OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 12 November 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 12 November 2024

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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
24th Meeting 2024, Session 6

CONVENER

*Karen Adam (Banffshire and Buchan Coast) (SNP)

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Pam Gosal (West Scotland) (Con)
*Marie McNair (Clydebank and Milngavie) (SNP)
*Paul O'Kane (West Scotland) (Lab)
*Evelyn Tweed (Stirling) (SNP)
*Tess White (North East Scotland) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Siobhian Brown (Minister for Victims and Community Safety)
Dr Ben Christman (Environmental Rights Centre for Scotland)
Walter Drummond-Murray (Scottish Government)
Professor Colin T Reid (University of Dundee)
Mark Roberts (Environmental Standards Scotland)
Denise Swanson (Scottish Government)
Jamie Whittle (Law Society of Scotland)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Tuesday 12 November 2024

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Karen Adam): Good morning and welcome to the 24th meeting of 2024, in session 6, of the Equalities, Human Rights and Civil Justice Committee. We have received no apologies today.

Our first agenda item is a decision on taking item 3, which is consideration of today's evidence on the Aarhus convention, in private. Do members agree to take item 3 in private?

Members *indicated agreement.*

Aarhus Convention

10:00

The Convener: Our second agenda item is evidence on the Aarhus convention. We will hear from two panels of witnesses this morning.

I welcome our first witnesses to the meeting: Dr Ben Christman, legal director, Environmental Rights Centre for Scotland; Professor Colin T Reid, emeritus professor of environmental law, University of Dundee; Mark Roberts, chief executive, Environmental Standards Scotland; and Jamie Whittle, convener, environmental law sub-committee, Law Society of Scotland. Thank you all for coming.

I refer members to papers 1 and 2 and invite each of our witnesses to make a short opening statement.

Dr Ben Christman (Environmental Rights Centre for Scotland): I thank the committee for agreeing to take evidence on this important and long-standing problem in Scotland.

The Environmental Rights Centre for Scotland is an environmental law charity. We provide free legal advice to members of the public and civil society organisations to help them to understand and exercise their rights in relation to environmental issues. We also carry out legal advocacy, particularly in relation to Scotland's long-standing non-compliance with the Aarhus convention, so I am glad to give evidence on that today.

Scotland is not compliant with the convention. The main reason for that is that it is not affordable for people to go to court over the environment in Scotland. We think that the Scottish Government could do three things to resolve that. First, it could repeal the joint interest test in respect of legal aid, which makes it difficult to obtain legal aid for environmental matters. Secondly, it could introduce qualified one-way costs shifting in environmental cases, in the same way that it has done for personal injury cases in Scotland. Thirdly, it could establish a dedicated environmental court, in the same way that many other countries worldwide have done.

Professor Colin T Reid (University of Dundee): Good morning and thank you for the opportunity to give evidence.

Quite rightly, the emphasis today is going to be on access to the courts and the costs involved in that. However, it is important to realise that the Aarhus convention and environmental justice are about a lot more than that.

Why do people go to court? It is because they are not happy with the way in which initial decisions have been taken. If they get to court, they will not be happy if all that they can do is argue about procedural issues, which is the limitation of judicial review at present.

Setting up an environmental court raises questions, such as what the court will actually do, what its jurisdiction will be and what its role will be in taking environmental decisions. Although there is a focus on the costs and affordability of getting to court, the Aarhus convention and environmental justice are about more than that.

Mark Roberts (Environmental Standards Scotland): Thank you for the invitation to give evidence.

To set the scene, I thought that it would be helpful to set out what ESS is, what it does and its specific role in relation to access to justice in environmental cases. ESS has existed for just over three years. It was established by the Parliament to fill a gap in governance that was created when the United Kingdom left the European Union. Before Brexit, the European Commission assessed whether member states were complying with European environmental law and were implementing it effectively. It could also refer cases to the European Court of Justice. In the UK, that oversight mechanism ended with Brexit.

Our remit is to monitor and investigate the effectiveness of environmental law, the compliance of public bodies with environmental law and how it is being implemented and applied in Scotland. That remit is very broad; it includes climate change, biodiversity, water quality, air quality, waste management and aspects of the marine environment. We scrutinise the Scottish Government, public bodies including the Scottish Environment Protection Agency and NatureScot, and local authorities.

We become aware of an issue related to environmental law in one of two ways: it can come to our attention through our own monitoring, analysis and horizon-scanning work, or it can be brought to our attention by way of representations made by members of the public, community groups or organisations.

ESS is a non-ministerial office that is independent of the Scottish Government and accountable to the Scottish Parliament. To date, that accountability has been provided predominantly by the Net Zero, Energy and Transport Committee. We are led by a board whose appointment is subject to parliamentary scrutiny. Our team is currently made up of 23 members of staff.

ESS's role is not to monitor and enforce compliance with the Aarhus convention, which is an international agreement with its own compliance mechanism through the Aarhus convention compliance committee. Rather, ESS has a distinct role in relation to the elements of the convention that have been incorporated into Scots law, that impose obligations on Scottish ministers and other public bodies, and that are concerned with environmental protection. When assessing whether environmental law in Scotland is effective, ESS will always take into consideration how effectively such law contributes to the implementation of any international environmental obligations.

Jamie Whittle (Law Society of Scotland): I am most obliged for being included today.

The committees of the Law Society of Scotland analyse and respond to proposed changes in the law in order to ensure that new laws or changes to existing ones are clear and will work in practice. Our environmental law sub-committee is made up of both solicitors and non-solicitor members who have an interest in and experience of environmental law matters. We work with relevant stakeholders and respond to consultations on legislation relating to a wide range of environmental issues. We also have other committees with an active interest in such issues, such as our access to justice, civil justice, and legal aid committees. The environmental law sub-committee's priorities include environmental governance and work on the introduction of a human right to a healthy environment. Those priorities intersect with the points relating to compliance with the Aarhus convention.

The Law Society of Scotland responded to the Scottish Government's review of the effectiveness of environmental governance, and earlier this year we gave evidence to the Parliament. We highlighted that even if the broad pattern of relationships is considered to be adequate, there are still areas where we consider that improvement is needed. Some of those areas touch on aspects of compliance with the Aarhus convention, including in relation to access to justice. We noted a number of developments emerging from that review, but some of the outcomes remain uncertain, in particular, the prospective human rights bill and legal aid reforms.

The Law Society of Scotland is of the view that effective access to justice requires attention to be paid not only to the formal procedures for resolving disputes but to the much earlier stages of information and education about legal rights and processes, as well as timely access to expert advice. On that, the Law Society of Scotland considers that it is essential that there is a well-

funded and well-resourced legal aid regime in place to ensure that legal advice is accessible to all affected members of the public.

The Convener: Thank you. We will now move on to questions from the committee.

Could you explain the ways that individuals and non-governmental organisations might attempt to access justice in relation to environmental issues? What is the process and how is it funded? Dr Christman, I put those questions to you.

Dr Christman: The main way in which individuals and NGOs attempt to access justice in Scotland is through litigation in the Court of Session—that is, through judicial reviews and statutory appeals. Although some cases are heard in the sheriff courts—those on statutory nuisance, for example—the majority of such cases are heard in the Court of Session.

Broadly speaking, there are three options for funding such cases. You can pay for the case privately, do it with legal aid, if you find someone who is willing to do it on that basis, or—if you are very lucky—you can find someone who is willing to do it pro bono. Jamie Whittle is one of the few solicitors in Scotland who does these types of cases on that basis.

The costs are really significant: it might be helpful to give the committee an idea of the costs that we are talking about. This is quite an extreme case, but it will give you an example. A few years ago, the John Muir Trust lost a judicial review over the Stronelairg wind farm. Its opponents in that case were the Scottish Government and the energy company Scottish and Southern Energy Networks. At the end of the case, it was reported that both opponents—the Scottish Government and SSE—were claiming £539,000 in expenses from the John Muir Trust. That was eventually negotiated down to £125,000, but that is still a very significant sum of money that would be enough to put off most, if not all, NGOs and, certainly, the vast majority of members of the public.

The Convener: Jamie, would you like to come in on that point, please?

Jamie Whittle: I will give a rough overview of how it might work in the Court of Session with regard to costs. If a party is a petitioner to a simple judicial review that runs for a day, it could cost them somewhere between £35,000 and £50,000—that would be my best guess—and every successive court day could cost in the region of another £10,000 to £15,000 on top of that. People have to raise significant sums of money.

The other element that we will, no doubt, come to shortly, is what happens if you are unsuccessful and the bill that might be faced for adverse costs. The rule of thumb in litigation is that adverse costs might be awarded to the amount of two thirds of the other side's costs, but one also must keep in mind that, in those cases, there will sometimes not only be a Government body responding, but a developer or third-party interest. As Ben Christman said, court costs can be very significant.

The Convener: Mark Roberts and Professor Reid, would you like to come in on that point? It looks as if you feel that the point has been covered.

We will move on to questions from Maggie Chapman.

Maggie Chapman (North East Scotland) (Green): Good morning, panel. Thank you very much for joining us.

I want to carry on the line of questioning about the impact on NGOs and individuals who might be seeking redress and access to justice. Ben Christman gave the example of the John Muir Trust, which faced a bill of more than £120,000 after having lost a case. Do people find barriers other than costs to accessing justice, and are they different for NGOs, community groups and individuals? Can you give us a flavour of the types of barriers that different types of people who might be seeking litigation face?

Dr Christman: Costs are the number 1 barrier, but there are, absolutely, others. Access to legal advice is a problem; members of the public and NGOs can find it quite difficult to obtain legal advice on environmental issues and, quite often, when they approach major law firms for either advice or representation, they are told that there is a conflict and that firms are unable to assist.

Accessing legal representation is also a major problem, basically for the same reasons. There are a lot of conflicts and very few solicitors are willing to take on that type of work.

Maggie Chapman: Do the barriers have different impacts on different types of groups and organisations? Obviously, NGOs might have more money behind them than community groups. Does that prevent community groups and local organisations from even considering trying to gain access to environmental justice?

10:15

Dr Christman: In some cases it does. We routinely give advice to community groups and individuals where we identify that there might be grounds for them to take legal action. They then look into the matter, get a sense of the costs that are involved and—quite understandably—think, "No thanks—we're not going to take that any further."

The barriers for some NGOs may be lower than those for ordinary members of the public, in that larger NGOs might have more resources, such that there is not so significant a problem. Nonetheless, there remains a problem across the board.

Maggie Chapman: There is also the threat of having to pay the legal fees of the other side if there is a loss, such as in the case that was mentioned. That is why the qualified one-way cost shifting is so important. Where are we in terms of conversations that the ERCS has had with the Scottish Government about that? Has there been any indication that there is recognition of the need for qualified one-way cost shifting?

Dr Christman: No—I am not aware of any recognition of a need for QOCS.

Maggie Chapman: Colin, I have a similar question for you. In your opening remarks, you reminded us that Aarhus is about much more than just a single aspect. Other than cost, what are the barriers to accessing environmental justice for community groups and others?

Colin T Reid: Some community groups feel that the system is tilted against them all the way through. For example, at the initial planning or approval stage, they do not necessarily have the resources, expertise and expert knowledge to put up as strong a case as the developer that has been working on the project for several years.

The current appeal system and planning are also very lopsided. The applicant can appeal on the merits, but the objectors cannot—their only recourse is judicial review. When a case gets to judicial review in the court—if the objectors can afford that—the court can consider only procedural grounds. There are such issues at all the stages, which means that people feel that they are not getting a fair crack of the whip.

Maggie Chapman: There is also the extension of the inability in terms of access to justice at all those levels. Can you tell us about the impact on community groups and local neighbourhoods of the failures in the system and of failures to access justice in relation to health and community cohesion—the things that make us human?

Professor Reid: The cases that come to the Environmental Rights Centre for Scotland show the strength of feeling, passion and concern that groups have about their communities and neighbourhoods being seriously affected.

For example, there is the recent case involving the Friends of Saint Fittick's Park in Aberdeen, about the expansion of an energy transition zone occupying a big area of green space near a large housing estate. That campaign shows how passionately the people feel, and how disenfranchised they feel by the whole process.

Maggie Chapman: I should probably state an interest, having supported the campaign to save the park. It is an interesting example, because it is about the wider issues. The justice and legal system is a means to achieving something—in this case, access to green space in an area where people have lower life expectancy than people elsewhere in the city. There is a real issue of individual and public health.

Do the courts reflect on and understand those kinds of impacts? Community groups and organisations may be going into such things in relation to access to environmental justice, but the impacts are, in fact, about healthy living, community and those kinds of things.

Professor Reid: I think that the courts would probably say that it is not their job to think about those things. Once a case gets to the court, its role is fairly defined and narrow. Such things should be resolved at the earlier decision stage, during which a more politically accountable body is able to balance the various considerations.

However, what often lies at the root of all this is lack of confidence in the initial decision making, and that is very hard to cure. We see a lack of confidence in political processes in all walks of life and at all levels of government. I am not saying that it is easy to deal with, but there is a deeper issue that will not be solved by dealing with those specific and narrow issues about legal access to court.

Maggie Chapman: Okay. That is understood.

Mark Roberts, I have similar questions for you. How do the barriers impact community groups and people in accessing justice? How is the current non-compliance exacerbating these issues?

Mark Roberts: I echo what Colin Reid and Ben Christman said. The current route by which people can take action through judicial review is constrained in looking only at the process that a public authority has followed rather than at the merits of a particular case. The scale of the costs that people might face has a chilling effect—I am surprised that that phrase has not been used yet—on their willingness to take cases. That is a major barrier.

Also, the sheer intimidatory nature of the process that people would have to go through is a disincentive for them when they are considering how to tackle issues, whether that is in relation to planning, environmental impact assessments or any other aspect of environmental law.

Maggie Chapman: If people have gone through all those processes and have still not got access to justice through the courts, the chilling effect is

the main barrier. In your experience, is there a sense that people just ask themselves, "Why bother? We've lost at every stage. What's the likelihood of success, given the procedural focus of court proceedings?"

Mark Roberts: I would be speculating slightly on what individuals or individual groups had experienced in commenting on that effect; other members of the panel might be able to comment. However, if you are asking me to speculate, I would imagine that that is quite a disincentive.

Maggie Chapman: Thank you. I might come back to you to pick up on a couple of points.

I turn to Jamie Whittle, who has experience as the person who guides these cases through for so many. On the barriers that we have been talking about and, I suppose, the lack of awareness upstream and the lack of a process to support communities, where does the problem start with access to justice, and environmental justice in particular?

Jamie Whittle: As I said in my opening comments, there is the element that access to justice is not about the sharper end of things, such as protective expenses orders. As Colin Reid said, it is very much about looking at the whole baseline of how we govern ourselves from an environmental point of view. That happens in a number of different ways. We have so many very clear pieces of legislation and policies on environmental matters in Scotland. The issue is having the confidence to ensure that those are followed through and implemented properly.

Another aspect is the early stages of engagement. Right at the root of the Aarhus convention is the concept of public participation. The issue is how communities can engage with developments and environmental plans meaningfully and authentically, so that they can inform, and be informed about, those processes. If you start with that baseline, things become a bit simpler. There should be less of a need to challenge things at the sharper end.

It is also a cultural thing. Environmental literacy takes time. It is about the way in which decision makers of all shapes and forms become aware of and understand the complexities of environmental issues.

From a community point of view, challenging a project, say, through a judicial review is a very uncertain process for somebody to go through. Sometimes, a well-established NGO might be involved. Sometimes, community groups are pulled together at very short notice, on the hoof; they are just people coming together with a common aim, and that takes them on such a challenging journey because they must face uncertainty and the risk of cost. There is also the risk that, if one wins in the Court of Session on a procedural point, that is not the end of the matter. Sometimes, it is a pyrrhic victory, which might also be a deterrent to people proceeding.

Maggie Chapman: You spoke about the importance of getting things right not only at the sharp end of the court system. The convention talks about the need to improve environmental democracy. On access to justice, there are costs associated with court proceedings, but legal aid and other support mechanisms start—or should start—much earlier in the process. What have you seen eroded in those upstream processes during the last years that has entrenched non-compliance?

Jamie Whittle: In a slightly back-to-front way, protective expenses orders have made a significant positive change to the way in which environmental cases have been able to come about. We have had protective expenses orders for the best part of 10-plus years, and more cases have come through the Court of Session because of that mechanism. My experience is that the process to obtain a protective expenses order has become simpler than it was three to five years ago. There is a growing culture there.

Cases in which somebody with an interest in environmental matters gains legal aid are few and far between. It can be hard to access legal aid anyway in the civil justice area, but particularly for environmental matters. There are barriers to community groups and NGOs accessing legal aid. It is therefore a question of funding. Those are the two issues at the sharper end.

Maggie Chapman: You said that not everybody is eligible to access legal aid, so that could be a barrier. I will leave it there for now, but I might come back in later.

Evelyn Tweed (Stirling) (SNP): Good morning, panel. Thanks for your opening remarks. I turn to Environmental Standards Scotland. Could you give us some examples of the work that you are doing presently?

Mark Roberts: As I said in my opening statement, our current remit is very broad, and we have work that spans pretty much all of our remit. We worked on climate change in the run-up to the Climate Change (Emissions Reduction Targets) (Scotland) Bill, which was recently passed. We are looking at aspects of fisheries management. We have been looking at marine protected areas. We are currently looking at issues relating to aquaculture. We have recently published reports on marine litter, soils and storm overflows. In the past, we covered issues in connection with various aspects of air quality. We consider a broad range of areas.

We are about to initiate work on different aspects of water quality, and we are currently looking at a range of representations that we have received from members of the public and organisations, which, again, cover a similar range of issues, from littering on roads all the way through to protected areas and how the legislation covers those. It is a broad, diverse range of work.

Evelyn Tweed: What options do you have to enforce your recommendations when you write reports?

Mark Roberts: Our strategic plan says that our initial approach will be to try and resolve issues with public bodies wherever possible. If that fails, and we are committed to our recommended approach being the one that we should take, it is established in the act that set us up that we have a range of options. We can issue an improvement report, which would go to the Scottish Government and would trigger a requirement for it to produce an improvement plan, which would then have to come to the Parliament and be approved by it. That provides a mechanism by which we can ensure parliamentary scrutiny of our recommendations. We have used that on two occasions: one in relation to air quality and nitrogen dioxide levels, and one in relation to local authority climate change duties. That is one of our options.

We also have the option to issue compliance notices, whereby we require a public body to take a certain action. To date, we have not had to resort to that, although we have come close on a couple of occasions. We would prefer it if we did not have to do that. Ultimately, in extreme circumstances, we could petition the Court of Session and go to judicial review. Quite high barriers are set for us to do that but, in a case of extreme environmental risk or harm, we could do it.

10:30

The Convener: We move to questions from Pam Gosal.

Pam Gosal (West Scotland) (Con): Good morning. I thank the witnesses for their opening statements. My question is about court fees. You have touched on how expensive Court of Session fees can be. The Aarhus convention compliance committee said that the court fee exemption should apply to other courts in Scotland and not just the Court of Session. What are your views on that?

Ben Christman: This is purely on court fee exemptions, which were introduced a couple of years ago in the Court of Session for cases within the scope of the Aarhus convention. We supported that, because Court of Session fees can be really expensive—sometimes in the thousands of pounds. We would support the extension of exemptions in other courts such as sheriff courts, but I am not sure that that is such a significant problem in Scotland. It would be just another minor incremental change that does not really shift the dial in improving access to justice. In general, we support extending the exemption, but it will not make a significant difference.

Pam Gosal: Thank you for that response. As nobody else wants to comment, I will go on to my supplementary question.

Transcripts of court cases can be very costly. The Scottish Government has launched a pilot to make transcripts free for survivors of rape or sexual assault. That idea was brought forward by rape survivor Ellie Wilson, who I worked closely with and who was forced to pay large sums of money to access court transcripts. Do you believe that scrapping transcript fees should be extended to other types of cases, including environmental cases?

Ben Christman: I have heard of that being a problem in other types of cases, but I have not come across it being a problem in environmental cases. Perhaps the other witnesses might have a different view.

Jamie Whittle: I am not aware, certainly in the Court of Session, of there being a transcript fee per se. When a decision is produced by the court, it is an opinion of the judge or the bench of judges, and no transcript is provided in a judicial review case. In a sheriff court case, there might be a requirement for there to be a shorthand writer in some types of cases, such as a proof with witnesses. That is probably the only area in which that would apply.

Pam Gosal: So, it is a very minor problem.

Jamie Whittle: Yes, it is, in my experience.

The Convener: We move to questions from Tess White.

Tess White (North East Scotland) (Con): Will you explain what the current problems are in relation to accessing legal aid for environmental cases in Scotland?

Jamie Whittle: There are probably two elements to that. One is the challenge of passing the test—in terms of prioritisation—for the available fund to support such cases. The second element is the fact that environmental cases might be taken by the likes of a community group or non-governmental organisation, and, under the current rules, they are not permitted to access legal aid.

Tess White: As you say, those with the right to access legal aid do not include community groups. I should declare that I have spoken to

environmental groups such as Save Our Mearns and Angus Pylon Action Group. What is your view of their right to access legal aid in relation to energy infrastructure?

Jamie Whittle: There is quite a crossover between energy projects and environmental matters. A lot of work on the Electricity Act 1989, for example, is linked with work on environmental impacts. There is a close link between the two and there is probably always an environmental element beneath the presentation of that.

Tess White: In relation to the point about not being able to access legal aid, what is your view of the right to a public inquiry for community groups being taken away? I am particularly interested in cases where productive farmland, or the health and wellbeing of communities, is negatively affected. What is your view of the justice of that?

Jamie Whittle: For a public inquiry, with a hearing specifically in relation to a planning development conducted by the department of planning and environmental appeals, I cannot think of a case in which an individual has been able to access legal aid in order to have legal representation.

Colin Reid, or perhaps Ben Christman, made a comment earlier about the disparity of representation at public inquiries. Developers may be well funded and there will be Government representation, but community groups or individuals may appear on their own or may have a solicitor appear for them. There is often a mismatch in what you might call the equality of arms.

Tess White: Professor Reid, you spoke about a lack of justice and unfair cracking of the whip. Do you have a view on this topic?

Professor Reid: Public inquiries are far rarer than they were and one reason why they ceased was the costs involved, which fall particularly harshly on any individual objector or community group. Any developer who has a lot invested in the project will have spent a long time preparing before the public inquiry and will be all set up with expertise and expert evidence and any public authority involved will also have expertise. A community group that may have known for a year or so that there is something in the wind about a project will be given a matter of months to get up to the same level and to do so without resources and expertise. It is often pot luck as to whether there happens to be someone in the community who has the relevant background and can do a lot. Otherwise, by the time that communities find out what they need to know and when and where they can get advice, they are up against the time and money issues.

Tess White: Do any other witnesses want to say anything about that subject?

Dr Christman: I can offer some more detail about the barriers to accessing legal aid for environmental matters.

Maggie Chapman hinted at an erosion of legal aid provision in that area, but for there to be an erosion, you would have to have started with some legal aid provision in the first place. Fundamentally, there has been little, if any, provision of legal aid services for environmental matters in Scotland. We are starting from a place of almost zero access to legal aid for these matters.

I said earlier that we would like the Scottish Government to repeal regulation 15 of the Civil Legal Aid (Scotland) Regulations 2002. To give you some detail, that restricts civil legal aid in cases where someone has a joint interest along with others. Environmental issues rarely affect just one person: the biodiversity and climate crises do not affect only me. That means that environmental cases often fall within that joint interest category.

In summary, regulation 15 says that, in joint interest cases, the Legal Aid Board

"shall not grant legal aid"

unless the individual applying for it would be "seriously prejudiced" by that lack of aid. That is a really high bar to meet and it does not apply to cases that do not involve a joint interest.

The test also says that the Legal Aid Board is to refuse legal aid if there are others interested in the case who would be able to pay the costs of taking it to court. That is an impossible test to apply in practice, because, first, you have to identify all the other people with an interest in the case. How do you do that in a case such as St Fittick's park, which affects hundreds, and potentially thousands, of people living in the local area? How can you possibly identify all the people there, and then, how do you means test all those people? How does the Legal Aid Board means test all of those people, when it has no direct contact with them?

Therefore, we say let us just do away with regulation 15—at least, in particular, for Aarhus cases.

Tess White: Thank you. Unless you have deep pockets or get pro bono advice, there is no legal aid, so you are stuffed, really. You are nodding your heads. Thank you. Back to you, convener.

The Convener: We move to questions from Paul O'Kane.

Paul O'Kane (West Scotland) (Lab): Good morning. I will elaborate on some of the questions that we have explored in terms of the potential for

reform of legal aid. In response to a parliamentary question, the minister said:

> "Discussions on legal aid reform will commence this year and will include environmental stakeholders."—[*Written Answers*, 3 October 2024; S6W-30377.]

Given that we are now 18 months from the end of this session of Parliament and that it has been stated that a number of other significant pieces of legislation, not least the human rights bill, will not be complete by the end of the session, is there a view about whether it is likely that legal aid reform will take place during this session, or is it likely to extend beyond that? Jamie Whittle, do you have a view?

Jamie Whittle: I was waving my hands to indicate that I do not have a view—apologies.

Paul O'Kane: Does anyone have a view?

Dr Christman: I would be pleasantly surprised if there was reform in that area before the end of the current parliamentary process. We have been given quite a few vague assurances about looking at it at some point in the near future, with no specifics. I am not aware of any specific reforms that are coming at any specific date.

Paul O'Kane: Would you be keen to at least see some work started on that? I am sure that people have already started to discuss some views and ideas about what could change, particularly with environmental stakeholders. I assume that there is a wealth of experience and work that is ready to be put forward.

Dr Christman: Yes, absolutely. We would be open to working with the Scottish Government on that if there was a willingness to address the issue.

The Convener: Thank you. We move to questions from Marie McNair.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. Dr Christman, you mentioned in your opening speech that you are a supporter of an environmental court. Would you expand on why you think that we should have a dedicated court? Do you think that it would improve justice?

Dr Christman: Yes, our view is that we need a dedicated environmental court to improve access to justice. That is because, as I mentioned at the start, most environmental litigation in Scotland takes place in the Court of Session, which is an institution that does not particularly facilitate access to justice as it is very expensive to take cases there.

Although we acknowledge that there has been some progress over the past few years in improving measures for access to justice, as Jamie Whittle mentioned earlier, the current approach to improving access to justice has been to make small, relatively minor changes at a snail's pace. As a result, we have a continuing failure to achieve compliance with the Aarhus convention.

Our position is that we should establish a new environmental court with a clear statement of purpose around securing access to justice and rules to secure that. Essentially, we should start a new institution rather than continue making small changes to the existing institution. That might sound a little bold, but Scotland has a number of specialised courts and tribunals, in all sorts of areas of law—for example, on employment, housing, immigration and asylum. The list is quite large. They are nothing new in Scotland. Similarly, environmental courts are not a particularly radical idea worldwide. They exist in many countries. Globally, as of 2018, the count was around 1,500 environmental courts and tribunals.

10:45

By itself, establishing an environmental court is not necessarily a panacea for access to justice, but it gives an opportunity to start with a new institution and think carefully about how we design rules and procedures that would facilitate access to justice. In particular, you could look at the costs of litigation.

Marie McNair: Does any other witness have a view on dedicated courts?

Professor Reid: That final point is important: creating a court that will just shift exactly the same cases to somewhere a bit more convenient and cheaper is not the answer. You would need to have a think about the court's role in the wider system from start to finish—from the initial decision-making procedures to appeals, reviews and so on. A lot can be said for such courts—there are a lot of benefits to them—but they need to be thought about in the system as a whole, not as if just plugging in a court will solve everything.

Mark Roberts: Last year, the Scottish Government conducted a review of environmental governance, which was a function of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021, which set up ESS and required the Government to conduct a review of environmental governance and specifically ask the question about an environmental court. When the Government published its review, it said that it was not convinced by the case for an environmental court. That was consulted on. Ben Christman and Colin Reid have given their views. We, too, thought that a case could be made for an environmental court, which we located largely within the context of working towards Aarhus compliance. We are still waiting for the publication

of the final outcome of that review of environmental governance.

Marie McNair: Do you have any knowledge of when that is due to appear?

Mark Roberts: That might be a question for the minister later this morning.

Marie McNair: Okay, I will ask her.

Jamie Whittle, I do not want to put you on the spot, but do you have any further points?

Jamie Whittle: I will pick up on Mark Roberts's point about the environmental governance review. The Law Society of Scotland submitted some comments on the idea of an environmental court. At this stage, the Law Society has not put forward a fixed view one way or the other; however, it has identified a number of positives that could come from having such a court. Again, if that was to be taken forward, the theme of making sure that it works in the wider system—having clarity and purpose—is really important. The Law Society of Scotland would be very happy to be consulted on that. Indeed, on the point that Paul O'Kane made about legal aid, a moment ago, were there the opportunity to consult further, we would be most obliged.

Marie McNair: For my next question, I go back to Dr Christman. You mentioned the 1,500 environmental courts across other countries. Do you have any examples of good practice that Scotland could use, and any other comments that you think would be helpful to the committee this morning?

Dr Christman: There are quite a few examples of good practice. The Land and Environment Court of New South Wales was set up around 1989, I think, and was the first specialist environmental court in the world, as far as I know. Its approach is to encourage the adoption of alternative dispute resolutions: encouraging parties at the outset of a case to think about things such as mediation—essentially, sitting down and speaking about the case rather than taking it all the way to a formal legal hearing, which comes with all the costs that you might imagine. In some cases—in which parties are willing to do such things—that can be helpful and can reduce costs, leaving two parties who are happier with the outcome, rather than one happy party and one very unhappy party.

Similarly in Australia, the Queensland Planning and Environment Court has a rule whereby parties bear their own case costs. That means that rather than having the loser pays rule—which is what we have in Scotland, where if you go to court and lose your case, you have to pay your own legal costs and those of your opponent—you just pay your own legal costs and you do not have any liability to the other side. That can be a useful way of improving access to justice.

We can also look at the various specialist courts and tribunals that exist in Scotland. The housing tribunal, where I used to practise for a couple of years, was set up to deal with private tenancy disputes, as a result of a recognition that there were access to justice problems in having such disputes heard in the sheriff courts. At the housing tribunal, many parties represent themselves and there is a very limited risk of adverse costs, so it is a relatively affordable tribunal.

Marie McNair: Thank you. Does anyone else have any comments or any information in that regard to pass on to the committee?

Professor Reid: I will come back to the point that you need to think about the system as a whole, because some of the environmental courts and tribunals do the job that our planning appeals do, where you are looking at the merits of the case as well as just the narrow legal grounds.

The international experience is great—it is hugely varied and hugely positive in lots of ways—but you always have to think about the context and the wider picture.

Marie McNair: Thank you.

The Convener: Do members have any other questions?

Maggie Chapman: I have a question for Mark Roberts, which follows on from Evelyn Tweed's question earlier. I appreciate that most of our focus this morning has been on the court end of access to justice. However, in your work in ESS, how much time and capacity do you have to consider compliance in relation to ensuring that the public have access to environmental information and to ensuring that they have the participation access rights? How do you assess those elements rather than the sharp end—the "things have now gone wrong" end—that we need to deal with?

Mark Roberts: We have been looking at the Scottish Government's non-compliance with the Aarhus convention for a couple of years now, so there are some elements of this where we can look at those questions and ask—why is there continuing non-compliance?

As Professor Reid mentioned earlier, this is a whole-system problem. We need to look at how the legal aid system works in order to support people's ability to access environmental justice.

In the Scottish Government's previous progress statement to the compliance committee, a lot of emphasis was placed on the potential right to a healthy environment. As an organisation, we were very supportive of that when it was proposed, as

long as it was an enforceable right. With the announcement that that legislation is not going to be taken forward in this parliamentary session, we are interested in seeing what the Government's next statement is going to be. Given what we know about the human rights bill and given the progress, or otherwise, of legal aid reform, how is that whole system going to work?

In thinking about where we might next add value—and that is critical—we are also waiting to see what the Government says as part of the next United Kingdom progress report to the compliance committee.

Maggie Chapman: Okay. I understand that you are waiting for that report. Would there be any value in being pre-emptive? Can you be pre-emptive? Is there a mechanism where you can say, "We can see the absence of access to rights and the absence of mechanisms for remedy, and we will step in now," or do we have to wait for the review process?

Mark Roberts: As I said, our job is not about compliance with the convention as a whole. The party to the convention is the UK and we have a very specific role within Scotland in relation to that.

In the past couple of years, we have engaged fairly extensively with the Scottish Civil Justice Council in its work on protective expenses orders. On the progress in achieving overall compliance, which, as others have noted, has been positive, although perhaps limited, we have said that we are supportive of the fact that the Scottish Government has committed to achieving, and wants to achieve, compliance with the Aarhus convention. At the moment, we are very much in a holding pattern when it comes to what the Scottish Government is going to say on its next steps, given that the things that it was previously relying on—namely the proposed human rights bill and legal aid reform—are a little bit up in the air.

Maggie Chapman: That is helpful. Does anyone else want to come in on that point?

Professor Reid: With compliance, it is important to think not just about the cases that happen to have come from Scotland but about the cases from other parts of the UK, which are based on systems that are broadly the same. For example, there is a Northern Ireland case on lopsided rights of appeal in planning cases. When you are talking about compliance, it is important to look not just at the purely Scottish cases but at the ways in which the system that is more or less applied across the UK has been found to go wrong.

Jamie Whittle: Since devolution, some really progressive environmental laws that we do not see south of the border or in Europe have been created in Scotland. For example, on biodiversity, we have the Nature Conservation (Scotland) Act 2004, and we have the most ambitious climate change legislation in the world. Those things have been driven by Scotland.

It sometimes can be quite difficult to design a justice system for environmental matters when it is reactive or under pressure from the need for compliance. I suppose that there is an element of design and of taking a step back and, given that we have a culture of progressive environmental law in Scotland, thinking about how we ensure that we design a system that supports that and makes the environmental aspiration come forward? Sometimes, that approach can change the pitch of how one looks at things. Rather than trying to fix things, it is about trying to take a much more holistic view, looking at the range of legislation that has come through relating to land, energy and environment, and making sure that the laws are not fragmented and that there is cohesion in the way in which it all flows through. That is just a perspective.

Maggie Chapman: That point about looking holistically and aiming for cohesion is really useful, because it is easy to get fixated on one little issue in one place and not think about the bigger picture.

The Convener: If members are content that they have asked everything that they would like to, and unless the panel members have anything to add, I thank our witnesses very much for their time.

That concludes the session with our first panel. We will suspend briefly for a changeover of witnesses.

10:57

Meeting suspended.

11:02

On resuming—

The Convener: Welcome back. We move to our second panel of witnesses. I welcome Siobhian Brown, the Minister for Victims and Community Safety. She is accompanied by three supporting Scottish Government officials: Walter Drummond-Murray, head of civil courts and inquiries; Denise Swanson, deputy director for civil law and legal systems; and Lisa Davidson, senior policy adviser, civil courts. I invite the minister to make an opening statement.

The Minister for Victims and Community Safety (Siobhian Brown): Thank you, convener, and good morning.

I welcome the opportunity to appear before the committee to give evidence on Scotland's compliance with the Aarhus convention. As

members of the committee will know, the convention consists of three pillars: access to environmental information for any citizen; the right to public participation in decision making; and access to justice in environmental matters. My portfolio responsibilities relate to the access to justice pillar.

We are all very appreciative of the detailed work that the ACCC undertook to ensure compliance with this important convention. It is a complex and cross-cutting area of work that touches on a number of different policy areas. Enormous strides have been made towards compliance under the current Government. Despite that, at a meeting of the parties in October 2021, the ACCC found both Scotland and the rest of the UK as a whole to be non-compliant. The ACCC had previously welcomed Scotland's significant progress in 2018, and work is on-going to strengthen compliance in the areas of concern that the ACCC identified in its most recent decision. We are optimistic that further progress will be recognised, following the submission of our update later this month.

Officials have continued to work with our counterparts in the Department for Environment, Food and Rural Affairs and in both the Welsh Parliament and the Northern Ireland Assembly to provide a response to the ACCC that addresses the concerns that have been raised.

I am happy to answer questions, convener.

The Convener: Thank you very much. We will indeed move on to questions from the committee.

I will start off. In a response to a parliamentary question, you stated that

"The Scottish Government will be contributing to a UK wide report on compliance to the Aarhus Compliance Committee very shortly."

Can you indicate when that will happen and when the report will be submitted to the Aarhus convention compliance committee, please?

Siobhian Brown: Perhaps I can give you a little bit of history first. When the ACCC reported back in 2021, it asked that the UK be required to submit an action plan in 2022, followed by a progress report in October 2023 and a final progress report in October 2024. However, following the general election in July, and the consequent change of Government, the ACCC agreed to an extension for the submission of the final progress report to the end of this month. The Scottish Government supplied our report to DEFRA several weeks ago.

The Convener: You stated in the same response that the UK

"report will detail significant progress towards addressing concerns previously raised by the Compliance Committee."—[*Written Answers*, 17 October 2024; S6W-30377]

Can you explain what that "significant progress" will include and what changes will be made?

Siobhian Brown: Sure. Several issues were raised in the report, and I can highlight probably four on which action has been taken since it was published.

The first issue is cost protection on appeal. Under a rule change enacted in June 2024, reclaiming is progressed in the same manner, regardless of whether it is a petitioner or the respondent who is appealing the original decision. The rule change clarifies that court fees are included in the cost cap and also addresses the issue that was raised by the ACCC.

Another issue related to protective expenses orders. A rule change was enacted, prompting a petitioner to request confidentiality when they lodge a motion requesting a protective expenses order, and in the event of a hearing, it would be heard in chambers, from which the public would be excluded. A rule change was also enacted in June 2024 with regard to interveners. The Scottish Government has taken action to clarify that a potential litigant's exposure to an intervener's costs is likely to be nil, providing that they act reasonably.

In relation to court fees, following a public consultation in 2022, an exemption from such fees was introduced for Aarhus cases raised in the Court of Session. Therefore, the ACCC's concern over whether court fees would be included in cost caps has become redundant, which has been welcomed by all stakeholders and environmental NGOs.

Several other issues were raised for proposed action, but I do not know whether you want me to cover all of them, too, or whether you are happy with that progress.

The Convener: I am happy with that progress, but I am also happy if members want to come in and ask for more detail.

We will move on to questions from Evelyn Tweed.

Evelyn Tweed: I think that my question has been covered.

The Convener: Thank you. In that case, I call Maggie Chapman.

Maggie Chapman: Thank you for being with us this morning, minister. I will now give you the opportunity to say a little bit more about some of the other areas that you know will be progressed or on which you expect to see progress in the forthcoming report.

Siobhian Brown: Absolutely. One issue was the types of claims that are covered and the actions that we propose to take in that respect. In

the context of the Aarhus convention, particular reference is made to nuisance and littering and the domestic law on both points under the Environmental Protection Act 1990. In Scotland, a litter abatement order would be sought in the sheriff court, but, to date, there has been very little available case law on that point. An action for nuisance would be raised in the sheriff court, too. The relevant committee of the SCJC has instructed the preparation of draft rules on the extension of PEOs to the sheriff court, with the aim of running a public consultation exercise on the matter next year.

The final point raised by the ACCC was about the level of cost caps. The SCJC has published on its website—so it is publicly available—a research paper about cost caps when used in practice. The paper sets out information on the use of PEOs based on the evidence available. The SCJC has given consideration to the cost caps, but is content to keep the current amounts at the moment. The SCJC has decided to maintain the ability to vary cost caps up and down, which is reflective of the statutory guarantee of judicial independence. Since cost capping was introduced in 2013, there have been no instances of caps being shifted upwards in practice.

The SCJC has also provided clarification of the phrase “on cause shown”; namely, that the party would need to demonstrate a valid reason. That is a Scots law term, and the SCJC has challenged the idea that it would cause enough uncertainty to lead to somebody abandoning proposed litigation.

Those are two areas in relation to which action is happening and proposed. As I said to the convener, there are other areas where we have taken action since the report was published.

Maggie Chapman: That is helpful. It is important to get that on the record.

I will shift to a couple of different questions.

What is your view on the arguments put by the Environmental Rights Centre for Scotland that the SCJC does not consult very widely, or widely enough, on court rules that are intended to allow access to justice in environmental cases?

Siobhian Brown: The Government is independent of the SCJC, so consultation is up to the SCJC. I know that it has committed to consult on that issue next year.

I do not know whether any of the officials would like to add anything further.

Walter Drummond-Murray (Scottish Government): That is it entirely. In a nutshell, the SCJC is independent of Government and was set up by statute in that fashion, and so it is responsible for its own processes.

There was a commitment in its latest papers to do a consultation on precisely those areas, which we have no doubt will take place in due course.

Maggie Chapman: However, the point is about concerns, for example, that not enough people are aware. I accept that the SCJC is independent and has a statutory set up. However, is its remit clear enough, or broad enough, to ensure that there is that wide engagement with people?

I appreciate what the minister said about the focus and interest, in relation to the pillars of the Aarhus convention, being primarily around access to justice. However, there is also something about awareness and participation. In that respect, is the SCJC constrained by statute, or is the minister of the view that it could do what the ERCS and others say that it should be doing?

Siobhian Brown: As I said, we know that the SCJC has committed to public consultation on the extension of protective expenses orders to the sheriff courts. That will be in its work plan for 2024-25.

As it is independent of Government, it would be inappropriate for me to comment at this stage. If we got to the end of that consultation and there were concerns, it would perhaps be an issue that Government could consider at that stage. However, as the SCJC is moving towards a consultation, I do not think that it would be appropriate for me to interfere.

Maggie Chapman: That is fine. I suppose that my question is about what the mechanisms are, if concerns are raised. I appreciate that now might not be the time to open that up.

I will move on to another question, which I know that other members also want to come in on. Is it possible for Scotland to fully comply with the access to justice requirements in the convention without legal aid reform?

Siobhian Brown: Yes. Legal aid reform is simply one element of access to justice, together with court fees and protective expenses orders.

As I have said on record, it has not been possible thus far to introduce a bill to enact any change in this parliamentary session. However, that does not prevent us from making further reforms that we can build on to simplify the legal aid system and reform fees within the current legislative framework, perhaps through the use of secondary legislation.

I am confident that we can still comply with the convention without full legal aid reform.

Maggie Chapman: You think that it is possible, even without the repeal of regulation 15 around the joint interest test.

Siobhian Brown: I will bring in Denise Swanson, who is the legal aid expert on regulation 15.

11:15

Denise Swanson (Scottish Government): Regulation 15 is a necessary control mechanism for the proper and consistent use of the legal aid fund. Repealing it in its entirety could well have consequences across other elements of legal aid provision. It is quite a long-standing provision—I think that it dates from 1950. It predates the regulations.

There is potential scope to adjust regulation 15 and to consider where environmental actions sit, but I wonder whether regulation 15 is a bit of a red herring here, and whether we could take a more strategic approach whereby there could be interaction with the judicare case-by-case system, in which a solicitor would be able to represent only the person who was legally aided. The issue of whether we need to have a model that is much more about strategic litigation is part of the reform discussions that we have been having and intend to continue to have.

Maggie Chapman: I appreciate that repeal might be a blunt instrument, but do you accept—I do not know whether this question is for the minister or for Denise Swanson—that there is an issue with the joint test, particularly when it comes to accessing the right to a healthy environment, although I know that we do not have that right in statute yet? If a community group seeks action but its membership does not include everybody in that community who might be affected, and if those other members of the community are able to pay the costs, regulation 15 means that there is a barrier to that community group even beginning the process of accessing justice, never mind getting an outcome from proceedings.

Siobhian Brown: I will bring in Denise, but my understanding is that, even if there were to be reforms to regulation 15, we would have to carefully consider the knock-on effects on different portfolio areas.

Denise Swanson: The fundamental issue is that legal aid is available for individuals; it is not available for groups or NGOs. That is a basic principle that is set in statute, and primary legislation would be needed to change it.

Even if regulation 15 were repealed, only an individual can apply for legal aid—a community group does not have access to that—and a solicitor will be paid only to represent that individual. That is why I think that there is scope to look at a different funding model that is about pursuing strategic litigation that is about the issue rather than the individual.

Maggie Chapman: Okay—so there is scope for discussion. I suppose that my point is that you see that there is a problem with the way in which things are set up at the moment, because if there is a broader interest, one individual alone might not be able to take the case forward.

Denise Swanson: There is a problem with the interaction between how the judicare system works—on a case-by-case basis—and the needs of environmental actions, which are more community based than individual based; they are not unique. There is a problem to do with the juxtaposition of how the legal aid system, including regulation 15, operates at the moment, and how we meet the needs of environmental issues and environmental actions.

Maggie Chapman: Thank you.

The Convener: We move to questions from Pam Gosal.

Pam Gosal: Good morning. Minister, can you indicate whether the legal aid reform will take place before the next Scottish Parliament election? If so, will that reform be targeted at certain areas of law, such as environmental law or reforms for survivors of sexual assault or rape?

Witnesses in the previous session this morning said that they would be surprised if there was any reform in the next 18 months, as they had heard only vague promises and nothing concrete. It would be good to get some clarity on that.

Siobhian Brown: I thank Pam Gosal for that question—I was watching the previous session before I came to the committee.

As I said in my previous answer, I have been clear thus far that we will not be introducing a bill in the current session of Parliament. I am really keen to look at legal aid reform, but it would be more in the landscape of secondary legislation. We have been listening to the committee, and it is important that we look in particular at different funding models for access to justice on environmental issues.

My officials are currently developing a paper on legal aid reform that will, in the coming months, set out the potential areas of reform. We are planning to host a variety of engagement sessions along with that.

Denise Swanson might want to add to that.

Denise Swanson: The areas that we are looking at are very much aligned with the Martyn Evans review with regard to how legal aid operates as a public service; how the user voice is embedded in decisions that are taken on it; and how the system operates both for providers and for users. As I mentioned, we are also looking at which types of funding models could be used to

improve consistency and perhaps target particular areas.

At this point, we are not considering particular case types; it is more about how we improve access to justice and consistency across the civil, children-related and criminal legal assistance landscape.

Pam Gosal: Is there a timescale for when you will produce the paper and for the areas that it will cover?

Siobhian Brown: On legal aid reform?

Pam Gosal: Yes.

Siobhian Brown: We are looking at starting the engagement process towards the end of this year and the beginning of next year. The timescale would be to put in place secondary legislation before the end of the current session of Parliament, so there will be some reform of legal aid.

The Convener: We move to questions from Paul O'Kane.

Paul O'Kane: Good morning. In the previous evidence session, there was discussion about the possibility of dedicated environmental courts. We heard about some international evidence from New South Wales in particular, and the operation of its environmental court. Can the minister expand on why the Scottish Government thinks that a dedicated environmental court is not necessary in Scotland?

Siobhian Brown: The issue of whether there should be a dedicated environmental court in Scotland has been discussed for many years, and it is clearly a question of interest within many portfolios and the Scottish judiciary.

The most recently published statement on the issue was in the "Report into the Effectiveness of Governance Arrangements, as required by section 41 of the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021", which the Scottish Government published last year. That report had to consider whether an environmental court would enhance the environmental governance arrangements that were put in place by the UK Withdrawal from the European Union (Continuity) (Scotland) Act 2021 to rectify the inadequacies that were created by the UK leaving the European Union. The report also considered wider issues of environmental governance in the context of the 2021 act.

The report stated:

"The Scottish Government recognises the strengths in the current balance of parliamentary, administrative and judicial roles in decision making on environmental matters, and does not see any strong argument for the creation of a specialist court."

We have since consulted on that report, and a written statement will be laid before Parliament soon. It would not be appropriate for me to pre-empt that statement, but I will highlight some points.

The court in New South Wales was highlighted in the previous session. There are two key examples of such courts operating, in New Zealand and Australia, which have been discussed by stakeholders. As has been described, those courts have remits that mainly cover disputes about local spatial plans, environmental permits and planning applications. Most of the cases are not of a nature that would lead to a judicial review in Scotland; rather, there would be a reconsideration of the merit of plans and the decisions themselves.

In general, Parliament has shown little interest in such matters being considered by courts in Scotland in the same way that such issues are considered by those courts in Australia and New Zealand.

Paul O'Kane: On the wider piece of work that you mentioned regarding environmental governance and the continuity act, am I correct in thinking that the minister intends to make an oral statement to Parliament?

Siobhian Brown: I do not know whether it will be an oral statement; it will come towards the end of November.

Walter Drummond-Murray: The relevant minister for the environment portfolio will be making a statement. I think that the timing is towards the end of this month, as the minister said.

Paul O'Kane: Is it the Government's view that the issues that we have just discussed will be touched on in that statement, with an opportunity for MSPs to ask questions?

Siobhian Brown: I do not think that it will be me who will make the statement, so I do not think that it would be appropriate—

Paul O'Kane: I appreciate that, but it would be useful to the committee if the relevant minister could give an indication of what the plan is for that.

Siobhian Brown: I cannot pre-empt what will be in the statement, but it will be given to all MSPs when it is available.

Walter Drummond-Murray: We can certainly highlight that point to the relevant minister.

Paul O'Kane: I have heard what the minister has said regarding the Government's view of the international examples that have been listed, and I also heard what the minister said in her previous answer regarding the reform of legal aid. Does the minister think that there is further scope to

continue to monitor and discuss those issues? In the previous evidence session, scepticism was expressed about what can be achieved on legal aid reform in this session of Parliament. Could the minister touch on those wider on-going reviews?

Siobhian Brown: We recognise that we need to reform the legal aid system. The officials are seeking to work collaboratively, especially with the legal sector, and to build a consensus. I hope that all the stakeholder sessions that we are planning to hold will allow stakeholders to discuss the contents of legal aid reform and their priorities. We are definitely open to working with the legal profession and all stakeholders in legal reform, while seeing what we can do during the rest of the parliamentary session through secondary legislation to make some progress.

Marie McNair: Good morning. Minister, do you have anything else to say regarding full compliance with the access to justice rules in the Aarhus convention? Is there a deadline for that? If not, are you able to put a deadline on that, or is it dependent on the feedback that you receive?

Siobhian Brown: That dates back to 2001. It is a long process, and there is not a deadline. In relation to the report that we got back in 2021, we have shown progress in all the areas that are being considered. The report has now gone to DEFRA; it is to be submitted at the end of November. We will wait for the feedback from DEFRA to see what further recommendations to take forward. We are keen to do what we can to be compliant.

Marie McNair: In response to a question that was put to the previous panel, reference was made to the environmental governance review—that was mentioned earlier, if I picked that up right. Do you have any details on when that review is likely to be concluded? Is that likely to happen next month?

Siobhian Brown: That is not under my portfolio, but we can write to the committee about that.

Marie McNair: It would be helpful if you could—thank you.

The Convener: Do members have any other questions?

Maggie Chapman: I appreciate the constraints that you feel under in answering some of our questions, as the subject covers more than two portfolios; it is quite a broad area. We heard clearly from our first panel this morning about the need to examine the whole process of justice. In your opening comments, you outlined the three pillars, one of which is about accessing the information.

Is there anything that you can say about what the Scottish Government is doing to look at the three pillars in a holistic way to see where the elements are? Access is your job; some of the other pillars will be down to planning, local government or environment. How is the Government looking at the subject holistically?

Siobhian Brown: I will bring Walter Drummond-Murray into the discussion. As you said, it is quite a complex subject. I have responsibility for the access to justice part of it. There are also the environmental and planning aspects. We need to have a holistic, joined-up approach.

Historically, Walter has been dealing with the issue.

11:30

Walter Drummond-Murray: What lies behind your question is entirely correct: no one single measure achieves Aarhus compliance. It is not an event but a journey that encompasses a whole number of things, all of which have cropped up across the two evidence sessions. Work is going on within the portfolio, which is being led independently by the SCJC, but we also consider issues such as the court fees exemptions. Other work is being done beyond that, including the development of a right to a healthy environment, and Aarhus cases are being raised in relation to planning.

A whole lot is going on. It is all considered in the round, and we are hopeful that we will continue to make progress across all the areas. We are in discussions across portfolios about how things read across and how it all links together in the context of Aarhus.

Maggie Chapman: I would like to drill into that a little more. As part of the need to look at coherence across the piece, there is a need to consider policy coherence. Can you say at this point whether that was mentioned in the Scottish Government's submission to DEFRA? Given that the issue is complex and that there are lots of moving parts in lots of different departments, pulling a lever in one place could completely upset something else that is going on. How do we ensure that there is not only overall cohesion but policy coherence across the piece?

Walter Drummond-Murray: The coherence comes from the helpful decisions that we get from the ACCC when it makes the linkages. However, we are also doing that proactively. I prefer to look at it not as one particular action upsetting the apple cart somewhere else; it is more that, if we get legal aid reform right and certain actions are taken in protective expenses orders, and vice versa—if we get protective expenses orders and legal aid right—the people who have been raising QOCS will, I hope, see that all those other things are working well.

We absolutely need to be coherent and are very aware of that in the discussions within Government.

Maggie Chapman: Okay, but, as you said, the legal aid reform piece is crucial, and we are waiting.

The Convener: Are members content that they have been able to ask all their questions?

Members *indicated agreement.*

The Convener: As that is the case, I again thank the minister and her officials for joining us. That ends our formal business in public this morning. We now move into private session to consider the remaining items on our agenda.

11:32

Meeting continued in private until 12:42.

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