



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Economy and Fair Work Committee

**Wednesday 25 October 2023**

**Session 6**



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**ECONOMY AND FAIR WORK COMMITTEE**

**26<sup>th</sup> 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:**

Alan McIntosh (Advice Talks Ltd)

Joe McMonagle (South Lanarkshire Council)

Natalia Mendel (Dalkeith and District Citizens Advice Bureau)

**CLERK TO THE COMMITTEE**

Anne Peat

**LOCATION**

The James Clerk Maxwell Room (CR4)



**Scottish Parliament**  
**Economy and Fair Work**  
**Committee**

*Wednesday 25 October 2023*

*[The Convener opened the meeting at 11:15]*

**Decision on Taking Business in**  
**Private**

**The Convener (Claire Baker):** Good morning, and welcome to the 26th meeting in 2023 of the Economy and Fair Work Committee. Our first item of business is to decide whether to take agenda item 5 in private. Are members content to do so?

**Members** *indicated agreement.*

**Bankruptcy and Diligence**  
**(Scotland) Bill: Stage 1**

11:15

**The Convener:** Our second item of business is a further evidence session on the Bankruptcy and Diligence (Scotland) Bill at stage 1. Today, we will hear from front-line money advisers. I welcome Alan McIntosh, who is an approved money adviser at Advice Talks Ltd; Joe McMonagle, who is money advice training and development officer at South Lanarkshire Council; and Natalia Mendel, who is money advice manager at Dalkeith and District Citizens Advice Bureau. I thank the witnesses for coming along.

I ask members and witnesses to keep their questions and answers as concise as possible. If a witness agrees with one of their colleagues on the panel, they should not feel the need to repeat what they have said, please. We are quite happy to hear from one member of the panel.

I invite Colin Smyth to ask the first questions. As you know, the bill seeks to introduce a mental health moratorium. The first few questions will focus on that area.

**Colin Smyth (South Scotland) (Lab):** Good morning. As the convener said, the first couple of questions are about the proposed mental health moratorium. The mental health moratorium working group has recommended that only those in compulsory treatment should be able to access a mental health moratorium. I am keen to get your views on that. I know that you have commented on that criterion, but I am keen that your views on it and what it would mean for the clients whom you work with are put on the record.

**Joe McMonagle (South Lanarkshire Council):** I was on that working group, and a lot of issues were discussed in it. As you can imagine, a lot of facts, figures and evidence were discussed, as happens in a consultation and in the committee. There was a view from us and Sarah-Jayne Dunn of Citizens Advice Scotland that more mental health issues should be included and not just compulsory orders, because there are a lot of significant health issues. As members will see from South Lanarkshire Council's submission, a lot of people in the community get care and support—that is social care and national health service care. It is not just people who are detained in a psychiatric ward in a hospital who require some help.

I will give an example of a case that I am actively working on. A client has been an in-patient at Hairmyres hospital since May. She has not yet been discharged, but the NHS is working on a

discharge programme and support. She had capacity, but the pressure and the worry about a debt compounded her health issues. I have seen evidence on a statutory moratorium of six months, but the question is what will happen after that. We have talked about extending it for another six months to a year in extreme situations.

I am also dealing with other cases. Yesterday, for example, I dealt with two energy grants relating to home heating support fund applications. Both clients had significant energy debt and mental health problems, and they get adult disability payments. One person's brother is caring for her, and the other person's sister is looking out for her. If it was not for the fact that they are social housing tenants—one is a housing association tenant and the other is a council tenant—and they do not have any other significant debts, we could be looking at a moratorium. However, if someone has significant debts and is a home owner with equity in their property, we would be looking at a mental health moratorium over and above a statutory moratorium.

One thing that the working group discussed was a mental health professional signing off on the level of a person's mental health issues, and the money adviser would go with that. However, considering purely a compulsory order would be very restrictive.

I would certainly like to see more in the draft regulations about how things will be delivered. There was talk about the Accountant in Bankruptcy doing a separate portal for the statutory moratorium and another one that could reach out to all the creditors.

**Colin Smyth:** I do not want to put you on the spot but, when you deal with clients, what proportion of them will have a compulsory treatment order and what proportion will have a mental health issue that is clearly impacting on their management of debt, but no compulsory treatment order?

**Joe McMonagle:** There is one in the current financial year.

**Colin Smyth:** Just one has a compulsory treatment order.

**Joe McMonagle:** Yes.

**Colin Smyth:** The vast majority do not have that.

**Joe McMonagle:** Yes. The vast majority are active in the community, but they have care and support. They have community psychiatric nurses and they are regularly out-patients. There are a lot more of those.

**Colin Smyth:** If the approach was not based on compulsory treatment, what could the qualifying

criteria be? How would you expand and define the qualifying criteria beyond compulsory treatment?

**Joe McMonagle:** We have the debt and mental health evidence form at the money advice centre. You might have seen that or had it distributed to you. I have a copy here and I can certainly send it on to the clerk. That form normally has to be completed by a mental health professional or a social worker, who will base things on the medical evidence that they have. Basically, the form details how the person's mental health is in relation to dealing with debt and its pressures. Can they handle it? Are there any issues? Do they understand financial issues or is the pressure of the debt tipping them over? Those are the three significant questions.

The things that are put down are up to a medical professional. That could be a general practitioner, who will work on the basis of any psychiatric reports that they have, or it could be a community psychiatric nurse, a psychiatrist, a psychologist or whoever. They will put down what they consider to be the person's capability to deal with the debt and the finances, and the risks that they are under with that pressure.

That is a good basis to start with. That was brought out in the common financial tool moratorium working group. I was a bit disappointed that that was not in the final report. It should be borne in mind that a lot of organisations provided evidence. Basically, however, it is down to the mental health professionals and their assessment of how individuals are dealing with their finances and whether the financial pressure is tipping them over and causing further anxiety that is worsening the health problem.

**Colin Smyth:** That is very helpful. I do not know whether Natalia Mendel or Alan McIntosh wants to add anything to the position that Joe McMonagle has outlined.

**Natalia Mendel (Dalkeith and District Citizens Advice Bureau):** I fully agree with the idea of using the debt and mental health evidence form as a trigger for the moratorium. The only obstacle to that at the moment is that some health professionals still charge for that, although they do not charge as much as they used to, maybe because more people know about it, what it means and what it can do. That is sometimes a prohibitive factor, but we use that form quite a lot in our advice process because it allows people to capture the difficulties that clients have. It will say specifically how their mental health condition affects how they deal with money. It will not simply stipulate that a person has bipolar disorder or depression, for example. We all know that mental health is quite fluid and that a diagnosis will not mean exactly the same thing for everybody.

That may be another thing to work on in order to give guidance to medical professionals. What should be in the form to make it as helpful as possible? Sometimes, even if they agree to fill in the form, the information that is provided is not very meaty or specific; sometimes it just says, "The patient suffers from such-and-such." When the creditors look at the form later, they may struggle to see how that impacted on the client's decisions or their particular situation with reference to their debts.

Nonetheless, I fully agree that the form would be a fantastic tool to use as a trigger for the moratorium. We see hundreds of clients who have significant mental health problems and it is evident that, for some of them, even contacting us can be triggering—it is difficult, and they miss appointments or do not respond to our correspondence. Sometimes we have to forewarn them that we are going to call from a specific number. We have our own mobiles so that the client will recognise who is trying to contact them. However, those people may not be subject to any compulsory treatment, perhaps because they do not need it or because there is a waiting list to be seen by a mental health professional. That might mean that people who would otherwise fulfil all the criteria that are required are not yet ticking the boxes simply because they are waiting in the system for their problems to be recognised. The form would allow those who are closest to them, such as social workers, support workers or CPNs, to inform the creditor about the difficulties that the client has. As such, it would be an amazing tool.

**Colin Smyth:** That is very helpful.

**Alan McIntosh (Advice Talks Ltd):** In England, there is the breathing space scheme, which is basically the equivalent of our statutory moratorium, and then there is the breathing space for mental health crisis tool, which is used in only about 1.4 per cent of the total number of cases. If we use a similar model to that which is used in England and the percentage is roughly the same—1.4 per cent—we are probably talking about 50 cases a year. If Scotland takes up that model, we are talking about passing a bill that is gonnae help 50 people a year at best. I do not know if it would even reach that amount, because the situation is different here. We have a better moratorium that lasts for six months, whereas the moratorium in England lasts for two months.

If you want the bill to help people, you really need to look at that. Otherwise it is gonnae be really restrictive. Is it really worth it for the sake of 50 people a year?

**Colin Smyth:** That is very helpful.

**Maggie Chapman (North East Scotland) (Green):** Good morning. Thank you for joining us

and for what you have said so far. I will continue with some questions on the relationship between you, as money advisers, and the kicking in—or not—of the mental health moratorium. Natalia Mendel spoke clearly about how even contacting money advisers can be a trigger and a potential hurdle for some people, and there have been suggestions about who will make the application for the moratorium and how we can ensure that that person, if it is the money adviser, will have the right information.

Natalia, do you see a situation in which you, as money advisers, might end up being gatekeepers, in a way? Are you potentially being given a responsibility that you do not want to have in your role? Is there another way of looking at the process for how the moratorium will be put in place, if we get the criteria for it sorted out?

**Natalia Mendel:** First, we have to recognise that not all people who have problems with mental health and debt are going to come through our doors and seek help. Those who do that are already in a good position, because they have recognised that they have a problem and that they need assistance. I would imagine that, with regard to those who have that awareness, there will not be a massive difference for us, as money advisers.

However, a new issue will arise with people who lack such awareness, who could be referred to us by mental health professionals. That co-operation would be very useful, but there would need to be some way—perhaps a procedure that is written down somewhere, because we have to adhere to data protection rules and all the regulations—by which a mental health professional could, with agreement from the client, refer people on to us, like any other organisation would. For example, it may be that they have recognised that a client's mental health status is triggered by the existence of debts and they would like an organisation such as ours to discuss that with the client.

11:30

There could be a soft referral whereby the mental health professional tells the client, "This service has advice available—please go and seek it" or it could be a more formal referral whereby they send us a referral form saying, "This client expressed in our meeting that they are struggling. I'm not sure whether they are going to try and reach you because of the problems that they have at the moment. They are finding it difficult to make a decision and it's a lot for them to make a phone call or even to appear in the outreach locations. Would you mind trying to contact them?" I do not think that that process would change a lot. As it is, we get referrals from the council and other organisations, and it would be pretty much the

same. I am more concerned about the data protection aspect and honing how it will be structured across the board.

**Alan McIntosh:** There is a practical operational problem with this. Our current moratorium is fantastic in that people can go online and register it, it comes on within 24 hours, and they have protection for six months. They do not need to wait to see a money adviser, get an appointment or go through somebody who will decide whether or no they deserve it. I understand the concern about gatekeeping, but the first problem is that we are dealing with people who possibly do not have that ability because of their mental health crisis. Looking at money advisers as gatekeepers in this context might be wrong, because we are really there to assist them.

The other issue is about the effect of the moratorium. One of the effects of the English breathing space moratorium is that it can freeze interest and charges. In Scotland, our moratoriums do not freeze interest and charges. That issue was raised during the coronavirus, and Jackie Baillie lodged an amendment to the Coronavirus (Scotland) (No 2) Bill about freezing interest and charges in our moratoriums. One of the problems with that, which the Accountant in Bankruptcy raised at the time, was that, if you do that, you have to notify the creditors. We do not need to do that at the moment, with the current moratoriums. If someone who has 10 creditors is having a mental health crisis and they apply for a mental health moratorium, they will have to notify the creditors. We need to know how that is gonnae happen. Will the Accountant in Bankruptcy notify them? How are we gonnae get a list of the creditors and their account numbers? The person might no be in a position tae deal wi them.

In that context, our money advisers should maybe be involved. I do not think that that will remove the problem, because there are issues, but that is one of the operational problems that we need to explain. If the moratorium is gonnae freeze interest and charges, from what has been said in the past, we will need to notify the creditors, but how will we find out who they are? Natalia Mendel will tell you that that is sometimes a really difficult problem. How do we get their account numbers? Who will do that? Will we do it or will the Accountant in Bankruptcy do it? That is an operational issue.

**Maggie Chapman:** That is really helpful. I have a general question. Would you support the moratorium if it froze interest and charges in that way?

**Alan McIntosh:** I would support the moratorium. The whole issue, which has perhaps not been highlighted enough, is the question of what the proposed moratorium will do. The current

statutory moratoriums stop all diligence and they prevent somebody from being made bankrupt unless a petition has already been raised for bankruptcy. What will the proposed moratorium do? In England and Wales, the breathing space moratorium stops somebody raising a court action, freezes interest and charges, stops cars being repossessed, stops evictions and repossessions, stops pre-payment meters being forcibly installed—which is a reserved matter for the UK Parliament—and stops arrears for electricity and gas bills being deducted from a pre-payment meter. Our moratoriums do none of those things. There is a big issue there. What will the proposed moratorium do that will make it better or more enhanced than the current statutory moratoriums? At the moment, we do not know.

**Maggie Chapman:** That is really helpful.

**Joe McMonagle:** You are talking about gate keeping, and we look at that as a multi-agency approach that includes the NHS and social work, whether that is a social worker or mental health officer. I like to use the analogy of a football team—basically, we are playing the ball from the back. The mental health officer or social worker might cross the ball and then the money adviser puts the ball in the back of the net. It is a team approach, and we all play a part. The money adviser is not doing all the work, because there is a lot of coming together.

We do our bit, and the mental health professionals and social workers, if a social worker is involved, do their bit. Sometimes it is the money adviser who identifies an issue with a client. Perhaps a client is in with a relative and they ask, “Have you discussed this with your doctor?” or whatever. Some people who come in have not seen a doctor in several years and are bottomed out because of their debt pressures. It is about identifying that and saying, “Go and speak to your doctor and then maybe go down that route.” It is very much a multi-agency team-working approach. We play our part, but we are not in total control. We do not monopolise it.

**Maggie Chapman:** Absolutely. I was not trying to suggest questions of gate keeping. You made the point that partnership, collaboration and a multi-agency approach is important. Is there enough in the bill or the guidance around that? What would you like to see to support that?

Natalia Mendel, you mentioned that the people who come to you are already in a better place than many people who cannot or do not know about all that. What do we need to ensure is in place so that people know that you exist and that there is support for mental health—Joe McMonagle talked about care and support in the community—so that people do not fall through the cracks? How can we use the bill and this process to plug those gaps?

**Natalia Mendel:** It goes back to what Alan McIntosh said about what the moratorium will offer. It is true that we use the statutory moratorium a lot at work. I am yet to meet a client who applied for it themselves, even though they have the ability to do so—it is a super easy form. We make people aware that it exists, because people do not know about it.

However, in reality, it is limited. It does not prevent the creditor from starting the action; it just prevents them from acting on it. During that six months, the creditor can obtain a decree and, when the six months is up, they can use it to arrest wages or go to the bank account and so on.

For the moratorium to work, particularly during the first period of time, people need to focus on their mental health. That is a very important part of the proposal. We must recognise that, when someone has a mental health crisis or when their mental health is so bad that they need to take time out and pause, that is not the time to think about their debts. That is the time for them to recover and focus on their treatment, whatever it might be. When they feel better is the time to slowly start the process of addressing their debts. Doing so slowly is crucial, because it can be like a knife cut—you were unwell but now you are fine so we are going to throw it all at you.

If people knew that, from the first moment of the moratorium, the interest is stopped, the charges are stopped, correspondence is stopped and no court action is started—everything stops—it would be a massive incentive. That could be advertised, and it would meet the need that is out there in the community.

**Alan McIntosh:** Otherwise, if it just does what a statutory moratorium does, just apply for a statutory moratorium. We have only six months so why would we waste our time doing all that extra work when we could just do it online and get it tomorrow? It is simple.

**Maggie Chapman:** I know that other members want to come in, so I will leave it there.

**Brian Whittle (South Scotland) (Con):** Good morning, panellists. I have listened to what you have said, and I am interested in the practicalities of addressing the issues that have been raised. Alan McIntosh, you talked about the problem that we are trying to solve. In an ideal world, somebody having mental health issues would seek treatment and, during that treatment, they would come to you, but that is not the real world. In the real world, people hide their mental health issues and might not receive treatment.

Do you have the required skill set? Is extra training required? Do you have the practical skills to be able to identify and deliver on what the bill is trying to achieve in this area? I am concerned

about the practicalities of what we are trying to do here.

Natalia Mendel, you talked about the need to identify those who would benefit from the mental health moratorium. You discussed very clearly that there is so much scope in mental health that not all people with a mental health issue will need that provision. How are we going to identify that? How are we going to make sure that we do not drop the ball?

**Natalia Mendel:** That was a problem that we had. We identified that issue in our service—that we have to have a way to reach out to people rather than wait for them to appear in our office. We tailored our advice model to try to answer the demands of the clients. At the moment, we offer advice mainly in our outreach locations, because it is easier for the client to come out and seek advice in a familiar place than to go to a building that they do not know. Very often, we are present in local food pantries to give people a chance to come and talk to us.

We have a separate project, for which we sought funding, in which we offer support to men whose mental health is affecting them in such a way that they struggle to engage with services or have attempted to take their own life.

We try to have good working relations with the local council. As has been said, it is about teamwork. In the previous organisation in which I worked, we had very good working relations with general practices. At the moment, we do outreach work in a couple of practices, and we sometimes get referrals from general practitioners, with the permission of the client. If the GP recognises an issue, they will let us know, and the client can be seen in the clinic.

The skill set is there. There is a way around the issue. It demands a bit of flexibility. I dare to say that it demands funding, too, because it all costs money. However, as money advisers, we have access to good training platforms, through which, face to face or via e-learning, we can get really good mental health training on mental health first aid, for example, or through MATRICS learn, which has good units on supporting clients who are vulnerable. We go out to training that is organised by our own bureaux with mental health professionals. There is therefore an ability to recognise clients' issues, triggers and points of crisis.

That comes with the job, too, because, regularly, we see clients come in at the door with no appointment, bags in hand, who have lost their house or who say that, essentially, if they do not get help, they will end their life.

**Alan McIntosh:** Money advisers are skilled people. As they will tell you, they act as

accountants, lawyers, social workers and mental health workers. They do pretty much a bit of everything. In large numbers, money advice clients have mental health problems of varying levels. It might just be anxiety but, sometimes, it can be a lot more severe. There are a lot of skills in the money advice sector, especially in identifying mental health problems and working with people who have such problems.

However, especially at times such as these, given the cost of living crisis, there is increasing strain on money advice services and money advisers personally. Obviously, given the environment that they work in, and the very ill clients who they deal with all the time, their own emotional wellbeing can quickly be eroded. That has an impact on money advisers.

The skill set varies between somebody who has just started and somebody who has been doing it for 10 or 20 years, but, certainly, a lot of skills are there. As Natalia Mendel said, it is also about funding—making sure that we can retain those advisers. However, my big concern is about the effect over time on the advisers. They take the problems home with them, especially if the organisation is short staffed or underresourced. That has an impact on their wellbeing. A lot of money advisers end up going off with stress and sickness because of what they are dealing with every day.

**Joe McMonagle:** I have been a money adviser for 20 years—13 of those in training and development. I train our advisers, and we are up to date with that. As Natalia Mendel has said, there is external training and internal training, which we in the money matters advice service do in-house. We have also done council-wide training, which is always available. Natalia mentioned a few things; I have done applied suicide intervention skills training.

11:45

As Alan McIntosh said, we are trying to hold on to good money advisers and seasoned people who have experience. There is no doubt that there is a lot of pressure. People take the job home with them and sleepless nights are not unusual, particularly when they are worried about a client who might lose their house or who has health problems.

One of the most important attributes for anyone working on the front line of money advice or as a welfare rights officer is the ability to build a rapport with individuals and to gain their trust. That is the same in the NHS and in social work. It is not just a paper exercise: staff need the ability to build a rapport with people and to give advice on the right level so that people are capable of taking it. Over

the years, I have told people to bring in a family member, a friend or someone they trust who will be able to talk them through the process. That might be a carer.

There is a lot of training, knowledge and sharing in the council environment. Housing officers are trained to identify tenants who may have issues and who may need to go to the NHS, social work or a money adviser; social workers are the same. There are lots of good people out there and a lot of good training and information. There is no doubt that there are concerns about capacity, but everyone can play their part. As I already said, we can do our bit and the NHS and social work can do their bit as part of the team.

As Natalia Mendel said, we also have link workers, working not for the council but out of GP practices. Part of their remit is to refer people to council services, Citizens Advice or other community projects that can help them with debt, job coaching or whatever.

I am sorry if I have rambled on a bit.

**Brian Whittle:** You raised the issue, as did Alan McIntosh, that the bill will affect a very small number of people. You made the point that some people have capacity issues that are outwith the confines of the bill and you also talked about resourcing. My concern about the way that the bill is drafted is that the whole point of the bill is to help people who are in real need, but we must also ensure that we do not run out of resources. Where are we with that?

**Joe McMonagle:** We are already dealing with some of those people, but they do not have enough protection. Given the right procedures, we can give them better protection. We are not dealing with clients who have no mental health issues whatsoever. We need to get them better and more extended protection. Someone might have had two, three or four years of on-going treatment, but the statutory moratorium gives six months' protection for someone who requires treatment.

As well as the people who I am aware of through my job, I am aware of other people from the area where I grew up, in Glasgow. I am aware of our neighbours or of people in the community who have problems. People come up to speak to me in the street. They chap my door or see me at a football game—I am a Queen's Park man—and speak to me because they know that I have a foot in the door and can point people in the right direction.

Some people are already on our case load and are existing clients. It is important to extend that protection and to give people scope to get treatment and protection until such time as they are well and are able to stand on their own two

feet and move on. They are here already. There will always be new clients, but we already have them.

**Alan McIntosh:** There is an issue, but that is a valid point. If we make something that is really good and it gives a lot of people a lot of protections, you might get a lot more health and social care workers starting to refer more clients on to advice agencies, because they will think, “Oh, this is great; it’s got a high profile; it could really help my clients.” If the procedures are quite complicated—if we have to notify the creditors and all that stuff—then it will have an impact on services. You might be creating further work, especially if you widen it so that it is not only 50 people a year.

There are a lot of factors and, as you know, the problem with the bill is that, with regard to the moratorium, there is no meat on the bones. We do not know any of this yet. We do not know what effect it will have. We do not know what the application process will be. We do not know who it will apply to. Without knowing that, it is really difficult to comment on what the impact will be. Will it be something that we want to use for our clients? If so, how many clients are going to use this and what impact will that have on services? We do not know at this point in time because there is nae meat on the bones.

**Kevin Stewart (Aberdeen Central) (SNP):** Sometimes, when folks see this kind of bill, they want all of the meat there and then, but this evidence session, this inquiry and the scrutiny of it all gives us the opportunity to go into more depth to make sure that the bill is actually the right one and will help folk.

Joe McMonagle was talking about rambling on, but I do not think that you have done that today. The evidence that you have given is extremely useful. I stand to be corrected, but I think that this is the first time during oral evidence taking that we have heard folk talk about the debt and mental health evidence form to any huge degree. For many who have watched this meeting but not looked at all the background, that will be a new thing. What you have done today has shone some more light on all that.

I want to come back to one of the most important points in all this, which is something that will not necessarily require a huge change in legislation or regulation. You talked about the training that you and your front-line staff have undertaken through ASIST. I am sure that many of your staff, if not all of them, have done trauma-informed practice training and various other training.

From the evidence that the committee has received, we are not sure what training is being

done on the other side with mental health professionals, social workers and others around their knowledge of debt advice that they can pass on to their clients. In some areas, other areas of business, Government and local authorities have come together to put in place toolkits so that everybody knows what is required to do the best for the person concerned. Have you done anything about toolkits for social workers, mental health professionals and others who you deal with on behalf of clients? Has anything like that been done previously to get the smoothest possible journey for folks at what are sometimes the most traumatic times? That question is for Joe first.

**Joe McMonagle:** Yes, although that has not been done in recent times, because of Covid and the cost of living crisis. We have not done it as often as would otherwise have been possible. South Lanarkshire Council has Learn On Line, which is intranet-based internal council training. We also do webinars—I have done them in the past. My colleague David Harkness, who is a welfare rights officer—a kind of guru—for South Lanarkshire Council, does webinars for social work and other staff to provide that information.

We also hold face-to-face meetings, which is probably something that we need to do more of, to be perfectly honest. We use Teams, which came in with Covid, but face-to-face training events tend to be more informative, because you can look round the room and see who is taking it on board, and it is easier for people to ask questions. We have done that in the past and we continue to offer it. With this new moratorium, there probably should be more information.

I do not know what it is like in other councils, but we have a turnover in staff in social work particularly—every so often, we get new social workers and, obviously, part of the remit for their training is to understand what is on offer from the likes of money matters advice service, welfare rights and debt advice and other departments.

**Kevin Stewart:** Although blips have happened over the past wee while in relation to the issue, your local authority seems to be, or to have been, on the ball. However, nationally, we do not have a set advice and help toolkit for everyone who is involved. Do you think that that would be beneficial?

**Joe McMonagle:** Definitely, because it would set a national standard. National standards for information and advice have been set around money or housing advice. Having a national toolkit would be good and healthy, too, because if standards are stipulated nationally, it is not a postcode lottery, with different types and levels of information and advice in different areas. Also, standardisation would mean that, if we deal with

creditors or whatever, they will know what is involved.

**Kevin Stewart:** Grand. Natalia, do you have any comments on that?

**Natalia Mendel:** I am thinking about it now.

**Kevin Stewart:** While you are thinking, I will tell you what my thinking is. We have a homelessness toolkit in place, so that folk follow—or should follow—the same kind of things. That toolkit can be added to with the wealth of knowledge that comes in from various professionals who are dealing with homelessness. Would something like that, with a flexibility around it so that it can change and all the knowledge can be kept up to date, be useful?

**Natalia Mendel:** Yes, to a degree—with that added flexibility. As has been mentioned, we already have national standards for debt advice. There is conversation around whether the common financial statement will exist in its current form or whether we should change it, so there is an element of standardisation.

We have to recognise that services are slightly different if they come from the council, a housing association or independent advice agencies. I am lucky to come from an agency that has the support of a wide network, but some small agencies do not have that. Agencies in rural areas up north might find it more difficult to tick some boxes or to utilise the toolkit fully. We have to recognise that agencies might dip in and out and take different things from it.

There is a requirement for a standard for debt advice: the adviser has to provide and do certain things, so that even the creditor knows what to expect, and so that the debtor knows what to expect and how they can be helped. If that can be done through some sort of recommendation, that would be fantastic.

**Kevin Stewart:** You are looking at this from the debt advice side, and I understand why—

**The Convener:** Sorry, Mr Stewart, is it possible to make some progress? We are a bit pressed for time—

**Kevin Stewart:** Very briefly, you are looking at this from the debt advice side, Natalia, and I understand, because that is who you folks are. Would a toolkit like that be helpful, not just for debt advice but for the likes of GPs and link workers that Joe McMonagle spoke about—all the people who are involved in this process and helping folk—so that they follow the same lines in getting the right advice for clients as well?

**Joe McMonagle:** Definitely.

**Murdo Fraser (Mid Scotland and Fife) (Con):** Good morning to the witnesses. Can I broaden the

discussion to a different topic? The committee has heard quite a lot of evidence about the minimal asset process bankruptcy. Some witnesses have said that they would like the current restriction on applying for that, which is 10 years, to be reduced to five years. It is fair to say that we have heard arguments both for and against that.

I am interested, therefore, in hearing any perspectives from you on what impact that change might have on your clients, and what difference it would make if they had to apply for full administration bankruptcy instead of the minimal asset process.

12:00

**Alan McIntosh:** I will give the committee a very brief history of how we ended up with minimal asset bankruptcy. Scotland was the first to introduce a process of what we now call “bankruptcy lite”—a low-income bankruptcy—in 2008, which was even before England introduced debt relief orders. We used to charge people £100 per application. By 2012-13, that had gone up to £200, because we were following a full cost recovery process. The number of low-income bankruptcies dropped off because of that.

In 2013, a new version of the process was brought in, called minimal asset bankruptcy, which put limits on the amount of debt that could be included and lasted for only six months rather than 12 months. The purpose of that was to reduce the cost to the public purse of administering such bankruptcies, so that we could bring the cost of applying for it down to £90 from £200 to increase take-up.

I never really understood why it was set down that people could do that only every 10 years. I think that it was about being cautious with a new thing and not wanting people to just keep doing it. However, the reality is that if somebody qualifies for a minimal asset bankruptcy, even if they have done it five years ago, they have no assets or heritable property, so they aren't gonnae be able to pay anything. Who does it benefit if we stop them from doing it again after five years? They could do that with a full administration bankruptcy.

What is the benefit of making someone have to wait for 10 years before they can do the minimal asset process again? If they do the full administration bankruptcy, it takes 12 months and costs more to administer, so it has an impact on the public purse. It means that the client remains bankrupt for 12 months rather than six months. That does not have any benefit for the creditors, because if someone qualifies for minimal asset bankruptcy, they never make a contribution.

My point is that we have got caught up in a moral issue of whether people should be able to

declare minimal asset bankruptcy twice in 10 years. Why should they not, if they can do a full administration bankruptcy anyway? The purpose of the minimal asset bankruptcy, as the “lite” version of bankruptcy, is that it is cheaper to administer for the public purse. It doesnae actually make any difference to the creditors—they never get a dividend payment anyway, because the person doesnae have any money.

It is about getting the poor and financially excluded person in and out the system—almost gien them a quick wash. That is what they do in America—their wans last about four months. That is helpful, because a lot of people might otherwise put off getting a job again—they will say, “I’ll wait until my bankruptcy’s finished.” That has nae benefits.

If we can get somebody in and get the situation dealt wi—they have no assets and nae money, so they cannae pay anything anyway—and get them out, it is beneficial for them because they will then, we hope, go on to become economically active again, and it is cheaper for the public purse. I do not see any logic to the restriction at all, from that point of view.

**Murdo Fraser:** Great. Natalia or Joe, do you agree with that?

**Joe McMonagle:** Yes, I concur. The full administration bankruptcy requires six-monthly reviews over four years, so whether it is the Accountant in Bankruptcy acting as a trustee or an insolvency practitioner, where there is a contribution, the fact is that they are having to take the time and make the effort to do the six-monthly reviews.

Basically, it is throwing good money after bad. The change would make it a bit more seamless.

**Colin Beattie (Midlothian North and Musselburgh) (SNP):** I have a couple of quick questions. You have already touched on the role of the money advisers in connection with the mental health moratorium, but it is recommended that money advisers should actually have the role of applying for a mental health moratorium on behalf of the person concerned. Do you have any views on that—for example, on how it might work and how complicated it might be?

**Alan McIntosh:** I can be very quick on that—I know that time is pressing. There is an issue. If the person has a capacity issue, we cannot act on their behalf unless somebody else can act on their behalf, such as someone with power of attorney or a guardianship order. Ultimately, if someone lacks the mental capacity to instruct us, we need somebody who does have that capacity. That is the first issue.

Obviously, people who have mental health crises may still have capacity. It may be down to a doctor’s decision whether somebody has capacity. However, there is also an issue with regard to how much they can assist us.

I go back to Maggie Chapman’s point about interest and charges. If we have to notify a person, we need them to be able to give us information about their debts, account numbers and so on; however, if they have diminished capacity, they might have the capacity to instruct us but, operationally, things can still be really quite difficult. We still need to get a lot of information off them if we have to notify creditors and so on.

**Natalia Mendel:** There is, sometimes, an issue with capacity. With some clients, I have been uneasy about signing off sequestration or advising them that that is the route for them without having it confirmed that they are fully aware of what they are doing. That is the beauty of our job, I think. That is where mental health professional involvement is important and, indeed, where the debt and mental health evidence form can help, because it would explain the extent of a client’s capacity issues. The process itself would need to be fairly straightforward—almost similar, say, to what we do now with statutory moratoriums, where you have an easy form to submit and everything is done via the AIB.

There is also an issue with contacting creditors. We tend to rely on credit reports, because many clients simply do not know what they owe and to whom they owe it, so this approach would make things more straightforward. There is some delay for those who are digitally excluded, because most of the reports require an active email address, which many clients do not have or, for whatever reason, cannot operate. We then have to make an application on paper, which takes time. Ultimately, though, that can be done after the moratorium application is submitted.

I think that the proposal is doable, but we definitely need to think about the capacity issue, the point at which the mental health professional would have a say and the criteria by which we would seek further advice.

**Joe McMonagle:** The mental health professional will make the referral to the money adviser; if the criteria are expanded, they will be able to confirm that the person has a mental health issue but also has the capacity to make decisions.

At the working group, we discussed the possibility of the Accountant in Bankruptcy having a portal for this, as it does just now for statutory moratoriums. If, when we meet the client, we have the medical evidence to show that they need this

protection, but they have capacity, it will be a simple thing to upload all that on to the system.

After that, the issue is case load. With any case, we act on the client's behalf for as long as they require our service, contacting creditors and so on. Uploading the referral from the medical professional to the sort of portal that we have for moratoriums should not be too time consuming—all the work comes when you start to expand and work the case. As I have said, I would not call putting a moratorium in place excessively time consuming.

**Colin Beattie:** I want to move on quickly to a totally different issue. How effective is the debt advice and information package as a way of communicating the key information to people who are facing enforcement action? Are there any improvements that could be made? We have heard evidence of some issues in that respect.

**Alan McIntosh:** I will be very quick and say that it is probably not very effective. People get a wee booklet that tells them that they can contact Money Advice Scotland, Citizens Advice Scotland, StepChange and stuff, but I do not think that it is a major source of referrals. I guess that it is just that they get that booklet and that they dae know who tae contact, but I would say that it probably isnae that effective.

**Colin Beattie:** Would you say, though, that it is simple and easy to get your head around?

**Alan McIntosh:** That is the problem, isn't it? The Accountant in Bankruptcy dae other more comprehensive booklets, but should there just be an A5 sheet instead of a booklet? I do not know.

How you communicate things to people effectively and how you tell them to get advice has always been a difficult issue. You could slim it doon tae an A5 because all you really want to give somebody is phone numbers that they can phone if they need help. That is the core message that we want to get to people, but I do not know whether that would make it more readable and whether people would read it more.

**Colin Beattie:** I will stop there because I am conscious of time.

**The Convener:** The bill makes some limited and fairly technical changes to diligence but we have heard calls to reform diligence against earnings. There have been suggestions that the amount that is protected should go up to £1,000 and that there should be a system of deductions that takes account of family size—I think that the Scottish Parliament report “Robbing Peter to pay Paul: Low income and the debt trap” recommended that second proposal. It has also been suggested that some flexibility for creditors could be introduced to the system so that they

could reduce the amount seized from earnings if it helped to support the debtor with their liabilities.

Alan, you have done some work on that. Will you talk to the committee about it?

**Alan McIntosh:** It is a difficult question. The origins of the diligence against earnings start back in 1985 when the Scottish Law Commission did its “Report on Diligence and Debtor Protection” and proposed the modern earnings arrestment. The amount that was protected started out as £152 per month in 1987. Until 2009, it went up with median average weekly earnings. In 2009, it switched to going up by whatever the consumer prices index was. I think that it has noo gone back tae median earnings.

I do not know exactly how it is done. I have looked through *Hansard* and have tried tae figure oot how the Government came up wi the figure of £152 in the first place. In its report, the Scottish Law Commission considered a number of different options. For example, some countries set the protected minimum amount against the minimum wage. Obviously, in 1985 and 1987, the United Kingdom did not have a minimum wage. Some countries set it against the personal allowance for tax.

I will gie the committee an example quickly. In 1987, the protected minimum amount represented 70 per cent of our personal allowance for tax purposes. It is now 62 per cent. At some points, it has been down at 50 per cent. The minimum amount has not held up compared wi the personal allowance for tax purposes. It has significantly dropped. In fact, in 1985, it was at its highest, because it was 125 per cent of the personal allowance. As I said, it is now down to 62 per cent and, last year, it was down to 50 per cent.

We did not have a minimum wage in 1987 but we got one in 1999. The protected minimum amount was 47 per cent of the minimum wage, based on somebody working 37 hours a week. It is now down to 39 per cent, so it has dropped significantly.

If you were to increase the protected minimum amount to £1,000, which is what I have suggested, that would bring it up to 59 or 60 per cent of the minimum wage in the UK and would work out as roughly 95 per cent of the personal allowance—the amount up to which we do not think that people should have to pay tax.

The Law Commission considered those points at the time of its report. We should consider them now. If you go bankrupt in Scotland, you are allowed to have £1,000 in your bank account. If your bank account is arrested—as you know, I was involved in campaigning on that—you are allowed since last November to have £1,000. Why should somebody no be allowed tae have £1,000

in their wages at the end of the day? All we are talking about is 60 per cent of the national minimum wage to give some basic protection to people.

I have done a survey. I will not go into it because I know that we are pushed for time but, in my experience—I do not know whether it is the same for my colleagues—the current system causes a lot of hardship. It is no based on whether you have children or not or on whether there are two or three people in your house. Again, the Law Commission looked at that point in 1985. It thought that it would be complex to do because it would put the responsibility on an employer to establish whether somebody has a dependent child, so the commission didnae think that it would be a good idea.

However, under the Welfare Reform Act 2012, which is UK legislation, the Department for Work and Pensions and local authorities can do a direct earnings attachment. That is a UK arrestment. They are allowed to change the amount. If somebody contacts the DWP or a local authority when it is doing an attachment for overpaid benefits and says, “Listen, I’m really struggling. I really cannae afford this earnings arrestment. I can’t pay my current council tax,” because they have two children or whatever, the DWP and local authorities are allowed to vary the amount of the wage arrestment. They can decide to reduce it, but you cannot do that with a Scottish earnings arrestment.

12:15

I think that we should give local authorities the flexibility to do that, and I see that South Lanarkshire Council has supported that, as well. When somebody contacts the council and says that they are having trouble with their earnings arrestment and cannot afford it and that is accepted—maybe the person could go to the money advice service, which could do a financial statement and give that to the council tax department—why would we not give councils the power tae at least reduce the amount or vary it? That is a power that the DWP has and that councils already have when they are arresting wages for overpaid benefits, but they do not have it for council tax.

I am happy to share tables relating to the minimum wage and the personal allowance. I can email them to the clerks so that members can look at them. The point is that the amount has never really held its value, and we need to look at that. I would argue that £1,000 is the right amount and that we need to give councils alternatives. Obviously, 90 per cent of wage arrestments are done by councils. For council tax, we need to give

creditors the power to vary the amount of a wage arrestment.

**The Convener:** Natalia and Joe, do you have anything to add in respect of your clients and the impact of wage arrestments?

**Joe McMonagle:** Yes. You have probably read South Lanarkshire Council’s submission. I was not directly involved in that, because I was on the money advice side, but the submission came from the council as a creditor for council tax in particular.

If someone gets an earnings arrestment for one year, that will often overlap into the next year. They will then run up council tax arrears for the subsequent year. I will not say that that happens in every case. In some scenarios, the earnings arrestment can result in a person getting into rent or mortgage arrears. We are then looking at a solution such as the debt arrangement scheme or bankruptcy. In the debt arrangement scheme, for example, the creditor will get only 78p in the pound, as stated in South Lanarkshire Council’s submission. They would prefer to amend the arrestment and get 100 per cent, particularly because, as we all know, there are factors such as local government funding issues, and even the third sector is struggling just now.

We should ensure that the councils have the power to vary the arrestment, particularly with regard to collection of the council tax. I am speaking about not just the council tax but other creditors. Some creditors will be happy getting a regular amount each month rather than potentially nothing at all. If an individual has to apply for bankruptcy, there is a fair chance that there will be a zero dividend. Do not get me talking about trust deeds, but they are not good. In the debt arrangement scheme, we are talking about 78 per cent of the debt. It is about having the power to vary the arrestment.

As Alan McIntosh said, there is the precedent in the direct earnings attachment at UK level. I would like to think that, as a caring country, we not only care for the individual but we are astute. For a council or any creditor, from a commercial point of view, that has to be more viable for them.

**The Convener:** Natalia, would you like to say anything about earnings arrestments or the impact on your clients?

**Natalia Mendel:** I fully agree that the level is not appropriate at the moment. It is adding to energy poverty and child poverty. On wages being arrested at the current level, there are often families in which only one person works, and if that amount of money is arrested from their sole income, that leaves those families in severe financial hardship, and there is simply nothing that

we can do to alleviate that and bring things back to the level at which people can cope.

**Alan McIntosh:** I have one last point. In Scots law, judges traditionally used to say that diligence is harsh by nature, because it is a coercive form of legal debt recovery, but it should never be unduly harsh.

The problem that we currently have with earnings arrestment is that it too often turns out to be unduly harsh, and the legal procedure for challenging it involves going through courts and getting a review. Clients will not do that. No flexibility is built into the system. Even if there is a perfectly reasonable creditor—many councils are perfectly reasonable, because they also help people with their welfare, as are other creditors who have been told by the Financial Conduct Authority to be reasonable—they do not have the power to vary it.

We have to give them the power to vary it. In too many cases, we hear what Natalia Mendel said. There are too many cases now in which the approach is unduly harsh—that is not the point. Even the Debtors (Scotland) Act 1987 says that, if the approach is unduly harsh, people can ask to get it recalled, but that means going through the courts. The law says that the approach should not be unduly harsh, but we see every day that it is unduly harsh in too many cases.

**The Convener:** I thank the witnesses for joining us—it is much appreciated. We now move into private session.

12:20

*Meeting continued in private until 12:28.*

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