers: That is not happening sufficiently or in a way that represents the full business base. Some big business employers have the resources to engage with the institutions, and SDS has good relationships with some of the bigger employers in Scotland. The voices of smaller businesses and even medium-sized businesses are lost in the system.

The Developing the Young Workforce network has real potential to be accelerated and become that employer voice. I have other views about how the DYW network could potentially evolve, but putting that employer voice into the heart of the system would be inherently good.

That is different from the system being set up to serve employers. One concern is that I saw parts of the system looking as though they existed to serve the needs of businesses more than the needs of employees, users and learners of all ages. Again, balance is needed in there.

Kevin Stewart: Thank you for your indulgence, convener. I will have to leave the committee soon, I am afraid.

Gordon MacDonald (Edinburgh Pentlands) (SNP): Good morning, James. I want to go back to apprenticeships, which Murdo Fraser touched on. Two of the 12 essential pillars for success for post-school learning relate to employers, which is great. However, I noticed from your comments this morning that you want to take skills planning from SDS and put it in the Scottish Government. There is the apprenticeship approvals group, which is made up of employers and is responsible for approving all Scottish apprenticeships, and there is the Scottish Apprenticeship Advisory Board, which your report says does

“excellent work in influencing the shape of apprenticeships”.

How can we retain that employer expertise within the system if we are going to devolve it down to city regions?

James Withers: That is where the DYW network has a real opportunity. SAAB has done really good work in helping to naturalise the concept of apprenticeships, inform their development, and identify the frameworks that should be developed. However, I go back to my point that the very structures that were required to build our apprenticeship family—a dedicated focus, a dedicated agency and dedicated structures were required—are now holding

apprenticeships back. They keep them separate from the rest of the learning system and the rest of the funding system. By putting apprenticeship development into a qualifications body, we would be putting apprenticeship funding into a funding body along with other types of learning.

The same principle applies to how employers shape the learning system. It cannot just be about an apprenticeship group that is separate from the rest of the system. DYW could potentially put greater resource into, and focus on, informing all parts of the learning system, including apprenticeships. If you were the SAAB with my report suggesting that you should be wound up, my message to you would be that it is partly because of the work that you have done that we want to see the same principles embedded across all parts of the learning system and in all parts of the country.

I have also suggested that there should be, above that DYW network—in effect, I suppose this is currently the DYW chairs group—the national employers board, which can help to inform the national priorities that we talked about earlier. I see the opportunity to accelerate the employer voice, not dismantle it, and particularly to put apprenticeships back in the mainstream, because they are too important to be carved out separately.

11:15

Gordon MacDonald: You mentioned Developing the Young Workforce. I was pleased to see that your report talked about the armed forces and veterans and the need for lifelong learning and retraining. There are three Army barracks in my constituency. Much of the current system quite rightly focuses on young people and positive destinations to break the generational unemployment situation that we have had over a number of years. Given the state of the financial situation and the public funds, how can we get the balance right so that we maintain positive destinations for young folk and also introduce lifelong learning? Do you see efficiencies that would help that in the reorganisation?

James Withers: Again, that is about ensuring a broad perspective on skills delivery. I would like to see the “Y” dropped from DYW. I would like to see a developing workforce network for people of all ages. That is not because generational and youth unemployment is not still an intransigent issue in many areas. Looking back over the past three or four years, DYW and the young person’s guarantee have been brilliant initiatives with a brilliant focus, but a lot of that was predicated on a post-pandemic situation, which was going to be a generation of unemployed young people. That has not come to pass. The pandemic has not had that impact.

We are in a country with a shrinking workforce. The Office for National Statistics forecasts that our population in Scotland will shrink faster than the population in any other part of the UK. Immigration will not be the answer. That is more challenging now than it was when we were in the EU. The need for us to tap into every shred of potential of our people is more critical than it ever has been. I have seen some numbers. If in the region of 400,000 people in Scotland are economically inactive and could be active—we are not talking about the long-term ill or people who are unable to work, but people who could be active—one of the most critical parts of the future system is having an all-age focus.

Gordon MacDonald: Okay. I have a final point to ask you about. You mentioned in your report that apprentices

“struggled to have their voices and opinions listened to within the system.”

Unless I missed it, I did not see how you think we should be able to address that.

James Withers: I spent time in a number of colleges, and apprenticeships moving through that process certainly seemed to be well supported in the college network. I was quite taken with how that worked and how, on meeting people, they felt they were able to shape the immediate short-term environment of the courses that were on-going. The question for me is how they shape the future of that.

How structures are built in to do that is open to some question. If a DYW network, including DYW co-ordinators working hand in hand with careers advisers—currently the SDS advisers—in schools, works closely with those who are going through apprenticeships, those who have come out of the back of them and those who might be going into them, that might, I hope, capture the voice.

I felt that that could be strengthened. It was not a fundamental weakness in the system. Other areas flashed more red lights for me. However, there is definitely potential to capture their views on their experiences of the system and how it could be more attractive to them.

The Convener: When you talked about hairdressing, engineering and forestry earlier, it struck me that those roles are traditionally gendered ones. We know from the discussion about the modern apprenticeships system that it is very male dominated.

You have talked about the need for structural reform. Do you see the structural reform that you have suggested in any way addressing inequalities in the system? How can we address occupational segregation issues, particularly in relation to gender, although we can apply the

same approach to disability? You will know that the committee has done a short piece of work on the disability employment gap. Do you see inequalities? How will we address inequalities through the reforms that you have suggested?

James Withers: I spent some time with a whole range of third sector bodies that advocate for gender-based reform or represent marginalised communities. There was talk about veterans reintegrating back out of military service. I talked with Ima Jackson in Glasgow about migrants coming to the country and how we properly profile their skills and match them to the frameworks that we already have.

There is no single vision for what good looks like in the system. In the absence of that, I wrote my own. It was not perfect, but my view was that every individual in Scotland should have an equitable opportunity to access the learning that they need to thrive. For me, that equity bit should be built right at the heart of it.

You cannot be what you cannot see. That goes back to the need for state-of-the-art careers advice and provision in schools. From my experience of talking to groups, some gender bias or unconscious bias or reality in some occupations was ingrained at a really early stage. How we talk about the opportunities will be important.

Post my review, I have seen some pretty amazing edtech platforms that have been built. One is called myglobalbridge; another is called Skillzminer. They match people’s skills and potential to jobs that are on offer. They are fuelled by AI, and they are completely anonymous in relation to issues of gender, race, background, age and all of that. That is a really interesting potential approach. If unconscious bias sits within any part of the employer community, it gets around some of that. Some of that edtech investment could be really valuable.

The Convener: Okay. Thank you very much. That brings us to the end of the evidence session. I thank James Withers for his attendance at the meeting. We will now move into private session.

11:21

Meeting continued in private until 11:47.

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