OFFICIAL REPORT
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Social Justice and Social Security Committee

Thursday 26 May 2022

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Thursday 26 May 2022

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SOCIAL JUSTICE AND SOCIAL SECURITY COMMITTEE

17th Meeting 2022, Session 6

CONVENER

*Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP)

DEPUTY CONVENER

*Natalie Don (Renfrewshire North and West) (SNP)

COMMITTEE MEMBERS

*Jeremy Balfour (Lothian) (Con)
*Miles Briggs (Lothian) (Con)
*Foysol Choudhury (Lothian) (Lab)
*Pam Duncan-Glancy (Glasgow) (Lab)
*Paul McLennan (East Lothian) (SNP)
*Emma Roddick (Highlands and Islands) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Richard Dennis (Accountant in Bankruptcy)
Dr Mark Simpson (Scottish Commission on Social Security)
Dr Sally Witcher (Scottish Commission on Social Security)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Social Justice and Social Security Committee

Thursday 26 May 2022

[The Convener opened the meeting at 09:30]

Decision on Taking Business in Private

The Convener (Elena Whitham): Good morning and welcome to the 17th meeting in 2022 of the Social Justice and Social Security Committee. Our first item of business is to decide whether to take items 4, 5 and 6 in private. Do we agree to do so?

Members *indicated agreement.*

Low Income and Debt Inquiry

09:30

The Convener: We turn to our next item of business, which is an evidence session for our inquiry into low income and debt. We are taking evidence from Richard Dennis, the Accountant in Bankruptcy. Welcome to the committee and thank you for joining us.

Before I begin, I remind everyone that broadcasting will operate your microphones. We have about an hour for this session, before we hear from the Scottish Commission on Social Security at around 10.30 am. Richard Dennis will make an opening statement.

Richard Dennis (Accountant in Bankruptcy): Thank you for giving me the opportunity to come and talk to the committee. I will start by giving a huge round of thanks to your broadcasting colleagues, who have spent the last half an hour sorting out my technical issues and getting me connected. Their support and their calm is much appreciated.

I am unlikely to have at my fingertips all the details, figures and facts that the committee might want. Where that is the case, I promise to provide data in writing as quickly as I can after this session.

People in unsustainable debt clearly need help, and my agency does important work in getting people a fresh start. I have listened to the evidence that you have had from other contributors and it has been pleasing to hear that, in spite of all the difficulties of running a public service during Covid, none of your witnesses has suggested that the way my agency has been delivering the statutory debt solutions during the pandemic has caused unnecessary concern or hardship for the people we all want to help.

I do not want to overplay our importance, however. In the first quarter of this year, around 280 people a week entered a statutory debt solution. That adds up over time: 280 people a week becomes 1,000 people a month and 12,000 people a year. At any one time, about 50,000 people are going through a statutory debt product. That is a significant share of the families who are in unsustainable debt in Scotland, but it is a far smaller percentage of the people the committee is thinking about how best to help. We are part of the answer, but we are only a small part of the answer.

I also wanted to say up front that, at the moment, we have not seen the number of new personal insolvencies rising sharply. That is still well below pre-pandemic levels, even if not quite

as low as it was right at the start of lockdown. While you might expect that it is too early to see the impacts of the cost of living crisis coming through in our numbers, it might be a bit more surprising that the economic impacts of the pandemic are not showing in the number of people entering statutory debt solutions.

I was hoping, looking through the evidence, that I might have had something interesting to say about energy debt, which I suspect is very much on the committee's mind. It is perhaps quite interesting to hear that, if you look at the bankruptcies awarded so far this year, gas and electricity bills are not a significant share of the debts that are being covered, nor are they an increasing share. They are less than 1 per cent of the value of debt that has been declared. That may not be unexpected; it is perhaps too early to see energy debt because the big cost increases are just beginning to hit people.

What I can say, and what you might want to pursue later on, is that looking across last year, the average monthly payments in a debt arrangement scheme debt payment programme were around £160 a month and in the average trust deed they were around £150 a month. Clearly, if you are looking at a £100 a month increase in energy costs alone, that will have significant implications for the viability of those payment plans, although news coming from elsewhere later today might change those figures quite substantially.

That is probably enough of an introduction. I will do my best to answer the committee's questions.

The Convener: Many thanks for those opening remarks. I will hand over to members for questions and Paul McLennan will kick us off.

Paul McLennan (East Lothian) (SNP): Good morning, Richard. the review of the statutory debt solutions is on-going—I think that the stage 2 recommendations have just been published. Are you aware of any timescales for introducing those recommendations?

Richard Dennis: Quite a few of the recommendations would require primary legislation. As you will know, the Government announces primary legislation for the coming year in September. Were it to want to take forward some of the recommendations in that timeframe, we could indeed be ready to pursue a bill in the next year or two, should that be attractive to the Government to do so.

Paul McLennan: The next stage of the review is obviously stage 3. Do you have a timeframe for that?

Richard Dennis: The minister's working group is meeting again this afternoon and that will be one of the topics for discussion. Stakeholders have been quite clear that they want this to take the time needed to get it right. They are not looking for something quick; they are looking at a process that might well run for a year or two and do a fundamental strategic look. We will talk to them again this afternoon about exactly how best to take that forward.

Paul McLennan: The review outlines the work that stage 3 is likely to look at. One of the key topics is an

"assessment of existing debt solutions",

to see whether they are "fit for purpose". You just mentioned fuel poverty and so on. Will that come into the equation? Some of the evidence that we have heard has been about moving away from the traditional debt solutions for credit issues and people's expenditure exceeding their income. Will that play a part in, or be a wider context for the stage 3 review?

Richard Dennis: It will certainly set the background and some of the context. I do not know whether you have had a chance to go through the stage 2 reviews. You will see that people are largely saying that we need to make adjustments and tweaks but, generally, the whole stakeholder community thinks that the solutions that we have in Scotland are working quite well at present. Some of the witnesses have even said that we have a world-class system. It has been nice to look down south and see them copying some of our initiatives up here. They are hoping to introduce their equivalent of DAS, for example, early next year, I think. They are just moving to catch up to where we are.

We have not really heard calls, either in the stage 2 working groups or in the wider debate, for fundamental reform, but I will be interested in the committee's views on whether the evidence you have heard also supports that conclusion that our system is broadly right at present.

The Convener: We will now ask questions on the theme of balancing the interests of creditors and those of people with debt problems. The deputy convener, Natalie Don, will kick us off.

Natalie Don (Renfrewshire North and West) (SNP): Good morning. How should statutory debt processes in Scotland be designed to improve outcomes specifically for people on low incomes? The Child Poverty Action Group has stated that debt processes should support the Scottish Government's national mission on child poverty. How do we make that a reality and achieve the correct balance? For example, would it be an option to have different processes in place for those on low incomes or those on benefits?

Richard Dennis: To some extent, we have that already in that the minimal asset process bankruptcy is specifically for those who have no surplus income. Of the categories that you have been talking about, a lot of folk will fall into that category. In fact, if you are looking at people running deficit budgets and so on, those are precisely the people whom MAP bankruptcy and perhaps the moratorium are there to help.

Bankruptcy cannot be the answer for families that just do not have enough to live on. You cannot have a system designed so that you go bankrupt, you get straight back into unsustainable debt, you go bankrupt, you get straight back into unsustainable debt. That does not work in the longer term. Bankruptcy has to be there as a last resort for people who have got into a position in which giving them a fresh start actually does give them a fresh start and a chance to get their life sorted out. It is a very significant step and it has big implications. We cannot see it as the answer to whether people have enough income, which is a question that needs to be addressed through other means; largely, I suggest, through the benefits system.

Natalie Don: In relation to private debt, should lending companies, and specifically those that target people on low incomes, have a legal obligation to ensure that anyone they provide a loan to is, in the first place, in both a mentally fit state and a financial position from which it is likely that they will be able to repay any loan that is provided to them?

Richard Dennis: The second condition is delivered by the Financial Conduct Authority regulation that requires customers be treated fairly.

On the first condition, about mental capacity and mental state, clearly you are absolutely on the money that debt and mental health are very strongly linked. One of the more interesting initiatives from down south that we should be looking to copy here is the special protection for people in mental health crisis circumstances. Whether you can put a duty on a creditor to assess a debtor's mental state before making a loan, however, will require quite a lot of further thought.

Natalie Don: Obviously, mental health issues can be exacerbated by debt, but they can also be brought on by debt. It is a really tricky system and it seems to be exacerbating mental health issues more and more. Figuring out how to tackle that is the issue.

My last question on this theme is whether more retrospective protection should be given to individuals who were provided a loan when the company should reasonably have known, or did not make the effort to confirm, that there was no realistic chance that the individual would be in a position to repay the loan. Some private lenders that have cropped up recently are providing loans and doing very few background checks to make sure that the person's income is enough to cover it. Should there be more retrospective protection?

Richard Dennis: You are getting a long way away from my area of responsibility here. I would say that, regardless of the state of the individual and the state of their income when they took out a loan, if they apply for a bankruptcy and it is awarded, their debts are written off regardless of the circumstances in which they originally took them out, unless it can be shown that there was fraud going on.

Companies do not have an incentive to lend to people who cannot repay, because people who run up unsustainable debts will come through my doors and those debts will be written off and the creditor will not get any money back. It is hard to see a business model where it is in the company's interests to lend money unsustainably.

One of my other reflections—I suspect that you will want to come to this, given the evidence that you have heard from the debt advice charities and others—is that the problems in pursuing debt are as much with the public sector as they are with the private sector. I suspect that that is partly the result of the FCA getting more and more muscular in the way it has been cracking down on one area of poor lending after another. Payday loans have been very strongly regulated now. There is work going on on catalogue loans and hire purchase loans. The FCA deserves a lot of credit for the general duty of treating customers fairly and for radically changing the marketplace in the last 10 years or so, just by its very proactive approach to regulating where it thinks that there are problems.

Natalie Don: Absolutely. We have heard throughout the inquiry that public debt seems to be more of a problem and I know that we will come on to that later. We have rightly focused on that a lot in this inquiry, but there are some little things about the private side that I still have problems with. For example, we have talked before about some of the companies that are popping up that allow people to buy things and spread the payment over three amounts. People who are getting those loans are incurring minimum payment charges on them and are already in a great deal of debt as it is, so there is something to be done there. Somewhere along the line, the checks are not there.

Thank you for your comments, Mr Dennis. Convener, my questions on this theme are finished.

09:45

Jeremy Balfour (Lothian) (Con): Good morning, and thank you for coming. I have a couple of questions that follow on from the deputy convener's questions. Do you know what the percentage is of public debt for the people who come to you with bankruptcy? How much of the debt is because of either rent arrears or council tax?

Richard Dennis: I have some numbers with me, but it will take me a while to pull them together. Creditor petitions for bankruptcy are currently very low but, in the first three months of this year, in well over 60 per cent of those, the creditor was a council. Traditionally, Her Majesty's Revenue and Customs is the other big creditor that takes action against debtors. It is just restarting its debt collection work, so its numbers are not in the figures for the past three, four or five months. However, over the past two or three years, probably around 65 to 70 per cent of all creditor petitions come from councils and HMRC.

The other big problem debt relates to the Department for Work and Pensions collecting overpayments of benefits. Compared to other creditors, the DWP is perhaps a relatively aggressive creditor in pursuing debt.

Jeremy Balfour: That is helpful. Is one of the issues that creditors are trying to secure the debt against other debts and so are almost going forward with legal action to secure that? Is there any other way that we can prevent people from having to go to bankruptcy while protecting creditors and having the debt repaid at some point, or is bankruptcy the only way around that?

Richard Dennis: I am sorry to give this cop-out answer, but it depends on the individual circumstances. There is a large category of people in unsustainable debt whose income will not allow them to repay it, and they need to go bankrupt—they need a fresh start. There is another category of people who can, for example, use the debt arrangement scheme and who can pay their debt back but who just need time to do so. The scheme gives them protection from their creditors, freedom from interest and charges and an extended period to pay back the debt principal. The issue very much depends on the circumstances of the individual.

Jeremy Balfour: My final question will just push that a bit further. With public debts to local authorities, is there any other way that local authorities could act without having to put people into bankruptcy?

Richard Dennis: Yes. I am sure that if you have the Convention of Scottish Local Authorities or local authority finance directors in front of you, they will talk about their moves to enhance their fairer collections policies. They tell us that they quite often consider writing off debts when they realise that there is very little chance of the money being collected. If a debtor is not in a position to pay, there is no point in the local authority pursuing them. I am sure that you will have heard from local authority advice services that local authorities fund lots of work, either through Citizens Advice Scotland or through their own services, to help people. The closer that their debt collecting and advice providers can work together, the better the outcome for the individual and the council. If you were to talk to local authorities about their fairer collection policies, you would see that coming through more and more.

Paul McLennan: The stage 2 working group report refers to the protected trust deed. I notice that there was a bit of debate on increasing the minimum debt level, which is currently £5,000. The exact wording of the report is:

"This remains a contentious issue with sharply opposing views".

Will you say a bit more about that to help us understand the thought process on both sides?

Richard Dennis: I do not want to put words into the working group's mouth, but I will try, and no doubt the group will write in and correct me if I get it hopelessly wrong.

One side of the argument is that, if you raise the minimum debt level, you close access to the product to a group of people, and there may be people whose debts are just over £5,000 and for whom it is the right solution. However, in running a trust deed, if someone's debts are around £5,000, it is quite likely that the minimum contributions that they will make over the four or five-year period will also come very close to £5,000, so they are close to being able to pay off the debt through a debt arrangement scheme, for example.

At the same time, running a debt solution has significant costs. If someone is paying, say, £100 a month over four years, that is £4,800, and it is likely that 80 to 90 per cent of that will be consumed in the costs of the product and very little will get back to creditors. Those who think that the minimum debt level should be put up a bit will be taking the position that there might be a better alternative for someone who can afford that level of contribution, and that it is not hugely fair to creditors to see the sector—the administrators—taking that provision from the debtor and to have so little going back to the creditors.

It is about the balance between closing off access to the product, which might be really valuable for certain people, and getting the balance right across the sector.

The Convener: I will need to read that back in the *Official Report* to understand and process that answer. It is a complicated picture, which is why it is a polarising option at the moment.

Emma Roddick (Highlands and Islands) (SNP): So far, we have talked about how future policy will balance the needs of creditors and those in debt, but where is that balance now? We have heard from people who have debt and low income that, even if they are successful in claiming social security, most of their monthly payments can end up going towards paying off debt. Is there currently a balance in considering the interests of people who are in debt, or are we a little too interested in making sure that creditors have their debt repaid, including interest?

Richard Dennis: It is a difficult question, with a number of factors involved. By the time that people come through our doors, their debt is unsustainable and they will not be able to pay it back, so they have that debt written off. When people go through the minimal asset process, nothing goes back to creditors—the debt is just written off. Is that harsh on creditors? Probably not, because you cannot get blood out of a stone.

On what happens before people come to our doors, I suspect that the debt advice agencies will have said pretty clearly that people should seek advice earlier than they do. Traditionally, people do that a year, 18 months or two years too late. During that period, the debtor has significant stress, the creditor has significant expense and nobody gets any money in the end.

It would be helpful if we could do more to make better information available to people in clearer terms—my agency and others plan to do quite a lot on that over the next couple of years—and if we looked again to see what we could do about reducing the stigma of bankruptcy. Particularly during the pandemic, there might have been a change in society in that people no longer assume that it is necessarily an individual's fault that they are in debt. I hope that, as a result, people will be more prepared to ask for help when they need it. However, the question of the balance between creditors and debtors before they come my way is a bit beyond my remit.

Emma Roddick: The deputy convener touched on the issue of mental health and the responsibility to freeze interest on the debts of people who are suffering illness. Taking that further, should a similar approach be taken where interest is being charged on debts that we can be reasonably certain will be paid only through social security?

Richard Dennis: As I said, once a customer comes through my doors and takes a statutory debt product, the debts are either written off or, in a debt arrangement scheme, the interest and charges are frozen. The more challenging question is how to allow somebody who is in a mental health crisis the time to deal with their debts. You will have noticed that, although the breathing space scheme down south allows less time for the ordinary debtor than is allowed in our moratorium, it has special extended provisions for those who are in mental health crisis. That is a very interesting initiative, although I do not think that it is quite right, and it is not being used very much yet. However, we can learn from the way in which it is panning out in practice. We should certainly think about copying that initiative up here.

Foysol Choudhury (Lothian) (Lab): Good morning. Given the current economic pressure, people are increasingly getting into debt just to live, and the way in which the debt is recovered is leaving those people destitute. Do you think that the balance between creditor and debtor is right in this situation?

Richard Dennis: Could you give me an example of the situation that you have in mind?

Foysol Choudhury: People are borrowing extra money when they are in debt already. When they are taken in for bankruptcy or getting pressure, is the balance right in that situation?

Richard Dennis: I am not sure that I can provide an answer. One way to answer the question is to ask what the right level of universal credit is and whether we should have a minimum income guarantee. However, those questions are so far beyond my responsibility that I am not sure that I can be much help.

I can say that we are clear that the purpose of bankruptcy is to take somebody who is in unsustainable debt and who cannot escape from it and give them a fresh start, while bearing in mind the needs of creditors. Once people have a fresh start, the last thing that we want is for them to fall straight back into unsustainable debt. However, deciding whether they have enough income to live on is, unfortunately, nothing to do with the bankruptcy system.

The Convener: We will move on to questions about the mechanics of bankruptcy. To kick us off, I will go to my colleague Pam Duncan-Glancy.

Pam Duncan-Glancy (Glasgow) (Lab): Good morning, Richard. Thank you for the evidence that you have provided so far and the information that you gave us in advance.

I am interested in the point about minimal income and bankruptcy and how much that leaves people with. In particular, I know that the fee to access the bankruptcy options has been lowered, but it is still leaving some people unprotected. Will you say a little about the purpose of the fee and whether it is becoming a barrier?

Richard Dennis: I am happy to address the question of fees. Currently, the vast majority of people do not pay an up-front fee. The fee for the minimal asset process bankruptcy, which I think is the group that the committee will be most interested in, is now £50, where people pay a fee. Is that a barrier? It will be for some people, because getting together £50 can be a stretch. However, bankruptcy is quite a serious step to take, and we want people to pause and think about it. Also, bankruptcy has to be funded.

The fees down south are significantly above ours. The current fee for full administration bankruptcy down south is £680, compared to our £150, and for the debt relief order down south, which is the equivalent of our MAP, the fee is £90 as opposed to our £50.

10:00

I make a huge loss running bankruptcy cases. On a full administration bankruptcy, on average, I lose over £1,500 for every case and the taxpayer very kindly picks that up for me—or the Scottish Government kindly sends across the money that we need to keep the system running. It is a question of balance. Clearly, you could abolish fees, and you might expect an increase in bankruptcies as a result. I would expect to see an increase in the support that I require to continue to administer them. That is a political judgment and, in reality, I do not have strong views on the matter one way or the other.

Pam Duncan-Glancy: Approximately how much do you collect in fees? You said that the majority of people do not pay, but it would be interesting to know what that figure is. I then have a further question that is still related to bankruptcy but slightly different, so I will pause.

Richard Dennis: Let me dig into the statistics that I have in front of me. In the past year, only 19 per cent of MAP cases paid an application fee, so four out of every five paid nothing.

Pam Duncan-Glancy: Do you collect figures as to how much money you get from the total fees paid to you?

Richard Dennis: For MAP bankruptcies, it would be no more than a couple of hundred thousand pounds.

Pam Duncan-Glancy: Forgive me if my next question is slightly outwith your remit. As you say, when people become bankrupt, it is a fresh start and I can understand why it is a helpful option, but it can often result in people being unable to get further borrowing. I am not suggesting that people should then get into a cycle of borrowing, but even things such as getting a mobile phone or broadband contract can be difficult, and those are pretty essential. We have heard about that issue from a lot of witnesses. Do you have any views on what we could do about that or how we could improve that situation for people?

Richard Dennis: That is largely a question of how the credit reference agencies react to either unpaid debts or statutory debt solutions. I would say that the issue is much larger than just bankruptcy—[*Inaudible*.]

The Convener: Richard, we seem to have lost connection with you.

Pam Duncan-Glancy: I was looking forward to that answer as well.

The Convener: We will suspend briefly until we can get Richard back.

10:03

Meeting suspended.

10:10

On resuming—

The Convener: I think that we have managed to get you back, Richard, which is fantastic. Can you hear me okay?

Richard Dennis: Yes—apologies for that. I gather that the Scottish Government's SCOTS network does not like your network.

The Convener: How ironic is that? I will hand back to you to finish answering Pam Duncan-Glancy's question.

Richard Dennis: Could you just remind me how much you heard, Ms Duncan-Glancy?

Pam Duncan-Glancy: Thank you—and welcome back.

My question was about people's ability to borrow after they have been through the bankruptcy process, particularly for things like mobile phones or broadband—which I guess is not so much about being able to borrow as about being able to get credit. I think that you said that that issue did not specifically relate only to bankruptcy, and then you mentioned credit reference agencies. That is as much as I got.

Richard Dennis: Well, my main point was about credit scores. Credit reference agencies will take into account missed payments, defaults and bankruptcies in different ways. At least when somebody goes bankrupt, they are starting the process of repairing all that, although I think that it takes seven years before a bankruptcy fully comes off a credit reference report. You could legislate for that; indeed, there are countries in the world that run credit reference agencies as public bodies. It would be quite a radical change.

Pam Duncan-Glancy: Thank you—that was helpful. With regard to the seven-year period that you have just mentioned, can you give us any examples of that from anywhere else in the world? Is seven years the average period? Is it longer or shorter? Where do we sit in that respect?

Richard Dennis: I am afraid that I do not know. We could try to do some research. I have a network of international colleagues whom I could ask, but it might be some time before I could come back to you on that.

Pam Duncan-Glancy: Thank you. Those are all my questions on this theme, convener.

Jeremy Balfour: Most of my questions have been covered, but there is one area that I wanted to pursue briefly. From the evidence that we have taken over the past number of weeks, many people are in a crisis situation that might get worse into the autumn and early next year. However, a lot of what you have been talking about—primary legislation, more reviews and recommendations and so on—is longer term. If there were the political will, what things could be done quickly and immediately to make people's lives easier? In your opinion, is there nothing that can be done in the short term about bankruptcy to make things easier?

Richard Dennis: As I said earlier, it tends to be quite a while before people who fall into even a financial crisis seek advice and end up with a statutory debt product. We think that that gap has become smaller, but I should point out that, after the financial crash of 2008, it was not until 2010 that we started to see bankruptcies coming through in such numbers.

Other factors are involved, but it is partly that people take a while to get to grips with the fact that they need help. Advice agencies might not welcome my saying this, but anything that we can do to convince people to go knocking down their doors sooner will greatly improve their chance of getting a workable and useful solution in place.

The system is quite good. If you can see a money adviser today, you can have a moratorium in place tomorrow. The system can react that quickly already, but it requires people to take the initiative to go and see a debt adviser. Making information clearer, simpler and more accessible and ensuring that the advice is there might be the priority instead of necessarily trying to do anything legislative overnight. That said, as I think we demonstrated at the start of the pandemic, we can put in legislative changes very quickly when we need to.

Jeremy Balfour: Thank you.

10:15

Miles Briggs (Lothian) (Con): Good morning, Mr Dennis, and thank you for joining us.

I have a couple of questions on debt enforcement. Last week, we heard about protections for bank accounts and the scope to increase the protected minimum balance in accounts to £1,000. What is your view on that and, in your experience, how should that work?

Richard Dennis: In reality, this all comes down to council tax collection. There would be scope to do something on bank arrestments, if that were judged necessary and valuable, but you would be taking away from councils a tool for ensuring council tax collection. The question is whether this sort of thing hits those who cannot pay or those who will not pay, and we do not want to hit those who cannot pay. If your benefits happen to arrive on the wrong day and a bank arrestment arrives the following day, your benefits can be frozen in your bank account and cannot be accessed.

One solution would be to make it much easier to undo an unduly harsh bank arrestment, and another would be to raise the level of minimum protected balance. However, we do not have the evidence that we need here. For example, we do not know how many bank arrestments are successful. We know that more than 200,000 are served a year, but anecdotal evidence suggests that less than 10 per cent of them actually hit a bank account, because, when he serves his bank arrestment, the creditor has to guess where your bank account is. We also hear from creditors that, as soon as the debtor picks up a phone and engages, they will not take that sort of enforcement action.

In short, the evidence is not there, and we might well be in a situation where such a move is judged sensible perhaps as a temporary measure while we find the right evidence with regard to raising the level. That could be done relatively quickly, although it would need primary legislation. There are opportunities in that respect, if the committee and the Government think it a sensible move.

Miles Briggs: On council tax debt collection, we have heard how enforcement can be inflexible and, as you have said, harsh. From your experience, what levels of unsustainable council tax debt do those whom you usually support have? I do not know if you have a percentage that you can give us.

Moreover, how could the system be reformed? Could there be, say, an earlier intervention to prevent significant council tax debt from building up? Indeed, we have heard about individuals moving properties with the debt attached. Do you have any information on that?

Richard Dennis: First, I just want to correct something, because I might have misspoken in my previous answer. I was not saying that councils were necessarily unduly harsh in their use of bank arrestments. There is already a process by which you can go to court to get an arrestment that has hit your bank account to be lifted, if it is thought unduly harsh. However, as that is a court process, it will take time for a family whose benefits have effectively been frozen in their bank account to get them unfrozen again, and they cannot really wait. The question is whether the process is right; I was not suggesting that the use of bank arrestments itself was necessarily unduly harsh.

Council tax is a significant debt in bankruptcies in a way that energy bills are not, but I wonder whether that is more about the choice that people make about which bills to pay than about the burden of the different impositions. I am not in a position to judge; I am just surmising that people pay their mobile phone bill, because they need their mobile phone to be working next month, and they might not pay their council tax one month, because they think that the council will probably not do anything until the end of the year. Just because it appears so often does not necessarily mean that it is the root cause of the problem.

Miles Briggs: Do you have any anecdotal evidence of the council tax debt that people usually have when they begin the bankruptcy process? Perhaps you can provide that to the committee if you do not have it to hand.

Richard Dennis: Yes, I can provide that to the committee later. I have that information somewhere in my pack of numbers, but it will take me a while to find.

Miles Briggs: Thank you.

Natalie Don: I want to follow up on some issues that were raised by my colleague Miles Briggs. First, you have said that you will consult on changes to the law of diligence. What will be the likely timescale of that consultation, and what issues it is likely to cover?

Following on from the last question, I know that you said that there is a lack of evidence on arrestments, but I would like to know more about earnings arrestments. Will an evidence-gathering session go hand in hand with that consultation, to make sure that we find the best outcomes?

Richard Dennis: There are a number of things to address in those questions, but I can easily give you a straight yes to the last of them.

The diligence working group report has been submitted to ministers and should be published very shortly, and we are hoping to take that forward in the same timeframe as the stage 2 bankruptcy working group reports. As for the issues that are covered, the papers that the group has asked for and considered are already on the website, so I will not be saying anything that is not already in the public domain. The group looked quite a lot at the need to make the system more modern and more efficient. Diligence legislation contains some bizarre requirements; for example, if you want to take diligence against a ship, you have to nail your court paper to the mainmast, which can be quite difficult in modern terms. Quite a lot of work will be required to make the process better and more efficient.

The group has also done quite a lot of thinking about information disclosure orders. Some legislation dealing with those matters is already on the statute book, but we need the detailed regulations necessary to bring it into force, and I think that you can expect that to be one of the main thrusts of the work as we move forward. Indeed, there are a number of other issues for which there is legislation on the statute book that has not yet been brought into force, and the group has decided that it would be sensible to treat that particular issue alongside treatment of the family home in bankruptcy and has suggested that they be carried forward jointly in stage 3 of the bankruptcy review.

Natalie Don: My colleague Miles Briggs also rightly highlighted the proposal to increase the minimum protected balance, and we have also heard calls for earnings arrestments to be more flexible and better co-ordinated. For example, no effort is made to assess an individual's circumstances prior to earnings arrestment or to find out whether, for example, they have children. Will further reforms of the earnings arrestment process feature as a core part of this consultation?

Richard Dennis: There is significant scope for improving the administration of conjoined arrestments. Indeed, it is one of the areas that we will be looking at.

The other issues are more complicated and need quite a bit of thought and some consultation. It is hard to expect a creditor to know a debtor's details and individual circumstances when they go to court for an earnings arrestment. They go to court for an earnings arrestment, because the debtor is not co-operating in paying the debt, and they want a court order so that the debt can be directly deducted from the debtor's salary. It is quite hard to put the burden on the creditor—or even the court—to assess the debtor's circumstances and adjust the level of the earnings arrestment on that basis.

As for your question whether things should be made more flexible, once an earnings arrestment is in place, it is for the employer to administer it. They deduct the relevant amount from the debtor's salary and send it on to the creditor. If you change

that too often, it imposes significant burden on employers, and a balance needs to be struck in that respect. The suggestion that the creditor and the debtor come to an agreement that would allow the earnings arrestment to be regularly adjusted up or down would, as I have said, put a significant burden on the employer, and we would need to think through the impacts of such a move on payroll and other systems.

Natalie Don: We know that earnings arrestments are closely related to council tax debt, and I understand the difficulties associated with creditors knowing everything about an individual's circumstances. If local authorities were to continue to outsource to debt collection agencies—and given that authorities know more about an individual's details—would it make sense to put more of an onus on them to provide those details to a debt collection agency so that these arrangements could be worked out? Given your earlier comment that things work better when there is co-operation between councils and the debt collection agency, would it be better to put more of an onus on the local authority?

Richard Dennis: The burden has to be very much on local authorities in determining their collections policy on which debts to chase, and it is right that councils that have gone a long way down the fairer collections route are held up as a beacon that others should be following. Councils tend to know their clients fairly well both on the revenue and debt-chasing side and on the advice side, and the closer they can pull together their own in-house people who provide advice to customers and the people chasing them for their debts, the better. Quite a lot can be done well away from statute and control, simply because it is in the council's best interests to make the right judgments here. After all, chasing the wrong debts will cost them money, and they will not get anything back.

Natalie Don: Thank you. I have no more questions, convener.

The Convener: Our last question in this session is from Pam Duncan-Glancy.

Pam Duncan-Glancy: I want to follow up on the breathing space concept. Earlier, you mentioned the scheme down south and said that although there were things that we should look to in it, there were also things that you had questions about. What questions do you still have? Could something similar could work here?

Richard Dennis: I am convinced that our moratorium is better than the main breathing space scheme down south. I can see an argument for freezing interests and charges—it would be a nice-to-do—but I have to say that I rather doubt whether freezing interest and charges for six weeks will make such a significant difference in light of the administrative cost and burden imposed by the scheme.

A lot of my concern is about take-up. The numbers that have taken up the breathing space initiative down south are less than 10 per cent of the numbers that were expected from the impact assessments undertaken when the policy was being put through Westminster, which suggests that something is not quite right about the way in which it is administered.

I think that we can learn something from the special provision that has been put in place for people in mental health crisis, and I can see a need for action in that respect, but I have to say that the provision is not being used very much down south, which again suggests that they do not have it quite right. That said, we can learn a lot of lessons from that initiative and come up with a good proposal for the committee and Scottish Government to think about with regard to whether it can be introduced up here in a way that delivers greater benefits.

Pam Duncan-Glancy: Thank you—that was really clear.

The Convener: Thank you for your time this morning, Mr Dennis. It would be very helpful to the committee if you could get back to us by 8 June, if possible, with the information that you so kindly said you would provide to us. That would allow us to have the information when we need it.

That concludes our penultimate formal oral evidence-taking session for this inquiry. We will be hearing next from the Scottish Government, and I should also say that the committee will be meeting its experts by experience panel informally on 6 June to take stock of the evidence that has been heard and hear their suggestions for improvements.

I suspend the meeting for about five minutes for a changeover of witnesses and a comfort break.

10:30

Meeting suspended.

10:36

On resuming—

Subordinate Legislation

Draft Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022

The Convener: Welcome back. We now have a short evidence session with the Scottish Commission on Social Security about its report on the draft Disability Assistance for Working Age People (Transitional Provisions and Miscellaneous Amendment) (Scotland) Regulations 2022—is that not a mouthful—which were laid in Parliament on 6 May. The regulations deal with the transfer from disability living allowance to adult disability payment for adults of working age and those who have reached pension age since April 2013.

The committee will invite the minister to give evidence on the regulations at a future meeting. This morning, I am pleased to welcome Dr Sally Witcher, who is the chair of SCOSS, and Dr Mark Simpson, who is a member of the commission. I hand over to Dr Witcher to make an opening statement.

Dr Sally Witcher (Scottish Commission on Social Security): Thank you very much, convener. We welcome the opportunity to talk to you about the regulations and our report. The regulations are exceptionally complex, as you will have no doubt noticed. I will, in fact, hand over to Mark Simpson to make an opening statement, as he was the lead drafter of the report. I am best placed to take questions around the wider issues, whereas Mark will field questions that are more detailed or on technical matters. I hope that that is acceptable to the committee.

The Convener: That is perfect, thank you.

Dr Mark Simpson (Scottish Commission on Social Security): Like Sally Witcher, I am very pleased to be here. This is my first meeting with the committee.

You will know that the social security system at both United Kingdom and devolved level gives various payments that are designed to support people with the extra costs that they incur as a result of disability. I think that all members will be aware that the disability living allowance was the benefit that was in place for working-age people prior to 2013. At that point, a process began to replace the benefit with the personal independence payment at UK level and, in turn, PIP has now been replaced by the adult disability payment in Scotland.

The Scottish Government's priority and, indeed, its mantra for the introduction of ADP, as with the other new disability benefits, has been to ensure a safe and secure transition of cases from the Department for Work and Pensions to Social Security Scotland. One of the things that has been central to the safe and secure transition project has been the maintenance of parity in the eligibility criteria for ADP and PIP. We have seen the same thing between the child disability payment and DLA, with the exception of people with terminal illness.

That essentially means that, when people transfer from PIP to ADP, they can easily get the same award without any complex reassessment of their entitlement. Where all that breaks down is that ADP is being introduced before migration from DLA to PIP has been completed. That leaves up to 38,000 adults in Scotland who are still in receipt of DLA. That is quite a significant problem from the point of view of the safe and secure transition, because DLA awards are made on a different basis to PIP awards and are therefore made on a different basis to ADP awards.

I will give a couple of examples of that. Many people have received higher awards when they moved from DLA to PIP because it is possible to receive the enhanced rate of the daily living component of PIP without having any overnight care needs, which is in contrast to DLA. On the other hand, quite a lot of people have lost money at that point of transfer because they are able to walk more than 20m, which rules them out of the enhanced rate of the mobility component of PIP, whereas they could have received the equivalent component of DLA.

Even the structure of the two payments differs. There are three rates of the DLA care component but only two rates of the PIP or ADP daily living component. I know that I am labouring this point a wee bit, but the crucial thing about the regulations is that they are necessary only because there is no simple lift and drop of cases from DLA to ADP in the same way that there is from PIP to ADP.

However, the Scottish Government still wants the migration process to be as seamless as possible. That is essentially why the regulations are drafted to envisage an interim award at the point of transfer being made at the same rate as the individual's previous DLA award. Only once that has been done and a case has been transferred from DWP to Social Security Scotland will a redetermination be made, within one year, to get the individual on to the rate of ADP that matches up with their impairment and its effect on their mobility and their daily living, as opposed to the rate that matches their previous DLA award.

We said in our report that we think that that approach is broadly sensible. We probed the

Scottish Government around its confidence that it has competence within the Social Security (Scotland) Act 2018 to award ADP on the basis of a previous award from the DWP rather than on Social Security Scotland's evaluation of the individual's impairment and its effect on their life. We were satisfied with the response that we received.

We suggested that the initial award to people who are transferring from the lowest rate care component of DLA be referred to as a transitional rate award rather than a lowest rate award to emphasise the temporary nature of the award. Ultimately, many of the people who receive that will not receive the daily living component at all, once they have been redetermined. We are pleased that the Scottish Government accepted that recommendation. We are also pleased that people with terminal illnesses are exempt from the two-stage process and will receive their full award from the point of transfer.

A number of issues remain. Although it is not stipulated in the regulations that this is the case, the intention is that, for the time being, the process will be used only to transfer people to ADP if they report a change of circumstances to the DWP or if they request to move.

When we received the Scottish Government's response to our report a couple of weeks ago, there was still no decision on what the process would be for people who fall outside those groups and who are under 74 years old. That could be the same or it could be something different. We know that people who are over 74—that is, people who were 65 or older in 2013—will be on DLA even after their case transfers to Social Security Scotland, so the regulations will—[*Inaudible*.]

10:45

That aside, we are expecting that the issues that arise will probably be more process related rather than to do with the wording of the regulations. There is no getting away from the fact that this will be complex. People will be confused about what is going on. A challenge is trying to make people aware that they might be better off on adult disability payment, bearing in mind that those people have not realised at any point in the past nine years that they might be better off on PIP than they are on DLA, so they have not asked for a transfer up to this point. Will they know that it might be in their interests to ask for a transfer now?

Another challenge is ensuring that people understand that their initial award is temporary, especially those I have already mentioned who move from the lowest rate care component through to the transitional rate of the daily living component of ADP. That forms part of a wider issue about how Social Security Scotland will deal with the fact that, for the first time in its existence, it is facing the prospect of having to reduce or terminate significant numbers of existing awards.

Bearing in mind that the loss of a disability benefit has wider consequences for passported entitlements and, in some cases, for exemption from the benefit cap, that could have a significant impact on people's lives and it will have to be handled carefully. There are communication challenges ahead, and there are relational challenges ahead for—[*Inaudible*.]—users.

We know that a review of ADP is coming and that there could be potential to kick some of those issues down the line by deferring redetermination—[*Inaudible*.]—but that is not what the regulations envisage, nor would that approach necessarily be risk free. You might raise expectations that the review would result in certain outcomes that are far from guaranteed. It could also be seen as being unfair to people who have already moved from DLA to PIP and then on to ADP and might have lost money in that process if others were protected from that.

By way of conclusion, moving a relatively small but not insignificant group of people on to ADP was always going to be a much bigger challenge than is the case for those who are already on PIP, no matter how that was approached. We hope that our report has helped to eliminate some of the issues. I am sure that, at the very least, it has eliminated some of the complexity.

As Sally Witcher said, we are happy to take any questions.

The Convener: Many thanks for that, Mark. As we have only a short amount of time left for this session—Mark has to leave for another meeting—I request that members ask all their questions in one when I come to them in turn. We will start with Paul McLennan, please.

Paul McLennan: You touched on an issue that I was going to raise about communications. Could you say a little bit around the tailored communications that are needed for the group of people that we are talking about? The most common main disabling conditions for the group are learning difficulties, mental health issues and arthritis. What tailored communications are you thinking about? Do you have any advice, thoughts or concerns about clients accessing advice on whether they would be better off volunteering to move to ADP?

Dr Simpson: The first part of that is more Sally Witcher's area of expertise than mine. Do you want to speak to that, Sally, and then I can take the advice issue?

Dr Witcher: Yes, I will do my best. Mark has already outlined that there are clearly massive complexities and some big differences. There will be certain groups who will need to understand the situation. The areas of difference need to be considered in particular. People who currently get the lowest rate of the care component need to understand the situation. A lot of communication needs to be done on the mobility component and on issues around the enhanced rate.

One concern that people will have is the implications for motability and cars, because we know that losing those has a major impact. It was interesting to see in the Government's response to our recommendations that it is looking at what it might do on that. It would be good if it could act on that, but it will need to do so fairly quickly.

There are also implications resulting from it not being specified in PIP and ADP what time of day support is required. Again, a bit of a drilling down is needed to identify the people whom that might affect, because DLA specifies night-time care.

There will be groups of people with mental health or cognitive impairments who might now qualify, or are more likely to qualify, for the enhanced rate of ADP.

There are also issues around terminal illness. Obviously, where people have indicated that that is their status, and where that is clear, they will be fast-tracked, which is very welcome. However, there are differences in eligibility around that.

ADP is more generous, so there might be a bit of a question about how you target people who become eligible for ADP. There is a particular challenge about the scope for people to voluntarily request transfer and how they understand the implications of that for them. There is also a challenge about drilling down to the specific groups—some of which are more obvious than others—and identifying third sector organisations and getting them up to speed and primed so that they are able to advise people appropriately.

There are some major issues and real complexities for people transferring who are over pension age. That is another area where some very careful communications will be required.

Carers benefits are passports, depending on eligibility for such benefits. They might well not be affected, but they will certainly have questions about that, so that possibly needs to be considered, too.

People will definitely need support. An independent advocacy service is available in Scotland, so there is a question about how that plays into the process, whether people can have access to that and at what point.

There might also be some questions about DWP's communications, because its messages will need to match those that Social Security Scotland and the Scottish Government are communicating.

We have raised points before, and we do so again here, about what Social Security Scotland can do for people who lose entitlement. Thought on communications around that needs to be given, too. There are challenges around how you communicate what Social Security Scotland can advise on and what it cannot.

In conclusion, there is a great deal to think about around communications. There are challenges around people who will be transferred anyway, through later managed migration, and who might not realise that that is happening. They need to be made aware of that, so that they do not inadvertently apply and then end up worse off. Basically, there are bunches of people who will be worse off and bunches who will be better off or are likely to be better off. The issue is how you ensure that those people know, in a timely fashion, and receive support around this very complex situation.

Paul McLennan: Thank you.

Convener, as Sally Witcher has mentioned, a lot of complex work is being undertaken. This might be something that we can discuss later, but I think that we need to keep an eye on things, perhaps get some further written information at an appropriate stage and pick up matters at a later point. It is all very complex.

Natalie Don: I thank the witnesses for their attendance this morning. As has been said, many people have seen their awards increase as a result of the transfer to ADP, but we are obviously concerned about those who have lost out or will lose out. Can you expand on the different options that have been presented for transitional protection and on what the challenges might be in providing for such schemes?

Dr Simpson: The second part of that question is probably the—[*Inaudible*.]. When you throw any form of transitional protection into the mix, you immediately add complexity and cost in terms of the extra money that is paid in awards and the extra time that Social Security Scotland has to spend dealing with that.

I touched on the question of the forthcoming review in my opening statement. I reiterate that, although we know that the review is coming, we do not know how long it will take, what will be recommended and whether the Scottish Government will accept those recommendations. In some quarters, hopes will be high that, for example, the 20m rule for the mobility component might be relaxed, but that is far from guaranteed.

As with any form of transitional protection, it might be that all that we end up doing is deferring the reductions and the difficult conversations. It is possible to argue that that would not be a bad thing, from the point of view of the individuals who are affected, but, equally, it is possible to argue that that will drag things out and that further delaying the loss of income will increase the shock when it happens.

That said, we have looked at the possibilities in our report. Keeping someone on short-term assistance raises similar issues, but it is worth noting that, if an individual no longer receives any disability benefit and receives only—[*Inaudible*.]—that might well mean that they also lose passported awards, so it becomes less clear cut—[*Inaudible*.]. As I said, the regulations do not allow for the "wait and see what the review says" options. There are time limits in that regard for the initial review, and there are also time limits if the determinations are challenged.

That brings us on to other things that we have talked about. The Northern Ireland model is probably harder to replicate in Scotland. In Northern Ireland, people ended up with a PIP award that was lower than the DLA award that they had received previously. They received what was referred to as a supplementary payment, making up 75 per cent of the difference for a year. That aspect could certainly be replicated in Scotland. The next step in Northern Ireland involved compensating for the loss of disability premiums and other benefits, but I suspect that, given that those other low-income benefits are not devolved, it would be harder for the Scottish Government to do that. Nonetheless, Scotland could, in principle, partly emulate that model.

The final option that we talked about was more along the lines of provisional protection for universal credit. It would involve providing the award at the level that it was at at the point of transfer and then not uprating it, so it would gradually fall behind whatever the uprated award at that level would be. If we moved from the enhanced rate to the standard rate of either component, the standard rate would eventually catch up as it was uprated with the level that people were getting. That would allow for a more gradual adjustment to the reduction in income; there would not be the cliff-edge drop in entitlement that would happen otherwise.

We have not gone into great detail on the feasibility of those options in our work. We have just noted the models that are available. As I said, they are not in line with what is currently being proposed, and people would be very naive to think that there would not be challenges associated with them.

11:00

Jeremy Balfour: I thank both witnesses for the evidence that they have given so far. I remind the committee that I am in receipt of PIP and will be transferred at some point. I have a quick question about the backdating of awards, which you have commented on. Could you give us a bit more information on the reduced ability to backdate awards and the financial effect that that will have on some claimants?

Dr Simpson: The backdating of awards relates to slightly unusual circumstances, because the individuals affected have moved from one agency to another, so the body with responsibility for their award has changed. The circumstances are also unusual in that, for the past two years, the DWP has, in effect, suspended the migration of DLA claimants in Scotland on to PIP, at the request of the Scottish Government. It is possible that some people might have missed out on higher awards as a result of that. For that reason, there is an argument in favour of backdating awards as far as possible. The argument against doing so is that Social Security Scotland is taking on responsibility only at a certain point, and it might be uncomfortable for it to award a higher payment for the period in which the DWP was responsible.

Even though the general migration has been suspended, individuals could still have requested to be transferred to PIP if they thought that they would be better off, although, as Sally Witcher alluded to, it is not necessarily easy for people to catch on to that.

We felt that the issue was worth exploring, but we do not necessarily take a view on what the right decision is. The worst-case scenario is that people have missed out on a higher PIP award for the past two years. However, those individuals could have missed out on that higher award for even longer if the migration to ADP had not been coming up and they had remained on DLA for longer. An optimistic way of looking at the issue is that, in some cases, the move to ADP might be the trigger in people getting a higher award.

The Convener: Sally Witcher wants to come in.

Dr Witcher: Actually, I wanted to come in on the previous question. I think that Mark Simpson has covered the issue of backdating as well as I could; I have nothing further to add on that.

The Convener: If you want to come in quickly on the previous question, that is okay.

Dr Witcher: I wanted to flag the fact that decisions about options are political decisions; they are not ones that it would necessarily be appropriate for SCOSS to comment on. In addition, we do not have the information. There are things that are ideal that could be desirable in

this scenario, but there is a challenge in relation to whether they are realistic.

For example, we do not yet know enough about the timing of the review of ADP to get a sense of what is practical and what is realistic around putting reviews on hold until that point. We do not know enough about the financial implications of the different options or about the delivery consequences. To explore that further requires a different type of investigation, which the committee is probably better placed to undertake than we are. All that we can do in this situation is point out the possibilities that would be likely to require, or would be worthy of, further investigation.

The Convener: Thank you. We move on to the final two questions.

Pam Duncan-Glancy: Good morning—I had to look at the clock to check that it was still morning; it is indeed. Thank you very much for setting out what is a complex situation. I have been trying to get to grips with the information that you provided in advance. Forgive me if some of what I ask about is outwith your remit, or if I have misunderstood.

My first question is a simple one; it is about the 38,000 people in Scotland who are on DLA and have yet to transfer to PIP. Is it your understanding that leaving them to transfer to PIP, as opposed to ADP, would have taken longer than the process that is set out in the regulations?

Dr Simpson: We have not given an enormous amount of thought to that. It would mean that the timetable would be out of the hands of Social Security Scotland and the Scottish Government and would be dependent on how long the process took the DWP. That process has dragged on. This way, we can say, "Here's the window when we transfer everyone in Scotland," and the Scottish Government can have some influence over that.

I do not sense that that has been a huge part of the reasoning. It is more to do with the Scottish Government's expectation that the process of getting on to ADP will be more claimant friendly than the process of getting on to PIP. That seems to be the motivating factor here, rather than the timing.

Pam Duncan-Glancy: In looking at this process, as you have set out in your evidence, there is a bit of policy divergence in that, with ADP, there is the interaction between the 50m rule and the 20m rule. Could any of the solutions that you have set out to address the transfer of individuals on DLA to ADP have been applied to the broader case transfer? It seems that, by definition, there will be two different systems, which will create inequity, in that some people will remain on a system that looks at the 50m rule as opposed to the 20m rule. If we are creating a solution to deal with this particular case load of people, could we not have done the same and extended that approach to others by addressing policies such as the 50m rule and the 20m rule?

Dr Simpson: If you had done it that way round, it would have looked—[*Inaudible*.]—same, only flipped in terms of the unequal treatment dimension. If the ADP criteria had more closely matched the DLA criteria, given that most people have already moved from DLA to PIP, a much larger number of people would potentially have to go through the two-stage process, because they would need to be migrated and then redetermined against the new criteria. The process would have been the same, but larger numbers of people would have been affected, so that would have had resource implications. Again, we are getting into the realms of political decisions about how much resource will be put into the transfer.

Pam Duncan-Glancy: I have two other brief questions. Could the Scottish Government have created a lower rate of ADP to transfer people on to, in order to mirror the DLA case load?

Dr Simpson: In effect, that is what it is doing. I presume that you mean retaining that as a permanent feature.

Pam Duncan-Glancy: Yes.

Dr Simpson: That is probably more a question for the review than it is for us. I presume that that would have been feasible technically but, as I said in my opening remarks, the emphasis has been on maintaining parity as a means of achieving safe and secure transfer. That raises the spectre of unequal treatment, because the relatively small group of people who were still on DLA would benefit from that, whereas the people who had already moved to PIP would not. That may or may not be an argument against doing it, but that has been the thinking.

I think that Sally Witcher would like to come in on that.

Dr Witcher: Briefly, this is where questions around the timing of the review become important. What comes out of that could mean a differently designed ADP. That is where the scope would lie for making such bigger changes. Questions of affordability and other matters relating to deliverability would need to be considered. Depending on the timing, one of the risks is that people could, in effect, be knocked off their entitlement to the enhanced rate, which we would not want to see, and then have it reinstated following a review. It could all start to get a bit messy, but that is where the issue would be positioned.

Technically, the Government can design such a system. Whether it can realistically do that is

another matter, because all the constraints that we know about—we have mentioned those around finance, delivery and DWP attitudes towards passporting—could start to creep in, in some cases.

Lurking in the background is whatever comes out of the DWP's green paper review of the structuring of benefits. Depending on the timing of that, that could throw up a lot of questions about the whole enterprise. One of the options that is flagged in the green paper would involve going down the road of merging universal credit-type benefits with extra cost benefits, which would require a fundamental rethink.

Pam Duncan-Glancy: I have one further question, but I will save it and write to the commission.

The Convener: I think that Mark Simpson wants to come back in before we move on to Miles Briggs.

Dr Simpson: No—I am okay. I simply wanted to flag the fact that the parity issue is not just about the transfer; it is also about the possible impact on passporting. However, Sally has covered that.

Miles Briggs: I have a brief question about part 4 of the regulations and whether there are any issues that you want to raise in that regard. Do you think that the ambition of creating a more flexible and person-centred approach will be achieved, or are there other issues that the committee needs to hear about and pursue?

Dr Simpson: I will do the easy bit on part 4. As we will be talking about that at our next board meeting, we do not have an awful lot to say about it now. The bits that we had sight of recently were dealing with small drafting errors and wee bits of unnecessary duplication. There is a bit more to them now than there was at that stage, but I think we will leave that until another day.

Sally, are you better placed to respond to the other question?

Dr Witcher: I am not entirely sure that I am, because we will be looking at part 4 at our meeting next week. If we have anything further to add, we will write to the minister and to the committee. Our initial response was very quick, because of the timelines. The points that we raised were immediate responses, but we would like to give the matter a bit more consideration. We may come back to you on that.

You also asked about a person-centred approach. If I have misunderstood what you were getting at, I apologise. Part of the aim here is to ensure that the more supportive, person-centred approach that is required of Social Security Scotland, in line with the expectations in the social security charter, is what people will get. Part of the reason for going down the road that it did was so that people would not be obliged to go through PIP assessments beforehand. That might not be what you were getting at, but it seems to be a slightly different point. I apologise if I have misunderstood.

Miles Briggs: It is not a problem.

The Convener: I thank both our witnesses for giving evidence. As always, your report and your evidence will help us in our scrutiny function.

11:14

Meeting continued in private until 11:35.

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