



OFFICIAL REPORT
AITHISG OIFIGEIL

Edinburgh Bakers' Widows' Fund Bill Committee

Wednesday 14 June 2017

Session 5



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Wednesday 14 June 2017

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
EDINBURGH BAKERS' WIDOWS' FUND BILL: PRELIMINARY STAGE.....	2

EDINBURGH BAKERS' WIDOWS' FUND BILL COMMITTEE
2nd Meeting 2017, Session 5

CONVENER

*Tom Arthur (Renfrewshire South) (SNP)

COMMITTEE MEMBERS

*Mary Fee (West Scotland) (Lab)

*Alison Harris (Central Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Flora Asplin (Incorporation of Bakers of the City of Edinburgh)

Lady Elizabeth Drummond Young (Incorporation of Bakers of the City of Edinburgh)

CLERK TO THE COMMITTEE

Mary Dinsdale

LOCATION

The Sir Alexander Fleming Room (CR3)

Scottish Parliament

Edinburgh Bakers' Widows' Fund Bill Committee

Wednesday 14 June 2017

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Tom Arthur): Good morning and welcome to the second meeting of the Edinburgh Bakers' Widows' Fund Bill Committee. The first item on our agenda is to decide whether to take item 3—a discussion about the evidence heard today—in private and whether to consider issues for our preliminary stage report in private at our next meeting and at future meetings. Do members agree to consider item 3 and issues for our preliminary stage report in private?

Members *indicated agreement.*

Edinburgh Bakers' Widows' Fund Bill: Preliminary Stage

10:01

The Convener: Today we will take evidence from the promoters of the bill, the trustees of the widows' scheme of the Incorporation of Bakers of the City of Edinburgh. I welcome Lady Elizabeth Drummond Young, trustee of the widows' scheme of the Incorporation of Bakers of the City of Edinburgh, member of the Incorporation of Bakers of the City of Edinburgh and trustee of the Incorporation of Bakers of Edinburgh Charitable Trust. I also welcome Flora Asplin, solicitor and agent for the trust, the incorporation and the charity. I invite Lady Elizabeth Drummond Young to make an opening statement.

Lady Elizabeth Drummond Young (Incorporation of Bakers of the City of Edinburgh): Thank you and good morning. On behalf of the promoters of the Edinburgh Bakers' Widows' Fund Bill, I thank the committee for taking the time and trouble to consider the bill. Flora Asplin and I will introduce ourselves briefly.

I am currently the boxmaster—the treasurer—of the Incorporation of Bakers of the City of Edinburgh. I am also, as the convener mentioned, a trustee of the widows' fund and the newly formed Incorporation of Bakers of Edinburgh Charitable Trust.

My early professional career was in investment management and pension fund management. More recently, I have been involved in tutoring philosophy at the University of Edinburgh. I joined the incorporation in 2011 at the instigation of a friend who is involved in reinvigorating the trades in Edinburgh. The trades have been around for a very long time but there is a group of people who would like to make the Edinburgh trades rather like the Glasgow trades—a lot more active in the city. It was at my friend's instigation that I joined the bakers; I am a keen amateur baker so I was delighted to join the incorporation.

Perhaps it is worth saying a little bit about the history of the trades in Edinburgh. They were very active, as I am sure members will know, in medieval times and in early modern times. In more modern times, they have fallen into a gentle state of not doing very much. The idea is that the trades should become more a part of Edinburgh city life again but in a new, invigorated form. That is all part of the background to why the bill is being introduced.

Flora Asplin (Incorporation of Bakers of the City of Edinburgh): Good morning. I am a solicitor at Shepherd and Wedderburn, which has

been involved in the incorporation and the widows' fund for some years. I have been dealing with them for the past couple of years; I have also been involved in the setting up of the new charitable trust. Separate from that, I am also clerk to the incorporation of bakers, which is an administrative secretarial role that involves setting up meetings, doing the minutes and so on.

The Convener: Thank you very much. The last contribution to the fund was made in 1981, but it was a further 32 years before the fund was closed to new members. Can you give a potted history of what happened in that period?

Lady Elizabeth Drummond Young: Since that time until very recently, the incorporation of bakers was sitting there as an unincorporated association with very few members—so few members, in fact, that the meetings must have been quite sporadic. The members of the incorporation tended to be elderly gentlemen. Nothing was happening, and the widows' fund was not attractive to new members. In order to join it, you had to be a male under 45 years old; you could not be a woman. None of the members of the incorporation was under 45—everyone was much older than that—and anyone who joined the incorporation was unlikely to want to join the fund.

The incorporation itself, never mind the widows' fund, was quite dormant. Indeed, that is part of the backdrop that I was trying to explain earlier. The trades in Edinburgh were not being activated; it is only fairly recently—perhaps in the last 10 years—that they have been undergoing a renewal, with people joining not just the bakers but the bonnetmakers, the goldsmiths, the candlemakers and so on. There has been a revival of interest, and often those who join the trades are—like me, I suppose—semi-retired people who have time to spend on charitable trustee duties.

The Convener: In the intervening period, were any efforts made to promote the scheme or attract new members?

Lady Elizabeth Drummond Young: The scheme was open only to members of the incorporation, and because there were not very many members of the incorporation and because the incorporation itself was not putting itself forward, there was obviously no promotion of the widows' fund as such.

The Convener: Can you set out the timeline with regard to the decision to move to a private bill? When was the idea of winding up the fund and moving to a charitable trust first mooted?

Lady Elizabeth Drummond Young: It was some years ago now, but I think that it was since I joined the incorporation. The issue was raised as the most major that we had to deal with. We had this widows' fund for which the number of trustees

was getting smaller—people were dying and nobody was around to look after it. There were just enough members in the incorporation to become trustees of the fund, and we saw that it would not be attractive or viable because of the very baroque entry requirements under the Edinburgh Bakers' Widows' Fund Act 1813. As I said, you had to be male and under 45, and the conditions for joining and, indeed, the benefits that might accrue to anyone were so vague and difficult to understand that it would not be an attractive vehicle for people to put their moneys into.

We were left, then, with a fund of considerable value that we felt in its current form was not viable to promote to people as an investment vehicle, benevolent vehicle or whatever you might want to call it. That being the case, it would eventually just fall into the Crown's hands as something that could not be used. The fact that it was not being used was a major problem.

That was some years ago. We undertook various investigations into changing the fund's conditions, and we finally came to the resolution that a private bill was the best way forward.

The Convener: How long was the period of investigation?

Lady Elizabeth Drummond Young: It was a number of years. It had been going on since I joined in 2011, so I would say probably five years.

Flora Asplin: That sounds about right.

The Convener: We might pick that issue up again later.

Alison Harris (Central Scotland) (Con): Good morning. What steps have the trustees taken to ensure that the capital payments offered to the wives of the contributing members are actually fair in terms of adequately compensating the wives and ensuring that the trust funds are protected?

Flora Asplin: The trustees consulted an actuary; they gave him the background and asked for an actuarial report on how to provide for the wives in a fair and equitable manner. The actuary then came back with a report that was agreed by the trustees.

In conjunction with that, the trustees consulted the wives and provided them with the actuarial report and all the information. It was then agreed—it has been agreed for some time now—that the trustees would make a certain payment to the wives when the fund was dissolved. Because that has been agreed, the funds that would be paid out to the potential beneficiaries have been ring fenced from the trust fund itself, and the trustees are absolutely certain about what they are going to pay the wives when the fund is dissolved.

Alison Harris: When was that agreed, and when did you get your actuarial valuation? Was that some time ago, or was it quite recently? Things have obviously moved on and changed. Has the valuation been updated?

Flora Asplin: The position has not changed. There are still just the two wives. It was done towards the end of 2015, which is approximately 18 months ago. The figure was agreed then.

Lady Elizabeth Drummond Young: Given the length of actuarial calculations, it will not change much in a few years.

Alison Harris: I just did not know when—

Lady Elizabeth Drummond Young: In the history of the bill, that is a fairly recent development.

Alison Harris: That is good to hear.

Can you give me any practical examples of how being governed by the 1813 act has constrained what you have been trying to do in relation to the widows' fund?

Lady Elizabeth Drummond Young: I have already talked about the conditions for entry. You have to be a male; you cannot be a woman. You have to be under 45. You have to be a member of the incorporation. You have to pay very specific sums of money—20 shillings a quarter.

The benefits are not guaranteed. It is merely a matter of paying in, and it is then a question of whether something happens 13 years down the road. You have to pay in for seven years, I think, and then you might get something if you apply to the fund. The benefits are very open ended. Is it fair to say that?

Flora Asplin: Yes. It is not a case of the contributor receiving a personal benefit. It applies if they predecease their wife. They have to be married for a certain number of years to a wife who is younger by a certain number of years, but not too young in comparison. The criteria are very restrictive.

The fund is not like a standard pension fund; it is not something that people see when they retire. There is a benefit that would go to their widow, if she fits the right criteria when she is widowed.

Alison Harris: It sounds quite restrictive.

Lady Elizabeth Drummond Young: I have it in front of me, and it is really quite complicated. It is all to do with the age of the children if she marries again and how much younger she is than her husband. It is incredibly of its time, if I can put it that way.

Alison Harris: What arrangements are in place to ensure that the assets that are transferred to

the new charity will be appropriately managed for the public benefit?

Lady Elizabeth Drummond Young: We have constructed a charitable trust that has been registered with the Office of the Scottish Charity Regulator. We have satisfied all the conditions for forming a charity. Charitable purposes have been set out for the trust. They are the advancement of education and the advancement of the arts, heritage, culture or science. We have had our purposes agreed.

We have had a review of investment managers to consider to whom we would give the bulk of the fund if it became available to us. We would give it to an investment manager—a specialist charity fund manager—and the trustees are minded to give grants only in accordance with the income from the fund. We would not be digging into the fund's capital; we would have a small income from the fund, which we would use to give grants, having applied the purposes of the trust. The fund would then be managed conservatively, as a charitable trust, by a specialist charity fund manager.

We hope that the fund will grow over time. Another point that we should make about the 1813 act is that it is very constrained as to how the fund is invested, whereas, if we are able to transfer the assets to a charitable trust, we can invest them more flexibly.

We have done all the normal things that you would expect a charitable trust to do on being handed a pot of money to ensure that it goes to a responsible charity fund manager.

Mary Fee (West Scotland) (Lab): The fund provides financial support for widows of contributing members and the change that you are proposing is quite fundamental to the fund's core purpose. We have heard that, normally, when changes are made to funds such as this, the funds are changed to something similar. Was consideration given to changing the fund to provide almost the same core purpose, but in a different way?

10:15

Lady Elizabeth Drummond Young: Yes, but the way in which people expect to receive annuities, pensions or any kind of hardship benefits has changed so radically since 1813 that, in essence, we would be trying to set up something in competition with, say, Standard Life or an annuity provider. It would be completely pointless to offer people the opportunity to invest in a very small fund when there is a marketplace of pensions, annuity providers and specialist investment managers. That would not be a competent use of the funds.

The way in which people receive benefits, annuities or pensions has changed radically even since the most recent payment was made in 1980, because 1988 was the start of the personal pension drive. The onus on, for example, employers to ensure that people have a pension available to them and the onus on each individual in Britain to think about investing for their future is much greater now than in 1813.

The act was passed in 1813, which was before the Burgh Trading Act 1846 under which the trades were rather clamped down on. In other words, in 1813, things were going reasonably well for the trades, but the trading act came along in 1846 and the trades could no longer be the closed shop that they had been and they had to change their business. The relationship of the trades and of how people choose to get annuities has changed dramatically in the intervening period and for us to try to set up a fund now that mimics an annuity provider would not be a good thing to do.

Mary Fee: Did the trustees take that decision themselves, or did they get advice from someone else?

Lady Elizabeth Drummond Young: We took the decision ourselves. We felt that we were able to take it confidently, because, among the trustees, there are people such as myself who have experience of pension fund management, there are lawyers and there are people who have been involved with the probation service. We have a set of people with professional experience and we felt able and competent to take the decision.

The moneys in the widows' fund are not just contributions from members of the incorporation; the incorporation itself put some money into the fund in the early stages, although we do not know how or how much as that information is lost in the annals of 19th century accounting. The incorporation put money in, so for us to promote the trust with purposes that are akin to the purposes of the incorporation today seems to be relevant and a good thing to do. The trust is very much in line with the purposes of the incorporation of bakers, which has some validity to it.

Flora Asplin: The purposes are charitable and they tie in with OSCR's charity requirements, so it seemed fitting that we were not only reflecting what the original incorporation's purposes were, but moving toward a public benefit and tying in with modern-day charitable purposes.

Mary Fee: Were other options than a private bill considered for making the change? How did you reach the decision that a private bill would be the best way to take it forward?

Lady Elizabeth Drummond Young: One of the reasons that it has taken us so long is that we have taken time to consider whether a private bill

was the right way to go. Perhaps, as a lawyer, Flora Asplin would like to say more about the other options.

Flora Asplin: Some time was spent considering how it could be done. The trustees felt that it was no longer appropriate to be governed by the 1813 act and, because they were looking to set up a charitable trust, they wished to be governed by OSCR rather than by a statutory regulation. They felt that it was appropriate to look at repealing the 1813 act and, in order to vary the powers that they were given under the act and to meet their objectives, they felt that a private bill was the way forward.

We considered other options for varying the purposes of a trust: an application to the Court of Session through a *cy-près* scheme and an application under section 9 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990. The problem with both of those options was that what the trustees wanted to do was quite at odds with the purposes of the widows' fund and moved away from the purposes that were set out in the 1813 act. Those were not the best options because the trustees wanted to vary their powers under the act.

Mary Fee: Do you think that, if you had taken it to the court, you would not have been allowed to make the changes?

Flora Asplin: I think so.

Lady Elizabeth Drummond Young: The point about that is that, if we had gone through the *cy-près* system and to the Court of Session, we could only have stuck to the purposes of the trust. We might have been able to make some changes, but we would have ended up with a rather watered-down fund. Think about all the big annuity providers and pension providers; we would have had a tiny fund that was tweaked just enough to be just about tenable in today's society for a very small group of people—the members of the incorporation. As the new trust stands, we are able to offer benefits to the wider community—for example, to offer a grant to enable a baking course in a primary school or a prison. We are able to offer wider benefits through that trust than we would be under a twiddled-about scheme that would have arisen from any adjustment that the court might have let us make to the 1813 act, which is incredibly of its time.

Mary Fee: So your only option to make the fundamental changes that you want to make was a private bill.

Lady Elizabeth Drummond Young: We felt that that was the best way to go to make a genuinely good use of the assets in line with the spirit of the Incorporation of Bakers of the City of Edinburgh, so that we could get practical modern

usage out of the money that had been invested by members of the incorporation and the incorporation itself, who were interested in promoting baking in the city of Edinburgh. That was one way to use the money, and creating a charitable vehicle was the way to encase it in a fully responsible mechanism that fits today's purposes.

Mary Fee: In promoting education and training, how will you promote the charitable fund to the wider community? Will you promote it within the existing baking community?

Lady Elizabeth Drummond Young: Yes.

Flora Asplin: Yes. There was quite a lot of dialogue on that with OSCR when we set up the charitable trust. The trustees have considered how they will promote it through the baking community and the usual forms of social media, for instance. In essence, they will establish a network that they will use to promote what they want to do.

Lady Elizabeth Drummond Young: Two of our trustees are active members of the baking community. One is the chief executive officer of Breadshare Community Interest Company—Debra Riddle, who would have been here but, unfortunately, could not join us this week. The other is Wendy Barrie, who is the slow food guru for Scotland. We have people who are involved in the baking industry as trustees and members of the incorporation. If we are able to get the bill passed and create the trust, we will be in a position to get more members of the incorporation, who would be bakers or might be suitable trustees at a future date. That way, we will be in a position to have grant applications coming into us. We are confident that we would be in a position to review a number of grants annually and apply the funds appropriately according to the charity's purposes.

Mary Fee: Will schools be able to apply for grants as well?

Lady Elizabeth Drummond Young: Yes, anyone will be able to apply for a grant as long as it fits the purposes of the trust.

Mary Fee: How will you assess the success of the trust? Will the trustees do that? Will they review it annually?

Lady Elizabeth Drummond Young: Part of our job as charitable trustees is to review how successfully we fulfil the trust's purposes. We will have to do that under the business plan, which we will have to review regularly, and say how we meet our objectives.

Mary Fee: The OSCR guidance will also be very important.

Lady Elizabeth Drummond Young: Exactly. That is all part of it. That is why we are going

under the OSCR banner, because that forces us to do the appropriate things to ensure that we are using the money properly.

Mary Fee: We have spoken about the two potential beneficiaries that have been identified. How confident are you that there are no other potential beneficiaries?

Flora Asplin: We are very confident. It is a fact.

Lady Elizabeth Drummond Young: Yes, we are very confident.

Mary Fee: How did you come to the position of being so very confident?

Flora Asplin: We know who the members of the incorporation are—it is a very small membership. We also know who the qualifying members are and there are only two of them who have made contributions who have wives, who are therefore potential beneficiaries. It is as simple as that.

Lady Elizabeth Drummond Young: Two of the members of the incorporation—I hesitate to say that they are quite elderly, but as they are not here I probably can—have been members for a very long time. They know the history of the incorporation. The minutes of the incorporation going back quite a few years are held and recorded. We are extremely confident that there are no other potential beneficiaries. Of course, as part of the bill process, we have put out public notices.

Mary Fee: Have the members of the trust been quite active and involved? When you say that the members of the incorporation and the members who have been paying in know what is going on, does that mean that they are quite active in the fund?

Flora Asplin: Yes. There is some overlap between the members and the trustees of the widows' fund and the trustees of the new charitable trust. I would say that they have been actively involved.

Mary Fee: Okay. Thank you.

The Convener: I have a final question about drafting. Regarding payments to the two identified potential future beneficiaries, section 1 states that the trustees "may"—not must—make them an offer. The word "may" confers a power, whereas the word "must" confers an obligation. Can you comment on that?

Flora Asplin: We discussed that point with the parliamentary clerks when we drafted the bill. The point is that the bill gives authority to the trustees—it empowers them to make the payment. On the basis that they make the payment, the fund is dissolved and the assets are transferred to the charity. If you look at the sequence in the statute,

phase 2—as it were—will not happen until phase 1 has happened. In other words, the payments have to be made to the beneficiaries and the act would give the power to do that and then once that is done the remaining assets would be transferred to the charitable trust.

The Convener: Thank you for coming along this morning. As agreed earlier, we will now continue in private.

10:28

Meeting continued in private until 10:33.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba