



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities and Human Rights Committee

Thursday 12 March 2020

Session 5



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Pàrlamaid na h-Alba

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EQUALITIES AND HUMAN RIGHTS COMMITTEE

6th Meeting 2020, Session 5

CONVENER

*Ruth Maguire (Cunninghame South) (SNP)

DEPUTY CONVENER

*Alex Cole-Hamilton (Edinburgh Western) (LD)

COMMITTEE MEMBERS

*Angela Constance (Almond Valley) (SNP)

*Mary Fee (West Scotland) (Lab)

*Maurice Golden (West Scotland) (Con)

*Alison Harris (Central Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

David Stewart (Highlands and Islands) (Lab)

CLERK TO THE COMMITTEE

Claire Menzies

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Equalities and Human Rights Committee

Thursday 12 March 2020

[The Convener opened the meeting at 09:30]

Petition

Access to Justice (PE1695)

The Convener (Ruth Maguire): Welcome to the sixth meeting in 2020 of the Equalities and Human Rights Committee. I ask everyone to ensure that their mobile devices are switched off.

Agenda item 1 is consideration of petition PE1695, by Ben and Evelyn Mundell, on access to justice in Scotland. The committee previously considered the petition at our meeting on 14 November 2019, when we agreed to write to the Scottish Government, Human Rights Consortium Scotland, JustRight Scotland and the Faculty of Advocates, whose responses are in the committee papers.

We are joined by Dave Stewart, who has an interest in the petition. With the agreement of the committee, I invite him to make some comments on it.

David Stewart (Highlands and Islands) (Lab): I thank the committee for allowing me to come along again. I am hopeful that Mr and Mrs Mundell will attend the meeting; they were certainly in Parliament yesterday, and I suspect that they are on their way.

Alex Cole-Hamilton (Edinburgh Western) (LD): On a point of order, convener. I noticed that the petitioners were waiting outside the committee room—perhaps nobody has thought to tell them to come in.

The Convener: We will get that checked.

David Stewart: I will summarise the petition and link it to the submissions that have been received since my previous appearance at the committee, in November. I will also make a recommendation for next steps, if that would be helpful to the committee.

The key underlying principle of the petition is a simple one: it is the question of how ordinary families on a modest income seek redress and justice. The simple answer is that families should seek redress through the legal system. We all know and understand that. It is the right answer, but what if people cannot get to first base? The

Mundells have been in touch—in person or by phone—with more than 50 law firms, but the vast majority will not deal with human rights cases. That is problem number 1.

Problem number 2 is that many legal firms restrict their involvement in human rights cases to those that are to do with prisoners or immigration issues.

The third problem is that, even when those hurdles are overcome, many firms deal with human rights cases only when there is a substantial up-front payment. For example, one lawyer whom the Mundells contacted wanted an up-front payment of £25,000 before proceeding, which, at the time, represented double the family's annual disposable income.

When I was in front of the committee in November, I quoted Judith Robertson of the Scottish Human Rights Commission, who is well known to you all. She spoke to the Joint Committee on Human Rights at Westminster about access to human rights, saying:

"It is difficult for anybody to take a case in Scotland. As I said, we have no power to support anybody to do that; in fact, we are expressly disallowed."

As for next steps, I suggest that the petition be kept open until the Scottish Government issues its response to the consultation on legal aid reform in Scotland.

I have carefully read all the submissions. Human Rights Consortium Scotland points out, as I mentioned, that the SHRC has

"no powers ... to take test cases".

It argues that the SHRC needs the power

"to give legal advice to individuals",

which

"would be a significant step towards improving access to justice on human rights".

The committee will know that the Scottish Human Rights Commission is a parliamentary commission. Interestingly, it is responsible to the Scottish Parliamentary Corporate Body purely for pay and rations. Its strategy is its own and Parliament's, but any change to its remit would require legislation to change its terms of reference. The committee might wish to pursue that.

I suggest that the committee consider inviting the Scottish Human Rights Commission and the United Kingdom body, the Equality and Human Rights Commission, to a further meeting of the committee. As the committee well knows—this is identified in the committee's background papers—the EHRC has the power to take human rights cases on reserved issues and, with the agreement of the SHRC, can take court action on devolved issues. It is a clunky way of organising things in

Scotland, but I am sure that the parliamentarians who thought up the legislation at the time did not consider that it was a problem.

Finally, I thank the Faculty of Advocates for its agreement with

“the tenor of the petition that there is a significant lack of availability of legal services in relation to public law matters.”

I think that the faculty put it extremely well in its submission, which summed up the problems that are outlined in the petition. I am happy to answer specific points, as I did at the meeting in November.

Although, on the surface, this seems complicated, it is not. It is about access to justice. To use an Americanism, if you cannot get to first base, you will not complete the whole circuit. It is important that we look at this carefully. I am happy to answer any questions, if I can.

The Convener: Thank you for that helpful summary. Do members of the committee wish to make any comments?

Mary Fee (West Scotland) (Lab): I am grateful to Mr Stewart for his helpful summary of the issues that are involved in the petition. I know that he has been involved with the Mundells since they launched the petition and that he has worked closely with them to support them. I will not go over the information that Mr Stewart provided, but I think that there is enough there for the committee to recommend that we keep the petition open until the Government issues its response to the consultation on legal aid.

I am also persuaded by Mr Stewart’s comments about taking evidence from the Scottish Human Rights Commission and the UK body, the Equality and Human Rights Commission. Clearly, this is a serious and pertinent issue for the Mundells, but other families will be in the same situation and we need to find a way to resolve the issue. I recommend that we keep the petition open.

The Convener: I see lots of nodding heads around the table.

Alex Cole-Hamilton: I thank David Stewart for his comprehensive assessment of the situation. It is a complex case. It is quite a unique case in that the policy applies only to a small number of dairy farmers. However, this Parliament exists to legislate for all of Scotland, not just the majority, so whenever we find cases of injustice—as in this situation—it is incumbent on us to look into them. It will not fall to anybody else to start making policy changes to address the matter, and I do not think that we should shy away from it. I support the calls to keep the petition open.

Angela Constance (Almond Valley) (SNP): I, too, express my appreciation for Mr Stewart’s summary. I am very much in favour of keeping the petition open until we have the Scottish Government’s response. I am also persuaded of the need for further evidence from the Scottish Human Rights Commission and the Equality and Human Rights Commission. I certainly want to hear more from those bodies about the benefits and how further powers for the Scottish Human Rights Commission could be secured, so that it could take on test cases.

The papers that were presented to the committee set out the crux of the issue, which is that cases need to be plausible: there needs to be a prospect of success before legal aid or other assistance can be acquired. I would like to hear from Mr Stewart—and from the Government and the human rights bodies—on that point.

Bearing in mind that we have to legislate for all of Scotland, it would be untenable if cases that were less than plausible were funded from the public purse. There is a balance to be struck. We need to ensure proper access to justice, but there are some financial aspects to consider. Mr Stewart and others may have thought about that issue.

David Stewart: That is a good point, and I thank the other committee members for raising those issues.

I note from the papers that one possible long-term solution is more delegation of European powers to the Scottish legal system, which would mean that we could get resolution at a lower level of the court structure. The fewer tiers you have to go through, the fewer costs are involved, so that would be a sensible approach.

I understand that decisions have to be balanced when it comes to granting legal aid. I stress that the lack of progress has not been for the want of trying. The basic problem that the family has faced is that they cannot get anyone to deal with the case. We all want to avoid having a millionaires’ legal system in which the wealthy have access to justice and those who are less wealthy do not, but that is exactly what has happened in this case.

I probably should have spelled out that the legal issue that we are talking about is to do with a ring-fencing mechanism that affected quotas that were worth a lot of money to the family—when I was at the committee previously, I think that I gave a figure of £300,000 or thereabouts, but the figure is on the record. We argue that the quotas were protected under article 1 of protocol 1 of the European convention on human rights, which is the right to property. The quotas had value and could be sold and transferred, but the ring fencing prevented the family from doing that. It did not

quite bankrupt the business, but it made it non-viable.

That applied not only to the Mundell family but to a number of families in the specific area, which is part of Argyll. Many of the families who were affected are no longer in business because the decision affected the viability of their businesses. Lawyers will argue that the only way to determine whether the Government's decision was right or wrong is the court process. I agree, but we cannot get to the court process to determine whether it was right or wrong.

I agree with all the points that have been made. While the committee is carrying out its work, I will seek a meeting about the case with the Scottish Human Rights Commission and the Equality and Human Rights Commission, which I think has an office in Glasgow. I will see whether there is anything that we can do in the meantime, but I am pretty certain that we have turned every stone—it has been an exhaustive process. Obviously, when I say “we”, I am referring in particular to Mr and Mrs Mundell.

There are no easy answers, but, if the committee could try to provide an answer for others families in the same circumstances, you would be doing a great deal of good for the cause of human rights in Scotland.

The Convener: We acknowledge that the issue is about access to justice for many. I saw heads round the table nodding in agreement to the suggestion that we keep the petition open until the Scottish Government issues its response on legal aid reform in Scotland, with the option of inviting the petitioners to give evidence and taking evidence from the Scottish Human Rights Commission and the Equality and Human Rights Commission after that happens. Do members agree to that approach?

Members indicated agreement.

David Stewart: I thank the committee for its understanding.

The Convener: You are welcome.

The committee's next meeting will be on Thursday 19 March, when we will have a round-table follow-up evidence session on the committee's report into destitution, asylum and insecure immigration status in Scotland.

09:42

Meeting continued in private until 10:11.

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