



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

DEVOLUTION (FURTHER POWERS) COMMITTEE

Thursday 8 October 2015

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DEVOLUTION (FURTHER POWERS) COMMITTEE
25th Meeting 2015, Session 4

CONVENER

*Bruce Crawford (Stirling) (SNP)

DEPUTY CONVENER

*Duncan McNeil (Greenock and Inverclyde) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh Northern and Leith) (Lab)

*Linda Fabiani (East Kilbride) (SNP)

*Rob Gibson (Caithness, Sutherland and Ross) (SNP)

*Alex Johnstone (North East Scotland) (Con)

Alison Johnstone (Lothian) (Green)

*Stewart Maxwell (West Scotland) (SNP)

*Mark McDonald (Aberdeen Donside) (SNP)

*Stuart McMillan (West Scotland) (SNP)

*Tavish Scott (Shetland Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Fiona Collie (Carers Scotland)

Mike O'Donnell (Skills Development Scotland)

Judith Paterson (Child Poverty Action Group in Scotland)

Pamela Smith (Scottish Local Authorities Economic Development Group)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Devolution (Further Powers) Committee

Thursday 8 October 2015

[The Convener opened the meeting at 09:30]

Scotland Bill (Welfare Provisions)

The Convener (Bruce Crawford): Good morning, colleagues, and welcome to the 25th meeting in 2015 of the Devolution (Further Powers) Committee. I remind members to switch off their mobile phones or to switch them to silent mode.

The first and only item on our agenda today is evidence on the proposals for the devolution of welfare powers in the Scotland Bill. Our witnesses are: Mike O'Donnell, the head of partnerships at Skills Development Scotland; Judith Paterson, the welfare rights co-ordinator at Child Poverty Action Group Scotland; Fiona Collie, the policy and public affairs manager at Carers Scotland; and Pamela Smith, the deputy chair of the Scottish local authorities economic development group. I welcome you all. Thank you for coming along to help with our deliberations.

I will open with a general question to set the scene. A significant part of the Scotland Bill covers welfare, which is an area in which you are all involved and have some expertise. Do you foresee any practical challenges in delivering the new powers, particularly in how the devolved benefits will interact with those that remain reserved and how the new benefits system in Scotland will fit with the tax-raising powers and the tax credit framework?

Who would like to kick off? You are all looking down, so I will pick on Mike O'Donnell.

Mike O'Donnell (Skills Development Scotland): Skills Development Scotland is looking at the current cohort of programmes that we deliver throughout Scotland to ensure that there is a good fit with universal credit, which, as you know, is being rolled out. So far, we have identified an issue in respect of the employability fund and the proposed restriction that the United Kingdom Government would place on training that lasts for more than eight weeks. We have some reservations about that, and the Government has allowed a period up to April 2016 for the restriction to be relaxed in a Scottish context.

SDS has been working with the Scottish Government and the Department for Work and Pensions in Scotland, and we have asked the UK

Government to respond to some of our questions about how its policy will fit with the employability fund. For example, in Scotland the employability fund delivers across the skills employability pipeline at stages 2 to 4, and each stage is considered to be a separate episode of training. Our question is whether, in the roll-out of universal credit, the DWP will also consider the training in such a way, so that there will be eight weeks for each episode of training, rather than it being considered collectively as people make the transitions from stage 2 to stage 3 to stage 4.

The other thing that the DWP talks about is "basic skills", and we have asked for a definition of what those are. The DWP says that more time may be allowed around basic skills, and we are awaiting a definition of "basic skills".

We have asked the DWP and the UK Government to clarify those issues.

The Convener: That is helpful. You are looking mainly for clarity.

Mike O'Donnell: Yes.

Judith Paterson (Child Poverty Action Group in Scotland): There are considerable delivery challenges, and we know that a lot of areas in the current system cause problems for claimants. The evidence for that is the very strong link between food bank use and the errors and delays in the administration of benefits. Moreover, CPAG's own early warning system, which gathers evidence of the impact of welfare reform on claimants, shows a high incidence of error in the system, with something like 40 per cent of all cases gathered through the early warning system relating to errors and delays.

We already know a lot about problems in the system, and we now have an opportunity to address such issues early in the process of developing new benefits. These problems will not necessarily come into the new system, because we can develop it to be simpler and more straightforward. After all, the more complexity there is, the more room there is for clashes and jagged edges that impact on claimants. We also have an opportunity to ensure that delivery systems offer a streamlined and seamless journey for claimants. We suggest that, in designing such a journey, the Scottish Government should put at the heart of it those vulnerable claimants who are often at the sharp edge of these problems.

Alongside that, we have opportunities to alleviate child poverty, particularly with regard to the new tranche of welfare cuts, and there are opportunities in the Scotland Bill to top up reserved benefits and create new benefits to help claimants to manage the cuts.

Fiona Collie (Carers Scotland): It will come as no surprise that I want to highlight certain specifics around carers allowance and the new carers benefit. We do not underestimate the scale of the challenge facing the Scottish Government and, indeed, the reserved benefits system, but there are questions that we need answers to, particularly if we are to reassure carers about what the system will look like in the future.

First and foremost, there is the issue of clawback. If the Scottish Government and Scottish Parliament choose to increase carers allowance, will that increase simply be taken off universal credit, income support or pension credit?

Secondly, there are questions whether the new benefit is an overlapping one. That has considerable implications for what the benefit will look like, because, if it is decided that it is not overlapping—in other words, it is not an earnings replacement benefit—pensioners might well become eligible for it in the future. A number of strongly vocal carers have said that it is not fair that carers allowance is stopped when they reach the state pension age. If the overlapping benefit rule is not in place, we will need to consider the financial as well as the practical implications and the moral case for carers who are over 65 retaining carers allowance.

Finally, there are also questions around the carers credit and the credit to national insurance from any new benefit that is created. It is important that carers retain that national insurance credit; after all, carers allowance might be their only income and we need to ensure that they have at least a reasonable pension when they retire, given the backdrop of their having lost significant amounts of income through not being able to work or through having to reduce their hours. We want it to be made very clear that the national insurance credit will continue.

Pamela Smith (Scottish Local Authorities Economic Development Group): I will set the context for the welfare reforms with regard to local authorities' interests, particularly those relating to conditionality and sanctions and the employability agenda. Last year, local government supported 25,000 unemployed jobseekers into employment and had 67,000 vulnerable individuals participating in employability programmes.

Picking up on what Mike O'Donnell said about the conditionality and sanctions regime, there are certainly a few jagged edges. The question is the degree to which the Scottish Government will have the freedom and flexibility to redesign programmes such as the work programme and work choice if the DWP is dictating participation conditions in terms of hours, weeks and content. We might find that we are developing and designing employability programmes to meet a sanctions

and conditionality regime as opposed to employability programmes that meet the needs of individuals, particularly those more vulnerable individuals who may be disallowed from participating in activity that would help their confidence and motivation. Of particular concern are those people with disabilities or additional support needs and ex-offenders—people whom the work programme has traditionally failed. Sixty-eight per cent of those who complete the work programme remain unemployed at the end of it.

The freedom and flexibility of the Scottish Government to revamp and redesign the programme so that it at least supports into employment more than half the people who participate in it is going to be impaired by conditionality and sanctions. The money for the programme and the legislative framework will come with so many conditions attached that it will be almost a poisoned chalice for the Scottish Government as well as for local government—we, too, fund our local programmes and have our European social fund employability pipeline money. The participation conditions will be the same whether the programmes are administered and funded by the Scottish Government, by SDS or by local government.

Our interest in employability is based on its relationship with poverty, inequality and the wellbeing of our communities. We know that people who are in well-paid, sustainable employment are healthier and that their communities are healthier and more prosperous. There is also an issue around people who are in work. We know that there is a working adult in the households of the majority of children who are living in poverty, and the conditionality and sanctions regime will apply to those in work who rely on working tax credit or in-work benefits. They will be encouraged to take low-hour contracts and contracts that might not meet their personal and financial needs to avoid facing sanctions. There is also the issue of how both the Scottish Government and local authorities will deliver in-work support to enable people to up their skills levels, which will, in turn, enable them to improve their earnings potential and increase their hours.

There are a lot of jagged edges relating to conditionality and sanctions, how we lift people out of poverty and how we improve and connect with the fair work agenda. In addition, there is the question of how the Government can increase policy coherence. If we have policies on the Scottish business pledge and we use a number of instruments to implement social policy, how are we going to do that?

Although it is not linked directly to welfare, a further issue is the apprenticeships levy, which is a reserved matter that is out for consultation.

Because the pay-as-you-earn system is reserved, the UK Government will levy large employers—those that have more than 250 employees—to fund apprenticeships and, at the minute, we have no guarantee that any of that money will come back to Scotland for training, because apprenticeships and training are devolved matters. Local government and public bodies will also be subject to the levy. Although training and skills are devolved matters, that national levy will be applied on the PAYE of large employers through Her Majesty's Revenue and Customs.

For local government, there are loads of issues with jagged edges relating to how we can achieve our aspirations and ambitions when certain powers are reserved to Westminster.

09:45

The Convener: A couple of members want to ask supplementary questions before we move on to Rob Gibson's questions about carers.

Your point about national insurance contributions and the apprenticeships levy will become more relevant as we get into the Scottish Government's budget process. If I understand the proposals correctly, between national insurance and pension contributions to support training activity, Scottish public services will have to pay something like £300 million back to the Treasury. Is there an argument for Scotland keeping that money to reinvest in training?

Pamela Smith: Given that apprenticeships and skills are devolved matters, there is no guarantee of what will happen to the money that comes from our public sector bodies and large businesses. We do not know the detail of how the apprenticeships levy will be charged to large businesses. At the moment, the Government contributes to training costs through SDS.

When money gets tighter, businesses might fail to invest if they think that they are paying twice. There are already levies for skills in the construction and engineering sectors. How will the apprenticeships levy rub alongside those levies? How will local authorities and public sector bodies be able to invest in a workforce of the future if there is a double whammy and a further 0.5 or 1 per cent—we do not yet know how much the levy will be—has to come off?

If the money comes back to the Scottish Government in the block grant, will it be part of a lower settlement overall? Will it be ring fenced for skills development? There are many unknown variables. The consultation on the apprenticeships levy closed only on 2 October, and I am sure that the Scottish Government has made representations, as have others.

The Convener: Are other members of the panel aware of the issue? What interaction have you had with the UK Government on it? Have you written to the UK Government?

Pamela Smith: The Convention of Scottish Local Authorities has written and, as far as I am aware, the Scottish Government has made representations through Roseanna Cunningham's office. I think that SDS has been looking at the issue, too.

The Convener: Can we get a copy of the COSLA submission, to help our understanding?

Pamela Smith: We can get that for you.

The Convener: We are interested in the fiscal framework. As the fiscal framework develops, it will be important to nail down that kind of issue, to ensure that the Scottish position is as fair as it can be and that we are doing no harm to Scotland in agreeing to the framework.

Mike O'Donnell: SDS's response has been given via discussions with the Scottish Government. There is dialogue, but it is through the Scottish Government.

Anything that supports employers to take on modern apprentices is to be welcomed. We have asked the Government to consider increasing the number of apprenticeships in Scotland from 25,000 to 30,000. A levy on employers will make it more difficult for us to engage with the employers that we hope will come forward to offer apprenticeships.

Linda Fabiani (East Kilbride) (SNP): Thank you all for your comments. Your answers turned into presentations, and they were interesting. Judith Paterson got me thinking when she asked whether we can structure a new benefits system in a better way—I am paraphrasing. That reminded me of concerns that I had when I was a member of the Welfare Reform Committee, and it seemed that there is an expectation that we will go beyond what we will be able to do under the provisions of the Scotland Bill, which we are studying.

That brings me to how we approach top-ups and sanctions. We have talked about changes to national insurance and pensions that might well take money out of the Scottish budget, and people will also suffer as a result of the change in the tax credits regime. My concern is that there is an expectation that everything can be sorted once the Scotland Bill has gone through. I would like to hear your views on that. It is all very well talking about jagged edges, but there is a lot more going on than that. Some of the small things that we are talking about can be ironed out, but the really big issue is the lack of money in Scotland.

Judith Paterson: Yes. I suppose that there is the technical issue of what powers are in the bill

and the separate issue of how much money will be available to use those powers in ways that help to alleviate poverty and prevent more families from falling into poverty.

On the legal powers, the bill will allow top-ups of reserved benefits, but it is not clear whether it will allow the top-up of tax credits. It is also not clear whether there will be an extra test of the need for a financial assessment to be applied individually or whether the eligibility rules will decide on need for a whole group nationally. There are uncertainties in that respect. A recent article in *The Scotsman* suggested that amendments to the bill might be in the pipeline. We would welcome amendments that make it clear that the Scottish Government has the power to top up tax credits as well as reserved benefits and that it can do that via nationally set entitlement conditions.

How the powers should be used might not have formed part of the original discussion about powers to be devolved, but the question to be asked is what will happen if Scotland does not use the powers to top up tax credits and benefits. It has been forecast that, if it does not do that, many more children and families will fall into poverty over the next few years, which would have associated impacts on children's health, education and prospects.

It is feasible both legally and practically to use the powers to top up, for example, child benefit, child tax credit and the child element of universal credit, which is the equivalent of child tax credit. That could be done to alleviate a number of things, but primarily the freeze on benefits, which is one of the main drivers of the increase in poverty. In the past five years, a family with two children has lost £900 in child benefit.

Linda Fabiani: The theory is fine, and I do not think that you would find anybody here disagreeing with what you suggest. However, what concerns me is how a Scottish Government will get the funds to do those things. It is all very well having the power but, as you said, if we do not have the funds to back that up, how do we use it? Do we look at raising taxes? That would go across all the bands, and we then perhaps get into the jagged edge of raising tax for the lowest paid as well. We also get into the benefits cap, and there are lots of jagged edges around that.

Alex Johnstone (North East Scotland) (Con): That is not a jagged edge; that is a fact of life, I am afraid.

Linda Fabiani: There is the issue of giving with one hand but taking away with the other.

My concern is that we are perhaps creating expectations among people that it will be okay once the Scotland Bill is passed. The reality is that

we cannot say to people, "Yes, it will be okay. Please don't worry about this."

Fiona Collie: Linda Fabiani makes a reasonable point. There is expectation, although I am not sure that it is necessarily that there will suddenly be a huge amount of money that can solve everything. Some of the expectations are about different ways of dealing with people, treating people and delivering the system. There have been a lot of conversations, particularly in the Welfare Reform Committee and wider civic society, about what that might look like and about treating people with dignity. It is also about trying to make it much easier for people not just to claim benefits but to access the other services that are available to support them.

We might not be able to create more money, but we can change the way that people experience the benefits system and our public services, such as social care and access to a range of other services, to try to make that easier for them.

Linda Fabiani: Are those discussions on-going with both Governments and the sector?

Fiona Collie: Yes.

The Convener: We could sum that up by saying that it might be feasible. The question is whether top-ups are affordable. Even if they are not, it might be possible to redesign some areas to make the journey easier for people. I think that that is where we are, in effect.

Tavish Scott (Shetland Islands) (LD): On the convener's earlier point about the training levy, it strikes me that that is not just a fiscal framework issue; it is also a constitutional issue. We cannot have a levy on something that is devolved and then not have that money spent in Scotland, but there we are.

The Convener: I agree.

Tavish Scott: Pamela Smith raised some interesting questions on the sanctions and conditionality regime and its incompatibility with programmes that SDS and others are taking forward in Scotland.

Any Government has to have some sort of sanctions and conditionality regime, for reasons that we can understand. I absolutely take your point that there is a basic potential inconsistency between a regime that is designed for programmes south of the border—and, for that matter, Wales and Northern Ireland, although Northern Ireland is a different issue altogether—and a regime that is designed for Scotland. I presume that your contention is that we should seek some ability to talk that through at ministerial level—at Government level—in order to deal with that basic inconsistency.

Pamela Smith: There should be conditions for any public sector support. It is about how those conditions are arrived at and how they are enforced. The risk and the danger that we see is that programmes are designed to meet unrealistic conditionality regimes and there are punitive sanctions.

We have to look at what is actually on offer, how we are assessing individuals' needs and what support is in place to meet them. We should not have arbitrary targets such as that someone must apply for X number of jobs. If someone does not have the basic core skills and they could not compete for and sustain a job, that is an unrealistic action plan and target. Jobseekers may well have other barriers to employment. It is about how we re-engineer our support for individuals.

I return to the point about how we join up some of the policy areas. If we take ex-offenders as an example, 30 per cent of their community service order can be dispensed on employability, so they can spend 30 per cent of their community service hours looking at increasing their core skills and so on. To some degree, that is an element of mandation, but it is a carrot-and-stick approach because one way of stopping reoffending is to get people into work.

Most people who are unemployed want a job. They just do not know how to go about getting one. Those who have multiple barriers are usually excluded, and they also exclude themselves for fear of sanctions, exposure and putting their head above the parapet and being pulled in. It is about how we engage with people, as was said earlier, how we look to meet their needs and how we join up the different things that we have control over.

A lot of our vulnerable jobseekers will be in receipt of other services, so although austerity might have an impact on employability provisions, we can look at packaging differently the other moneys that are directed to those individuals. Someone who receives tenancy support might equally have to up their core skills, such as their literacy, communication and information technology skills. We can look at how to meet multiple objectives from the public pound instead of continuing to operate services in silos.

Our call is for a much more integrated and aligned approach to individuals under which we look at the person in the round rather than dealing with whatever badge they are presenting on the day—for example, as a jobseeker, a care leaver, an ex-offender or a young carer. We need to look at the person and our public services in the round and consider how we can better align them to improve the return on investment. That does not always mean more money. It just means that we need to have a re-engineered or redesigned approach.

10:00

Tavish Scott: I absolutely take that point. Any conditionality and sanctions system needs to have, at the very least, some ability to recognise the conditions of the individual that it is being applied to, as opposed to what I understand we have at the moment, which is very broad-brush. People are told, "You do not tick this box—that is you."

Pamela Smith: Yes—we need flexibility to be able to meet individuals' identified needs, and not just the conditions related to receiving benefit.

Tavish Scott: Yes—quite.

Pamela Smith: That has to be at the heart of any service that moves people from welfare into work. When people are in work, employers have a role to play, too.

The Convener: That raises the issues of coherence, breaking out of the silos and making sure that we have a more joined-up approach. The access to work programme is not part of the devolved package, but it is very much part of the area that we are talking about. If that programme had been devolved, would it have helped to bring that more coherent approach?

Pamela Smith: All programmes that are aimed at assisting people to enter and sustain employment should be devolved so that they can be integrated as a full package along with the other moneys in the system.

Mike O'Donnell: There is an opportunity in Scotland just now. The Scottish Government will be closing a three-month consultation on employability services in Scotland tomorrow. The heart of the ask—if you like—for Government is about how we take a more individualised approach to employability in Scotland, putting the individual at the centre of the intervention.

This is not just about the devolution of the work programme and work choice; it is an opportunity to re-engineer the employability service that has been running in Scotland for seven or eight years in its current format. We need to look at how we will take the new powers and resources that we will have and create a much clearer landscape. I think that it is fair to say that the current landscape is a bit messy. There is an oil-and-water mix between devolved and reserved matters that does not serve the customer well—the young person or the individual. We need to try to pull that together.

I agree with Pamela Smith's point that the more welfare and employability services we can get devolved, the better the fit we will be able to get in the Scottish context in taking this forward to the next phase.

The Convener: Judith Paterson has a comment. I will then come to Duncan McNeil.

Judith Paterson: I have two points. First, there is a crying need for more research on conditionality and the impacts on claimants, because there is just not sufficient evidence. It is taken as a given that conditionality and sanctions are the effective tool to help people into work. That may be so, but the evidence for that is simply not in place. Given that, as Pamela Smith said, conditionality is applied not just through the DWP but much more widely in services that are already devolved, it is particularly important to make sure that we integrate those programmes.

Secondly, I note that the new devolved powers are narrow. I am thinking of the work programme in particular. Powers over sanctions and conditionality are not being devolved. If somebody who is referred to the work programme by a jobcentre does not attend, they could be liable for a sanction. However, once they engage and are in the two-year—or whatever the period may be—work programme, the powers to decide on the arrangements and how heavy or light the conditionality that is applied should be devolved.

The guidance to work programme providers, which is set by the DWP, tells them how to apply that. It tells them, for example, to pay particular attention to people with mental health and learning difficulties if they are on employment and support allowance, but it makes no similar suggestion that they safeguard vulnerable jobseekers allowance claimants. There is no reason why a devolved work programme could not put in place similar safeguards and apply a much more thought-out approach that protects those people. There is no reason why that conditionality could not simply be switched off for ESA claimants, who, after all, are by definition not ready to go into work. They are simply ready to look at their health condition in relation to potential work and to take certain steps towards being more job ready. A lot can be done to ameliorate sanctions and their effects on the most vulnerable.

Duncan McNeil (Greenock and Inverclyde) (Lab): I am sorry, but I am going to take us back the way again. Linda Fabiani asked about how the new benefits system in Scotland would fit in with the tax-raising powers or the tax credits framework. I think that the Deputy First Minister's position is not to rule out tax increases. In a recent Finance Committee meeting, the Scottish Trades Union Congress made a strong case that future tax rises would be necessary to tackle inequality. Will the panel comment on that? I am sure that you will have differing views about what we could use the money for and how best we could tackle

inequalities. I would be interested to hear views on that.

Judith Paterson: I am a technician; my background is welfare rights. I know more about how the tax credits system works than I do about how the tax system works.

The Convener: Can I ask you a question about tax credits, because I am not sure that I have the right understanding in my mind? Are tax credits a tax or a benefit?

Judith Paterson: That is a good question. I can make it absolutely clear that tax credits are not a tax; they are not at all connected with the income tax system. There is no simple definition of what a benefit is, but a tax credit is more akin to a benefit than anything else. It is not called a benefit simply because it is delivered by Her Majesty's Revenue and Customs.

The Convener: That question has been going round in my head since you mentioned tax credits; the position was not clear to me.

Judith Paterson: Tax credits are a benefit.

The Convener: I am sorry for the interruption—on you go.

Judith Paterson: I am not an expert on tax or on high-level economic matters. To state the obvious, our benefits system is paid for through taxation; that is the mechanism that we use to tackle inequalities. There is a good argument that Scotland could use that mechanism for its new tax powers to look at how income can be better shared among citizens. We have good mechanisms, through benefits and tax credits, to ensure that people in lower income bands get a better share of the national cake.

The Convener: Would not it be more appropriate in those circumstances if the basket of taxes raised in Scotland was much wider? The risk-reward balance would become much easier to manage.

Judith Paterson: Do you mean beyond the powers that will come in a couple of years?

The Convener: Yes.

Judith Paterson: That is not my area, I am afraid; I do not think that I have the analysis that would allow me to comment.

Pamela Smith: I am coming at the issue from a slightly different perspective—from the preventative approach. If additional moneys were invested to top up benefits or tax, who would get the return on that investment? If we are looking at preventing poverty, poor health and low education, we must take a long-term view and say that any taxes that are raised are part of a preventative approach and are an investment in the future,

such that in the future lower amounts would have to be invested in health and wellbeing, criminal justice, homelessness and so on because—in theory—citizens will be more productive and prosperous, and able to pay their own way in life through increased earnings.

However, there is another side to that. If the tax-raising power is used to top up benefits, by how much more will benefits be cut and how much more will we have to use that power to subsidise things over which we have no control? It is a very difficult dilemma, because there is only one pot of money. We need to be able to take a much longer-term view; we currently view things only over three years, or in some cases only from one year to the next.

If we were to take a purely preventative approach, it would probably take at least 10 to 15 years to invest in the social capital of the community—the citizens—in order to start to deal with the embedded problems. Vulnerable individuals have multiple problems and experience a broad spectrum of deprivation related not only to income—although it is well known that increased income alleviates many other problems. In some of our communities, especially those in which there are pockets of social and economic deprivation, problems are so embedded that it will take almost a generation to reverse them. Thought must be given to how we deal with those communities as well as with the individuals concerned.

There is a much broader issue to do with investment—how we invest in prevention and how, in the long term, we change the scenario and deal with root causes of problems instead of just putting on sticking plasters to deal with the symptoms. That is my take on the situation.

Fiona Collie: I am inclined to agree with Pamela Smith. When we talk about raising taxes, we must think about why we want to do that and what we want to achieve through it. Are we putting a sticking plaster on something that is a problem now, or are we trying to plan for the future? Part of my field is social care: many people face difficulties in getting the social care services that they need. If we are raising taxes, should we be investing in those services, because they help with individuals' health and wellbeing and reduce costs in other areas?

We should not look just at one area. We need to think about what we are trying to achieve and what elements of that we might need to raise more money for, or on which we might need to change policy. The bigger policy discussion about how things work better together is sometimes extremely important. One of the biggest sources of stress for carers, and one that makes them ill, is their trying to deal with a number of different

systems—the benefits system, the social work system, health systems and a myriad of others. We need to know why we want to raise taxes and we need a clear plan to ensure that we achieve what we want to achieve. A purpose is needed.

The Convener: I want us to move on to more specific areas, starting with carers issues.

Rob Gibson (Caithness, Sutherland and Ross) (SNP): We need to home in on how we can make better use of the limited pot. It is obvious to me that dealing with people in a different and more caring way goes hand in hand with reducing the bureaucracy that people have to face up to in the different systems. That way, we might be able to reduce the costs of administration and use more money on the front line.

Carers allowance is an earnings-replacement benefit, so it is subject to the overlapping benefits rule. What is the panel's opinion of the overlapping benefits rule? Is it a necessary part of the social security system? If so, should it apply to carers?

Fiona Collie: I will answer the second part of that question. It is problematic that the rule applies to carers, because caring is a reality across age groups. As I think I mentioned earlier, people who are receiving the state pension in particular simply do not understand why their carers allowance is taken away from them. Their caring duties do not end. Our view is that, although carers allowance should be seen as an independent income for carers, it should also be seen as a recognition of the person's caring role, and that should be the case for all age groups. Many people with disabilities are carers—about 20 per cent of carers have a long-term condition or disability. People with disabilities and older people already provide care.

10:15

There is a problem in that respect, but there is also a problem in just trying to explain the system to people. A person might phone up and you tell them that they must apply for carers allowance, but that they will get a letter saying that although they qualify for carers allowance they will not get it, but have established an underlying entitlement, so if they take the letter to the pensions service they may get an addition to their pension credit. It is very difficult to explain the system to people; they often decide not to bother. That is a barrier—especially for older people. We know that access to pension credit opens up other passported benefits and passported support, so our view is that there needs to be something to prevent that problem from occurring.

Whether the overlapping benefits rule remains or not, we need to change the system to make it much more clear how people can access the

income-replacement part of it—the universal credit and pension credit elements—so that additional problems are not created for them.

Rob Gibson: Let us hear other panellists' views on the current overlapping benefits rule.

Mike O'Donnell: We know that carers are a broad church in terms of geography, age and stage of development. My interest lies in ensuring that benefits and allowances do not get in the way of our being able to provide an equitable service to carers, allowing them to access a skills intervention if required, so that they can develop their on-going skills and participate in society. That goes back to an earlier point about ensuring that there is an alignment between employability and welfare, to allow equal access to the services that are available across Scotland.

The Convener: Have you got enough out of that, Rob?

Rob Gibson: No—I want to ask another question. The definition of a carers benefit in the Scotland Bill has been criticised for being too limited, in that it will not allow people who are gainfully employed, people who are under 16 or people who are in full-time education to qualify. It will also limit the number of hours that can be worked. Do you have a view on the potential for simplifying that and opening it up?

Judith Paterson: I do not think that the overlapping benefits feature is necessary for carers allowance. As Fiona Collie said, it can lead to a lot of confusion, particularly for people who are over pension age, because most of them are on a benefit with which it overlaps—the state retirement pension—so they end up claiming a benefit that they will never get. They are advised to claim it, and that is the correct advice, but they get a letter saying, “Good news! You're not entitled.” However, people get extra means-tested entitlements, so it is worth while, but it is a ridiculously convoluted process.

For working-age people, however, the overlap is with benefits such as jobseekers allowance and employment and support allowance, which perhaps has some justification. The overlapping benefits feature is not used in the benefits system as much as it used to be; it is a bit of a dying breed. Generally, the divisions between benefits are dealt with by the fundamental entitlement conditions, so a person is not entitled to one benefit if they are entitled to another. Carers allowance is not dealt with in that way; it overlaps.

What needs to be considered is what carers allowance is paid for. Some people need support because they cannot combine work and their caring responsibilities, so it is an earnings-replacement benefit. Other people need support because there are extra costs associated with

their caring responsibilities—perhaps because they do not live with the disabled person for whom they care, so they may have extra travel costs. There are all kinds of things that carers might need to pay for.

That suggests that there are two possible types of carers allowance—one for extra costs and one for earnings replacement. There could even be a benefit that combines the two different types of allowance to help people with those different costs.

Traditionally in the system, extra-costs benefits do not overlap with anything. They are like the disability living allowance or personal independence payment: they are paid on top of any means-tested benefits and are generally helpful, more straightforward and universal. That would be a straightforward, streamlined and claimant-friendly direction in which to take carers allowance.

If we got rid of overlapping benefits altogether, including for people who came out of work in order to claim, we could be in the situation of people being compensated through JSA at £70-odd, plus through carers allowance at £70-odd, which some people might feel was unfair. We could have an earnings-replacement part and an extra-costs part of the allowance.

The Convener: Fiona, Rob Gibson also asked specifically about the definition as well. Can you comment on that?

Judith Paterson: For 16-year-olds?

The Convener: Sorry—I am asking Fiona Collie.

Fiona Collie: To be honest, we are concerned about the definition. The flexibility should exist to enable the Scottish Parliament to consider what carers allowance should look like. If we put restrictions on it, it will create complications. The study rule in particular is an example of that. I know many carers who study, including a number who have chosen to study full-time and have lost their carers allowance but are still caring.

Carers allowance is called an earnings-replacement benefit, but I really do not know how we can say that £62 is an earnings-replacement benefit. Work and study are not necessarily off-limits, but the benefit is meant to compensate the carer to enable them to care. We simply need recognition of caring; we need an independent income for carers in their own right. They may have an opportunity to top that up through employment, but the reality for a lot of carers is that that will simply not be possible. Judith Paterson's idea of having an earnings part and a carer-recognition part of the allowance is good.

The Convener: Is the fundamental point that you are making that, as far as you understand the bill and regardless of how we might design the allowance—the design issues are for the future—we will not have the ability to design how we want it to work?

Fiona Collie: Yes. We are concerned that the drafting is too restrictive.

The Convener: I wanted to make sure that we got that point.

Fiona Collie: We had some discussions that indicated that there would be some flexibility but, following that, the Minister of State for Employment made a statement in the House of Commons that seemed to indicate that there are, in her opinion, good reasons for the restrictions to remain in relation to other state support.

Mark McDonald (Aberdeen Donside) (SNP): Convener—

The Convener: If your question is not a supplementary to that, Mark, I will bring Malcolm Chisholm in.

Mark McDonald: Fiona Collie has gone into the discussions that have taken place, which is an area that I want to explore.

The Convener: Let me come back to that, because there might be other areas to which that generic question will apply, if you see where I am coming from.

Malcolm Chisholm (Edinburgh Northern and Leith) (Lab): Most of the jagged edges that we are discussing are within working-age benefits, but the last discussion was really about the relationship between carers allowance and the pensions system. The Scottish Parliament is being given powers to vary the level of the housing element of universal credit but, when somebody becomes of pension age, housing becomes part of pension credit. Is that another jagged edge? Is it something else that we just have to live with, or can something be done about it?

Judith Paterson: That certainly is a jagged edge. For example, the Scottish Parliament information centre's briefing paper illustrates clearly that the Scottish Government would have the power to top up the local housing allowance rate so that people who were renting in the private sector would have a wider choice of tenancies, but that power would stop at pension credit age. If nothing was done about that, it would lead to a palpably unfair situation in which at pension credit age people would lose money that goes towards paying their rent. People would potentially have to move house at that point.

Would the Scottish Parliament have powers to do anything about that? We would need to look at

whether there were top-up powers to reserved benefits. That might allow something to be done about that particular jagged edge; it would mean supporting people on pension credit throughout. Action could potentially be taken. It would be a shame if the powers were not used for people of working age because the problem that I have outlined was viewed as insurmountable.

Malcolm Chisholm: That is helpful clarification.

I want to home in on the comment in CPAG's submission:

"In terms of more immediate opportunities to reduce childcare costs faced by parents CPAG believes that, in order to focus support on those on lower incomes, the most effective approach would be to use new powers to 'top up' benefits to top up childcare support within working tax credit/universal credit."

The context is that CPAG is advocating that approach in preference to the UK Government's tax-free childcare scheme. I do not know a lot about that scheme, because it has not yet come in, but one question in relation to the scheme is whether the UK Government would still pay £2 in for Scottish people who were contributing to it. I do not know whether anybody knows the answer to that question.

My main question is about the topping up of childcare support. The UK Government has obviously flagged that up this week as something that could be done, although Linda Fabiani's point about how to pay for it remains. Would there be potential knock-on consequences in terms of an adverse effect somewhere else on family income?

Judith Paterson: You are right that the tax-free childcare scheme is not yet in force. In our view, the scheme will not—by its very design—help parents on the lowest incomes. The scheme has very problematic aspects—the most problematic one being that parents have to make a choice between claiming a tax credit or tax-free childcare. That is not a choice between claiming childcare support or not within the tax credit system; it is take it or leave it, as parents have to leave their entire tax credit award to take up tax-free childcare. If they make the wrong choice, they end up being much worse off. That is not a happy position for claimants to be in. The choices that they need to make are complex enough without being presented with one that can have such dire consequences.

The tax-free childcare scheme does not support the people who need the help the most. In the long term, our preference would be that the childcare system is funded on the supply side, so that funding is put into high-quality childcare with universal access and parental contributions are capped. However, that might be a longer-term ambition.

In the short term, the system that we have to help parents with their childcare costs is the tax credit system. That system will be moving towards universal credit over the next few years, so at the point at which Scotland is able to use the powers we will be further down that road. Nevertheless, there will still be a large cohort of tax credit claimants as well as a growing cohort of universal credit claimants. In order to be fair and not to introduce more jagged edges, top-ups would therefore need to be considered for both cohorts. That obviously raises issues about working with both HMRC, which delivers tax credit, and the DWP, which delivers universal credit, but I think that it is feasible and it can be done.

Co-operation with DWP on universal credit needs to happen anyway, because there are direct powers in terms of universal credit. It would seem to be entirely possible to work with the DWP to put in place other Scotland-specific measures.

On tax credits, their importance will diminish in the system over time, so a way might have to be found to directly compensate tax credit claimants if it proves more difficult to work with HMRC within the system. However, again, I think that that is doable.

10:30

Malcolm Chisholm: I agree about the supply side and the top-ups. Under the UK Government's proposals, will people on higher incomes benefit from the tax-free childcare? Would parents in better-paid employment who did not get tax credits still get the advantage of that?

Judith Paterson: I do not have the analysis in my head but, yes, parents in better-paid work could be better off with tax-free childcare than they are under the tax-credit system. Some parents will not be entitled to tax credits at all and, with tax credits becoming less generous over time, more parents will come out of the tax credits system and have to rely on their wages alone. Those parents could benefit from tax-free childcare.

Malcolm Chisholm: However, given that income tax is devolved, your understanding is that they will still be able to get tax relief from the UK Government.

Judith Paterson: I think so. As far as I understand it, the tax-free childcare system has connections with the income tax system, but it is not delivered through income tax as a tax allowance or refund. A parent sets up a different account and, for every £8 that they put in, the Government puts in £2. That 80p/20p split reflects the basic rate of tax. However, it is not paid or collected through the tax system. It should be applicable in Scotland, too.

The Convener: This is all fascinating stuff. It is detailed and deep, but—I am sorry, folks; this is just where I am—I am beginning to feel a bit frustrated because it sounds as if we are going to end up applying expensive Elastoplasts to a system that is not working, and that we might not be able to afford the Elastoplasts. I am getting myself into a heck of a frustration around these issues.

Mark McDonald: There is a distinction between feasibility and affordability. Whether something can practically be done is different from whether something can be afforded.

At the moment, tax credits are administered through HMRC, not DWP, so they are technically not classified as a benefit but as more of a tax rebate. Under the proposals in the Scotland Bill, would they therefore be excluded because issues around tax allowances and rebates are not going to be devolved?

Judith Paterson: To make the distinction that the convener helpfully made earlier, tax credits are not tax; they are much more akin to a benefit. You are right to say that the Scotland Bill is not clear about what comes under the umbrella of benefits—it is not clear whether tax credits are included. However, one would expect that they should be. The clarification ought to bring them under the umbrella of benefits that can be topped up. They used to be part of the benefits system, but they were renamed and given to HMRC to administer. However, the essential characteristics have remained the same.

It is possible that Scotland will have powers to top up tax credits. Some clarification around that would be helpful.

Mark McDonald: I want to talk about the clarifications and the discussions that there have been. You are giving evidence to this committee and have had input to the Scottish Government with regard to the approach that it is taking. What direct approaches and discussions have you had with the UK Government? At the end of the day, the amendments that are accepted by the Government are in the gift of the secretary of state and the UK Government. What discussions have you all had in those respects?

Fiona Collie: Obviously, I do not work alone; I work with my colleagues at Carers UK and they have been meeting various ministers and officials from across the UK Government, including the DWP. Along the way we have been seeking amendments and clarification. We have been working with MPs from all the parties. The bill is now moving up to the Lords and a similar process will take place as we try to secure support for amendment from all sides. That work is broadly similar to what I do here. My colleagues in

London, working with us, are seeking the same amendments and clarification. We are still in the position that we do not yet have all the answers or the clarification. As I said, it is very important that we get that as soon as we can.

Mark McDonald: Does anyone else have any points to make?

Pamela Smith: Most of our representations are made through COSLA and much of the opinion is aligned to Scottish Government, so much of it is joint representation to the UK Government through local and Scottish Government. We have not been campaigning on any separate issue and we do not have a different view from the Scottish Government. However, after devolution we will be looking at what comes to local government and we will have a different debate with the Scottish Government around that.

The Convener: I want to ask a general question. You have obviously been trying hard to get things changed, in the amendments and the discussions, but has anyone at any stage seen any movement or change on anything that they have suggested so far?

Mark McDonald: Just you steal my supplementary, convener.

The Convener: I do apologise.

Mike O'Donnell: I mentioned the issue of the eight-week rule, which I raised, and the fact that we have asked for clarification. There is a timescale issue for us, because we are in a commissioning process in relation to the employability fund, so we have asked the UK Government to give us clarification. We were told that we would get something in August, and then it was 3 September, but as yet we still have not received any clarification.

The Convener: I will repeat the question. You may have had an impact, but has anyone seen any changes or movement by the UK Government as a result of lobbying?

Judith Paterson: No.

Fiona Collie: That is probably clear given that no amendment was accepted.

The Convener: I am just trying to get that on the record, rather than make assumptions.

Stewart Maxwell (West Scotland) (SNP): I had to leave briefly to deal with another matter so I may have missed this, but just in case it has not been asked I have a question following on from Mark McDonald's questions about practicality and affordability. I have listened carefully this morning and have heard a whole range of issues where we could top up and add new benefits and many more have come up in other evidence, but can you put a figure on how much that might cost?

Judith Paterson: I cannot put a figure on that. We have not done that kind of analysis.

Stewart Maxwell: Can you put a figure on how much the suggestions that you have made this morning will cost?

Judith Paterson: We could look at that. The welfare cuts were announced in the summer, and the powers that the Scottish Government might or might not have, have been unclear, so the suggestion to use the powers is fairly new. We would need to do that analysis, and we would be prepared to do that in order to be helpful.

Stewart Maxwell: It would be helpful because it sounds very expensive.

Judith Paterson: The information is probably out there in relation to the impact statements that the DWP has produced on the cost of its cuts in the UK. That could be analysed to work out the costs for Scotland, but that is just one side of the equation and against that you would have to work out the costs of not doing anything and the knock-on effects on health and education and so forth. The reality is that those families will have less money and will be presenting to other services for support. One way or another, the consequences will have to be dealt with in Scotland.

The Convener: Linda Fabiani has a supplementary question.

Linda Fabiani: It is not really a supplementary but relates to something from way back.

The Convener: Okay, we will go back to the future.

Linda Fabiani: When we were talking about the work programmes, sanctions and conditionality, I got a bit confused about some of the things that were being said in relation to the fact that, when a sanction is applied, there might be an element of conditionality that could be done in Scotland. That is not what I have picked up when I have looked at the Scotland Bill and done some background reading. It would seem to me that the conditionality will stay at Westminster. What is the reality? Would it be much easier all round if the whole thing were devolved in relation to the conditionality aspects of the work programme and so on?

Pamela Smith: Our experience and belief is that the conditionality and impact will remain with Westminster. It would certainly be a lot neater if it were all devolved and we could re-engineer our total system.

Whether there is flexibility as to how sanctions are applied is another issue. The way in which sanctions are applied has varied across the 32 local authorities, as well as how the work programme providers refer people for sanctioning.

Much of it is quite subjective and depends on whether the providers think that a person has not complied or has not given a good enough reason for why they did not do X or Y. There is some subjectivity in sending people for sanctioning.

Linda Fabiani: Perhaps that is what I was picking up earlier.

The Convener: If there are no more questions, we have reached the end of our process. I am grateful to you, folks, for coming along. It is a complex area with many threads so thank you for making those more visible to us and helping us to understand more clearly what it all means.

Our next meeting is on 29 October. I must also pass on late apologies from Alison Johnstone. She put a note in after the start of the meeting and there are very understandable reasons why she could not manage to be here today.

Meeting closed at 10:43.

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