



Scottish Affairs Committee

Oral evidence: The Impact of the Bedroom Tax in Scotland – Continued, HC 937–III Tuesday 04 February 2014

Ordered by the House of Commons to be published on 14 February 2014.

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Members present: Mr Ian Davidson (Chair); Mike Crockart; Jim McGovern; Sir James Paice; Mr Alan Reid; Lindsay Roy.

Questions 221 - 249

Witnesses: **Rt Hon David Mundell MP**, Under-Secretary of State for Scotland, gave evidence.

Q221 Chair: Mr Mundell, can I welcome you very much to this meeting of the Scottish Affairs Committee? We are having a brief session with yourself before we move on to a session with David Willetts as part of our investigation into the impact of separation.

As you know, there has been a great deal of coverage recently in Scotland about the legal position relating to the bedroom tax. We know that you had some comments to make a little while ago about this. The Committee was very interested in getting clarification from you about your remarks, if I have them correctly, that the Scottish Government have the power to deal with the bedroom tax at the moment: “It is a question of choices on where they want to spend their money...the Scottish Government has the power to completely deal with it now for remarkably little if it is such a priority.” Can you clarify for us how you believe that, within the existing devolution settlement, the Scottish Government could deal with issues arising from the bedroom tax?

David Mundell: Thank you, Mr Davidson. If it is all right, I want to make a short opening statement to put matters into context. I am of course aware that the Committee produced an interim report on this subject and the impact of welfare reform issues in Scotland, on 13 December last year. Colleagues in the DWP are considering that report and will respond shortly, so for that reason I do not intend to comment on the report today, or indeed on the political differences that some of us may have over the Government’s welfare reform policies, which have been exhaustively debated on other occasions. I think it would be useful for me to say something briefly about what I have been doing on behalf of the Scotland Office in relation to liaising with all Scottish local authorities and other stakeholders on what the impact of welfare reforms and the challenges of implementation have been for them, their services and their tenants.

In recent months, along with senior DWP officials, I have met all local authorities at least once, most twice, and by mid-March all twice. The dialogue has been frank but constructive. We have sought to address issues raised. For example, there is now recognition of rurality in discretionary housing payment funding, and in the current financial year a £20 million fund, into which councils can bid on specific issues, was created. The deadline for bids for this £20 million fund was yesterday. In total, DWP have now received bids from 14 local authorities in Scotland out of a total of 32. Of these bids received by DWP, 10 have been awarded additional funding, and four remain outstanding and will be considered this week.

During that time we also sought to work constructively with the Scottish Government, despite our policy differences, but this has not always proved possible. When the Scottish Government previously announced that £20 million was to be allocated to local authorities in Scotland this year in respect of welfare reform issues, there was no discussion with the UK Government about how that funding could be best dovetailed with our own transitional arrangements, or any request to change the regulations on capping the funding of discretionary housing payments. On 29 January, DWP announced its allocations of discretionary housing payment to local authorities for next year, and members of the Committee should have that information with them.

On 31 January, the Deputy First Minister issued a letter to Lord Freud, and subsequently embarked on one of her customary media operations, calling on the UK Government to lift the cap on funding for discretionary housing payments. No formal request to change the rules for discretionary housing payments had previously been made by the Scottish Government before last week.

I am sure the Committee will welcome the fact that Ms Sturgeon's letter confirmed that the Scottish Government were in a position to make available an extra £15 million to deal with the issues they claim relate to the removal of spare room subsidy, because as recently as 13 January this year the Scottish Government Housing Minister, Margaret Burgess, told *The Scotsman* that such funding could only be achieved by budget cuts, and asked what other spending area should be cut.

This afternoon I am in a position to confirm that that money can be used for such purposes, whether or not there is a change to the cap on funding for discretionary housing payments. Seeking that change from the UK Government seems to me to be a smokescreen set up by the Scottish Government to mask inactivity over three years to address claims that they said they had in relation to welfare reform.

The UK Government announced their intention to introduce this policy as part of an emergency budget in June 2010. That was nearly three years before its implementation in April last year. During that time and since then, and despite their vociferous opposition to the policy, the Scottish Government failed to take any positive steps to plan for the change, including ways in which the impact could be reduced by those likely to be affected in Scotland.

Lord Freud will reply to Ms Sturgeon's letter in early course, but members of the Committee, and indeed Members of the Scottish Parliament considering the Scottish Government's budget tomorrow, can be assured that, if an additional £15 million has now been found to be spent on welfare reform-related issues, subject to the clearly set out constraints of the Scotland Act 1998, that money can be used for those purposes.

Q222 Chair: Thank you. That was a very comprehensive statement, which I had not seen before you made it; therefore, I am in some difficulty about remembering the detail of it all. Can I clarify one or two things? You have said before that you thought the Scottish

Government did have, under the devolution settlement, powers to mitigate the effects of the bedroom tax. Can you clarify for us what the mechanisms for that would be?

David Mundell: It would be for the Scottish Government to come forward with specific proposals. I want to make it very clear this afternoon that if the Scottish Government come forward with specific proposals within the bounds of the Scotland Act, we will work with them in respect of implementing them so they can deploy the resources that they say they now have available to do that. The most straightforward mechanism available to the Scottish Government would be to make payment to the housing revenue accounts of local authorities or to registered social landlords to reflect any diminution in those accounts arising from non-payment of rents due possibly to welfare reform changes.

Q223 Chair: The Committee has heard evidence in the past that that would be a mechanism, the idea being that the Scottish Government could give money to either local authorities or social landlords to cover any debts they wrote off as a result of the bedroom tax. My understanding of that mechanism is that it would not require any co-operation or collaboration with the UK Government because, surely, all of that is within their existing powers. While I appreciate that you were offering to work with them to make that mechanism operate, it would not be necessary, would it?

David Mundell: It would not be necessary in relation to an arrangement that simply required the payment into housing revenue accounts or to registered social landlords. Those would be decisions for the Scottish Government, based on criteria that they sought to apply in that regard. We would be happy to give advice and guidance in case there was a suggestion that any scheme was an attempt to create a separate welfare system, which clearly is not allowed within the Scotland Act—welfare is a reserved matter—but funding of local authorities, funding of registered social landlords and housing issues more generally are devolved matters, and the responsibility of the Scottish Government.

Q224 Chair: These always have been, have they not, since June 2010—I think that was the date you mentioned—when the UK Government announced they intended to introduce what we now describe as the bedroom tax? The powers have not changed on either of the two elements of this. If you could just bear with me, so that I and anybody watching this are absolutely clear, the powers for the Scottish Government to give money to the housing accounts of local authorities or to registered social landlords have not changed in any way—those powers were there at the very beginning; nor have the powers of landlords to write off, as they see fit, any debts associated with the bedroom tax changed. I want to be absolutely clear that all the powers you are saying the Scottish Government can now use, they could have been using from the day the bedroom tax was introduced. Is that correct?

David Mundell: There has been no legislative change to the powers the Scottish Government have in relation to these housing-related and local authority funding issues from a UK Government perspective, i.e. changing the line between reserved and devolved issues. Indeed, it is self-evident that your own colleagues in the Scottish Parliament, the *Daily Record* and others have raised that very point: there were mechanisms available to the Scottish Government to carry out certain actions which they said were necessary or of concern to them, but it was not until last week that the issue of capping discretionary housing payments, for example, was raised. I am afraid I think that is reflective of an attempt to put this issue purely into a referendum silo: “If we are going to take forward this issue, let’s choose the basis which the UK Government is likely to find the least able

to work with, and seek to create a Scotland-London issue.” I think that is most regrettable, when it is clear that there are other things that could be done.

It is also interesting that Ms Sturgeon’s letter claimed that there was a discrepancy between London and Scotland, in that London received more money than Scotland in relation to discretionary housing payments for the spare room subsidy. That is in fact not the case, and I would be able to provide the Committee with the detailed numbers to demonstrate that.

Chair: It would be helpful if you gave us that factual information.

Q225 Lindsay Roy: As I understand it, the Deputy First Minister said yesterday, or the day before, “We want to do the right thing.” To what extent has the Finance Secretary or Deputy First Minister pursued with tenacity and determination ways in which they could use existing money to cover the bedroom tax over the last year or two?

David Mundell: It is quite clear that the dialogue between the UK Government and the Scottish Government has not been as free flowing as we would have wanted it to be, because, I am afraid, it has been influenced by political differences. While I have found that it is quite possible to work with local authorities—who have serious policy differences on this issue—because their focus is to carry forward implementation and look after the interests of their tenants and local residents, what we have found repeatedly with the Scottish Government is an attempt to politicise this issue rather than to find solutions.

Q226 Lindsay Roy: You are saying there has been a playing of politics here and there could have been an intervention much earlier.

David Mundell: If the Scottish Government had come forward at any time with proposals for their own intervention, we would have looked at that. I strongly believe that the best use of resources is for UK Government resources and Scottish Government resources to be used together, so that local authorities and housing associations have the maximum benefit and those resources are used to maximum impact rather than completely in separation, which sadly has been the case to date.

Q227 Lindsay Roy: In the meantime, there has been a lot of angst among local people who have been faced with challenging financial circumstances in paying the bedroom tax.

David Mundell: Clearly, there are individuals who have faced difficulties. A lot of local authorities are to be commended for being very proactive in dealing with individuals in their communities who have such issues. I think, Mr Roy, you are aware that I met with Fife council very recently and was impressed by the proactive approach that Fife council took. I was also impressed by the fact that we could have a dialogue with Fife council; although we had policy differences, we were able to have a dialogue focused on the best interests of tenants in the Fife council area.

Q228 Lindsay Roy: In other words, Fife council was very proactive, in contrast to the Scottish Government’s approach.

David Mundell: The Scottish Government have had a lot to say on this matter in terms of their policy concerns, but that is not necessarily backed up by what they have done in relation to tackling the issue. Some would argue that pressure within the Scottish

Parliament, from the *Daily Record* and other campaigns, and perhaps even my own remarks earlier in the month in *The Scotsman*, have led to the current situation.

Q229 Lindsay Roy: There has been pressure from Labour and the *Daily Record*. Why do you think the intervention has come now?

David Mundell: It has become clear that the Scottish Government could take action to deal with certain concerns they had. It has been demonstrated that a number of local authorities in Scotland, such as Renfrewshire, who, as I know from personal experience of appearing before almost the full council, are not in support of this Government policy, have chosen to take specific actions to address their concerns. Other local authorities—East Lothian was one—have taken action. It has been very difficult for the Scottish Government to continue to maintain that they were unable to take any action. Ultimately, they have sought once again to punt it back into the UK Government’s court, saying, “Well, we’ve come forward with the money and now the UK Government won’t let us use it.” We are not going to say that. We are saying, “If you apply legitimate legal means which are clearly within the Scotland Act, get on and use that money.”

Q230 Lindsay Roy: In effect, Scotland has been put unnecessarily on pause by the Scottish Government.

David Mundell: Ultimately, it is for the Scottish Government, supported by the Scottish Parliament, to make their own decisions, but legitimate questions can be asked as to why it has taken the Scottish Government, until days—hours—before the budget was agreed in the Scottish Parliament, to come up with a specific response.

Q231 Lindsay Roy: If the priority is to mitigate the worst effects of the bedroom tax, surely that is the case.

David Mundell: I think that is a very good question to put to them.

Q232 Lindsay Roy: I will. I note that Renfrewshire council was more challenging than this Committee. Is that right?

David Mundell: Renfrewshire council was very challenging, as is their right. We want to engage with local government across Scotland and have a frank and robust discussion about their issues and concerns, and I think we have done that. It is a tribute to local government in Scotland that, despite political and policy differences, we have been able to work in a constructive way. I want to continue that dialogue directly with local government, and I intend to do so.

Q233 Chair: Can I congratulate you on managing to mention the *Daily Record* twice, before anybody else had managed to do so? However, could I trump that? By coincidence, I have with me a copy of the *Daily Record*, so that is at least equivalent to your two mentions. Let me also mention in passing *The Scotsman*, which is a fine newspaper as well, since they have turned up at the Committee, too.

Can I come back to a couple of points you made, to seek clarification? Has there been any contact from the Scottish Government with yourselves, before the recent exchange with

Lord Freud, about how the bedroom tax could be mitigated within the existing devolution settlement? Is it only within the last week or so that they have come to discuss this question of mitigation?

David Mundell: In the last week they have come to ask for a change to discretionary housing payment funding. At the moment, there is a cap of 150% on additional funding. They have formally asked for a change to the arrangements. The previous discussions have almost exclusively related simply to the UK Government providing them with more money, but no specific scheme has been brought forward to say, “If we did this, would that work within your rules?”

Q234 Chair: Fine. Until now they have neither brought forward a scheme nor approached you for any help to devise one that would be within the devolution settlement. The only thing they have come forward with now is to ask for a change of powers when in fact a change of powers is not necessary, since there is another mechanism within existing powers to achieve the objective of mitigating the bedroom tax.

David Mundell: That is my understanding.

Q235 Chair: Is it the UK Government’s view that both the schemes in East Lothian and Renfrewshire are legal?

David Mundell: It is our view that the remit of those schemes falls within the devolved settlement. There is an extent to which the Scottish Government will have to satisfy themselves that they are operating legally in that sense. The clear rule is that you are not able to create what is in effect a shadow benefit system by another means. The primary criterion in ensuring that is the case is that there are not payments to individuals, but that payments are to local authorities or registered housing associations in terms of such a scheme.

Q236 Chair: I am sorry to labour this point, but I want to be absolutely clear. Maybe I was running two things together. In terms of what both Renfrewshire and East Lothian, as councils, are doing, am I right in thinking that, first, that is legal and the councils are not acting ultra vires; and, secondly—a point I think you covered—that it would then still be perfectly legal for the Scottish Government to recompense Renfrew council and East Lothian council for the losses they are incurring as a result of taking actions that we are agreeing, unless I am mistaken, are legal?

David Mundell: Yes. They could recompense them for actions which are legal. I did read in the notice issued by Renfrewshire council that they were seeking explicit clarification from DWP in relation to all that they were doing.

Q237 Chair: On the figure of £15 million, it has been suggested that the total cost to Scotland of the bedroom tax is £50 million. I am not clear whether or not in your view there is a distinction between the £15 million that the Scottish Government seem to be willing to spend, or are seeking permission to spend, or have got the powers to spend, and the total cost of £50 million. It seems to me there is an important issue of moral hazard here. If the effects of the bedroom tax have been nullified, everybody who has been hit by the bedroom tax should either have it refunded or have their debts written off. If, on the other hand, you only

meet the debts of those who have run up debts, in effect that is putting at a disadvantage those who may have scrimped, scraped and borrowed in order to meet the cost of the bedroom tax in the short term. Therefore, if the Scottish Government have found a legal way of covering the debts that have been incurred in the bedroom tax, the only fair thing for them to do is to meet all the costs incurred to all tenants in Scotland who have had to pay the bedroom tax. Does that seem a reasonable approach to you?

David Mundell: That is a matter for the Scottish Government.

Q238 Chair: I understand that, and they may choose to be unreasonable, but each of those options is equally legal. Is that your view?

David Mundell: I think I would require you to set out the retrospective part of it. There are always dangers with retrospection, for example.

Chair: I understand that general point. We will perhaps correspond on that in due course.

Q239 Mike Crockart: I have a very similar point, which is to do with whether the Scottish Government had any conversations with you to show the workings of how they came up with the £50 million that they now feel they need to deal with the extras. There has been quite a complex set of calculations up to now. Some councils have chosen not to top up, but have then been given extra money to recompense them for that, and now it seems they are likely to get more money, which perhaps they did not ask for.

David Mundell: It is a complicated position. Therefore, and this is clearly a personal view, I think it is best to approach it local authority by local authority and housing association by housing association, because most of them are in very different positions. As I mentioned to Mr Roy, and earlier to Mr McGovern, I visited Fife council and City of Dundee council, and although they are neighbouring local authorities, they have different specific issues and there is a different pattern of housing associations operating within the area. These larger figures are essentially quite blunt in that sense. It does appear that the figure of £50 million has been generally taken as the figure required completely to buy out—if you want to use that expression—this policy. The UK Government are putting forward £15 million. The Scottish Government had previously committed £20 million, so now £15 million tops up to the £50 million. For example, Ms Sturgeon’s letter is not evidenced by breakdown in relation to individual councils. It is quite clear that individual councils have very different financial circumstances. Some would claim that they still have ongoing needs; others would say that they probably have sufficient resources to deal with the issue.

Q240 Mike Crockart: It seems to be quite a formulaic way of dealing with it—just assuming that each local authority will need the same level of top-up, which has happened up to now—so there are no workings to show that this £50 million is for them to deal with it themselves.

David Mundell: It is a very simplistic approach, and it is the same approach that was used to allocate the £20 million that was provided this year. That was not allocated on a basis that focused on each local authority’s particular circumstances.

Q241 Mike Crockart: You said earlier that, of the extra money available from DWP, only 14 local authorities had applied for extra funding.

David Mundell: Fourteen local authorities had made bids into the pot of £20 million. To be fair to a number of other local authorities, rural authorities had been the subject of a specific rurality scheme, so perhaps for those local authorities there was not the same basis on which to make an application. Mr Davidson, I can certainly provide the Committee with details of which local authorities had made an application and what their success in so doing had been.

Chair: That would be helpful.

Q242 Lindsay Roy: Mr Mundell, has the full £20 million been claimed?

David Mundell: I do not think the £20 million had been claimed in full. If I may check with one of our officials, I will probably be able to tell you that.

Q243 Lindsay Roy: It is still to run through to March.

David Mundell: No. The scheme is now closed, but there are still a number of applications in the process, including four from Scottish local authorities.

Q244 Lindsay Roy: If they are granted, will the full amount have been taken up?

David Mundell: It will certainly be very close. What we can say is that the scheme has not been vastly oversubscribed, although it is a UK-wide scheme, but in due course we will be able to get you the exact detail on that.

Q245 Chair: That would be helpful. Can I clarify one other thing that you have said before is in the power of the Scottish Government to deal with? That is the question of redesignation of properties, which also offers a way forward. Can you explain to the Committee how that would operate?

David Mundell: Housing, which includes the designation of social sector properties, is a devolved issue, and therefore the UK Government do not place any barriers on the ability of the Scottish Government to redesignate properties. Indeed, redesignation, or reclassification as they call it, is part of the Renfrewshire scheme. However, we would expect that rents are reduced in line with redesignations, and, if local authorities do not work in that way, the DWP would not look favourably on such a redesignated property.

Q246 Chair: If a registered social landlord redesignated properties and that resulted in a fall in income, would the Scottish Government be empowered to provide them with money to balance that loss of income?

David Mundell: In the same way as the Scottish Government are able to make payment into a housing revenue account, they are able to make payments to registered social landlords if their budgetary expectations are not met.

Q247 Chair: Redesignation is a route forward in some areas of the bedroom tax.

David Mundell: It would be, but it is correct to say that there has to be fairness and consistency in redesignations.

Q248 Chair: We would be in favour of that, but have the Scottish Government ever approached the UK Government for clarification about whether or not redesignation might be appropriate? Have they ever discussed it with you, or has it ever been raised with you, as a possible way forward?

David Mundell: I am not aware of any explicit discussions about redesignation.

Q249 Chair: If there are no other points, can I clarify the position as I see it and seek from you verification or otherwise, in case I have misunderstood this? It seems to me that the Scottish Government have the powers to mitigate the bedroom tax at the moment; they have always had the powers to mitigate the bedroom tax. That is one of the strengths of the devolution settlement. The Scottish Government have got the money, and under Barnett consequential the amount of money they have had under the positive payments from Barnett would have been sufficient to cover all the costs of the bedroom tax to tenants. In these circumstances, it is reasonable, is it not, for us to seek clarification from the Scottish Government as to why they have not taken all these steps right from the very beginning?

David Mundell: I think it is a perfectly legitimate course of action to take; it is one which your colleagues in the Scottish Parliament are seeking to take. The Scottish Government have set out certain views. However, it is clear that those views have not necessarily been followed up with action that it was within their power to take at an earlier stage.

As I said in my earlier remarks, I am tempted to the view that, when they were finally forced out of inactivity, they wished to do so on a basis that would cause the maximum amount of conflict with the UK Government so as to force this issue into the referendum prism, rather than the prism of doing the right thing for the people of Scotland.

Chair: Thank you very much.