

JUSTICE 1 COMMITTEE

Tuesday 5 June 2001
(*Afternoon*)

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2001.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 5 June 2001

	Col.
ITEM IN PRIVATE.....	2527
REGULATION OF THE LEGAL PROFESSION INQUIRY	2528
PROPOSED HUMAN RIGHTS COMMISSION FOR SCOTLAND.....	2544
PETITION.....	2562
EQUAL OPPORTUNITIES	2562

JUSTICE 1 COMMITTEE

† 21st Meeting 2001, Session 1

CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

Phil Gallie (South of Scotland) (Con)

*Maureen Macmillan (Highlands and Islands) (Lab)

Paul Martin (Glasgow Springburn) (Lab)

*Michael Matheson (Central Scotland) (SNP)

*Nora Radcliffe (Gordon) (LD)

*attended

WITNESSES

Linda Costelloe Baker (Scottish Legal Services Ombudsman)

Professor Brice Dickson (Northern Ireland Human Rights Commission)

Anne Millan (Complaints Investigator, Scottish Legal Services Ombudsman)

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

† 20th Meeting 2001, Session 1—joint meeting with Justice 2 Committee.

Scottish Parliament

Justice 1 Committee

Tuesday 5 June 2001

(Afternoon)

[THE CONVENER *opened the meeting at 13:37*]

The Convener (Alasdair Morgan): Good afternoon, ladies and gentlemen. I would appreciate your turning off your mobile telephones and pagers. We have received apologies from Gordon Jackson, Phil Gallie and Paul Martin. Michael Matheson will join us slightly late.

For the committee's information, the Protection from Abuse (Scotland) Bill was introduced into Parliament yesterday and we expect to take the stage 1 debate towards the end of June.

Item in Private

The Convener: I propose that the committee take agenda item 6 in private. Is that acceptable?

Members *indicated agreement.*

Regulation of the Legal Profession Inquiry

The Convener: We are taking evidence today from Linda Costelloe Baker, who is the Scottish legal services ombudsman, and Anne Millan, who is a complaints investigator. Does Linda Costelloe Baker wish to make any opening remarks?

Linda Costelloe Baker (Scottish Legal Services Ombudsman): No, convener, I do not.

The Convener: Thank you. First, I shall ask you a fairly general question. What would you say is the most important element of your work? Has it changed since the office was first established?

Linda Costelloe Baker: This month is a rather important anniversary because the position of ombudsman came into being 10 years ago. The most important element of the work is the same now as it was then: the perception of the ombudsman's independence from the legal professions. That was important to complainants 10 years ago and remains so now.

As the committee may know, the Law Reform (Miscellaneous Provisions) (Scotland) Act 1990 states that I cannot be a lawyer. I have never worked in the legal professions, which means that people can be assured of my independence.

The Convener: We share something, in that I am not a lawyer either.

The service was presumably set up in response to pressure from the public, who felt that they needed such a body. Has the service successfully addressed whatever public concern caused the ombudsman's office to be set up?

Linda Costelloe Baker: In part. The ombudsman's post grew out of the lay observer's post rather than being a fresh and new idea. In 10 years, the ombudsman has been quite effective in improving the way in which the legal professions deal with complaints. To that extent, the post has been a success—changes would not have happened without pressure from the public and my predecessors. However, the public are still concerned that they do not have a formal right of appeal to the ombudsman. I cannot overturn decisions that have been made by the professional bodies and I cannot make decisions about what should happen; I can make only recommendations.

The Convener: Is your work entirely concerned with individual complaints that come to your office or are there other elements?

Linda Costelloe Baker: It is mostly concerned with complaints that come to the office. Between 300 and 400 people contact the office every year.

A relatively small proportion of them are people whom I can actively help by preparing an ombudsman's opinion. Many of the people who contact the office do so with a wide range of complaints about bodies in the legal and justice world that are outside my remit, such as judges, sheriffs, procurators fiscal and the police. We get a few general consumer complaints—for some reason, I am thought to have magic powers in relation to public transport and I get quite a lot of complaints asking me to put the buses right. There is a serious side to that: it shows how important the concept of the ombudsman is to consumers; they perceive an ombudsman as someone who can put things right.

I can prepare a formal opinion on only about 120 complaints a year—those that are about the way in which one of the legal services professional bodies has handled a complaint against a lawyer. Of the complaints that I cannot deal with, the largest proportion are direct complaints about a lawyer. I have to refer those to the professional body.

The Convener: Other than your dealings with the professional bodies, the discipline tribunal and others in relation to individual cases, do you have general meetings to highlight problems that arise in certain areas?

Linda Costelloe Baker: I have quarterly meetings with the Law Society of Scotland—with the director of the client relations office, the deputy director and the convener of the client care committee. They are relatively formal meetings with an agenda at which we discuss issues of mutual interest. The Law Society might want to discuss changes to how it deals with complaints or difficulties that it is having in its office and I might raise general issues that have arisen from the complaints that I have received. Similarly, I have about three meetings a year with the dean of the Faculty of Advocates. I have also had two meetings with the Scottish Conveyancing and Executry Services Board on general policy issues and general practice.

The Convener: This may be difficult for you to answer, as you have not been in post for 10 years, but do you think that the general approach of the legal profession has changed as a result of the existence of the ombudsman?

13:45

Linda Costelloe Baker: Undoubtedly. I would like to think that it has changed as a result of the work of my predecessor; I am fairly certain that it has. In his final annual report, which was published last year, my immediate predecessor, Gerry Watson, highlighted the areas in which significant change had been effected during his six

years in office.

For example, in 1994 and 1997, Mr Watson recommended that the Law Society establish a telephone helpline so that people could access the Law Society easily for advice on how to make a complaint. The Law Society rejected that recommendation in 1994 and 1997, but the helpline came into being in September 1999. It has received more than 7,000 calls a year and is enormously effective. I have met the qualified solicitor who answers the phone and I am very impressed by the service. It uses a lo-call number, so anyone in Scotland can ring it for the price of a local phone call. Very few of the phone calls—only about a third of them—concern complaints, but the helpline would not have been set up if the ombudsman had not told the Law Society that it needed to be more accessible, so that people could contact it more easily.

Nora Radcliffe (Gordon) (LD): Do the figures in the annual report reflect changes in the work that is carried out by the ombudsman and in the demand on the ombudsman?

Linda Costelloe Baker: There is no trend. Over the 10 years, the number of complaints has gone up and down and up again. The average is 120 complaints a year that are within the ombudsman's remit to investigate. Over the past 12 months, there have been 117 complaints.

Nora Radcliffe: Bang on target. You have spoken about complaints coming to your office. What does your office consist of? What resources do you have to do the job?

Linda Costelloe Baker: At the moment, there are just two of us. I am employed as ombudsman part time—four days a week—and I have two full-time complaints investigators, of whom Anne Millan is one. The other complaints investigator left earlier in the year and his replacement will not start until next week, so we have had only half our staff complement for five months. I also have an office secretary who works four part-days a week. We are quite a small team.

Nora Radcliffe: Is not having a legal background a disadvantage?

Linda Costelloe Baker: No. The ombudsman is the only truly independent person in the whole complaints process. If I lost that independence, I would lose a lot of the confidence that consumers have in the ombudsman. I am reasonably familiar with law and the legal process from things that I have done previously in my professional life, but it is important that the ombudsman is not a lawyer.

Nora Radcliffe: Do your complaints investigators have legal expertise?

Linda Costelloe Baker: One has; one has not. Anne Millan's background is in citizens advice

bureaux, but the other complaints investigator has a legal background. The balance is good.

Nora Radcliffe: The annual report provides information on turnaround times. What is your opinion of the turnaround times?

Linda Costelloe Baker: They were very bad, but they are fine now. The turnaround time increased over two or three years. Because our office is small, it became difficult to put things right once the waiting list began to grow.

Until 1999, there was only one complaints investigator—the second was appointed that year. When I took up appointment in the middle of last year, I made it an absolute priority for the first six months to focus on doing something about the turnaround times. That was extremely hard work, but the commitment I gave to everyone who was waiting was that we would complete an opinion on their complaint by the end of the year. Over five months, we got the waiting time down to six months. To illustrate the current position, the opinion that I put in the post at the end of last week had been made to me 11 weeks before. I think that is reasonable. My aim now is that the turnaround time should vary between three and 13 weeks, depending on the complexity of the case.

The Convener: The majority of cases used to take more than a year to clear up. Given the fact that a lot of the original complaints were about the length of time that it took lawyers to clear things up, I suspect that that delay confirmed the complainants' problem with the legal position. You are saying that that state of affairs has improved and that turnaround times have been cut by quite a few months—even nine months.

Linda Costelloe Baker: We have taken a year out of the waiting time.

The Convener: Has the fact that you have been a person short for five months affected that? It must have done.

Linda Costelloe Baker: It made it very difficult, but we were determined to provide a good service.

The Convener: Can you say why it took five months to recruit a new member of staff?

Linda Costelloe Baker: We have some administrative links with the Scottish Executive justice department, which provides some services. Given that I am a statutory post holder, there have been real efforts on both sides to ensure that there is clear, blue water between us. One of the services that the Executive provides is help with recruitment. I ought to be tactful about this, but I perhaps will not be able to be.

The Convener: I think that we would rather just have the truth.

Linda Costelloe Baker: The Scottish

Executive's personnel division is used to dealing with the recruitment of a large number of people, perhaps once a year; it is not used to the fact that a small office that loses half its staff needs a rather more urgent approach. It has been difficult.

The Convener: Is the new person now in post?

Linda Costelloe Baker: They will start on Monday.

Maureen Macmillan (Highlands and Islands) (Lab): I declare that my husband is a solicitor and a former member of the council of the Law Society of Scotland.

On statistics, a percentage-based breakdown of the nature of the criticisms of the Law Society that were handled by the ombudsman over the past four years has been provided. Those criticisms include inadequate consideration, delay and administrative failing, inadequate investigation and inadequate explanation. Will you expand on those, so that we can tease out the difference between, for example, inadequate consideration and inadequate investigation? What types of situation might fall into those categories? Are the same criticisms reflected in the complaints about other professional bodies that are handled by the ombudsman?

Linda Costelloe Baker: Inadequate investigation applies to cases in which the Law Society had not gathered enough evidence. I cannot and should not discuss individual complaints, but I can give examples that will illustrate the differences in general terms, which would be more useful.

One complaint involved another institution. The solicitor's file included very little evidence, and my view was that the Law Society—it was a Law Society complaint—could have and should have obtained information from that other institution, which would have filled the gaps in the solicitor's file. That recommendation was accepted. I would classify such criticisms as inadequate investigation.

Inadequate consideration refers to cases in which the Law Society's reporter, committee or council—since January last year, all complaints have had to go to the council—has not properly studied and considered the complaint that has been made. That is a fairly common reason for saying that a matter needs to be reconsidered.

It is rather too easy for the complainant's original complaint to get lost as it wends its way through some lengthy and rather complex processes.

A particular difficulty applies to complaints that are made to any of the three legal services professional bodies, because their complaints systems are based on disciplinary measures and not on dealing with complaints. The complaint

made in commonsense, ordinary English has to be broken up and translated into a list of alleged disciplinary failings. Members can probably imagine that complaints can get lost in the gap. If the complaint made by the client does not survive the process and the committee and the council do not examine the complaint that was made, we would classify that as inadequate consideration and we would say, "Go back and look at the complaint that was originally made."

Maureen Macmillan: Are you saying that, if it were not possible to translate a complaint into a sort of disciplinary jargon, that complaint would be disregarded?

Linda Costelloe Baker: It can be. Over the past year, I have noticed that an increasing proportion of complaints that come to my office are cases that the Law Society has refused to investigate. In its annual report this year or last year, the Law Society said that it could not investigate more than 1,100 of the complaints that it had received. If the Law Society refuses to investigate, the person can complain to the ombudsman. I look to see whether, in the circumstances, the Law Society's decision was fair and reasonable.

Maureen Macmillan: Does the Law Society give a reason why it will not investigate?

Linda Costelloe Baker: Yes.

Maureen Macmillan: What sorts of reasons are given?

Linda Costelloe Baker: If someone makes a complaint about a sheriff who happened to have been a solicitor, the Law Society will not investigate a complaint about him or her. If someone makes a complaint about a chairman of a tribunal who happens to be a solicitor, the Law Society will not investigate the way in which he acted as chairman of the tribunal. Both those reasons are fair and reasonable. The cases that cause more concern are complaints about someone else's solicitor, as the Law Society is reluctant to investigate those cases.

Maureen Macmillan: Sorry, did you say someone else's solicitor?

Linda Costelloe Baker: Yes. In a divorce, if someone is not happy with the way in which their ex-partner's solicitor is conducting matters, the Law Society will in general not take that on as a complaint. If someone complains about the advice or professional judgment of their solicitor or advocate, the professional bodies—the Faculty of Advocates' procedure is the same as the Law Society's—will say that that is not something that they can second-guess and they will not accept the complaint.

Maureen Macmillan: Thank you. That was very interesting.

The Convener: Does that mean that a large proportion of the advice and assistance work for which lawyers receive legal aid cannot be the subject of a complaint?

Linda Costelloe Baker: Yes.

Maureen Macmillan: The convener's question covered part of my next question, which is about the detailed reasons why cases handled by the ombudsman are deemed to be ineligible for investigation. Those reasons are listed as: "Outwith remit"; "Law Society/Faculty not involved"; "Law Society/Faculty not finished"; "Time-barred"; "No identifiable concern"; "Withdrawn/deceased"; and "Legislative bar".

You talked about cases that were "Outwith remit" when you said that you cannot deal with indirect complaints or the decisions of sheriffs or judges. Are other areas outwith the ombudsman's remit? I am also interested in time-barred cases. What is the length of the time bar?

Linda Costelloe Baker: It is six months—the person has to make a complaint to the ombudsman within six months of receiving the decision from the professional body. The time bar was set in the 1993 general directions to the ombudsman by the then secretary of state. That is being reviewed as part of an internal policy and practice review. We are actively considering whether, in my next annual report in a year's time, we should recommend a reduction in that period. We think that there are strong arguments for doing that.

Maureen Macmillan: It is hard for people to get their act together in such a short period.

Linda Costelloe Baker: I would make it shorter. However, before I make a recommendation, I would like people to let me know what they think.

Complaints to the ombudsman are unusual in having a firm starting point. A letter from the professional body is issued giving the decision and notifying people that they can complain to the ombudsman. Because there is such a clear starting point, a period of less than six months might be appropriate.

14:00

The Convener: How long does the Law Society or the Faculty of Advocates have to finish dealing with a complaint before you intervene?

Linda Costelloe Baker: I can intervene while a professional body is still investigating on two grounds: if I think the investigation is taking too long or if I think my investigation is justified. The second is a catch-all provision, but I have to explain my reasoning.

We are now up to date and our turnaround time

is pretty good, so I am more able than I was to take on complaints where the professional body is still investigating. If someone writes to me to say that one of the professional bodies is taking too long to deal with a complaint—recently I was informed that a body had taken three months to reply to a letter—I can deal with that without issuing a formal opinion. I can write to the professional body to say that Mr Morgan has expressed concerns to me in a letter and to ask them to respond to those concerns. That usually works.

The Convener: Your report tells us how long you take to deal with a case once you have started to investigate it. Do you have any idea how long the Law Society takes to deal with cases?

Linda Costelloe Baker: I have been in post for 11 months and considered around 180 cases. The longest investigation that I have come across involved just less than four years of almost continuous investigation. If either the complainant or the solicitor initiates a legal action relating to the complaint, the Law Society stops its investigation until that has been completed. The four-year investigation to which I refer did not involve concurrent legal action, although it was an extreme case.

We have a good computer-based information system on complaints, which was introduced a year ago. One piece of information that we note is the amount of time that the professional body takes to deal with a complaint. The last two opinions that I filed related to investigations that took 122 and 121 weeks to conclude. Both involved the Law Society. That is not atypical. We would be surprised if a case were dealt with in less than a year.

Maureen Macmillan: I assume that you think the professional bodies take too long to complete their investigations.

Linda Costelloe Baker: Yes.

Maureen Macmillan: What sort of target would you set them?

Linda Costelloe Baker: A reasonable complaint investigation should take no longer than six months. At the moment, because the Law Society cannot delegate its powers and complaints have to be dealt with in committee, I would be prepared to allow another couple of months as a temporary measure.

Investigations can involve consideration of the same information time and again, with letters being cross-copied to the complainant and the solicitor concerned for further comment. That is a damaging process. Although it is my responsibility to examine the process from the complainant's point of view—and we try to step into their

shoes—I also think that it is damaging for the profession. The complaints procedures of the Faculty of Advocates do not take as long, but it is not fair for a solicitor to have an investigation hanging over them for one, two or three years. The Law Society has a responsibility to solicitors as well as to complainants. It is unhealthy for investigations to go on for so long.

Maureen Macmillan: On the process by which the ombudsman seeks to resolve complaints, are there differences in practice, depending upon which professional body is involved?

Linda Costelloe Baker: No. Practice is similar across the board. Recently, we have tried to be more open and accessible to complainants. We want to give the feeling that we have an open door. If anyone wants to see us as part of their complaint investigation, they are very welcome to come. We have to tread a fairly careful line and not make it look as though they must come to see us, because we cannot pay expenses and we should not make people from the Western Isles, for example, feel that they are disadvantaged because they cannot visit us. However, we will talk by telephone and we will telephone back so that we meet the cost of the bill. As far as possible, we will deal with any queries and let people know that they are welcome to contact us.

When we accept a complaint for investigation, we send for the professional body's file. There is no difficulty in securing a file quickly, although there used to be a number of years ago. The typical Faculty of Advocates file is about half an inch thick and the typical Law Society file is about two inches thick. Occasionally, the file is bigger and there is a crate of associated files. We examine anything sent by the complainant. That can arrive in cardboard boxes or suitcases or it can be one letter in an envelope.

We go through the complaint investigation step by step in considerable detail. I do not know whether any member of the committee has seen an opinion provided by a constituent? It specifies the date on which the complainant wrote to the professional body and what they said. We summarise their letter and what and when the case manager replied. We summarise almost every piece of correspondence and report in the file.

When we have finished that stage, we consider the complaint that was made to the ombudsman. That is useful because it means that we can focus on the points that matter to the complainant. We then assess the adequacy of the complaint investigation under two headings. Under one heading, we consider how the complaint was managed. Were letters replied to promptly, for example? Were concerns addressed? Did the complainant get a response to those concerns?

Were there avoidable delays in the process? Did everything happen as it should have done? That is a management assessment.

Under the second heading, we consider whether the complaints, as made and agreed, survived the process. Were they properly considered? Were they considered at each stage of the investigation? Were full and adequate reasons given for the recommendations and decisions that were made?

My opinions and recommendations are the shortest and final part of the report. The size of the whole report is typically between 20 and 30 pages, with 1.5 line spacing so that it is easy to read.

We have considered methodology because the process is time-consuming and detailed, particularly if a backlog has built up. We have considered whether it is possible to summarise and shorten some things. From an analysis of letters of thanks, we decided not to do so. The letters of thanks have a theme. They thank us for the care, attention and detail, for helping people to understand, for showing that we read everything and for following arguments. That is so important to people that it is worth showing how we have worked rather than simply producing the answer.

Maureen Macmillan: I agree. People want to ensure that their case has been fully considered and that must be shown.

You also publicise cases. I presume that you do so if you feel that your recommendations have not been followed. Can you give examples of circumstances in which you would do so?

Linda Costelloe Baker: Yes. Somebody complained to the Law Society. The Law Society refused to investigate the complaint on the ground that, under the Solicitors (Scotland) Act 1980, the person did not have an interest to complain. The person then complained to me that they thought that that decision was unfair and inappropriate. I agreed with the complainant. In my opinion, the complainant had an interest to complain and there were matters that the Law Society is required by law to investigate. The Law Society refused to do so.

That was a particularly serious refusal to follow an ombudsman's recommendation. I notified the Law Society that I intended to publicise the refusal and sent it a draft copy of the announcement that was going to be put in the four principal Scottish newspapers. With 48 hours to go, the Law Society said that it would make further inquiries and, with a little more pressure from me, has now started a formal investigation.

Maureen Macmillan: Is that the one and only time that you have threatened to publicise a case?

Linda Costelloe Baker: There is another case

at the moment. The final decision has not yet been made.

Maureen Macmillan: Do you think that publicising a case is a way of getting the Law Society to change its mind?

Linda Costelloe Baker: In the case that I mentioned, I felt strongly about the complaint and believed that it should be investigated. On other occasions when the Law Society has refused to accept a recommendation, the cases have not been as black and white as that.

We assess recommendations for compensation against the amount of avoidable delay or mismanagement. Sometimes, the Law Society does not accept my view of that and there can be some negotiation. The Law Society or the Faculty of Advocates might pay part of the compensation but not all of it. In those circumstances, I would not normally publicise the refusal. The refusal is not sufficiently important, as it does not mean that an entire recommendation has been overturned.

Maureen Macmillan: So publicising a refusal is a strategy of last resort.

Linda Costelloe Baker: Yes, I think so. The potential publicity clearly matters. It is the only sanction that I have; it is the only thing that I can do. Everything else has to be a recommendation. As it is the only sanction that I have, it has to be managed carefully.

The relationship with the professional bodies also has to be managed carefully because it is based on persuasion, convincing arguments and sound work. I have to be bomb-proof in my opinions, because I can only make recommendations. Those recommendations have to be soundly made and well supported by arguments. That is a good discipline.

The Convener: You also have power to refer solicitors to the Scottish solicitors discipline tribunal. Has that power been used and, if so, how often, not just over your tenure, but since the office was set up?

Linda Costelloe Baker: As far as I am aware, it has never been used. We have examined the power as a fundamental part of the policy and practice review. I think that we have identified some circumstances in which it might be appropriate to use that power, but in many ways it does not sit comfortably. My understanding is that anyone can refer a case to the Scottish solicitors discipline tribunal; but it is included as one of the ombudsman's powers.

I would have concerns about using the power at the moment because of some implications under the European convention on human rights. If it was used at the end of a long complaints investigation by the Law Society, there might have

been a prosecution before the tribunal. I would then have some concerns about whether it would be ECHR-compliant for someone to re prosecute. The fact that the power has not been tested means that the difficulties have not been brought to light.

The Convener: Is it also the fact that, by their nature, complaints would often not be susceptible to discipline anyway—if, for example, the complaint is about advice or judgment?

Linda Costelloe Baker: The principal type of complaint that can go to the discipline tribunal is one about an individual solicitor's conduct. Probably about a quarter of the complaints that we receive are about conduct rather than service. Complaints about service are dealt with entirely within the Law Society.

There are circumstances in which we could refer a case to the discipline tribunal, such as one involving a solicitor acting where they had a conflict of interest. If the Law Society had not identified the conflict of interest and we had, and if the Law Society refused to reopen the case, that might lead to a chain of events in which I might consider it appropriate to make the referral. We have examined that. As far as I know, such a referral has not been made in the 10 years of our existence.

14:15

The Convener: Looking at the previous annual report, we see that three recommendations were made to the Faculty of Advocates. One was that correspondence should be exchanged. That was rejected because the

"present system does not require any change".

The second recommendation was:

"Complaints should be determined by Committee with lay membership."

That was rejected because

"members have confidence in ... the Office of the Dean and would not readily accept involvement of other members".

The third recommendation was:

"Complaints should be determined by Committee with not less than 2 lay members."

That recommendation was made in 1996. The response was that a wide-ranging review was being undertaken.

Out of three recommendations, two were rejected and one was kicked into the long grass. The response seems almost arrogant; the faculty seems to indicate that it believes that its procedures are fine and that there is no point in telling it that it is wrong. Is that the feeling you get when you make recommendations to the Faculty

of Advocates?

Linda Costelloe Baker: We deal with very few complaints about the Faculty of Advocates. It gets about 20 complaints a year.

The Convener: Why is that?

Linda Costelloe Baker: There are three reasons. First, compared with solicitors, there are relatively few advocates: there are 8,500 solicitors in Scotland and 400 advocates. Secondly, advocates' contact with a client is over a much shorter period than solicitors' contact with a client. Thirdly, the advocate works directly to the solicitor, so the relationship is between the solicitor and the advocate rather than directly between the advocate and the client. That removes one of the possibilities for complaints to be made.

Having said that—and I hope that the dean of the Faculty of Advocates will not mind my quoting him—at a meeting that I had with the dean at the end of last year, I asked him straightforwardly where the ombudsman fits in to the Faculty of Advocates' complaints procedures. After some thought, his reply was that I help him to understand the points of view of clients and members of the public. There has been a realisation that clients and members of the public might see things differently from a close-knit professional body such as the faculty.

I have suggested that, as part of the initial response to a complaint, the faculty should provide an information sheet to explain who deals with the complaint, the time scale and the process. That has been readily accepted. The more fundamental changes to which the convener referred are in the pipeline, but it is a slow process.

The Convener: For clarification, does the advocate act directly for the client? Does he have a contractual or pseudo-contractual relationship with the client, or is his relationship with the solicitor?

Linda Costelloe Baker: Remember that I cannot be a lawyer, so this should not be interpreted as legal advice or opinion. The advocate certainly has a duty of care to the client, but the contract—in terms of who pays—is, I think, with the contracting solicitor. Is that right?

Anne Millan (Complaints Investigator, Scottish Legal Services Ombudsman): It is a difficult matter of interpretation. It could be said that, because in the end the client pays the advocate via the solicitor, there is a sub-contract with the client. It is a rather fudged area of case law. It is under review and decisions are being reconsidered.

The Convener: Who is reviewing it?

Anne Millan: The Faculty of Advocates.

The Convener: Can a solicitor complain to you about an advocate?

Linda Costelloe Baker: Yes.

The Convener: Has that happened?

Linda Costelloe Baker: An advocate has complained about a solicitor, so it has happened the other way round. The complaint was not directly about the legal practitioner, but about the way that the body dealt with a complaint. Therefore, a solicitor who complained about an advocate to the Faculty of Advocates and was unhappy with the way in which the faculty responded would be entitled to complain to me.

The Convener: Our inquiry is into regulation of the legal profession which, excepting you, is characterised as self-regulation. My question is general—do you think that self-regulation is the best method of regulation?

Linda Costelloe Baker: It is important to recognise that complaint handling is only a small part of regulation and self-regulation. However, it is the public face and the bit that matters to the public and to clients. It is also the bit that it is my job to do something about. I will talk about complaint handling, rather than regulation, because broader regulation is outwith my remit.

Improvements have taken place in the past 10 years, but I am concerned that some fundamental issues that were around 10 years ago are still around today. A complaints system that is based on disciplinary sanctions by a professional body has problems. Consumers are concerned about a process that is so in-house.

I will make a broad statement about whether I have confidence in self-regulation. Self-regulation is fine, in principle, as long as consumers are confident that it works. I have doubts about whether legal services consumers are satisfied with the present regime.

On a wider trade and professional basis, a move is being made nationally to increase the amount of self-regulation. The Cabinet Office's better regulation task force makes strong recommendations that self-regulation is the best way forward. I identify two broad areas where self-regulation must be treated with care. One is the police and the other is the legal professions. I will explain why.

In any other trade or profession, if someone has a problem, a dispute, or alleges that poor service has been provided, they can approach a lawyer who will act on their behalf and on their side. That person will feel supported by the law and legal argument. If someone has concerns about the legal service that they have received, there is no

escape from legal services, legal culture, courts and the law. People feel that the same independence and impartiality does not exist and that lawyers are not totally on their side. Self-regulation maybe is the right move, but for legal services complaints, extra measures are required to win consumer confidence.

Maureen Macmillan: Are you saying that it is a matter of public perception rather than reality?

Linda Costelloe Baker: It can be. No matter how good investigations are, people can feel that a lawyer will not act against a lawyer; if they go to court to take legal action, the judge will be a lawyer. Many people are concerned that legislation is made by Parliaments, many members of which are lawyers. The lack of faith goes deep—not with everyone, but with many people.

The Convener: Have you discussed with the Executive the research report that the central research unit of the Executive published last year? Is that an on-going matter?

Linda Costelloe Baker: The discussions were principally with my predecessor, because the report was published before I took up my appointment, but I know that we focused on some of the consumer concerns that were raised. We removed the waiting list, because that was a concern, and we improved the amount of information and the way in which we give people information. We hope that we give information in a plain English, frequently-asked-questions style, which people find easier to absorb. We dealt with the two problems that were identified with my office. The other cause for concern was the limits on the ombudsman's remit.

The Convener: Indeed.

Linda Costelloe Baker: That is more your concern than mine.

The Convener: Yes, and it would have to be addressed either by the profession giving way or through legislation.

Linda Costelloe Baker: Because we moved office in December and we are about to have a new website, we have not wanted to reprint the leaflets, so we have produced a rather inelegant temporary leaflet, copies of which I will leave for members. Within a month or so it should look more professional, although the content will be the same.

The Convener: Unless committee members have any more questions, I thank you for your evidence. It has been a very helpful start.

Linda Costelloe Baker: Thank you. As I said to the clerk, my annual report is due for publication at the beginning of July. All MSPs will receive copies

of it. If members would like to ask me any questions on the report once it is published, I would be pleased to accept an invitation to come back.

Proposed Human Rights Commission for Scotland

The Convener: The third item on our agenda is the matter of a human rights commission for Scotland. We will take evidence from Professor Brice Dickson, who is the chief commissioner of the Northern Ireland Human Rights Commission. I thank Professor Dickson for coming across from Northern Ireland to give evidence.

Professor Brice Dickson (Northern Ireland Human Rights Commission): Thank you for the invitation to be here. Members of the committee will have received a three-page document from me summarising the work of the Northern Ireland Human Rights Commission, which is now in its third year. The summary does not convey the overall impact of the commission in Northern Ireland, which has been significant. The potential for that impact to continue is great.

Although the Northern Ireland Human Rights Commission is a product of the Belfast, or Good Friday, agreement, it should not be assumed that its focus is on matters relating to the conflict in Northern Ireland. At many of the meetings we have had in Northern Ireland, there has been no mention at all of the police, prisons, emergency laws, Diplock courts or paramilitary abuses. Instead, people have wanted to discuss issues such as education rights, access to health care, safe living conditions, environmental issues, the rights of people with a disability, planning matters and so on. Complaints against professionals are rife, especially complaints against legal and medical professionals.

We have striven to make public authorities aware of their duties, as well as to make individuals aware of their rights. For example, we have engaged the churches on whether human rights are the new religion in Northern Ireland. We had to explain that creating a human rights culture is not synonymous with promoting selfishness and greed, and nor are we encouraging litigation for litigation's sake. In fact, we seek to prevent grievances arising in the first place.

The Northern Ireland Human Rights Commission acknowledges that bodies other than state bodies—such as paramilitary organisations, corporations, newspapers, trade unions and churches—and even individuals in their home, for example, can abuse human rights. We are in favour of the horizontal application of human rights—to use the jargon.

Every society should have a human rights commission to help the Government comply with its international obligations and to assist individuals to assert their entitlement to basic

rights. All individuals deserve such assistance, regardless of their antecedents. A human rights commission is not in the popularity stakes. It must be willing to stand up for the human rights of unsavoury characters. The commission must be a watchdog, but also a bit of a terrier—snapping at the heels of those who wield power over others.

I repeat that I am grateful for the opportunity to present evidence to the committee today. I affirm the strong support of the Northern Ireland Human Rights Commission for the establishment of a separate human rights commission for Scotland.

14:30

The Convener: We are aware that the commission was set up as part of the Good Friday agreement. What benefits has the commission brought to Northern Ireland that would be applicable here if such a commission were set up in Scotland?

Professor Dickson: First, the Northern Ireland Human Rights Commission has done much work proofing legislation that has come before the Northern Ireland Assembly and legislation that has come before Westminster that applies in Northern Ireland. We have indicated several times possible inconsistencies between the draft legislation and the European convention on human rights and other international human rights standards. We have given committees of the Assembly evidence about proposed laws and policy initiatives.

Secondly, we have been engaged in casework and have helped individuals who have come to us for assistance. We have taken cases in our own name and, until we were recently deprived of the power by a court decision, we applied to intervene in court cases to give the court the benefit of our views on relevant human rights standards.

Thirdly, our education work is transferable to other jurisdictions. We have informed people about not only the Human Rights Act 2000, but other laws and policies that deal with human rights. We have a duty to advise the Government on what should be contained in a bill of rights for Northern Ireland and have received many views from quite ordinary people who, otherwise, would have no real interest in legal matters. They have told us how their rights in connection with public authorities and others could be enhanced. All such functions are transferable.

The Convener: We note that the commission has a grant of £750,000 per annum. What structure has that money set up? Is it a sufficient sum for the purpose?

Professor Dickson: I can answer the second part of the question easily and quickly. No, that sum is not sufficient. We continue to be in a

funding crisis, especially with regard to the financing of litigation. We operate through committees that are organised more or less in line with the functions outlined in the paper that I sent members in advance. Four or five commissioners sit on the committees, which are serviced by one or two members of staff.

The part-time commissioners, apart from me—I am a full-time commissioner—are hands-on, perhaps because we are a new institution with a high profile in Northern Ireland. The commissioners are keen to participate actively in the commission's work, perhaps more so than commissioners in other quangos. Our staff, some of whom are legally qualified, contribute hugely to the work of the commission.

The Convener: How many commissioners and staff do you have?

Professor Dickson: At present, we have nine commissioners. I am a full-time commissioner and the other eight are commissioners one day a week. We have 13 members of staff, who cover 11 posts—two posts are job-shared.

Michael Matheson (Central Scotland) (SNP): First of all, I extend a warm welcome to Brice Dickson. I had the pleasure of visiting the Northern Ireland Human Rights Commission just over a year ago and found my visit very informative.

When you have proofed legislation being considered by the Northern Ireland Assembly or by Westminster and have recommended that changes should be made, what impact have you had?

Professor Dickson: I regret to say that our impact has been minimal. The Executive Committee in Belfast and the Government at Westminster would say that that is because the relevant legislation is already proofed for compatibility with the ECHR before it is sent to us. Although we might raise questions about aspects of legislation, the response that we usually get is, "Well, we considered that but our view is different. If such a case were to go to court, the legislation would be considered to be compatible with the convention."

We did a lot of work on the Terrorism Bill as it passed through Westminster and on the Police (Northern Ireland) Bill. However, in almost every case, the amendments that we suggested were not accepted, either in the House of Commons or in the House of Lords.

Michael Matheson: What about legislation in the Assembly?

Professor Dickson: We have had less work to do on legislation in the Assembly, partly because there has not been much of it. Such legislation as there has been has not had huge human rights

implications. I can think of only one bill where we differed with the view of the Speaker's legal advisers on the compatibility of a provision. The bill concerned the powers of the fisheries inspectorate to go on to boats and to confiscate equipment and so on. We considered those powers to be, at least arguably, contrary to the ECHR. However, the Speaker's office and the Assembly as a whole took the opposite view.

Other legislation is going through and has not yet been determined. We do not know whether our recommendations have been accepted.

Michael Matheson: I am conscious that, if a Scottish human rights commission had concerns about a piece of legislation going through Westminster that would have an impact on Scotland, we could find ourselves in a similar position. We could make recommendations and express concerns, but Westminster might take a different view. Is there a way in which we could address that situation? The obvious suggestion would be the establishment of a human rights commission that would also cover Westminster legislation. However, is there another way in which we could address that problem?

Professor Dickson: I am not sure that it would be easy to address that situation.

I am not totally au fait with the Scottish system, but in Northern Ireland, if a draft order in council is being prepared under the Northern Ireland Act 1998—that is the way in which direct rule operates—it must be considered by a committee of the Assembly in Belfast. A report is then sent to the Secretary of State for Northern Ireland who, in turn, must lay it before Parliament in London.

The Human Rights Commission has had an input into the Assembly committee reports on two or three of those draft orders and on the Proceeds of Crime Bill. When the committee reports were prepared the committee accepted our points in two of three instances and passed them on to the secretary of state. However, in one instance in which the draft order had already been passed, Parliament in London did not agree with the Assembly committee's recommendations and in another two cases, we are still waiting to hear whether Parliament will agree with the relevant committee's recommendations. We are not hopeful that Parliament will agree with those recommendations. The fact that there is such a large majority in Westminster means that the Government can push through the legislation that it wants, despite the caveats that are expressed by the Human Rights Commission.

Nora Radcliffe: We note that commissioners were appointed by the Secretary of State for Northern Ireland. Are you content that that is the best appointments process for commissioners?

Professor Dickson: No, I am not convinced. In fact, it is questionable whether such an appointments system complies with the United Nations principles on national human rights institutions—the so-called Paris principles.

Under the Northern Irish system, an advert was placed in newspapers so that people could get the forms to see what criteria they would be measured against. People applied and were interviewed by a panel, which consisted of two senior civil servants and a civil service commissioner. The panel's recommendations were then given to the secretary of state. I happen to know that the secretary of state at that time, Dr Mowlam, accepted all the panel's recommendations and did not interfere with the choice at all.

A better system would have been for Parliament, or the Government together with representatives of Opposition parties, to have selected the commissioners. That is a surer way of ensuring that there is no cronyism or nepotism.

Nora Radcliffe: Has the current appointments mechanism been successful in obtaining representation of the whole community for which the commission has responsibility?

Professor Dickson: It is fair to say that there has been some controversy about that in Northern Ireland. I should add that that is not of the commission's own doing; we were not responsible for our own appointments. As chief commissioner, I had no say—nor did I want one—in the appointment of the other commissioners.

As soon as we were appointed, the unionist community expressed serious reservations about the adequacy of the unionist representation on the commission. Under the Northern Ireland Act 1998, the commission must be representative of society in Northern Ireland. The answer to that criticism is that no one on the commission is active in nationalist politics. Although it is true that two of the commissioners used to be active, one left to join a different party five years ago—and, in any event, she has now, for personal reasons, resigned her post from the commission—and the other man left the nationalist party 25 years ago. However, as members may know, memories are long in Northern Ireland.

Nora Radcliffe: They seem to go back hundreds of years.

Professor Dickson: I might add that, after the resignation of one commissioner, adverts were placed for one or more replacements. I am told that 520 individuals applied for the replacement post, which is three times as many as applied for the commission as a whole the first time round. That at least indicates that the commission has a high profile and that significant numbers of people are interested in serving on it—constructively, I

hope.

Nora Radcliffe: I will move on to a different area. How important is it that commissioners have expertise in human rights legislation? Is it more important to get representation from different groups across society? Obviously, there is a balance.

Professor Dickson: Yes, there is a balance. It is important that there should be some people on the commission who have expertise on the legal dimension to human rights protection, especially the international legal dimension. However, it is equally important that there are on the commission people who have experience of the voluntary, community, and statutory or political sectors, because they will be more aware of what is pragmatic and realistic. They might have just as strong a commitment to the protection of human rights but be unable to make the legal arguments in favour of human rights.

We have tried hard to avoid dividing the commission between those who have a legal background and those who do not. I think that that has worked reasonably well. For example, on the casework committee, which has five commissioners who decide which cases to fund, three of us have a legal background and two do not, but that committee works more successfully than any of our other committees.

Nora Radcliffe: Do the numbers on the other committees tend to be less evenly balanced?

Professor Dickson: No, not necessarily. I did not mean to imply that. The casework committee by definition deals with legal matters, yet the input of the non-lawyers to the discussions in the casework committee is always extremely helpful. We could not really do without that perspective.

Maureen Macmillan: I want to ask about your functions and powers. A minute or two ago you said that you have a rising profile in Northern Ireland. How has that occurred? Have you been working to raise awareness of human rights issues? If so, there might be lessons for us to learn about educating public bodies and the wider public. How can that be done most effectively?

14:45

Professor Dickson: We obtain a high public profile in at least two ways. We are proactive in publishing information and research reports.

Last week, for example, we issued two research reports. One was on whether the criteria that are applied by boards of governors of schools when deciding which children to select for admission are consistent with human rights or equality standards. We timed the publication of that report to coincide with the date on which letters were sent out to

parents telling them which schools their children were being selected for at post-primary level. Understandably, the report received a great deal of publicity and produced a considerable number of phone calls to the commission.

The second report was on the way in which the police record the use of plastic baton rounds in Northern Ireland. We timed that to appear on the day when a new type of plastic baton round was introduced. That is a controversial topic anyway, and the report received a great deal of publicity.

The other way in which we raise our profile is by reacting to approaches that are made to us by the media and others. Perhaps Northern Ireland is slightly different in that respect. The newspapers and the broadcasting media have a lot to say, make many programmes and write a great deal about troubles-related issues. They often come to the commission for a perspective on the release of prisoners or some aspect of the criminal justice system that happens to be in the public eye at the time.

Maureen Macmillan: Given that we do not have that background in our society, how would we transfer what you are doing to Scotland? What could we usefully copy?

Professor Dickson: If there were a human rights commission in Scotland, it would want to say a great deal about the way in which the criminal justice system operates and the way in which complaints against the legal profession are handled—the topic that the committee was just considering. It would also want to address the social and economic issues that give rise to claims of rights—the right to access to health, the right of people with disabilities to employment and the right to education. We find that the general public and the media want us to comment on those issues, which have a human rights dimension. We profess to have an expertise in the international standards for issues of that sort.

Children's rights are a matter of particular concern. Children who have suffered neglect or who have become involved in the criminal justice system are often in the news. There are many international standards relevant to the protection of children, on which we are often asked to, and do, comment.

The Convener: How would you respond to someone in Scotland who said that two years ago for the first time we elected a Parliament made up of 129 civil rights commissioners? Why do we need another body to do the job that they should be doing?

Professor Dickson: The answer to that is twofold. First, members of the Scottish Parliament have a great deal to do and cannot always be specialists in human rights. When they scrutinise

legislation, they may not be aware of its human rights implications.

Secondly, even elected politicians—perhaps especially elected politicians—must be kept in check and made aware of the constraints that international human rights law places on them. In our dealings with politicians we have encountered not only the natural antipathy towards lawyers that politicians tend to feel, but particular antipathy towards human rights lawyers.

There is a feeling among some political parties that human rights lawyers think that they can rule the world and restrict what elected politicians can do and what they can promise in their manifestos. However, human rights lawyers do not profess to go that far; they simply point out to the politicians that there are certain bottom lines below which they must not go when they distribute resources. For example, they could not decide to do away with the proper facilities for prisoners or people who are detained by the police. They might like to make that public expenditure choice, but it would be unlawful under international law. There are other similar restraints of which elected politicians need to be reminded and it is part of the job of a human rights commission to do that.

Maureen Macmillan: We will return to your relationship with politicians in a wee while. I would like to ask you more about your casework. You said that people are more interested in disability rights than they are in Diplock courts. How do you prioritise the use of your resources and decide which cases to support, and how are applications for assistance processed? Do you prioritise any right over another?

Professor Dickson: The criteria whereby we decide whether to grant assistance are laid down partly in the legislation governing us—section 70 of the Northern Ireland Act 1998—and they are almost identical to the criteria in the Sex Discrimination Act 1975 and the Race Relations Act 1976 for gender and race discrimination in Great Britain. We have amplified those criteria slightly because we are aware that we must be selective in the cases that we support. Although we are conscious of the need not to fetter our discretion, thereby leaving ourselves open to judicial review, we have indicated clearly, through a series of cumulative criteria, what sorts of cases we might fund.

One of those additional criteria relates to the strategic plan that we drew up last year, in which we indicated the types of areas on which we wanted to focus for the next two years at least. Those areas include the rights of young people, the rights of older people, the rights of prisoners and ex-prisoners, and the rights of gay, lesbian, bisexual and transgender people. That is only one indicator of the preference that we might have for

a case. If a case were brought to us that raised a novel point that we had not anticipated, which we thought would have a significant impact in Northern Ireland as a whole, it is likely that we would be sympathetic towards supporting it.

An issue that arose unexpectedly—although I know that it has arisen already in Scotland—was the compatibility of the planning legislation with the European convention on human rights. We took the strategic decision to obtain a legal opinion on the compatibility of the full set of planning laws with the ECHR and to make that available to anyone who came to us with a specific case rather than to fund a case through the courts. We try to manage the way in which cases come to us in that manner.

Maureen Macmillan: What are your statistics on cases that you turn away—people who apply to you but whose cases you cannot take up? Are you able to deal with the cases of only a small proportion of those who apply?

Professor Dickson: We are able to help nearly everyone who comes to us. That help usually consists of telling them where they can get more specific advice—perhaps from the police ombudsman or the Equality Commission for Northern Ireland, or from a solicitor, if it is a matter for private law. Only about 5 per cent of the inquiries that we receive lead to applications to the casework committee for assistance.

You asked about our process for dealing with applications. The casework committee sits monthly—sometimes more frequently—to assess cases that are prepared for it by our caseworkers, using the criteria that I just mentioned. Ultimately, only about 5 per cent of the cases are brought to us and only about a third or even a quarter of those cases are granted assistance. The cases for which assistance is granted represents only a small fraction of the total number of inquiries.

Maureen Macmillan: So you choose cases that you think would make a real difference.

Professor Dickson: We try to, subject to the vagaries of litigation.

Maureen Macmillan: How do you carry out your advisory work on proposed legislation? You have talked about the fact that you have tried to promote the ECHR, perhaps without much success, at Westminster, and possibly the Northern Ireland Assembly, although I was not quite sure about your evidence on that. What mechanisms do you have in place for your advisory work on proposed legislation and how do you interact with the Assembly?

Professor Dickson: In answering that, it is important that I distinguish between the Assembly process and the Westminster process. Under the

Northern Ireland Act 1998, the Speaker of the Assembly is obliged to send us copies of all new legislation that is introduced into the Assembly. We have the opportunity to send our comments on that to the Speaker and/or the chairperson of the relevant Assembly committee that is dealing with the bill; we choose to do both. Unfortunately, the Assembly has not adopted the practice that I believe is now common in Scotland of pre-legislative scrutiny of bills. However, if we get a whiff of draft legislation and what it might be saying before it is introduced into the Assembly, we make our views known through letters to the members of the Assembly.

On the secondary legislation that goes through the Assembly, we have yet to establish a foolproof system for filtering pieces of secondary legislation that might have human rights consequences. Just last week, I was discussing with the Speaker of the Assembly how we might improve our mechanisms.

On Westminster legislation, I am sorry to have to say that the Government departments, including the Northern Ireland Office and the Home Office, tend to forget that we exist. They sometimes do not include us in consultations. For example, they recently issued five codes of practice under the Terrorism Act 2000 but remembered to send only two of them to us for comment prior to their being affirmed in Parliament. We have to rely on our own researchers to keep an eye on what is coming down the pipe.

When we become aware of draft legislation, one of our researchers prepares a paper on the legislation. That is then reviewed by a committee of the commission and endorsed by the full commission at its next monthly meeting. The paper is then sent to the Parliament.

Maureen Macmillan: Do you find yourself under pressure of time?

Professor Dickson: Very much so. We are often unable to respond, although not so much to legislation, which we try to prioritise. We receive many consultation documents about potential legislation to which we do not have the time to respond, even though they are significant documents.

Michael Matheson: You said that the Speaker of the Assembly is obliged to forward to you any proposed legislation that goes before the Northern Ireland Assembly and that you received only two of the five codes of practice under the Terrorism Act 2000 because Westminster seemed to forget about you. My concern is that the same thing could happen with a Scottish human rights commission. I am conscious that the effectiveness of your role and of a Scottish human rights commission would be compromised if Westminster

did not accept that we had commissions within our relative areas. Do you have a view on how that should be addressed and whether there should be some type of arrangement with Westminster departments to ensure that you are always consulted?

Professor Dickson: We have been pressing to establish memorandums of understanding or protocols with Government departments to ensure that we get early access to draft legislation. We have not yet finalised the memorandum of understanding with the Northern Ireland Office. I admit that that is mainly because of a delay at our end rather than at the NIO's end, although the comparable protocol with the Government departments in the Executive Committee in Belfast has been held up because of delays at their end rather than at our end.

That is probably the only way in which early access could be ensured, unless, when a Scottish human rights commission is set up, some kind of statutory obligation were placed on Government departments in London to provide copies to the commission in Scotland if legislation applied to Scotland. That would require amendment to existing legislation.

15:00

Michael Matheson: How receptive have Westminster departments been to the idea of a memorandum of understanding?

Professor Dickson: Our experience has been limited to the Northern Ireland Office, which has been very receptive to the idea. Of course, it envisaged the memorandum covering other aspects of the relationship between it and us—financial matters, publicity matters, and so on. Our difficulties have mainly been with the Home Office, with which we have not yet actively explored the possibility of establishing such a protocol.

Maureen Macmillan: As well as interacting at the level of legislation, you must obviously give advice on human rights to individual members. What sort of feedback have you had from individual Assembly members or Assembly committees on the value of what you are doing?

Professor Dickson: We have not had many approaches from individual Assembly members for advice on particular issues—or, indeed, any, that I can think of. I have appeared before five committees of the Assembly. On some of those occasions, the questioning has been quite hostile from some members. As you may appreciate, some members of the Assembly in Belfast do not approve of the existence of the Human Rights Commission. They take serious objection to the commission standing up for the rights of, for example, prisoners or suspected criminals. That is

a philosophical difficulty that we constantly come up against. However, on the whole, the committees have been receptive and appreciative of the information that we have been able to provide for them.

Maureen Macmillan: When cases arise, or when legislation is on the horizon, are you proactive in informing individual members about the issues?

Professor Dickson: I do not think that we have been proactive in that sense, but we have been proactive in sending the comments that we have prepared on draft legislation to members of the relevant committees. We have just produced a report on how we think the standing orders of the Assembly could be amended to provide for better scrutiny of laws from a human rights point of view. That is being sent to all 108 members of the Assembly. Otherwise, our contact with the Assembly has mainly been through the Office of the Speaker and through the clerks—the principal clerk of bills, for example.

Maureen Macmillan: Would it be a good idea to get more involved on a one-to-one basis with members to brief them? I am wondering how a similar body might function in Scotland.

Professor Dickson: Our difficulty in trying to develop almost personal relationships with individual members is that we could risk being seen as partisan—precisely because some parties are more sympathetic to what we are doing than others. We must be strictly non-partisan. If we have been running events to which any Assembly members have been invited, we have tended to invite them all, knowing full well that very few will turn up. We have also dealt with parties through their own party offices rather than through their Assembly representatives. We have found that the parties are reluctant to come together to discuss human rights issues. They tend to want to be consulted separately on the issues.

Maureen Macmillan: I can see that you have a hard furrow to plough. I hope that the situation will not be the same here.

Do you consider whether existing legislation is compliant and do you proactively seek to reform laws that appear to infringe human rights rather than try to look into the future all the time?

Professor Dickson: We do that. We have produced a review of the existing law and the policy in practice affecting the rights of older people in Northern Ireland, for example, in relation to discrimination in access to health care. We have produced a report on the rights of gays, lesbians, bisexuals and transgender people. We have recently commissioned a report, which will be completed by the end of this year, on the rights of people who have or have had a mental illness.

Many people who fall into that category have come to us in the past two or three years. We have been surprised at what appears to be a serious lack of protection for the rights of such people.

Maureen Macmillan: Has the existence of the Northern Ireland Human Rights Commission helped with the process of incorporating the European convention on human rights into domestic law?

Professor Dickson: I think that we have done that, although, because it was a coincidence that the Human Rights Act 1998 came into force at the same time as the Good Friday agreement, we were not set up specifically to do that. All three of the Secretaries of State for Northern Ireland that we have had since we were established have said that they want the Northern Ireland Human Rights Commission to play a full part not just in the implementation of the Good Friday agreement, which I think is a good thing, but in helping Northern Ireland to be a model for human rights protection.

Given our troubled past, it would be appropriate if we were able to turn the situation around and become a model for other societies, particularly divided societies. I detect political support in that sense, even if it is lacking in the parliamentary sense in Westminster.

Maureen Macmillan: That is a good aspiration. If you had additional functions and powers, could you more quickly fulfil the potential that you see? What additional powers and functions would you like to have?

Professor Dickson: We could be much more effective if we had more powers and functions. When the bill that established us was going through Parliament in 1998, the Government compromised on various amendments by saying that, although the Northern Ireland Human Rights Commission was not going to get certain powers at once, it would be able to produce a report after two years on the subject of the ways in which extra powers would increase its effectiveness. That report was published in February and I will make a copy available to the committee.

The report contains 25 recommendations for increased powers, three of which I will highlight. There is the old question of resources—we could do a lot more if we had more money. Secondly, we could do a lot more if we had the power to compel people and organisations to produce evidence for us. For example, when we investigated the juvenile justice centres in Northern Ireland, we were denied access to important documentation, which made it difficult for us to carry out a proper objective assessment of whether the rights of children are being protected. We need that power

to bring our powers into line with these that an ombudsman has. Thirdly, we would like the power to apply to a court to intervene as a third party to make the court aware of the human rights dimensions of the case. That right has been denied to us by the Court of Appeal in Northern Ireland and we are petitioning the House of Lords for leave to appeal that decision. If we do not win that appeal, we would like the Government to amend the legislation to give us the power.

The Convener: You referred to the resources. A budget of £750,000 will not go far if you are funding cases. Living in the real world and given the constraints on budgets, what kind of budget do you think would be realistic for a population the size of that of Northern Ireland?

Professor Dickson: Things are slightly askew at the moment, because our focus this year and next is a bill of rights for Northern Ireland. That is a time-limited function for which we would like a lot more money. We would like, for example, to provide a copy of the draft bill of rights to every household in Northern Ireland, but that would cost £150,000. We have put in a special bid to the Northern Ireland Office for extra money just for the bill of rights work.

Leaving that aside, we could probably achieve what we would like to achieve with something approaching double the amount of money that we have at the moment—£1.5 million. With that, we could clear the backlog of cases—we have a huge backlog to deal with—we could be much more proactive in our education work and we could be more efficient in the provision of information to Assembly members and parliamentarians.

Michael Matheson: We have touched on the general aspect of the casework that the commission undertakes. Do you have specific provisions for human rights issues for children? Does the commission have such a thing at the moment?

Professor Dickson: One of our commissioners is a specialist in children's rights. She is the director of the Children's Law Centre in Belfast. We strive not just to protect the rights of children but to include children in the consultation processes that we conduct. When we were consulting on what should be in our strategic plan and what should be in our bill of rights, we set up special events and meetings with and for children—sometimes through the auspices of other organisations—to collect their views. We have had some very interesting, thought-provoking and artistic contributions from young people on the bill of rights. Amnesty International collaborated with us in running a schools competition, for example. Children in care were brought together by the Children's Law Centre and, I think, Save the Children to produce moving recommendations

to us as to how children in their position could be better protected in society.

Michael Matheson: There is a school of thought that there might be a need for independent children's rights commissioners, which some countries have. Do you think that there is such a need or that children's rights could be adequately dealt with under a human rights commission?

Professor Dickson: Interestingly, there is a move at the moment to create a children's commissioner for Northern Ireland. It is one of the few things—I should not say that—one of the things that the two main parties in Northern Ireland agree on. A bill is due to be introduced in the next session. The Northern Ireland Human Rights Commission's view is that, if such a commissioner can be established, we would welcome it very much. We would like that person or body to have more extensive powers than we have at the moment. I refer again to the power to compel the production of evidence, for example.

Our remit is so wide that we would have no objection to one particular aspect of our work being separated out and given to another body, as it is already for complaints against the police or complaints of gender or religious discrimination. We have quite enough to be getting on with in terms of other aspects of human rights, especially within the criminal justice system.

Michael Matheson: I am conscious that we have the Disability Rights Commission, the Equal Opportunities Commission, the Commission for Racial Equality, a proposed children's rights commissioner for Northern Ireland and a Northern Ireland Human Rights Commission. You are obviously now used to having to interact with a number of other commissions and Government agencies. What has been your experience of trying to link up with those other organisations? Is there a way in which the system could be streamlined and some of the commissions brought closer to together?

Professor Dickson: My experience has been that the various relationships between the commissions, of which there are probably more in Northern Ireland than anywhere else in these islands, have worked well. We have a good memorandum of understanding with the Equality Commission for Northern Ireland, which merges the prior anti-discrimination bodies in Northern Ireland. That functions very effectively.

Speaking personally, we have too many quangos of that type in the small jurisdiction of Northern Ireland. I understand and sympathise with the scepticism that some members of the public express about the proliferation of such bodies, but they can be excused if they work effectively and do not overlap with each other and

waste public money. Effectiveness is the key criterion. Proliferation itself is no bad thing, so long as the quangos collectively are effective.

15:15

Michael Matheson: One of the things that I feel about the commissions that we have at the moment is that they are centralised. Often they have an office in Edinburgh or Glasgow and that is it. I wonder whether the modes of operation of the commissions should be examined with regard to having more local offices. Have you gone down that route? Do you have one office in Belfast that serves the whole of Northern Ireland, or are you trying to localise services and devolve them to local areas?

Professor Dickson: When we were established in March 1999, we looked actively at setting up an office outside Belfast—indeed, one or more offices—but we quickly realised that we could not afford to do so, so we have not done it. We have responded by promoting ourselves actively outside Belfast. We have a pledge, which we have kept to, to meet anyone anywhere in Northern Ireland on a human rights issue if they would like such a meeting, so we are out and about a great deal. No place in Northern Ireland is more than two hours away from Belfast by car, so it is doable. We try to hold public events in Derry, or Londonderry, Enniskillen, Dungannon and so on. We are aware that people in those places have just as many expectations as people in the Belfast area have.

Michael Matheson: If you had the resources, would you like to have offices across Northern Ireland?

Professor Dickson: We would like to have at least one office in the west of the province, probably in Derry or Londonderry.

Michael Matheson: In response to an earlier question, you said that you examine issues in terms of whether they comply not only with the ECHR, but with other international human rights standards. Clearly, there is a need to keep updated on new international standards. What interaction do you have with human rights commissions and bodies in other countries?

Professor Dickson: We are recognised as a national human rights institution by the international group of national human rights institutions, which is organised on a continental basis. We attend meetings of the European human rights institutions as well as the world association meetings. The latter take place in Geneva every year contemporaneously with meetings of the UN Commission on Human Rights. On the agenda every year is a discussion of human rights institutions.

Recognised human rights institutions, such as my own, have speaking rights at the Commission on Human Rights in Geneva, so every April I am able to make a seven-minute presentation on the state of human rights in Northern Ireland, which is an important and effective means of telling the world how things are in Northern Ireland. The Government also has the opportunity to respond.

We also try to welcome visitors from overseas to our offices; for example, we have had many from Canada, New Zealand and Australia, where there have been human rights commissions for 20 or 30 years. We also, although less often, try to visit other countries to share our experiences with them.

Michael Matheson: Would it be advisable for a Scottish human rights commission to be a member of the association that you referred to?

Professor Dickson: It would indeed. At the last meeting the Irish Human Rights Commission—which I am sure you are aware has just been established in the Republic of Ireland—attended for the first time and was welcomed with open arms. It expects to play a full part in the institutions.

The other aspect of international work that we do is commenting on periodic UK reports to various, mainly UN, committees—for example, the Committee on the Rights of the Child, the Committee Against Torture or the Human Rights Committee itself, which is considering the latest report in July.

Michael Matheson: Are there any particular regulations around how people obtain entitlement to speaking rights?

Professor Dickson: Not at the moment. Those rules are developing, and the UN Commission on Human Rights can determine for itself whom to allow to speak. With the proliferation of human rights commissions and of non-governmental organisations there is a danger that it will become too unwieldy to allow such extensive speaking rights in Geneva. At that point, an institution such as mine or the Scottish institution may find that it is excluded. We are not, of course, national institutions in the full sense; only a UK commission or a body representing the UK would then be given speaking rights. There is some danger that there will be change to the current practice.

Michael Matheson: What would be the way round that? How could that be addressed?

Professor Dickson: In Sweden, there is no centralised human rights commission, but there are many bodies dealing with ethnic discrimination or with discrimination against gays. There is also the children's ombudsman, for example. Those bodies share the responsibility of representing the

whole of Swedish society at the Commission on Human Rights each year. They are delegated the task of speaking and the right to speak on behalf of the other bodies. I imagine that that is what would happen on a UK basis.

The Convener: I have one final question. You mentioned that you felt that the mode of appointment of the commissioners might not be in accord with the Paris principles. Is there anything else in the way in which your commission has been set up that would breach those principles?

Professor Dickson: There are two aspects to that. The first is our lack of power to compel the production of evidence. There is a phrase in the Paris principles that suggests that a human rights institution must be able to obtain all the documentation necessary to enable it to protect human rights. Secondly, I think that I am right in saying that the Paris principles require human rights institutions to be adequately funded, so that they may perform their functions. We would argue that we are not adequately funded.

The Convener: There are no further questions. Thank you very much, Professor Dickson, for making the journey across from Northern Ireland.

Petition

The Convener: Item 4 on the agenda is on petition PE102 from James Ward. Due to an administrative oversight, the letter from the Minister for Justice was not copied to Mr Ward. I therefore suggest that, in order to give him an opportunity to comment on it if he wishes to do so, we postpone consideration of this matter until our next meeting. Is that okay?

Members *indicated agreement.*

Equal Opportunities

The Convener: Item 5 is consideration of the paper from the Equal Opportunities Committee on mainstreaming equal opportunities in committees. Members will note that a workshop is being held. It is suggested that

"at least one member from the Committee ... attend the workshop"

to discuss the topic. Do I have any volunteers?

Maureen Macmillan: I cannot go on that day.

The Convener: The day suggested is 20 June, a Wednesday, and the workshop is to be held in the evening.

Nora Radcliffe: I cannot go then either.

The Convener: Any volunteers? If not, all I can do is have the invitation circulated to the members of the committee who are not present today and we will see if any of them can attend.

Nora Radcliffe: I think that it is important that somebody from each committee goes. We have been discussing a human rights commissioner. We should equally be attending to equal opportunities.

The Convener: Indeed. We will see if we can get somebody.

We now move on to item 6, which is to be taken in private.

15:24

Meeting continued in private until 15:25.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Thursday 14 June 2001

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £500

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriel Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers