



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

WELFARE REFORM COMMITTEE

Tuesday 28 May 2013

Session 4

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WELFARE REFORM COMMITTEE
10th Meeting 2013, Session 4

CONVENER

*Michael McMahon (Uddingston and Bellshill) (Lab)

DEPUTY CONVENER

*Jamie Hepburn (Cumbernauld and Kilsyth) (SNP)

COMMITTEE MEMBERS

*Annabelle Ewing (Mid Scotland and Fife) (SNP)

*Linda Fabiani (East Kilbride) (SNP)

*Iain Gray (East Lothian) (Lab)

*Alex Johnstone (North East Scotland) (Con)

Kevin Stewart (Aberdeen Central) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kenneth Gibson (Cunninghame North) (SNP)

Jackie Killeen (Big Lottery Fund)

Ann McVie (Scottish Government)

Professor Alan Miller (Scottish Human Rights Commission)

CLERK TO THE COMMITTEE

Simon Watkins

LOCATION

Committee Room 3

Scottish Parliament

Welfare Reform Committee

Tuesday 28 May 2013

[The Convener *opened the meeting at 10:00*]

Interests

The Convener (Michael McMahon): Good morning, everyone, and welcome to the 10th meeting in 2013 of the Welfare Reform Committee. I ask everyone to ensure that mobile phones and electronic devices are switched off.

I welcome Kenny Gibson, who is here to substitute for Kevin Stewart. As this is the first time that you have been at the committee, do you have any interests to declare?

Kenneth Gibson (Cunninghame North) (SNP): Thank you for your welcome, convener. I have no interests to declare. Regrettably, I have a long-standing ministerial engagement with Keith Brown at 11 so I will have to leave the meeting somewhat early.

The Convener: A short but sweet stay. I hope that you find it enjoyable.

Decision on Taking Business in Private

10:01

The Convener: Item 1 on the agenda is a decision on taking business in private. We have been asked to decide whether to take in private items 5 and 6. Item 5 is consideration of our work programme, and item 6 is consideration of an invitation to visit a Department for Work and Pensions office in Scotland where decision making is carried out. Do members agree to take those items in private?

Members *indicated agreement.*

Big Lottery Fund

10:02

The Convener: Agenda item 2 is evidence from the Big Lottery Fund. I welcome Jackie Killeen, who is the director for Scotland. Thank you for coming along this morning. The Big Lottery Fund has come up on a number of occasions in our deliberations and we felt that it would be useful if we had a chat with you. If you have any opening comments, we will hear those before we go to questions from the committee.

Jackie Killeen (Big Lottery Fund): Thank you for inviting me along. I hope that we are able to share our experience, which may give some insight into the challenges that communities are coming to us for help in addressing. I am very happy to say a little by way of introduction about the Big Lottery Fund. I am not sure how much information members have.

The Convener: Go ahead.

Jackie Killeen: Some of you will know us on a constituency basis. We are the largest of the lottery distributors, which means that we distribute 40 per cent of all the money that the national lottery raises for good causes.

We are a United Kingdom-wide non-departmental public body but we have a high degree of devolution, so we receive policy directions from Scottish ministers. Those are signed off by Mr Swinney, and they underpin all our work.

Our main focus is on improvements to communities and the lives of people most in need. Many of you will be aware that most of our funding goes into projects that are either charities or committee organisations that are working to help people at the sharp end of challenges.

In the past five years, we have been working with a portfolio of small grants, which go into grass-roots organisations, and larger grants of up to £1 million, which tend to tackle some bigger issues, including employment—in particular, helping people who are very disadvantaged to move into employment—and work on supporting families and communities.

Over the past two years we have noticed a rise in what we describe as hardship and material need. We have had requests to fund things such as food banks and the provision of white goods or food parcels. We did not have ready-made programmes to support such requests.

Also, as an outcomes funder, we have tried to take a longer-term approach, which is about building and strengthening communities rather

than being a crisis funder. We had to think about what was the best way of responding to that growing level of hardship.

Not only have we have altered our main programme to allow us to respond more readily, but a few months ago we introduced our new £10 million support and connect fund, the first round of applications for which has just closed. I am very happy to say a bit more about that in response to members' questions, if that would be helpful.

The Convener: Thank you very much.

When we looked at funding, the main issue that emerged was the amount of money that the UK Cabinet Office was making available for advocacy work in relation to the welfare changes. Am I correct in thinking that the UK Government put about £33 million into the pot, and that that sum was matched by the Big Lottery Fund?

Jackie Killeen: Yes. The Big Lottery Fund put £30 million into the programme in England.

The Convener: As a consequence, the Scottish Government received around £3.5 million, which it has made available for welfare and advice. Has the Big Lottery Fund discussed the issue with the Scottish Government and, if so, why have we not seen the same result up here?

Jackie Killeen: There are a couple of things to say about that. First of all, like us, colleagues in England had been working on advice for quite some time. They receive policy directions from the UK Government for their work in England and we receive them from the Scottish Government.

We decided to develop the support and connect fund because we thought that we needed something slightly different in Scotland. When we looked at the evidence and had dialogue with other funders and front-line organisations, we saw a need to support not just advice services, which are obviously very important, but ways of helping people get advice from other places in their communities—joining up advice services with housing associations and other community-based organisations where people can get help.

We are sometimes asked, "There's a fund in England, so why don't we do exactly the same in Scotland?" The response is partly because the Scottish context is different and partly because we work on different timescales. Our investing in communities programme was already up and running, and the England programmes were running on a different timeframe.

However, I do not want you to think that we have not been working with the Scottish Government—we have been. As we came close to finalising our support and connect fund, we became aware the Government was also

considering putting money into advice, and we have been working quite closely with the Scottish Government, Money Advice Scotland and the Scottish Legal Aid Board to ensure that there is no duplication in the funding that is available and that people can be passported to whatever is most suitable. I think that the Government's funding focuses more on the advice side, and although we will pick that up—indeed, we have received a lot of applications relating to advice services—we have a broader base that takes in advice more broadly, connecting up services and so on.

The Convener: That is helpful but, with regard to your comment that you could be driven by UK Government policy, do you have the same relationship here? Did the Scottish Government say, "We like what you're doing but we want you to reciprocate and put in £3 million"?

Jackie Killeen: No. I should make it clear that the policy directions in England and Scotland are set at quite a high level. As the Government in England has only very recently issued policy directions, the programmes in England are at a different point in relation to the timeframe. A whole new raft of programmes has been developed there, whereas our programmes have been running since 2010. That is all that I meant by that comment. We were not directed in England; I think that it was decided that the funds should be combined because of timing rather than any specific direction to work together.

The Convener: But have you had a specific discussion with the Scottish Government about whether it would be appropriate to replicate the approach in England or about topping up the £3 million, or was it just assumed that things would carry on as they were without any specific discussion?

Jackie Killeen: We spoke to the Scottish Government while we were developing our fund, and we have worked with it to ensure that we are taking full advantage of its intelligence. Because it wanted the focus of its fund to be much more specifically about advice, it decided to route it through other channels, including the Scottish Legal Aid Board. We have tried to ensure that we are still making the best use of all the funds that are available. The Scottish Government did not issue us with a direction to do anything specific in Scotland, but we have kept in close contact with it. The funds are different—they have a slightly different focus.

The Convener: That is fine.

Alex Johnstone (North East Scotland) (Con): I will cover some of the same ground from a slightly different angle. If we look at the headline funds, we see that, south of the border, match funding is being provided to support advice

services. That is not obviously the case in the Scottish context, so many people are afraid that the amount of money that is available to support those services in Scotland is half as much per capita as it is south of the border. Are you telling us that the Big Lottery Fund is putting in that additional money in Scotland, but that it is going in in different ways?

Jackie Killeen: Yes—you have expressed it far better than I did. That is exactly what I am telling you.

Between 2010 and now, we have put about £3 million to £4 million into advice through our main programmes, but through the £10 million support and connect fund we expect to put a very high level of funding into advice services, although, as I said, our focus is slightly broader.

Alex Johnstone: Other members might be interested in digging into what you are doing, but I want to look at a highly specific issue: how decisions are made on funding that relates to advice services. Does the way in which that is done in Scotland differ significantly from the way in which decisions are made on Big Lottery Fund match funding in England and Wales, with the result that the outcome might be different?

Jackie Killeen: I am not sure whether the thrust of your question relates to decisions that are taken by the Big Lottery Fund in Scotland. We have a Scotland committee that takes decisions on our strategic direction as well as funding decisions.

Alex Johnstone: My question is fairly general, so I will ask it in a fairly general way to get an impression of what is happening. Let us imagine a situation in which the arrangement that exists south of the border were simply duplicated in Scotland. Is the current circumstance likely to divert resources to specific areas in a way that is different from the effect of the decisions that are taken south of the border?

Jackie Killeen: Yes. We have just had in the first lot of applications for the support and connect fund and although we have not been through them all yet—we received a very high number of applications—we can see that they include applications from a large number of citizens advice bureaux. I cannot tell you specifically what they have asked us for, as we have not yet had the chance to go through them in great detail. We have also received partnership applications. For example, a number of applications involve CABx working in partnership with other organisations such as community-based organisations. In some cases, those organisations are in contact with local authority services and, in others, they are working with housing associations.

We expect a very large number of advice service-led projects to be funded through the

£10 million fund. We also expect to see a significant number of projects that put the CAB in the driving seat of a local partnership, or which view the CAB as part of a local partnership that is about joining up services.

Alex Johnstone: You mentioned that the support that is provided might include support for advice services through housing associations.

Jackie Killeen: Yes.

Alex Johnstone: Does that form another substantial part of the bidding?

Jackie Killeen: Yes. Even before we introduced the new fund, such requests had already been made to us. When we have talked to bureaux, housing associations and local voluntary organisations throughout the country, we have found that there is a big appetite for that approach. There is a desire to create a more joined-up safety net locally so that there is less chance of people dropping through. Although people will sometimes go straight to their CAB for advice, on other occasions they will seek advice elsewhere. In some cases, the relationship that people have with their housing association is more immediate. People in a housing association can spot when someone might be in need of advice but might not come forward for it voluntarily. It is about ensuring that we have put in place as much local connected support as possible.

10:15

Alex Johnstone: I have another question about general headline figures. There is a perceived gap of about £3.5 million in support, and you have explained to us where it would be filled. You have talked about a £10 million fund. Are we talking like for like? Is that an annual figure?

Jackie Killeen: Because we already have the investing in communities programme, which has been making very large grants to organisations that help people in need, our committee has decided to set up a £10 million fund that will fund projects that run over two years. That will give us the opportunity to see demand and what organisations are able to do, and to think about the best approach in the longer term.

Our committee is quite conscious, and so are we, of not wanting to institutionalise emergency or institutionalise crisis—I suppose that those are the expressions that have been used. We are an outcomes fund and we try to take a long-term approach. We want to try to build resilience and connections so that we do not just make short-term investments. However, we recognise that people are experiencing hardship and need now, so we have put in place the £10 million support and connect fund to help to meet that need over

the shorter term—two years—while we look at the best approach for Scotland in the longer term.

Alex Johnstone: So we are looking at a sum of money that will do the same thing that is being done south of the border and an additional sum of money that will be available to deal with additional problems.

Jackie Killeen: Yes. Our main grants programme in Scotland, investing in communities, had already been funding such work. It funds projects that run over five years up to £1 million, and tends to focus very much on long-term preventative work that is about addressing the root causes of challenges. I suppose that in numerical terms, the difference between what we have been doing and what we are additionally doing is that the support and connect fund will make grants of up to £350,000 over a two-year period, and it very much recognises that there is a need to meet the immediate hardship and challenges that people are facing. That includes the provision of advice and dealing with issues around preventing homelessness and preventing children from being unable to access food. In the initial bunch of applications, there are applications about the provision of white goods, food banks and breakfast clubs. People are looking to make such provision available in their local communities.

Alex Johnstone: Thank you.

Jamie Hepburn (Cumbernauld and Kilsyth) (SNP): Good morning, Ms Killeen. Over what period has the money south of the border been made available?

Jackie Killeen: I just have to check my notes, if you do not mind.

Jamie Hepburn: I will wait.

Jackie Killeen: It is a transition fund. From memory, I think that they are three-year grants. However, I would be very grateful if you would let me double check that and get back to you. I know that there was a single deadline. Applications have already been submitted and assessed and, as far as I know, the grants will be made in June.

Jamie Hepburn: So there is around £65 million to cover a three-year period.

Jackie Killeen: Yes, but please let me double check that.

Jamie Hepburn: Of course.

There has been reference to the £3.5 million that has been made available to the Scottish Government for advice services. Of course, we know that that money has already been supplemented. The Scottish Government is putting in more money—it is putting in £5.1 million, and it will put in another £2.35 million for Money Advice Scotland and its making advice work programme.

That is almost £7.5 million. It is important to put that on the record when we refer to the £3.5 million. That leads me to my question. Will the £10 million that you referred to be issued over a one-year period?

Jackie Killeen: There are two deadlines: one that has just passed and one in September. The grants will run for two years and, as I said, we will keep the situation under review. Our committee may take the view that, based on what people have asked us for, we might need to extend the fund or do something different.

Jamie Hepburn: So you might supplement the grants with additional funds. I am not asking you to commit to that; I am just saying that it is a possibility.

Jackie Killeen: Yes, it is a possibility. We try to be responsive and take account of what is happening, which is why we introduced the fund in the first place.

Jamie Hepburn: That sounds an eminently sensible approach to me. In essence, we are talking about £20 million—

Jackie Killeen: Sorry, no, it is—

Jamie Hepburn: Sorry—please let me finish. It is £20 million between what is being provided for the making advice work programme—I can see what your concern was, because you thought that I was saying it was £20 million from the Big Lottery Fund—and the £10 million from the Big Lottery Fund in Scotland over two years. In England, there is £65 million over three years. It seems to me that, proportionately, more is being invested in Scotland.

Jackie Killeen: From the Big Lottery Fund perspective, Scotland receives 10.35 per cent of the overall money that is available across the UK. We have probably put in a bit more than you would have expected.

Jamie Hepburn: I am talking about a like-for-like basis in terms of the programmes and not so much about what your organisation is allocating. I appreciate that the programme that you are taking forward is different from what is being taken forward south of the border. I would like to know the position, as far as you can state it, on a like-for-like basis. There is £65 million over three years in England and £20 million over two years between the Scottish Government and the Big Lottery Fund in Scotland. That sounds to me like, proportionately, higher investment in Scotland.

Jackie Killeen: Yes. You could say that.

Jamie Hepburn: Thank you.

Kenneth Gibson: Can people apply for capital and resources grants or just resource grants from the support and connect fund?

Jackie Killeen: They can apply for both, but we expect the majority of the funding to be revenue. That is one of the changes that we have made, because we recognise that there are requests for funding for small capital items, which we have not seen previously.

Kenneth Gibson: What do you mean by “small capital items”?

Jackie Killeen: People have asked for help with some quite practical things such as washing machines. We would not have expected to see such items in applications to us, but we have made it possible to fund them in the current programme.

Kenneth Gibson: You do not envisage the grants funding buildings, for example.

Jackie Killeen: The amount of capital work that could be undertaken with a grant of up to £350,000 would probably be fairly limited. We expect the grants to be primarily for revenue. I have not had the chance to go through the first raft of applications in detail, so there might be more requests for capital.

Kenneth Gibson: In your submission, you say:

“We are aware of the current levels of hardship and material need facing communities and individuals throughout Scotland ... Our investment has so far helped local projects provide a wide range of support. We’ve delivered this through a range of our existing funding programmes”.

Can you quantify that investment?

Jackie Killeen: Yes. We spend about £75 million a year in Scotland in new grants. It depends on what you describe as projects that address those most in need. Last year, through the investing in communities programme, we invested around £50 million in projects that help people with long-term challenges and issues such as employment; they also help young people who have been in the criminal justice system and young people with additional needs. Recently, we have seen some of those challenges become more difficult. For example, on employment, it is harder for young people and other marginalised groups to access jobs.

I am trying to give a sensible answer to your question, but to a large extent everything that we do is about need, so it is hard to quantify it more specifically. Across all our programmes, from awards for all right through to investing in communities, we have seen an increase in requests that are more about shorter-term, immediate need. However, we also try to keep funding the longer-term preventative work.

Kenneth Gibson: Okay.

In your Valentine's day letter to the convener, you said:

"We are currently engaging with Scottish Government to gain a detailed understanding of their recently announced funding for support advice services and to explore how our investment can complement this to achieve greater impact."

Where are we with that? There have been some discussions about that already. Where are those discussions? When will decisions be made about delivering the funding?

Jackie Killeen: We have worked with the Scottish Government team that is working on welfare reform. We have also worked with Money Advice Scotland and the Scottish Legal Aid Board, which are administering the funds that the Government is putting into the area. We have gone through the Government's funding criteria to understand in detail what it is looking to fund so that we can make sure that people who call us or are directed to us are directed towards the best source of funding for what they want to do. My staff have been in regular contact with the teams at those organisations.

Now that we have our first raft of applications, we expect to be able to share intelligence about the kinds of projects that people are proposing. We want to find a way of quickly and easily passporting people through to funding without making them go through the full process all over again if they have applied to us for funding when what they are looking to do would fit better with what the Government wants to do. However, because we are slightly ahead of the Government's timetable, the arrangements have not completely settled down yet.

We will also take cognisance of what people have applied to us for and, as the Government's funds begin to come through, take those into consideration when advising people who come through to us in September for the second support and connect application deadline.

Kenneth Gibson: You said that the arrangements have not settled down yet. When is that likely to happen?

Jackie Killeen: As the Scottish Government's funds begin to flow through, we are trying to make sure that we share intelligence with the Government and give consistent advice to people who want to apply. We know that some organisations want to apply quickly, and it might be that what they want to do fits better with what the Government is funding through the Scottish Legal Aid Board and Money Advice Scotland. We will make sure that we direct those organisations accordingly.

Linda Fabiani (East Kilbride) (SNP): Kenneth Gibson has asked some of the questions I was interested in asking. However, I am particularly interested in the whole ethos of connecting services because it is really important. Surely it is achievable in a country the size of Scotland. Are you confident that everyone is on the same page in relation to that?

Jackie Killeen: I think that the situation is getting better but, when we have talked to organisations across the country, we have found that they are sometimes very busy responding to the needs that people present to them and they might not be aware of other services that are operating at local level that they could be connecting with.

We are hoping to see better and quicker referrals so that people who are operating services such as food banks at a local level are completely up to speed on what else is available. We are hoping that they will have mechanisms in place so that, if someone comes in who needs it, they can refer or even bring that person to the other services in the area that could help with some of the other challenges that their family are experiencing, whether that is in relation to advice, help with managing debts and money issues, or accessing care that might help with challenges with children or families.

We would like organisations to be much better connected to each other at the local level. There are some really good examples of that but, when people are dealing with much higher levels of demand than they have experienced before, it can often be quite difficult for them to look up and make those connections. We are trying to use the funding to make it easier for them by putting funds into connections as well as support.

10:30

Linda Fabiani: Are you finding that those at the top who make the decisions work together? Is there on-going dialogue at that level?

Jackie Killeen: Yes, we have seen good examples of that throughout Scotland, particularly between housing associations and citizens advice bureaux. Where those partnerships are already in place, they are beginning to work quite well—that is admirable, given the challenges that organisations now face. However, it can be harder for small locally based organisations, which often have small numbers of staff or are volunteer run. With the support and connect fund, we hope to help those locally based organisations to make connections as well.

Linda Fabiani: Sometimes, at an even higher level, bureaucracy can get in the way and slow things down terribly. How have you found the

situation in your dealings with Government, Government agencies, local authorities and so on?

Jackie Killeen: We have probably had more contact with local government over the past six months than we had previously. We have also had a really good response from organisations such as the Scottish Federation of Housing Associations, which has played a facilitating role in helping to broker dialogue with its network.

We are definitely seeing an increase in local groupings of partners—community planning partners, I suppose, or other agencies—a number of which have asked us to come and talk to them about the things that we can support. We have been out on the road doing that over the past few months.

Linda Fabiani: Do you feel that things are improving?

Jackie Killeen: Things are improving. As I said, we have had a high level of interest in the fund. I will be happy to share with you the detail of the proposals once we have been through the assessment. The deadline was 13 May, and we are working through the applications at the minute.

Linda Fabiani: You said that the fund can be used for small capital items but will generally be for resource expenditure. Will any of that resource expenditure be used to employ more people?

Jackie Killeen: Yes, absolutely.

Linda Fabiani: What checks are there in relation to the people who can be employed? For example, with the Government's change fund for local authorities, I know that all that has apparently been achieved in some instances is that there are more people in jobs but there is not a lot of difference on the ground. Do you have checks and balances to monitor that aspect?

Jackie Killeen: Yes, there are a few requirements. First, lottery funding must be additional—that is an absolute requirement—so we cannot fund statutory obligations, such as things that are the responsibility of other agencies. Added value and additionality are key watchwords for us, so we will want to understand clearly what the added benefit of a new post would be.

With a two-year fund, we also want to be clear about longer-term thinking. For example, when a person is being employed, are partnerships being embedded at the local level so that the organisations are thinking about what they need to do beyond those two years? If they are given the requested resource or capacity, are they thinking about what they should be doing in the longer term about both the need that they seek to address in cementing the partnerships and the longer-term requirement for those kinds of posts?

Linda Fabiani: I have one final wee question. On the issue of obligations, an interesting point that jumped out at me from your written submission was the reference to grants for food banks and the provision of funding for organisations

“tackling food and fuel poverty”.

I had not previously seen the expression “food poverty” crystallised in writing. I remember that, when the national lottery was set up, there was a lot of concern that the funding would be used to replace social services. Are such requests to use lottery funding to feed people fairly new?

Jackie Killeen: That has definitely grown in demand over the past couple of years. To an extent, we have always had requests for projects in disadvantaged areas that might include an element of that work, such as after-school clubs that provide a meal for children. However, particularly for the small grants provided through our awards for all fund, there has been an increase from people, often working at a very local level, who see a need around them and are motivated to address it. Quite often, such groups might be a bit unsupported, which people can find quite difficult, so encouraging support connections locally is even more important for those organisations.

This may be a bit anecdotal, but when my staff have been out in different areas with organisations such as Buttle UK, they have seen breakfast groups and organisations that run an event that provides meals for people in a local hall a couple of times a week—often for children but sometimes for pensioners. There has always been an element of that work, but it has definitely increased.

Linda Fabiani: Is the food bank part new?

Jackie Killeen: Yes, absolutely.

Iain Gray (East Lothian) (Lab): I assume that the fund is oversubscribed—if I am wrong, by all means say—but, from looking at the applications that you received, do you have any sense of by how much it is oversubscribed?

Jackie Killeen: For this first round, we have received around 120 applications—there will always be a bit of rounding in that when we get to the detail. As yet, I cannot say how much those applications will be for. We did not say that we would make £5 million available for the May deadline and £5 million for the autumn deadline, as we wanted to see what the level of demand is now. However, in terms of monetary value, I expect that the applications in this round will be at a very high level.

Iain Gray: You have expressed a number of hopes about what the fund might achieve, such as prioritising projects that connect services. You also

said that you hope to be able to support small local volunteer-led projects, which might find difficulty accessing other funds. If the fund is oversubscribed, what criteria will you apply? You said that you have not divided the fund into two parts, so how will you do that? How do you avoid allocating all of it—I was going to say giving it all away, but that would be unfair—in the first round? I am just interested to know what the process is.

Jackie Killeen: We are very much focused on the two outcomes, and we are trying to ensure that we offer the funding across as much of the country as possible. The two key outcomes are that people are better able to access support at the local level and that support is more connected so that there is a reduced risk of people falling through. We are also very conscious that the issues are experienced across the country.

As I said to the convener earlier, we will keep the funding under review. If there is a very high level of demand both in the first round and in the autumn round, we might review the overall budget that is available for the fund. However, we want to see the quality of the applications that have come through in this first round and how able people are to respond to the need to join things up at local level. Partly because this is just a couple of weeks after the deadline, we do not yet have a qualitative assessment of that. As I said, it is possible that we may review the budget depending on what the overall demand is.

Iain Gray: That is quite reassuring, but I am still struggling a little to understand how you will make that judgment. Do you score and rank the applications on the basis of certain criteria?

Jackie Killeen: We do. We always find some applications that are much better developed than others and some applications that might better fit one of our other programmes. As much as we try to direct people to the correct source of funding, they sometimes come into support and connect when they would have been better to come into awards for all or investing in communities. We are able to passport people internally to the more appropriate source. There will also be some applications that will not be successful.

If we are trying to focus on the outcomes and to fund as many applications as possible, our aim will be to support as much of the work—if it is fundable—throughout the country as possible.

Iain Gray: Is it fair to say that it is quite likely that you will need to increase the funds to address the need?

Jackie Killeen: That would be a decision for our committee and it would have to be based on the evidence that the first round of funding brings to us. We would also want to take account of what

happens as the Government's funding begins to come on stream.

The terrain is moving in that respect. There are developments that might mean that organisations that have applied to us now decide that that is all that they have the capacity to do—or they might never have wanted to come back to us in a second round. We do not know yet how much of the demand or need we will be able to absorb in the first round of funding.

Annabelle Ewing (Mid Scotland and Fife) (SNP): My question concerns the fact that the matter is reserved to Westminster and dealt with by the Department for Work and Pensions. What role has the DWP played in the discussions south and north of the border? If money is being made available for other things—which is all well and good—what residual things will the DWP be doing?

Jackie Killeen: In England, the arrangement was with the Cabinet Office, to which we report on policy direction. The advice transition fund was built on previous funding for advice that had come through the Big Lottery Fund and the Cabinet Office and its predecessors. In England, the work is focused on how the advice will be provided now and in the future and how that will be resourced rather than dealing with the DWP per se. However, all the bureaux are conscious of, and work with, the local DWP infrastructure.

In Scotland, our discussions have primarily been with the Scottish Government and local government. At the local level, we have taken account where we can of the various pilots that were under way and we have been able to look a bit at the experience of housing associations, for example, in informing the fund.

I have to say that we have had less direct engagement with the DWP than with the Scottish Government, which has been our primary engagement in developing the fund.

Annabelle Ewing: Thank you for that. It was interesting.

In general, to determine how best to spend hard-pressed resources, one must determine what the gap is and, to do that, one needs to know what the organisation in charge—as you put it, the local DWP infrastructure—will do and will not do. What picture of the gap is being formed?

We have heard a lot of evidence about the difficulties that many people will face for one reason or another with online applications. To take that as one example, do we know what the DWP plans to do through its local infrastructure on that issue so that we can determine what else needs to be done to help people to access the information

that they need to make an application? Does that fall within your considerations?

10:47

Meeting suspended.

10:45

Jackie Killeen: Probably not so much. I do not know whether people have applied to us for this, but we have been aware of discussions happening at the local level on how digital exclusion can best be addressed. We have seen some good examples of local library networks, for example, thinking about how they can make their services and staff available to help people with that online move. Housing associations are also conscious of that.

For us, the issue is to try to ensure that people who face challenges are helped. There will be a range of challenges: hardship, the welfare reform changes and challenges that they may experience personally, such as lack of access to, or confidence in using, information technology.

We are keen to work with local organisations. If there was a strong partnership that included all those elements at the local level, we would want to be sure that we were putting additional support in the right place.

Annabelle Ewing: That might be another issue to pursue with the DWP, convener.

The Convener: That seems to have exhausted our questions, Jackie. A picture is emerging. In the fullness of time, once the mist has cleared a bit, we might need to have a discussion again. Do you want to say anything in conclusion?

Jackie Killeen: I am just sorry that I have come to you so soon after our deadline and that I am not able to give you more granular information. I would be happy to write to you or to come back with it in the future.

The Convener: That would be really helpful. At some point, we might be able to look at the clearer picture and assess it.

Thank you very much for giving us your time this morning. It was really helpful to clarify some of the issues.

Jackie Killeen: It is a pleasure. We will obviously keep the matter under review. Our aim is to be as responsive and responsible as we can be in Scotland with such issues. As the picture of need clarifies, we may well develop further interventions or approaches that address the need. However, as you will appreciate, it is a bit of a moving picture at the minute.

The Convener: I totally appreciate that.

I suspend the meeting for a couple of minutes to change witnesses.

10:54

On resuming—

Scottish Human Rights Commission

The Convener: Our next item of business is evidence from the Scottish Human Rights Commission, which is represented here today by its chairman, Professor Alan Miller. I thank you very much for coming along this morning. Professor Miller will make some opening remarks, after which committee members will ask questions.

Professor Alan Miller (Scottish Human Rights Commission): Thanks very much, convener. I commend the committee for the work that it has been doing. It might assist if I briefly set the scene with three questions for further discussion. What does human rights add to the committee's work? Where have we reached? What can be done?

First, I will deal with what human rights brings to the table that adds a necessary dimension to your considerations. International human rights law provides for the right to social security as part of the right to an adequate standard of living. That very language is useful in broadening the terms of the debate, which hitherto has been on welfare reform. With so much stigmatisation being attached to the UK debate on welfare reform, it is helpful and will lead to better scrutiny of the welfare reform measures if they are seen in the context of the broader international human rights legal framework right to social security.

The framework that is provided by international human rights law is not about just giving out big rights without filling in much detail about what they mean and what states are supposed to do. It suggests how, in times of austerity, decisions and policies should impact on the right to social security. It would have been helpful if some of those principles had been followed before now; nevertheless, they should be followed now.

All United Nations member states—including the United Kingdom, which has accepted all the international human rights treaties—accept that they should progressively realise the right to social security and an adequate standard of living through committing the maximum available resources to realising that right. When, in times of austerity, there may have to be cuts in public spending, those cuts, as they impact on the right to social security, should be demonstrated to be necessary: that is, evidence should be given of what alternatives were considered and why they were rejected, what the legal measures that were

introduced were based on, and what the likely impact is understood to be by those who are introducing the measures.

The measures should be temporary and should not be built into the system on any other basis. They should prioritise the most vulnerable people and should not create unjustifiable discrimination against them. Even in times of austerity, measures must ensure that there is the core provision that is essential for a dignified human existence, and that the right to social security is not so impacted that people are left in a state of destitution.

Secondly, where are we? Because the United Kingdom—unlike many other countries and despite continual requests to do so from the United Nations—has refused to incorporate the international human rights treaties that it has ratified, and to give them legal status in the UK, the UK Parliament has been able to pass legislation that is not within the international human rights legal framework. The consequence of that today is that no human rights impact assessment whatever was done by the UK Government before it introduced its legislative measures. A box was ticked to say that there would be no impact on human rights.

When the UK Parliament's Joint Committee on Human Rights asked what reference was made to the UK's international legal human rights obligations, it was told that the Government did not consider that there were any implications, and therefore no detailed analysis was done; that committee received literally a one-sentence reply. More important is that the public have been left with inadequate legal protection. Although the UK has signed up to the international human rights treaties and has a legal obligation to apply them domestically, the public have no rights to enforce them through tribunals or courts in the UK, which leaves the public largely unprotected from the measures that have been introduced.

Thirdly, what can be done? Individuals will use whatever legal means they can to challenge the impact of some of the measures on their right to social security. They will use the Human Rights Act 1998, which will provide some form of protection. It does not give the right to social security, but it gives certain other protections in relation to a person's private family life and home, as well as non-discrimination. Challenges are already being brought to court—some successfully—in relation to the bedroom tax.

11:00

Local authorities in Scotland will do the best that they can in what are very difficult circumstances. They are being left to implement a discretionary housing payment fund in relation to the bedroom

tax. They should use a human rights approach, using the broader principles to determine how they use that discretionary fund. The fund is inadequate, however, when it comes to meeting the needs and ensuring the rights of the population.

As for the Department for Work and Pensions, there should be an urgent review of some of the measures. It is already beginning to be demonstrated that they have not been properly considered. Evidence should be examined and a review done to determine what alternative steps should be taken—in particular, to the bedroom tax, which is now in force.

The bigger lesson, for the UK and for Scotland, is to incorporate the international human rights legal treaties, which would lead to better governance and better policies. It would enable Parliament better to hold the Government to account and to exercise more scrutiny. It would give the public protection. Incorporation of those international treaties, which provide the right to social security, an adequate standard of living and adequate housing, has to be the next step, whether that is at UK or Scotland level.

Jamie Hepburn: It is good to have Professor Miller with us today. In your paper you set out how “the Chairperson of the UN Committee on ESC rights”—that is, economic, social and cultural rights—

“has advised all States’ Parties that they should ‘avoid at all times taking decisions which might lead to the denial or infringement of economic, social and cultural rights’.

How is the UK faring by that barometer?

Professor Miller: I do not think that the UK is faring well. As I said in my opening remarks, the UK Government has said in one sentence that it thinks that international human rights treaty obligations have no relevance to the Welfare Reform Act 2012. I do not know about all of them, but a lot of bodies have given the committee evidence—whatever one’s view of what weight to attach to things, and irrespective of whether it is premature for us to say that we understand the impact—that there are clear implications for the rights to enjoyment of private and family life and of the home. In that light, welfare reform does not serve governance, policy making or the public well, at all.

Jamie Hepburn: Did the UK Government respond to the call by the chairperson of the United Nations committee on economic, social and cultural rights?

Professor Miller: The UK was subjected to UN scrutiny late last year. Its response was that, by and large, it is continuing to refuse to incorporate international human rights treaty obligations on the basis that it feels that such obligations are best left

to the UK Parliament through domestic legislation. That is a storable position—it is up to the United Kingdom. However, it increases the necessity for the UK Parliament to be able to hold the Government to account when it introduces laws, and to satisfy itself that those laws implement international human rights treaty obligations and do not breach them. Otherwise, the UK’s international position becomes unsustainable, if Parliament is unable to hold the Government to account and if there is no human rights impact assessment that would enable Parliament to know whether measures that are introduced are consistent with international law.

Jamie Hepburn: Still on economic, social and cultural rights, you suggest in your submission:

“Germany and Latvia provide good examples of where states have integrated ESC rights into their domestic or constitutional law.”

You give the example that, in Latvia, pensioners were able to take a reduction in state pensions to their constitutional court. What are the parameters within which the legislatures and Executives in those two states—you perhaps have other examples—operate, which do not exist in the United Kingdom?

Alan Miller: About 60 countries have constitutionalised their international human rights obligations; Germany and Latvia are just my examples. Such a framework means that, when laws are brought to a Parliament, the Government should be able to satisfy that Parliament that those laws are consistent with its international obligations, which were entered into for the benefit of the public. The experience of humanity and of other countries is that basic human rights must be part of governance. It is left to countries to decide how they will best achieve that, but everyone agrees that that is the destination.

If there is no human rights framework in the constitutional framework, it means that if the Government of the day seeks not to comply with international human rights legal obligations, Parliament will not be able to hold it to account properly and the public will not be able to enforce their rights through the tribunals and courts in their country.

Jamie Hepburn: Let us look at welfare reform more widely. As we know and as you say in your submission, under the Scotland Act 1998,

“the Scottish Parliament may not pass laws which are incompatible with the rights in the”

Human Rights Act 1998. You go on to say:

“Under the Scotland Act both the Scottish Government and Parliament must also take into account the whole range of international human rights obligations by observing and implementing them.”

This will be theoretical. Let us put to one side the reservation in schedule 5 to the Scotland Act 1998 that means that the Scottish Parliament does not have control over social security, and instead say that it has that control, and there is an attempt to take forward the welfare reforms through the Scottish Parliament under the provisions that are set out in the Human Rights Act 1998 and with the Parliament's responsibility to refer to international human rights obligations. As the chair of the Scottish Human Rights Commission, what would you say about the Scottish Parliament attempting to take forward the welfare reforms if we had responsibility for them?

Alan Miller: I do not think that the Scottish Parliament would do that; I do not think that it would be able to do that, and I would not expect there to be the political will to do that.

We have just finished a mapping of where human rights are in Scotland. One of the findings from that exercise is that, because of the Human Rights Act 1998 and the Scotland Act 1998, which create a sort of constitution and constitutionalise certain human rights, lawmaking in Scotland by and large attracts a green light and has been consistent with the European convention on human rights, although things get weaker when we get to outcomes. The good intentions are not always turned into good practice. However, we can see the benefit of devolution to date. Because of the Human Rights Act 1998 and the Scotland Act 1998, the legislative process in Scotland is sounder and better and resonates more with international best practice. Indeed, some of the laws that have come out of the Scottish Parliament have been recognised internationally as best practice.

We have already seen the public benefit of constitutionalising some of our internationally recognised human rights in Scotland, but we need to go further and to constitutionalise economic, social and cultural rights, as the UK should. That has been a repeated call of the United Nations for decades.

Jamie Hepburn: That is interesting. Essentially, because of our institutional practice and perhaps even our cultural practice through devolution, you do not think that the welfare reform process would even get off the ground here.

Professor Miller: Certain aspects of it certainly would not get off the ground.

Annabelle Ewing: Good morning, Professor Miller.

I have been interested in following in general terms the progress—or, sadly, otherwise—of cases that have been brought to challenge some of the provisions. I seem to recall—although I may be recalling incorrectly—that, during the passage

of the Welfare Reform Act 2012, there was an attempted challenge that came to naught. In any event, let us leave to one side the international treaty provisions, which are not always easy to invoke for the reasons that you have stated.

I presume that there may be grounds in the UK Equality Act 2010 on which to challenge some of the legislation, which might be an easier route for various groups. What are your views on that?

Professor Miller: I think that the challenges, which have begun to come forward, will be based on the Equality Act 2010, particularly in relation to discrimination against disabled people and the lack of a proper impact assessment; on the Human Rights Act 1998, with regard to what is called the right to a possession—in this case, a social security entitlement—and discriminatory interference with that right in terms of, for example, the impact on the disabled; and on the European convention on human rights article 8, which covers the right to a private life, a family life and a home. The bedroom tax might well be on the radar for challenges under that article, because it might be argued that such interference is disproportionate and that the potential savings and stated public purpose do not outweigh the impact on individuals or families of having to uproot themselves from the life that they have led and look for alternative accommodation.

Those are the areas where the challenges will be raised; they might be more restricted than broader international human rights challenges, but might be more effective because the UK has given those aspects legal protection.

Annabelle Ewing: Are you aware of further challenges in the pipeline to other aspects of the Welfare Reform Act 2012 and its statutory instruments?

Professor Miller: No. The equality angle, the right to private life and the right to social security as a possession that should not be disproportionately interfered with seem to be the areas on which challenges to the bedroom tax, for example, are being based.

Annabelle Ewing: I imagine that as the welfare reforms, particularly the personal independence payment, are rolled out there might be further challenges down the line.

Professor Miller: There is protection under ECHR against being subjected to inhuman and degrading treatment. If, in the worst cases, individuals are left destitute as a result of the cumulative impact of cuts, challenges will also be raised under article 3 that the state has failed to take measures to protect those people from falling into such a state. The threshold will have to be quite high, but there is European Court case law in which failure to take steps to protect someone,

and their not having adequate food, clothing or housing, has taken things to that threshold. I have to say that for a country like the UK that is intolerable.

Annabelle Ewing: Thank you very much.

Iain Gray: You have kind of answered this question, but I want to make things really clear. Are you, as chair of the Scottish Human Rights Commission, saying that, in your opinion, the way in which the welfare reform measures have been introduced is—at least in part—not compliant with the Government’s human rights obligations, and that they are, in part, likely to breach the human rights of some of the people who are affected?

Professor Miller: Yes.

Iain Gray: The paragraph in your submission about the position in Scotland, which Jamie Hepburn quoted in part, points out that the Human Rights Act 1998 has been embedded in the Scotland Act 1998. You have talked a bit about that, but I note that the paragraph goes to say:

“Under the HRA, public authorities too are prohibited from acting in a manner incompatible with the rights of the European Convention on Human Rights ... which are included within the HRA.”

You have also referred to the position of Scottish local authorities, which are, of course, public bodies. Does the constitutional embedding of the Human Rights Act 1998 in Scotland place Scottish local authorities in a more difficult position in that by implementing UK Government legislation they might find themselves breaching ECHR and therefore open to legal challenge?

Professor Miller: It puts them in a very difficult position. Under the Human Rights Act 1998, they can argue as a defence that because of primary Westminster legislation they had no alternative—I have no doubt that they will seek to rely on that defence.

Case law from the Court of Appeal in England to date seems to indicate that if a local authority is challenged on the basis that its discretionary fund from the DWP is being allocated in such a way that someone can argue, “I should have had a discretionary payment”, the courts might well take the view that that discretionary fund is insufficient to satisfy the requirements of the Human Rights Act 1998 and that therefore the local authority should not be legally liable.

11:15

When the DWP has argued that there is not a discretionary housing payment for any exceptional cases of real hardship that might arise, the courts have said that that is not good enough. For a start, the fund is discretionary—it might be here this year and gone the next—and because it is capped

it is unlikely to capture all the deserving cases. Indeed, the UK National Audit Office has said the same thing and has asked for evidence that the £30 million is sufficient. As the courts’ view seems to be that the discretionary housing fund is inadequate to meet the requirements of the Human Rights Act 1998, the legal challenge of an individual in Scotland would primarily be against the DWP.

Iain Gray: Further on in your submission, you refer to article 8 of the ECHR, which is the right to respect for private and family life, home and correspondence, and point out that the European Court of Human Rights

“has consistently found that ‘the loss of one’s home is the most extreme form of interference with the right for respect for the home.’”

There has been quite a lot of discussion in this committee and elsewhere about how local authorities deal with that and their willingness or capacity to avoid evicting their own tenants if they get into rent arrears as a result of the bedroom tax. I suppose that my next question is similar to my previous one. Are we saying that if local authorities were to find themselves with no option but to evict a tenant from their home they might be found in breach of article 8?

Professor Miller: It is a very tough place for local authorities to find themselves. They would have to demonstrate that eviction was the last resort that was open to them and the courts would have to be satisfied that all other avenues had been explored before that step was taken. That is provided for in the existing law on rent arrears in general, of which arrears as a result of the bedroom tax would be part.

Iain Gray: Would the same apply to other registered social landlords, such as housing associations?

Professor Miller: Yes.

Linda Fabiani: You will have noted that a new phrase—“food poverty”—has gained currency; indeed, you will also have heard that we are now feeding people using the Big Lottery Fund. Where does the lack of dignity in queuing at a food bank or the inability to feed one’s children stand in relation to human rights?

Professor Miller: As you did, I listened to Jackie Killeen and got quite an insight. As I sat there, I was reminded of a famous remark by Eleanor Roosevelt, the architect of “The Universal Declaration of Human Rights” in 1948, who in asking the question, “Where do human rights begin?” said that they do not begin in far-off countries that you can see only on maps of the world—they begin in places “close to home”, in our neighbourhoods, communities, care homes and workplaces. Having been chair of the Scottish

Human Rights Commission for five years now, I have to say that compared with many other countries in the world Scotland has a relatively good human rights record but—I hope that I am proved wrong—the bedroom tax has the potential to become one of the most compelling human rights issues in Scotland. It is not something that we should be having to sit around a table and talk about in this day and age.

Linda Fabiani: What about food poverty?

Professor Miller: Article 3—protection against inhuman and degrading treatment—is by and large used by the European Court of Human Rights in very bad situations of detention in prisons, police stations and so on. However, we are moving in a direction in which it is foreseeable that such cases could find their way from the UK to the European court. Someone who was on the street as a result of the cumulative impact of cuts to social security could well argue—perhaps successfully—that they have been left in such a state that it amounts to inhuman and degrading treatment. That would be intolerable in Scotland and in a country such as the UK.

The Convener: Will you clarify a specific point that was brought to my attention? The Department for Work and Pensions produced the Jobseekers (Back to Work Schemes) Act 2013, the explanatory notes to which state:

“The Bill has been introduced to avoid the need to repay claimants who have been sanctioned for failure to comply with requirements under the ESE Regulations”.

That gives the Government power to overturn a court ruling using primary legislation. Is that legal?

Professor Miller: You are all becoming much more expert than I am in some of the practicalities of all this. One consequence of the power that is given to decision makers in the DWP on sanctions could relate to cases when, although people genuinely cannot work, they have been classified as unwilling to work and have therefore been cut off from social security. If such a person ends up in a destitute state, it is quite possible that they will be able to claim successfully that they have been subjected to inhuman and degrading treatment. One hopes that such cases never happen, but there is a definite risk of them happening, because wide discretion appears to have been given to the decision makers in the DWP.

The Convener: You mentioned the lack of an equality and human rights impact assessment—I think that everyone was aware of that lack. Are you aware of any human rights organisation or any other organisation that might be conducting its own impact assessment because of the absence of such an assessment from the Government?

Professor Miller: In one form or another, that will be attempted—with whatever resources are

available—by non-governmental organisations. If academics could get funding to do it, I am sure that they would attempt it, too. However, it is very difficult for any body other than a Government to have the resources, the data and the reach to do a robust, proper human rights impact assessment. I am sure that there will be all kinds of attempts to do so and that references will be made, and many of them will be very credible, but a comprehensive human rights impact assessment is what the state needs to do, should do and so far has failed to do.

The Convener: Was the UK Government specifically challenged for not conducting an impact assessment?

Professor Miller: Yes. The Joint Committee on Human Rights at Westminster asked why an assessment was not done. As I said, the one-line answer was that it was not thought that there was sufficient cause to do an assessment.

Annabelle Ewing: I will look at the issue from a broader perspective. Apart from the fairly horrific social connotations of a state direction that people could take in a lodger as a response on how to mitigate the effect of the bedroom tax, there is the legal perspective. The DWP told the committee the other week that taking in a lodger would be one solution. Now that we have the learned professor here, will he say what legal issues would arise from a state prescription to take in a lodger to reduce the negative effect of a social security measure or provision?

Professor Miller: There will probably be no legal requirement. People will not have to take in a lodger—that will be one of the options that are presented. People could charge more to members of their family, get more hours at work, take in a lodger or move.

That probably would not be legally contentious. However, the law is one thing; it is the backstop. If individuals have to take cases to court, they have to do that. If that happens, the system has failed.

Another element is human empathy. Even if the worst does not come to the worst for Mrs Smith in Bellshill, she does not know what will happen or what the consequences will be this year, next year or the year after. We are talking about anxiety, uncertainty and insecurity, as well as the legal challenges that can take place, although those will be much more restricted; some will win and some will not.

We should not be in this place. People should not be in a state of uncertainty and the onus should not be on them to contrive, within the inadequate human rights framework at a UK level, a legal argument to try to get some assurance that they can live a life that has some dignity.

Linda Fabiani: When the Parliament started back in 1999, there was a general pride that we had incorporated ECHR. There was also great pride when we appointed the Scottish Human Rights Commission. I know that you were recently reappointed as chair of an international group of human rights organisations.

Professor Miller: Yes.

Linda Fabiani: In your position as chair of that group, you obviously have experience of the austerity measures that are being taken in a lot of countries. I am trying not to be subjective, but it must be quite depressing for you to see our human rights level in the UK dropping considerably.

Professor Miller: The Scottish commission was re-elected unanimously as chair of the European network of national human rights institutions, of which there are 40 on the continent of Europe. It is very interesting that we can see different responses to austerity emerging in different parts of Europe, with different outcomes from other parts. The imposition of austerity measures in countries such as Ireland, Spain and Greece is having devastating impacts on the fabric of life and is leading to all kinds of social tensions, such as increases in suicide rates, HIV rates and mental health problems.

Different responses have been made by countries in northern Europe, where the responses to austerity have been much more balanced. Some countries have made decisions in accordance with the framework of international human rights law, which gives a fairer prioritisation of limited resources than the starker austerity cuts that have been imposed in the likes of Greece and Spain.

It looks as though the UK is voluntarily going down the road of imposing cuts in the context of austerity. That could lead to the outcomes that we see in southern European countries, which are not seen to the same extent in other northern European countries, which are responding in different ways. For example, northern countries are still investing in promoting access to employment and training, which mitigates some of the effects. The economic, health and equality or inequality outcomes are better. From that point of view, the UK seems to be going—unnecessarily—in the wrong direction.

Alex Johnstone: In his introduction, Professor Miller talked about the duty that human rights legislation places on Governments to prioritise the most vulnerable. Is that your interpretation?

Professor Miller: Yes.

Alex Johnstone: Where does the principle of universality sit within that? I am thinking of the

circumstance in which universality could conceivably be a casualty of the prioritisation of the most vulnerable.

Professor Miller: International human rights law requires states to recognise the right to social security. The state is left considerable leeway to determine how it will progressively realise that right. That can mean universality, if it wants to promote that system, or it can mean means testing. Whatever system is adopted should not discriminate on unjustified grounds against particular sections of the population, such as children, women, disabled people, migrants or whatever, and it should prioritise those who are the most vulnerable and the least resilient.

11:30

Alex Johnstone: The principle of universality, as we discuss it in the UK context, tends to be about whether we should limit the entitlement to certain benefits of those who are in higher income brackets. Is it fair to say that human rights legislation is silent on that?

Professor Miller: On whether particular benefits should be universal or means tested?

Alex Johnstone: Yes.

Professor Miller: Yes. There are red lines that human rights legislation puts down. As a result of whatever system is adopted, no one should receive inhuman or degrading treatment. There are amber lights that say that if a state is to interfere with an individual's quality of life—for example, through means testing—it should ensure that that interference is not disproportionate.

Alex Johnstone: So the position would depend on the outcomes rather than the principles.

Professor Miller: Yes.

Alex Johnstone: I will raise a couple of other issues that have come up in discussion. One of them is the judgment that was made in relation to those who were asked to work as part of the welfare reform arrangements, which has already established case law or is in the process of doing so. I understand where we are with the ruling but, in your view, does human rights legislation state that it is inappropriate for a Government to ask people to work in return for any part of their benefits?

Professor Miller: The case to which you refer might find its way to the European Court of Human Rights; I do not know whether it is progressing there. The answer is similar to the answer to your question about universality. Generally, there is no blanket prohibition on what might be called conditionality of unemployment benefit, but the situation very much depends on the outcome and

the detail of the process that is put in place. I would say that human rights legislation is silent on the principle in the same way as it is silent on universality.

Alex Johnstone: Is it therefore reasonable to suggest that it is conceivable that legislation could be put in place that was consistent with human rights legislation and which, in certain circumstances, would allow us to ask individuals to participate in work experience, for example, as a condition of receiving unemployment benefit?

Professor Miller: If the case in question goes to the European Court of Human Rights in Strasbourg, I hope that the judgment will answer your question. As the European convention on human rights is a living instrument—it constantly evolves as society's expectations and values evolve—it is very dangerous to give a categorical yes or no answer to such a question.

So far, in principle, conditionality has not breached ECHR but, as I said, it is a living instrument, and a lot would depend on the case that came before the European court. If the case that we are talking about goes there, we can wait and see what the judgment is.

Alex Johnstone: Another issue that I want to tackle is an extension of something that has been discussed. In a great deal of the evidence that the committee has taken, we have heard about the establishment of food banks in Scotland. It is disappointing, to say the least, that it has become necessary for food banks to exist, although some food banks existed before the welfare reform process was put in train. There is a reasonable degree of concern that, in many cases, one reason why food banks are needed is that many people who receive benefits find it extremely difficult to budget and to prioritise their expenditure.

Can you imagine circumstances in which, in an attempt to deal with that problem, it would be appropriate for the present UK Government or any subsequent Government to use the medium of food stamps, for want of a better expression, as an alternative to giving people the money to dispose of as they see fit?

Professor Miller: That takes me back to my original point about the stigmatisation that is taking place—very unhelpfully—of many sections of our community. The description of people who are living day to day to make ends meet and of the Government introducing welfare reform to assist those people with their budgetary decision-making processes is unrealistic. If that is a concern, there should be support provided and capacity built, not a carrot-and-stick approach.

We have austerity because of financial mismanagement by those running the financial

institutions in our country and not because of those who are trying to get to the end of the month on a pay cheque or on social security. On the evidence about why we are in the place that we are in and what steps must be taken, it is a bit rich for those in government to blame the mismanagement of finances by families, as opposed to the mismanagement by those who got us into the hole and who should be getting us out of it.

Alex Johnstone: Are there any circumstances in which it might be the responsibility of anybody other than the benefit claimant to prioritise how their support is used?

Professor Miller: I do not know what you are referring to in particular. Before I became chair of the Scottish Human Rights Commission, I ran a legal aid practice in Castlemilk for 15 years. I am not singling out Castlemilk, but there was a lot of unemployment there. My experience was that the overwhelming majority of people wanted a decent job.

When I saw young kids get a decent job, I was losing my practice, because they were no longer committing crimes and they were not in debt or facing evictions and all that. Just getting a job stabilised their lives, and the whole community—not least their families and their partners—benefited as a result. Therefore, the stigmatisation of those who are not in work is most unhelpful. However, asking how we improve or reform the social security system is legitimate, particularly in times of austerity because, no matter who got us into this mess, we have to get out of it.

We should call welfare benefits social security. The United Nations Universal Declaration of Human Rights says that people have the right—through sickness, age, becoming unemployed or family circumstances—to expect some form of protection. All civilised communities share that right. Welfare reform has a stigma attached to it that can be the political justification for all kinds of things that go against human dignity and the reality of life in the UK.

The Convener: Iain Gray's question reminded me of the conversation that I had at the weekend—I was talking not to a Mrs Smith from Bellshill but to a gentleman—about the powers that local authorities have under the welfare regime to protect people. Could a local authority not follow orders and challenge the Government's legislation because it believed that enacting it would be in breach of someone's human rights? Could a local authority say that it was not prepared to breach those rights? Could it make a challenge on those grounds?

Professor Miller: A public authority could not issue a challenge under the Human Rights Act

1998; that would have to be done by individuals who were impacted by the cuts. In legal terms, a local authority could not be the victim.

I have no doubt that you have taken or will take evidence from local authorities. They will be audited by the DWP on how they implement the discretionary housing payment fund, for example, so they must be very careful. I advise them that they should follow their duties under the 1998 act, prioritise the most vulnerable and not discriminate in how they operate the discretionary fund. If they do that, that will be an answer if the DWP asks in its audit why a local authority gave funding to one category and not to another.

A challenge must come from the individuals who experience the hardships as a result of the cuts. They would have to take that challenge to the DWP on the ground that, for example, the action interferes disproportionately in their right to family life. Scottish local authorities are placed in a difficult position.

The Convener: I think that local authorities have tried to make that clear to us. It is just that, when I discussed the issue with someone at the weekend, they wondered whether local authorities might be able to offer more protection than they do. That clarification is really helpful.

All the evidence this morning has been very useful. As I said to Jackie Killeen earlier, we will watch to see how the picture emerges. We might chat to you again to see how the legislation is progressing and what challenges are emerging.

Professor Miller: Many thanks, convener.

11:40

Meeting suspended.

11:43

On resuming—

Subordinate Legislation

Welfare Reform (Consequential Amendments) (Scotland) (No 3) Regulations 2013 (SSI 2013/142)

The Convener: Our next item of business is consideration of a statutory instrument. The Subordinate Legislation Committee considered the regulations at its meeting on 21 May and raised no points.

We are joined by Scottish Government officials. I think that Ann McVie is going to make a comment or two before we open up the session to questions. Is that all right?

Ann McVie (Scottish Government): Yes, that is perfectly fine.

Good morning. Thank you for inviting us along to talk about the latest set of welfare reform regulations. As the Deputy First Minister outlined in her letter of 20 April, the regulations make a number of further minor changes relating to the UK Government's introduction of personal independence payments, commonly referred to as PIP. More substantially, the regulations provide for recipients of the new armed forces independence payment—AFIP—that the Ministry of Defence is introducing to access the same benefits, disregards and allowances as recipients of the existing disability living allowance or the new PIP.

AFIP is designed to provide financial support to service personnel and veterans seriously injured as a result of service to cover the extra costs that they might have as a result of their injuries. AFIP is a substitute for disability living allowance or PIP. The financial value will be the same as that of the higher rate components of PIP. The main difference is that the recipients of AFIP will not have to undergo the periodic reassessments that people in receipt of PIP will have to undergo.

AFIP is a Ministry of Defence benefit that the DWP is administering; it does not fall within the Scottish Government's ambit. The MOD estimates that there could be about five recipients of AFIP in Scotland each year and that about 50 people might be eligible from the outset. A small number of people will be affected by the change.

At the same time, the regulations make changes to the National Health Service (Travelling Expenses and Remission of Charges) (Scotland) (No 2) Regulations 2003, commonly referred to as the TERC regs. Those changes will ensure that any dependants of universal credit recipients are not required to pay any health charges. That is

during the pathfinder period for universal credit that has now started in the Manchester area of England.

Last but not least, the 2013 regulations amend instruments on legal advice and assistance and on civil legal aid to ensure that any payments that are made from the new Scottish welfare fund are disregarded from the calculation of disposable income and disposable capital, as well as from any payments that are due to be recovered for solicitors. In these regulations, we have rolled up the disregard for the new welfare fund, which was introduced in Scotland at the beginning of April.

The Convener: That has been quite a helpful clarification. It appears that members have no questions, so do members agree to note the regulations?

Members *indicated agreement.*

11:47

Meeting continued in private until 12:06.

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