



Official Report
Aithisg Oifigeil

DRAFT

Equalities, Human Rights and Civil Justice Committee

**Comataidh nan
Co-ionannachdan, Còraichean
Daonna agus Ceartas Catharra**

Thursday 3 September 2026

Session 7



The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website—
www.parliament.scot or by contacting Public Information on 0131 348 5000

Thursday 3 September 2026

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
CIVIL JUSTICE (OVERVIEW)	2

EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
2nd Meeting 2026, Session 7

CONVENER

*Katie Hagmann (Carrick, Cumnock and Doon Valley) (SNP)

DEPUTY CONVENER

*Meghan Gallacher (Central Scot and Lothians West) (Con)

COMMITTEE MEMBERS

*Holly Bruce (Glasgow Southside) (Green)

*Amanda Lindsay (Central Scot and Lothians West) (Reform)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Carol Mochan (South Scotland) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rachael Kelsey (SKO Family Law Specialists)

Colin Lancaster (Scottish Legal Aid Board)

Paul McKinlay (Scottish Courts and Tribunals Service)

Kate Nevens (Edinburgh and Lothians East) (Green)

Jennifer Paton (Law Society of Scotland)

Paul Reid KC (Faculty of Advocates)

Kyle Scott (Citizens Advice Scotland)

Jamie Speirs (Scottish Child Law Centre)

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Equalities, Human Rights and Civil Justice Committee

Thursday 3 September 2026

[The Convener opened the meeting at 09:36]

Decision on Taking Business in Private

The Convener (Katie Hagmann): Good morning, everyone, and welcome to the second meeting in session 7 of the Equalities, Human Rights and Civil Justice Committee. We have not received any apologies. I welcome Kate Nevens MSP, who is also joining our meeting.

Our first agenda item is to decide whether to take item 3, which is a review of this morning's evidence, in private. Are members content to take that item in private?

Members indicated agreement.

Civil Justice (Overview)

09:36

The Convener: Item 2 is the only public agenda item this morning, and it is the first of three round-table evidence sessions exploring key issues within the committee's remit. Today, we will be focusing on issues relating to civil justice.

Before we move to questions, I invite members and witnesses to introduce themselves briefly. If representatives of organisations would like to give a short summary of the role of their organisation, that would be really helpful.

I will start. I am the MSP for Carrick, Cumnock and Doon Valley and committee convener. As a newly elected MSP, I am really excited to be in this position. I have met some of you already through earlier engagement on this topic.

Meghan Gallacher (Central Scotland and Lothians West) (Con): I am the deputy convener. I am delighted to be part of this committee and am really looking forward to working with you all. I am one of the members for the Central Scotland and Lothians West region.

Kyle Scott (Citizens Advice Scotland): Thank you for inviting me today. I am from Citizens Advice Scotland. As part of the citizens advice network, and alongside the citizens advice bureaux and the extra help unit, we provide advice to anyone who needs it in more than 300 locations throughout Scotland.

Holly Bruce (Glasgow Southside) (Green): I am the MSP for Glasgow Southside. I am on this committee, as you can see, and am also a spokesperson for social justice in the Scottish Greens group.

Paul Reid KC (Faculty of Advocates): I am from the Faculty of Advocates, which is the independent referral bar in Scotland. I am a member of the faculty's human rights and rule of law committee and its law reform committee.

Carol Mochan (South Scotland) (Lab): I am an MSP for the South Scotland region. My region has many rural areas, and I am interested in hearing about that aspect of legal services.

Colin Lancaster (Scottish Legal Aid Board): I am the chief executive of the Scottish Legal Aid Board. We administer the legal aid system in Scotland, which includes assessing applications for legal aid and paying solicitor and advocate accounts. We grant-fund a range of advice projects, and we also deliver direct services in relation to civil, children's and criminal legal assistance.

Kate Nevens (Edinburgh and Lothians East) (Green): I am one of the MSPs for the Edinburgh and Lothians East region. I am the spokesperson on equalities for the Scottish Greens group. I am not a member of the committee but am here as a guest.

Jamie Speirs (Scottish Child Law Centre): I am the principal solicitor at the Scottish Child Law Centre. We provide free legal advice to children, young people and their families across Scotland on any child law-related issue.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I am the MSP for Coatbridge and Chryston.

Jennifer Paton (Law Society of Scotland): I am the head of policy at the Law Society of Scotland, which is the statutory professional body for more than 14,000 Scottish solicitors. We are a regulator that upholds standards for the solicitor profession, and we protect the interests of consumers and the wider public interest. We also seek to influence changes in legislation and the operation of our justice system as part of our work towards achieving a fairer and more just society.

Amanda Lindsay (Central Scotland and Lothians West) (Reform): I am Amanda Lindsay, a newly elected MSP for the Central Scotland and Lothians West region.

Paul McKinlay (Scottish Courts and Tribunals Service): I am the executive director of courts for the Scottish Courts and Tribunals Service. The SCTS provides the people, buildings, information and communications technology and administrative support for Scotland's judiciary and, in that role, supports the civil justice system.

Collette Stevenson (East Kilbride) (SNP): I am the MSP for the lovely big town of East Kilbride.

The Convener: Thank you, everyone. Rachael Kelsey is online. Please come in and introduce yourself, Rachael.

Rachael Kelsey (SKO Family Law Specialists): Thank you for having me and for accommodating my being unable to be with you in person. I am a solicitor in private practice and am based in Edinburgh. I have specialised in family law for about 25 years. I am a member of the family law sub-committee of the Scottish Civil Justice Council and have been in that role for about 10 years. I am also the immediate past president of the International Academy of Family Lawyers, which is a group of specialist family lawyers from around 130 different jurisdictions in the world. As a result, I am fortunate enough to have a little bit of experience of seeing how international or intra-United Kingdom jurisdictional issues in family law matters are dealt with for children and families who

finds themselves involved in the civil justice system.

The Convener: I thank everyone for those introductions. We have a vast range of knowledge around the table. It is important to have this round-table discussion. The programme for government was announced this week, as I am sure that you are all acutely aware. There may be ramifications flowing from that, and aspects of it that you are delighted to see, as well as aspects that you expected to see but which were not mentioned as explicitly. We can perhaps use this session to explore some of those issues as well.

I will start the questions. It is fair to say that we are interested in everything, but that family law and matters relating to children are key points. One issue that has been highlighted to us concerns the Children (Scotland) Act 2020 and the current laws and processes governing parental disputes, and whether they strike the right balance between promoting parental involvement and co-operation and protecting children and families where there is a risk of harm. I will put that out there to see who would like to come in. If colleagues want to build on that, that would be really helpful.

I am trying to catch someone's eye. It would be particularly helpful for me to understand whether alleged domestic abuse is being captured. Does the act strike the right balance? I am looking for a volunteer. Paul Reid, you look as though you are about to come in.

Paul Reid: I was trying to catch Ms Kelsey's eye, because she is probably the best person to start our discussion on that.

The Convener: Rachael, come in and kick things off for us, please.

Rachael Kelsey: I am similarly going to try to pass the buck in some respects. This is one of the areas in which the work of this committee will showcase the extent to which many issues interlink and where people need to work together effectively in order to get the best possible outcome. At a practical level, the principal issue with the 2020 act is not so much what it says but the issues that we face around its implementation.

09:45

We have a situation where we have a piece of legislation sitting on the statute books but we have very patchy implementation, which creates real practical issues for self-represented parties and for individuals who are trying to help people who come into contact with the act and with issues around it. There are then linked issues, I suspect—certainly from a legal aid perspective—and there are also issues around the operation of the Scottish Courts and Tribunals Service.

Those implementation issues have been exacerbated by the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024. There has been a lot of impressive education for our children and young people in Scotland about the human rights that they have as individuals notwithstanding their age. However, there are real tensions there, because we do not have proper implementation of the 2020 act and there is a linked implementation issue that runs right the way through the issue of family law here in Scotland. We also have issues around implementation of part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021.

There are real challenges, because we are trying to do the right thing in creating legislation, but we are often not focusing on how to implement it at a practical level on the ground. To understand whether the right balance is being struck and met, it would probably be really useful to hear from the Scottish Child Law Centre and possibly from the Scottish Legal Aid Board; there are also issues around Police Scotland and the Scottish Courts and Tribunals Service. We all have challenges in how we deal with not only meeting the expectations that our citizens properly and rightly have to be properly involved in their children's lives but ensuring that there are adequate protections in place. Now, following the 2024 act, we also all need to keep in mind at all times that our citizens are not just adult citizens; we have a cohort of young people who have enhanced rights that they are expecting to be met.

The Convener: Thank you for that. Jamie Speirs, you were nodding along, so I will invite you in next. It would be helpful to dig a little bit deeper into what those barriers to implementation are. What is happening there?

Jamie Speirs: I echo everything that Rachael Kelsey said about implementation. In principle, for me, the 2020 act goes further in terms of strengthening children's rights under the UNCRC but, much like the 2024 act, there seems to be this consistent issue with implementation. The intention is really good—to have legislation that furthers children's rights and which, in theory, makes it easier for the rights holder to seek remedies for breaches—but, in my view, not a lot of thought is given to how it will actually work in practice and to the setting up of policies that will help to expand access to justice, for example. I know that we are going to get into legal aid, but access to justice is a central tenet of the UNCRC and of the 2024 act.

Turning first to the 2020 act, there should be a push for it to actually be implemented. As I said, it goes further on realising children's rights, particularly in terms of the views of the child. I used to be a family law solicitor and I know that there is

a presumption that children aged 12 and up can give their views for the purposes of section 11 orders but, in my experience, sheriffs often took the views of children who were much younger than that. However, the 2020 act really strengthens that presumption that all children are capable of giving a view, which indeed they are.

Another barrier for children and young people that we see is access to solicitors, as well as to advocacy services. Depending on where a child lives, they could find an advocate with Who Cares? Scotland if they are care experienced, for example. However, provision can be really sparse if, for example, a child lives in the Highlands, the Borders or the islands, and their access to such services will be quite limited. One of the promises under the 2020 act is to provide an adequate advocacy service to all children who are going through relevant proceedings.

On protection from abuse, which is another aspect of the 2020 act, the act strengthens section 11 of the Children (Scotland) Act 1995. There are already protection of abuse elements in the 1995 act, but the 2020 act furthers those. However, the legislation is not really that helpful for children and young people unless they have access to services, free legal advice and representation when they need it, to enable them to access justice when that is necessary. Obviously, we hope that they are able to access remedies for non-legal rights breaches—by going through regular complaints mechanisms, for example—but children have a right to any form of redress that they would wish and, if they want to consult a solicitor, they are entitled to do so. However, we have children and young people coming through our advice line who understand that they have rights, yet they still cannot get a solicitor due to the lack of availability of legal aid and of specialist solicitors who will deal with children—and the entire process of going through court and seeking legal advice is intimidating.

Those are some of the barriers that we see. In principle, the legislation is great, but, without the policies to back it up, it is not that helpful. It is just words on paper, and it will not really benefit children and young people, as far as we can see.

The Convener: Do any of our other witnesses want to come in on that—perhaps Colin, as legal aid was mentioned a couple of times? A couple of members want to join in, but we want this to be a conversation and not just a back and forth.

Colin Lancaster: I am happy to wait for members if they have points to make.

The Convener: Please come in now, because legal aid has been touched on, and then I will come to Carol and to Holly, and then anybody else who wants to jump in can do so at that point.

Colin Lancaster: Thank you, convener. Some of the points that Rachael and Jamie have made are perhaps indicative of wider issues in relation to the current legal aid system, which no doubt we will come on to talk about. I cannot shed any light on issues to do with implementation of the 2020 act, but, as far as legal aid is concerned, the scope is broad and it is demand led, so there is no structural limitation on what can or cannot be done in respect of implementation. However, if there were a sense that a more planned approach is needed to ensure that services are available, to structure those services in a way that is accessible and to design those services with particular needs in mind, I note that the legal aid system in its current form cannot do that. Again, we might come on to discuss that later.

In looking at evidence that was submitted to this committee's inquiry in the previous parliamentary session and at issues that are flagged in the Government's consultation paper, I can see that there is an appetite to consider a legal aid system that can be more responsive and more proactive, and that is more focused on identifying priority needs in ways that are directed at specific problems, geographies or client groups. The current reactive system has the capability to fund individual cases, but not to design or secure services.

Carol Mochan: What Colin has just said is quite helpful in relation to what I was going to ask. I was also really interested in some of the stuff that Jamie was saying, because people speak to me about advocacy services, in particular, and I want to understand the issues.

Colin Lancaster said that working on that is not within his remit at the moment. What are the barriers in that regard? Is it that we do not have enough people trained, or is it difficult to get people to the right place to deal with young children? Alternatively, is it just that there is not enough funding in the system? It would be useful to know that information, because it would help us to raise that in a cross-party way.

Jamie Speirs: I think that it is a combination of everything that you said, to be honest. Advocacy services are available, but they might have certain criteria. For example, it would be care-experienced children and young people who would be eligible to use Who Cares? Scotland, and I know that Barnardo's also provides some advocacy services. However, the remit of those services is limited in terms of where the child is located. For example, if the child is in a more rural area, there will often not be a service there.

There are not enough advocacy services, and not enough importance is given to advocacy services in general. I am not just talking about the

legal sphere, because children need advocacy when it comes to things like school and healthcare. We see a lot of breaches in relation to additional support for learning, and it would be incredibly helpful for those children and their families to have an advocate to help them engage in that process, because it is a very complex area, as most of these sectors are.

Often, children do not know that they are entitled to have an advocate in some circumstances. I know that legislation restricts the circumstances in which a child would be entitled to have one, but, in our experience, many do not even know that advocacy might be an option. When we go into schools and provide training, we stress the rights that a child has under the UNCRC. We see that there is a wide range of knowledge among pupils about what their rights are, but, when we talk about remedies for redress and mention advocacy services, legal aid or solicitors, they say, "Oh, I did not know that I could consult someone who is not my parent or my teacher."

As I said, the issue is a combination of the factors that you mentioned. One factor is the lack of services. I could not speak to the funding structure for advocacy, but the people I have talked to tell me that funding is an issue, and another issue is a lack of knowledge among children, young people and their families about the fact that they are entitled to express their views in relation to any decision, and that that can involve advocacy.

Carol Mochan: Kyle Scott, can you talk about how young people interact with Citizens Advice Scotland?

Kyle Scott: Naturally, a citizens advice bureau welcomes anybody through the door, whether it is a parent with their kids or, in some cases, children under the age of 18 themselves. With regard to advocacy and so on, bureaux are not able to provide that level of support. We can provide people with information about their basic rights and what they are entitled to, up to a certain point, as we are competent to do. After that, we signpost people to other services.

Depending on where someone is, they might get very lucky and find advocates or legal aid solicitors locally, but we are hearing that there is a reduction in those services. Advocates might have found that their funding has dried up, so they can no longer offer their services, or local legal aid solicitors might not be taking on any new cases at that time. What we often hear is that family and child law cases are so complex that legal aid solicitors do not want to touch them. We print out a list of solicitors that clients can contact but, when the client phones them up, they have no luck with them. When that happens, we try our hand with

law centres, law clinics and referrals to the Faculty of Advocates, if appropriate. In such cases, the journey that those people go through to find representation is long and, at points, dehumanising, and a lot of people feel that they are unable to have any form of access to advocacy. We have been told that that situation is incredibly distressing for children and their parents, but there is only so much that a bureau can do with regard to advocacy and, unfortunately, much like ourselves in the third sector, our lovely colleagues in advocacy spaces are crying out for resourcing and funding to enable us to better support people.

Holly Bruce: It is great to see Jamie Speirs again. I am aware that the Scottish Child Law Centre does pro bono work in Govanhill, in my Glasgow region, and that that is a relatively new project. I would like to hear a little bit about that project. Has it been a success so far, and does it face any barriers? How could it be rolled out to other areas of Scotland?

10:00

Jamie Speirs: Our Govanhill clinic was launched last October, so we have been up and running for nearly a year. The clinic was launched following a pilot several years ago, when we were hearing from people in the Govanhill area that there was a lack of access to solicitors and free legal advice. Govanhill is an area of multiple deprivation and a very diverse community—I think that more than 80 languages are spoken there. There are a large number of asylum seekers and refugees, so it is a very diverse and thriving community. A couple of years ago, following the pilot—before I joined the Scottish Child Law Centre—we did a consultation to see whether the people of Govanhill would like that to be a permanent structure, so that they could come to ask a solicitor a question about child law and get an answer and support with implementing the advice. Overwhelmingly, the response to that question was yes and that the people of that community really needed that service.

In response, we launched our community clinic. I do not work in the clinic—it is our solicitor Jan McCaig, along with a support worker. On Tuesdays, anyone from the community who has a child law or child rights question—or a question relating to housing or immigration that has a child law element—can drop in to speak to our solicitor to get free legal advice. Depending on the matter, our support worker can then help with the implementation of the advice. For example, that might involve writing a letter to a school or making a phone call to the Department for Work and Pensions, and our solicitor and support worker can assist with that, especially where there are

language barriers. We also have the ability to get interpreters, which is obviously a necessity with so many different languages being spoken.

On the themes that have arisen at the clinic, a lot of issues relate to poverty, because Govanhill is an area of multiple deprivation, which prevents people from being able to access legal services. We are also seeing people from diverse communities who have English as a second language and do not know where to start in their legal journey, so we are a very welcoming space. We are centred at MILK cafe, which is a community hub, so it is not like a solicitor's office—it is very homely. Domestic abuse is probably the most common theme in the matters that arise in the clinic. Schools and additional support needs for learning are another top one, because parents just do not know how to navigate those issues.

The Convener: If I may ask you to pause there, Collette Stevenson had a question on domestic abuse, so I will bring her in so that we can get that conversation going—my apologies.

Jamie Speirs: Oh no, that is okay.

Collette Stevenson: I am asking this in the light of the programme for government and the announcement that was made about violence against women and girls and domestic abuse situations. There is a huge gap in relation to the implementation of part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021, so what are witnesses thoughts on that? I would like to hear more about that and what implementation would look like.

Jamie Speirs: It might be best for one of my colleagues to come in on that.

The Convener: I will bring in some of the witnesses who have not spoken yet, but does Paul Reid want to come in first?

Paul Reid: To take the example of that act, it reveals two things that are important for the committee to think about in its work when scrutinising legislation. First, in civil justice, this must be placed in a broader context. Quite often, domestic abuse cases will, in the first instance, appear in a summary criminal court quite quickly after an allegation, and there will be bail conditions that regulate access to children and the like, so substantive civil decisions are taken in a summary criminal context.

The other thing, and this perhaps goes to the point about the committee scrutinising the legislation that it is asked to support or pass, is that I encourage the committee to think about it at the end—that is, how it will work in practice. The 2021 act's aims are important and commendable, but, for those who work in sheriff courts day in and day out, the idea that, on the day following a police

officer issuing a notice, you could get the matter before a civil sheriff is aspirational in many parts of the country, where a civil court is not sitting every day. Those areas that do have a civil court sitting every day will already have a full programme of business. When the committee is presented with legislation, it is important that it thinks about how it will work on the ground, so that we do not have an important piece of legislation that sits unimplemented, because how to implement it is too challenging.

The United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 is in a similar bracket. It is important and it confers a huge number of rights, but it has largely been left to the courts to work out how those rights are implemented in practice. That requires individual litigants—that will bring us on to the point of funding—to take cases through the appellate process so that we have a consistent approach across the country. There is a lag between the laudable work that is done here and in the chamber and that work becoming effective. When presented with legislation, I encourage the committee to interrogate the end point more fully in order to see whether it is ready for the road on day 1 and whether the implementation process is sensible and realistic.

It essentially comes down to three things. First, you have to have availability of justice. You have to be able to find a solicitor, a support worker or an advocacy worker who can support you. Secondly, they have to have access to justice. You have to be able to get to a court and be supported to do so. Thirdly, the justice system has to be efficient because, for example, at stages 1 and 2 you might be told that it will take 18 to 24 months to resolve whether a three-year-old child can have contact with a parent for an amount of time in the holidays, but each child has only 18 summer holidays. If the civil justice system is to take two or three years to sort out where they spend those holidays, there will only be so many magical Christmases. You need efficiency as well. Again, I encourage the committee to challenge legislation on points around availability, access and efficiency, because if such work is not done thoroughly at the start, we are left with things such as the 2021 act.

Sorry, that is a much longer answer than I expected to give.

Collette Stevenson: We have already discussed the fact that the situation is challenging. Kyle Scott mentioned the difficulty of getting hold of a solicitor. In the Social Justice and Social Security Committee in the previous parliamentary session, we heard about difficulties in accessing legal aid in cases that involve financial abuse.

I will put it out there that, as of this month, there is an increase of 13 per cent in the legal aid budget. Will that help in any way, shape or form?

Paul Reid: I do not think that anyone will say that it will not help. It is also a consequence of an extended period during which legal aid rates did not adjust in line with the economy and inflation, so the increase will definitely help. However, it is important to think about the availability of legal aid across the country, so that there are no legal aid deserts where rights are less effective.

The Convener: Your comments about how legislation works on the ground, implementation and its practicalities are points for the committee to reflect on as we go forward; we should consider whether we need to do some short inquiries into legislation that has been passed but not implemented. That was helpful.

Paul McKinlay, what are your reflections on where we are in the court system?

Paul McKinlay: It comes down to the fact that all parts of the system have finite capacity, but one of the biggest capacity issues for the Scottish Courts and Tribunals Service just now is the availability of the judiciary. Business, both criminal and civil, has increased and changed—it has become more complex and takes longer. Currently, we have a number of vacancies across the sheriff courts; we will be advertising for those posts soon through the Judicial Appointments Board for Scotland but, until they are filled—a process that can take a significant amount of time—the capacity to do that work is further reduced.

Going back to Paul Reid's point about the specifics of the 2021 act, I would point out that we did recognise the practical difficulties, and not just with getting the hearing itself; ensuring meaningful participation for people with just a day's notice also seemed very problematic to us. I know that the police are not represented here today, but they have written a letter on this issue that I read in preparation for the meeting, and I think that we would echo everything that they have done with regard to the practicalities.

We are very keen to support these things and make them work where we can—indeed, we have a strong track record of doing so—but that does not come without its challenges. Yes, there are 39 sheriff courts across Scotland, but the vast majority of them are rural and do not sit every day, so what might work in Glasgow or Edinburgh might not work in Stornoway.

The Convener: I will ask Jennifer Paton to respond on behalf of the Law Society and then I will move on and bring in Meghan Gallacher.

Jennifer Paton: Picking up the point about the 13 per cent uplift in legal aid fees, which took effect earlier this week, I would say that there is no question within the profession but that it is welcome. As Paul Reid said, it reflects the long period of underfunding that preceded it, but it is still a very positive step.

However, we hope that we can move away from those kinds of ad hoc fee uplifts. There was a long period of negotiation between the Law Society, the Scottish Government and others before the uplift was agreed, and we would like to move to a more sustainable fee review mechanism. Perhaps we can talk about the issue later in the session, but we think that regular fee uplifts would encourage practitioners to offer legal aid and thereby help address some of the issues that we have heard about today. It would also encourage new people to go into legal aid practice, which is another issue at present, and would create a financial framework that would allow legal aid practitioners to make decisions about their business in a more predictable way. I would just note that point.

If it is okay, I would like to build on Paul Reid's point about the scrutiny of legislation that comes through the Parliament. It raises some important points about making good law, which is something that the Law Society would advocate for. It is necessary for bills that come through the Parliament to match their policy intentions as well as to be clear, accessible, and easy to understand to anyone who might be using them, and committees such as this one play an important role in that respect. I just wanted to underline the importance of good lawmaking.

The Convener: I want to jump in on that. When you talked about good lawmaking, you mentioned ensuring that bills match policy intentions, but do you have any advice for the committee with regard to how we might look at the unintended consequences of good law? How would you recommend that we as a committee try to find those sorts of things, given that they are unintended in nature?

Jennifer Paton: Indeed. It is certainly a challenge, and not one that I would underestimate with regard to the committee's tasks. However, it would be helpful to hear from experts, and not just those in the Law Society—although I should say that they bring a lot of practical experience from trying to apply the law on the ground. However, there is a whole range of other stakeholders who have expertise that can help to highlight such issues at an early stage and allow the committee to consider them.

Paul Reid: Just to add to the point, I think that the other way in which the committee can think about the issue is to challenge what is subsequently left to delegated legislation or left to the courts to work through and testing whether those things really should be left to be worked out down the line, why that has happened and whether they need to be worked through during the passage of the legislation. That is one of the areas that can be tested by the committee when it looks at what comes before it.

Meghan Gallacher: I was struck by what Paul McKinlay said about the challenges that our courts are facing, particularly in relation to vacancies, backlogs and the impact not just on the people in the profession but, of course, on the individuals and the families caught up in the system.

The Scottish Law Agents Society has brought to my attention the issue of delays in the registration of power of attorney. That is quite a sensitive issue, and it can have profound impacts on practitioners, individuals and families, as well as practical consequences, which can be serious if registrations are not dealt with in a good timeframe. There are challenges with that right across the UK. In England and Wales, the delay is sitting at about eight to 10 weeks, but here in Scotland it is sitting at about 14 months. What can we do to overturn those backlogs to ensure that families are dealt with within a good timeframe? What procedures are in place to expedite particular cases in that field?

10:15

Paul McKinlay: As fate would have it, I was at the Office of the Public Guardian yesterday, so that is a timely question. We are actively working in that space. The people who I met yesterday explained to me that, when the Office of the Public Guardian first started dealing with power of attorney, there were 5,500 registrations in the first year whereas, this year, there will be more than 100,000 registrations. That is a success story, because power of attorney is a preventative action and a degree of estate planning, but it places enormous demand on the system.

The SCTS has recently invested in a new case management system for that, which is bringing benefits and speeding up the process. We have increased head count in the area to try to work through the backlogs. Yesterday, I was told that the figure is around nine months, but I would want to confirm that before it becomes part of the record. We are actively working in that space to try to address the issue.

There are also issues downstream. Power of attorney is the first part of the process but, where that is not in place, there can be the need for a

guardianship order. That also requires investment, because the harms to the individual in that space can sometimes be greater, and we are actively trying to work on that.

Fundamentally, the issue is about legacy systems and a need for investment in reform. I could probably give that as the solution in relation to any part of what the court system is doing just now. However, in relation to power of attorney, we have invested in a new system to try to remove some of the legacy work. In future, we hope that that will pay even bigger dividends in terms of the time that is taken to get through the work.

I am not sure of the exact process for expediting cases, but there is a process in place where that is required. If the committee finds it useful, I am happy to write to you to explain what that is.

Meghan Gallacher: That would be helpful. It is reassuring to hear that work is being done and investment is going into that aspect. We do not by any stretch of the imagination underestimate the amount of work that will have to be done to get the backlog down, but it is reassuring to hear that at least things seem to be moving in the right direction. Given the sensitivities and concerns around the issue, I am sure that many families will be thinking about how long they will have to wait to go through the process.

The Convener: I think that Rachael Kelsey wants to come in on that question as well.

Rachael Kelsey: I wanted to come in on a previous question so, if this is not the right time, just say.

I want to pick up on something that Paul Reid said, which is absolutely the crux of the issue. He said that, in the lawmaking process, it is important to think about what is left to the courts or delegated legislation to clarify or explain, for want of a better word. A good example of that in the family law sphere is what is currently being looked at in the cohabitation space. We have a need for further legislation to provide guiding principles, because the current provision, which is from 2006, is too broad and does not give clarity on what it actually means.

We need to consider what happens when somebody is trying to access the rights. We need to think about what people can actually access, how they can access it and who can access it. We need to think about the availability issues and have them retrofitted at the beginning, by thinking about what the provisions would do in real life, as opposed to starting from an aspirational point of thinking that it is a good thing that all children and young people in Scotland know that they can be rights holders under the UNCRC. We need to

consider how that works, what it means at a practical level and what the challenges are.

You have a good example with the cohabitation provision. We are having to revisit legislation 20 years on, which in the family law space is a blink of an eye, because arguably we did not have the same detailed provision that, for example, we had in the divorce legislation that came 20 years before that.

The Convener: Meghan, do you want to ask anything else in relation to that or the power of attorney question?

Meghan Gallacher: My query on power of attorney has now been resolved, and the situation seems to be moving, but I will pick up on Jennifer Paton's points. What she said about the unintended consequences of legislation was interesting, and I am keen to revisit some of that, if we have time.

One of the potential unintended consequences of the Regulation of Legal Services (Scotland) Act 2025 relates to the Scottish Legal Complaints Commission. There are still unresolved concerns about the independence of the SLCC because of its extended remit, and there is also the accountability aspect. Practitioners in the legal profession are concerned about that. What are the panel's views on that? Should we look into it again?

I understand that a consultation is ongoing and is likely to conclude in November, I think. It would be useful to hear the panel's thoughts on where we are now and what they think the consultation could bring around.

Jennifer Paton: I will come in briefly. I have colleagues who are much closer to the implementation of the Regulation of Legal Services (Scotland) Act 2025 than I am, so it might be better if we follow up with those colleagues on the detail relating to the SLCC.

I am pleased that you mentioned the Regulation of Legal Services (Scotland) Act 2025. That bill was scrutinised by your predecessor committee, during the last session of Parliament. We worked hard to secure those very significant changes to legal services regulation, and passing the 2025 act was a huge step forward for justice, strengthening consumer protections and promoting the competitiveness of the legal sector in Scotland.

However, as I think Ms Gallagher's question indicated, it will take a long time to implement the act's provisions fully. It is a multiyear process, but it is of very high priority to the Law Society of Scotland in our public interest role.

I am happy for colleagues to follow up on the specifics of your question.

Paul Reid: My answer is similar. Other colleagues at the Faculty of Advocates have been more closely involved in the work related to the 2025 act, and they engaged with the predecessor committee during its scrutiny of the legislation. If the committee is content, I am happy for the faculty to follow up on that.

Kyle Scott: I am meeting the chair of the SLCC consumer panel at half past 12 or maybe 1 o'clock—as soon as this meeting is done—and hopefully I will be inducted as a member of the consumer panel this time. I am also happy to provide Citizens Advice Scotland's thoughts on the unintended consequences of the 2025 act in writing—particularly in relation to the creation of new powers for the SLCC.

There are some other little things that we consider are unintended consequences, such as charities being able to hire or employ solicitors directly, which we consider incredibly beneficial to the clients of advice-providing organisations. We still have big questions that need to be answered about how that is going to be properly implemented, how it will change our insurance and advice provision and how easy it will be for small-resource organisations to hire a solicitor.

We often hear about the unintended consequences of legislation first, from people who walk through the doors of their local Citizens Advice Bureau. If something is working well, we do not hear about it, which is fantastic. However, when legislation fails people, we hear about it almost immediately. The bureaux and solicitors are the first ports of call when something goes wrong, and they are the first indicators of whether legislation of any kind has been successful or unsuccessful.

Holly Bruce: I want to come back in to ask about the implementation of the domestic abuse protection orders for perpetrators that are in the 2021 act. I heard what you said about the fact that there are not civil courts in every area of the country and that courts are busy every day, so implementation of those orders is not looking achievable at the moment. What would make that achievable?

Paul McKinlay: Probably a change to the timelines, to be honest. It is about more than only the availability of the judiciary, as others have highlighted. The order would have to be served on both parties, and they would have to instruct a solicitor to make sure they could execute their rights. Just now, the timelines are for the next day. It is unrealistic to think that a solicitor could be instructed after 5 o'clock on a Monday for a hearing on a Tuesday or after 5 o'clock on a

Sunday for a hearing on a Monday; that is not how the system works in practice. There are challenges with that. As has been recognised, a change to the timelines would have to be set out, and there may need to be different arrangements in the interim while that happens.

Paul Reid: That is where context is also significant. If the police were going to bring charges for an alleged offence, the person would be in the criminal court the next day, because they would have to be there. Bail conditions would regulate contact with the complainer and, quite often, directly or indirectly, contact with children would be regulated. Putting a civil layer on top of that would necessarily catch cases only for which police have not brought charges, so the criminal process would not have been engaged. To me, it seems quite hard for that process to be done in a day, because there would be a real chance of the accused person saying, "Well, I'm not actually accused—it's a civil notice." You will have sparked a significant process to contain within a day during a court programme that will already be expected to deal with, invariably, child matters, which are scheduled in civil courts and have a certain priority.

Holly Bruce: I will come back on that. I hear what Mr McKinlay is saying about the logistical implications, but the intention of the provision in the law is to save lives. As we have heard, domestic abuse is increasing. In my constituency and in the region of Glasgow, it is up by 51 per cent in just three months. We need to be cognisant of that. Logistics, processes, people's time and how the courts operate absolutely need to be part of how the provision can work in practice, but I do not think that changing timelines would be the correct approach. I think that we need to work creatively in that space to make it a reality.

Paul Reid: The point that I was trying to stress is that, as a matter of substance, it is not just a civil matter; the criminal law context responds quickly and has coercive measures that will be imposed almost as a matter of routine where there is a domestic abuse allegation.

The concern about the civil mechanism must be seen in the context of the criminal processes that step in, whether that is bail conditions or, in exceptional circumstances, remand in custody. That is exceptional, because the Parliament took a view to change the threshold for placing people on remand in custody. I absolutely agree with the importance of the legislation and the intent, but it is important to keep it in the context of the available remedies that already respond quickly if the police have sufficient concern to have brought a charge.

The Convener: I am conscious that Collette Stevenson wants to come in before we move on to Amanda Lindsay. On Paul Reid's point, and to

offer assurance to everyone in the room, there have been early discussions within the Parliament about how we work across committees. The committee would want to reflect on how we are going to interact and work together with the Criminal Justice Committee where there are criminal and civil matters. This might be a very good issue to start with.

Collette Stevenson: Holly Bruce pointed out that there has been an increase in domestic abuse. You can criminalise more behaviour, but civil protection for women and children who are impacted is at the heart of it. Part 1 of the Domestic Abuse (Protection) (Scotland) Act 2021 does not allow for the civil protection of removing someone from a home. Although you are saying that the police can get involved, civil protection has to be available as quickly as possible to try to eradicate violence against women and children.

Paul Reid: I agree. I sit as a part-time sheriff, although I am not speaking in that capacity. Almost as a matter of routine, a provision that someone shall not enter a property, a street, or even a town would be attached to bail conditions or, at least, would be sought by the Crown when there is a domestic abuse allegation. That exclusion from the home can be achieved. That is an example of why it is important to look across the range of the law and identify where we need to escalate because part of the process would not work. That involves the cross-discipline discussion that the convener mentioned.

10:30

Kyle Scott: On Collette Stevenson's point, I note that our bureaux are seeing more cases of women fleeing domestic abuse than ever before, and we know from colleagues at the lovely Scottish Women's Aid that it is the same for them. The women who are coming in may not have gone to the police because they do not feel that they can or because the police do not believe them. Regardless of that, they still need civil protection, so they are coming to our bureaux or Scottish Women's Aid.

The crux of the issue is access to a legal aid solicitor. I will tell you the story of Mariah, who visited her local citizens advice bureau in the north of Scotland. Mariah is a victim of domestic violence and she decided to flee for her own safety and that of her 12-year-old son. She and her husband were legally married and he has finances and resources to employ solicitors, who have been advising them, but that client was left with nothing. All the marital property was left behind—two properties from the marriage, which have an estimated value of nearly £300,000. Our client has no access to those without legal assistance. No solicitor would take her on without payment, and because of the assets

she cannot apply for benefits that would help her to apply for legal aid. Even though the assets are attributed to her, there is no way that she can access them without the assistance of a solicitor to do so.

As things stand, Mariah has the dilemma of having assets that are regarded as capital, which bars her from legal assistance, but which she cannot access without that legal assistance. We therefore have a very vulnerable woman who has suffered at the hands of an abuser, whom she is genuinely afraid of, but the abuser has recourse to the law, which has entitled him to retain all the assets and left her with nothing.

Our bureaux are doing whatever they can to help women such as Mariah to find the justice that they rightfully deserve. Under the current measures on legal aid eligibility, we are seeing a lot of women being excluded from that. We have heard of civil cases involving domestic abuse where the abuser is the opponent and they have been notified by SLAB that their victim is applying for legal aid and been invited to comment on whether that is appropriate.

On civil protections and how they are working out, they leave a lot to be desired in relation to how we treat women. I understand the need for due process of the law and suchlike but, when a woman comes into a bureau and says, "I am a victim of domestic abuse", we are going to believe her and we are going to try to find her the support and help that she needs. It would be nice if other civil protections tried to follow that example.

The Convener: Thank you, Kyle. That is a really important demonstration of what is happening on the ground. Obviously, the committee has to try to strike the right balance in trying to balance everything.

Colin, I am conscious that there was mention of Scottish legal aid. I am also aware that Amanda Lindsay wants to come in. However, as it is 10.33, we will take a five-minute comfort break. We will then come back and delve a bit further into Scottish legal aid. That will set us up for our next area of discussion.

10:33

Meeting suspended.

10:41

On resuming—

The Convener: Thank you for coming back, members and guests. We will move to our next area of questions, and I will bring in Amanda Lindsay.

Amanda Lindsay: I want to touch on something before I come to my main question about eligibility. Although the 13 per cent increase in fees is welcome, from my reading of the previous committee's report, I understand that a legal aid solicitor has to go through quite an onerous bureaucratic process in order to get paid. The report mentioned the need for a lot of hours' work by back-office staff to make claims. To what extent is that a barrier, and is that something that this committee should also consider?

The Convener: I will come to you on Scottish legal aid, Colin Lancaster. We might want to consider other areas, too, but I will come to you first on that and any points that were raised previously.

Colin Lancaster: I will touch on Ms Lindsay's question and then go back to what Kyle Scott said before the break.

On accounts assessment, it is a feature of the legal aid system, in the regulations and the fee tables, that, in many types of cases, we require detailed accounts. That is because the fee tables require us to pay on the basis of individual items of work, whether that is letters, telephone calls, meetings, travel time or waiting time in court. All of that needs to be set out in order for us to be able to assess whether the taxation standard, which, again, is set out in the legislation, is met, in relation to whether those charges are reasonable and necessary and whether the work has been done with due regard to economy. Those aspects are baked into the regulations that we have to operate under, and that absolutely places a burden on the profession and on us with regard to our assessment of those accounts.

That contrasts with some areas of legal aid, where we have block or fixed fees. For example, in summary criminal legal aid, the vast majority of cases are paid as a single block fee to cover all the work undertaken in the case. That is literally a tick of a box to confirm that the matter is concluded and that the full payment can be made, with little, if anything, in the way of supporting information. Therefore, the amount of work involved in claiming fees is very much a feature of the type of regulations that govern the process. There have been some improvements in that over the past few years, as a result of regulations that have been introduced to Parliament. Three years ago, the solemn criminal legal aid system was converted into a block-based system, which has led to significant reductions in the bureaucratic burden associated with claiming fees in those cases.

Members might be aware that, last year, there was a consultation on taking a similar approach in relation to adults with incapacity. That was not supported through the Government's consultation,

and, as a result, the regulations were not brought forward. However, there remains significant potential to look at different areas of legal aid practice and to try to identify whether having standardised fees would be a far more straightforward and less bureaucratic way of ensuring consistent and quick payment and minimising the administrative costs for everybody concerned. I absolutely recognise the issue, and it is one that we are keen to see resolved, as regulations can be brought forward.

10:45

With regard to the discussion that we had before the break on domestic abuse, the case study that Kyle Scott highlighted is of considerable concern. I think that Ms Stevenson's committee in the previous parliamentary session carried out an inquiry into the financial barriers that people encounter when leaving abusive relationships, and, as part of that inquiry, there was discussion around the financial eligibility arrangements for legal aid. We gave evidence to that inquiry, and similar themes also came up in an inquiry held by your predecessor committee last session.

Some of the issues that were brought to the committee's attention previously were ones that we sought to clarify in our evidence, including follow-up written evidence. The issue of trapped capital, for example, is one that we are able to take into account. Although it is a general statutory requirement for us to notify the opponent when any application for civil legal aid is granted, there is an exception to that where grounds are established for that not being appropriate in the circumstances. We would see any application in relation to domestic abuse falling into those circumstances, and, as we have previously highlighted, the application itself includes the facility to advise us of that. We have instituted a revised procedure internally where we will proactively seek to identify anything in the material submitted that would indicate a domestic abuse situation, and we will proactively contact the applicant to check whether we should be notifying the opponent to ensure that it is not just the solicitor who can bring that to our attention. We will seek to identify that for ourselves.

More generally, we also published updated guidance on means assessment in domestic abuse situations, specifically with regard to trapped capital or, indeed, issues relating to evidence of finances. We are aware that, when somebody has had to leave the home, it might be entirely unsafe for them to seek to obtain the evidence that we would normally require to verify eligibility. Again, we can, at the outset, remove that condition with regard to verification in such situations.

Amanda Lindsay: The consultation asks about extending legal aid eligibility to groups such as charities or community organisations. I understand that, currently, legal aid is generally granted to individuals and that there is a means and merits test. What, in your experience, would be the main risks if public funding was to follow an organisation's priorities rather than those of a single client?

Colin Lancaster: It is a really interesting area, and one that came up in the previous inquiry. The legal aid system is fundamentally individually focused. In other words, what underpins the application is the individual applicant and their individual circumstances, and the eligibility tests that they are also subject to.

There might be a gap when it comes to groups, but it is not necessarily a simple question of extending the current arrangements to groups. We might want to look at different sorts of arrangements in that respect. It might be that it is a matter not just of a direct application being made for legal aid, as in an individual case, but of looking at the work of the group itself, whether it is wider in scope than an individual case and therefore whether another form of funding might better support that organisation's work, which might include the taking of individual cases.

Obviously, it would be for Parliament to consider what conditions in relation to, say, financial eligibility might be put on that, given that a group is clearly not an individual and given that the existing regulations are entirely structured around an individual's ability to pay for their own legal advice. That question looks very different when it comes to a group, whether it be a group of individuals involved in group proceedings, which I think you might want to talk about later, or an organisation that might be representing a client group in a more abstract sense. There are challenges with regard to bolting something on to the existing structure, as it is fundamentally about individuals.

As for certain gaps—I am thinking of, say, environmental matters—it might be more a matter of supporting the work of organisations more generally through a grant funding arrangement instead of looking at individual cases.

Amanda Lindsay: Thank you.

The Convener: I am conscious that Collette Stevenson, who has been name checked, wants to come in, and I will then bring in Fulton MacGregor if he wants to ask about legal aid generally.

Collette Stevenson: I dealt with Colin Lancaster in the previous parliamentary session in relation to the challenges and forms of financial

abuse, and I am aware that legal aid is still to be reformed. In relation to how the committee scrutinises that, what would you like to see come out of that?

Colin Lancaster: Are you talking about potential legislation or the reform process more generally?

Collette Stevenson: Reforms, legislation and policy.

Colin Lancaster: We are keen for the legislation that the Government is committed to and that it mentioned in its programme for government to be wide ranging and strategic in nature. Many of the discussions that took place in the previous session were about the nuts and bolts of the system and their impact in practice. Many of those nuts and bolts were defined 40 years ago, and some of them were borrowed from provisions from between 50 and 70 years ago, so the system was designed for a different place and time.

There was no real thinking about everything that we now appreciate in relation to the way in which people might experience problems, how those problems might intersect, the barriers that people might face in taking action, how people seek help, how public services are designed and delivered, user needs and the flow of work. None of those issues can be accommodated in the current tightly defined legal aid system, which has various rigid and specific rules and regulations.

As I said, we want the legislation to be strategic in nature. At its core, it should be about demand-led judicare provision, because that is really important, but we should also consider other ways of funding, providing and delivering services to ensure that they can be directed at and designed around identified needs. We should ensure that, when gaps are identified, something proactive can be done to address them, rather than having to make arrangements using the broad measures on eligibility, fees and scope in the current legal aid legislation and hope for the best, which is what is required under the current system. If people can access those arrangements, the system is there for them. However, if they do not fit into the particular boxes that have been defined, the system cannot do much to respond.

It will be for other people to decide which committee should be the lead committee when the Government introduces the bill, but I would urge that committee to consider the bill strategically by thinking about what we know now and what we can anticipate potentially happening in the future, so that we build a system that is not tied to a particular place and time but has the range of tools and capabilities that we might need to respond to evolving needs, some of which we cannot anticipate.

Thirty years ago, we did not anticipate the scale of the current need for legal aid in relation to asylum and immigration cases, we did not anticipate the extent of the involvement of legal aid in mental health cases, and we did not anticipate that cases of adults with incapacity would comprise more than half of the applications for legal aid in any given year. It was a different world. The legal aid system was about family law and personal injury. It is not anymore, but the system still looks like it used to look. We should take that point on board and think about what the system needs to be able to do in the future, not what it needs to do, to the nth degree, right now.

Collette Stevenson: That is really interesting.

The Convener: I will bring in Fulton MacGregor, but I know that a number of the witnesses want to come in.

Fulton MacGregor: Given that this is a round-table discussion, I was going to start a conversation and hear the witnesses' responses to the Scottish Government's consultation. That conversation has already started, but, as a politician, I will still take the opportunity to contribute. I heard Colin Lancaster's responses to the questions from Amanda Lindsay and Collette Stevenson, and the witnesses have given a balanced overview of some of the possible provisions in the consultation. I am just wondering about the thoughts within the profession on the consultation. Colin, I will start with you and then maybe bring in others who have an interest in legal aid reform.

Colin Lancaster: I cannot speak for the profession; Jennifer Paton and her colleagues will be happy to do that, I am sure. Before the consultation was launched, we were already undertaking various stakeholder engagement events. Some of those events brought together third sector providers, whether from the advice sector or law centres, and private practice solicitors to discuss the range of funding tools or approaches that might be possible in a reformed legal aid system. It was a really valuable process. We got really good feedback about the relative strengths and weaknesses of different ways of funding and delivering services and a fairly strong appetite for a mixed model came through from that; not just a mix in terms of some services being grant funded and others being delivered through the judicare case-by-case system, but a mix in terms of some services doing both and those different funding models complementing how they delivered their services.

At the moment, the legal aid system is very heavily judicare based and there is significant scope for it to develop more down that mixed-model route, where you take a strategic view on

what priorities Parliament or ministers want to be met and ask whether they are being met at present and, if not, what can be done to better meet those priorities. It is about asking what tools can be used to do that in terms of that combination of judicare services, which are delivered by hundreds of solicitors up and down the country, and specific services in relation to particular topic areas, particular client groups or particular geographies. It is about how they can be seen together as part of a strategic whole rather than the system being largely reactive to not only demand—in terms of how that is expressed by people who are in need and are seeking advice—but the decisions that individual solicitors make every day about which cases to take on as part of their business planning. For example, if they do not have capacity for the demand that they are seeing, they must decide whether to expand that capacity—whether they want to do that and whether they think that it is worth their while to grow their businesses to accommodate more of the need that is there. If the aggregate view is that people do not want to do that, that leaves gaps, and there needs to be some other way of recognising those gaps and then filling them, which is not really what the system does at the moment.

As I say, we got positive feedback about that combination of approaches. On the consultation itself, a number of the principles that are set out there in terms of the judicare system—looking at simplification, consistency, and reducing that bureaucratic burden—are absolutely ones that we would support wholeheartedly. How exactly one does that is obviously a difficult question to answer. None of those systems developed by accident. All the rules and regulations that we have were created for a reason, at a particular point in time, to respond to a particular challenge that was being faced. Unpicking all that has to be a careful exercise so that we do not throw the baby out with the bath water but there is definitely a lot of support for those general ideas of simplification, greater consistency and less bureaucracy.

The Convener: Kyle, you have been waiting patiently, so I will come to you next.

Kyle Scott: I appreciate it, convener. I will try to give one combined answer to Collette Stevenson and Fulton MacGregor's questions.

The legal aid bill represents a brilliant opportunity. As much as I can sit here and slate where the issues are stemming from—where we are seeing gaps and people harmed—legal aid in itself is a success story. It has helped so many people throughout this country to access justice and realise their human rights.

I totally agree with what Colin Lancaster said—it has to be a strategic bill but it also has to be, at

its core, preventative in nature. I will provide another wee example from the bureaux. Several of our lovely bureaux are funded by SLAB's grant-funding mechanisms to provide in-court advice and lay representation. That is mainly done through a housing stream to support people at risk of eviction. Every time that we successfully support someone who is at risk of eviction, we prevent them from being homeless and all the trauma that comes with that. Again, I cannot put a number on it, but preventing a homelessness application saves local authorities a pretty penny. That is the preventative side of things: if we can get in early and support someone, that is all the better for everybody involved.

11:00

There is a flipside, too. Through our citizens advice bureaux, although we cannot provide legal advice, we can do everything else. Our wraparound service deals with debt, employment and welfare issues. We can do as much of that as possible, including providing representation at tribunals. The point is that, when it comes to SLAB funding, some of those success stories that show how people are being helped are missing from our reporting.

We can say how many people we have seen and supported, but that does not tell the human story of the success of legal aid. I think that we are missing that aspect. Yes, it is a bureaucratic nightmare for the profession. However, we would like to sing its praises more, both for our grant holders and, frankly, for ourselves, because it helps so many people. That aspect is largely missing from this discussion.

Perhaps the legislative proposal provides a good opportunity to drive home how successful legal aid is not only for the people it is intended to help. In the context of public service reform, there is a strong push for services to save money, become more efficient and so on. There is something in any legislation, particularly legal aid legislation, that can contribute to that. Some legal aid cases save money in the long term. As Colin Lancaster said, the cases are increasing in both type and complexity. Simple procedure is no longer simple, as our advisers like to say. Those cases can lead to detriment if they are not sorted out nice and quickly.

The proposed bill could be significant in improving access to justice outcomes. Legal aid is, in its own right, essential. It is working for some people, but it does not work for many others. The bill represents a chance to get that right. That will happen only if it is strategic and flexible enough to deal with demand five or 10 years from now, which is not currently the case.

The Convener: I will come to Paul Reid, and then Jamie Speirs and Rachael Kelsey. I appreciate that everybody wants to speak on this issue.

Paul Reid: I agree that legal aid must be considered at a strategic level, and that is where I come back to the need for the availability of justice, access to justice and the efficient administration of justice. That is what the legal aid system should be seeking to secure for those who rely on it. Before the suspension, Kyle Scott's example showed a system that failed on each of those counts. It was not available, people could not access it, and it was not going to be efficient.

Efficiency has two dimensions. One is how quickly the court can deal with a case. The other is ensuring that people have representation where they should have it, whether that is to help them reach agreement, to understand the limits of a process or to reduce the burden on the judge or sheriff of helping them to navigate the process, so that the case can be dealt with more expeditiously. Kyle's point is that there is a broader saving by having a well-funded and efficient justice system, which requires a well-funded and efficient legal aid system.

My second observation is that the legal aid system has to keep up with the time. It is person centred, but that dates from an era where the rules on standing were person centred. Groups generally could not bring proceedings, and there certainly was not group litigation. It probably was not permissible for a community group to challenge a planning decision, for example, rather than an individual. The system must keep up and reflect that the court has expanded access to justice and its rules on standing. However, the financial resources do not sit behind that.

The third point is to illustrate the issue with an example. The most recent Scottish appeal to the Supreme Court raised an issue concerning the relocation of children under the Hague Convention on the Civil Aspects of International Child Abduction. It is a case that necessarily raised a point of law of general public importance, and that is why the Supreme Court agreed to hear it. The respondent in that case could not afford representation but did not qualify for legal aid, so she was represented only because the lawyers that acted for her were prepared to do so on a pro bono basis.

It is plainly in the interests of justice that the respondent was represented, and it is in the court's interest to have the full argument on a point of general public importance. However, it cannot be correct that a system can have a case that is identified as having broader public interest—and sufficiently important to trouble the Supreme

Court—but not ensure that both parties have professional and paid-for representation.

I have two final observations. We have heard about the system and how it works. As I understand it, the very first statutory provision for legal aid anywhere in the world was enacted by the predecessor to this Parliament in 1424, and it required someone to establish that they did not have sufficient resources and that they had a reasonable cause of action. If that was the case, they were entitled to legal representation. Nothing seems to have changed over 600 years. There might be a schedule of fees and the like, but that insight—which, as I understand it, was the first statutory intervention in the world—should still be the fundamental point of the system.

My second observation is something that was written just over 80 years ago in a debate about legal aid reform in the 1940s. Legal aid was described as

“a service which the modern state owes its citizens as a matter of principle.”

The author continued that it is just another vagary of life,

“such as unemployment, disease, old age, social oppression, etc.,

and so the state should protect the citizen when legal difficulties arise, arguing that the responsibility to provide that protection was, arguably, stronger, than it was to provide other protections, because

“The State is not responsible for the outbreak of epidemics ... But the State is responsible for the law.”

Not much has changed since 1424 with regard to the basic principles, and if we have a system that is available, accessible and efficient, there will be broader societal benefits, too.

The Convener: The point about access to justice is made by a range of organisations on a range of topics—Colin, you have referred to what legal aid initially looked to achieve and reflected on where we are now and what is being asked of that system.

It is really helpful to go right back to where we came from in order to look at where we want to go and how this committee can help to ensure that that happens—which takes us back to the point about good laws and making good law.

Jamie Speirs: We, along with many other organisations, would welcome a legal aid reform bill. The consultation process should be done with the legal sector but also with the third sector and, in particular, law centres, which provide such a vital service to the general public and, in particular, those affected by the legal system.

Obviously, in my case, I am going to stress the needs of children and families, but it is the duty of lawmakers to consult children—not just children who are easily accessible, but a wide range of children and young people who are affected by the justice system—and to obtain and seriously consider those views when forming the legislation.

We are supportive of legal aid for organisations. We can see it being useful for a point of principle that we or another organisation would specialise in. If we are working with a person who feels unable to raise an action on their own, whether that is because they are a vulnerable person or, in particular, a child—as far as possible, we would not want a child to be engaged in the court process—it would be really beneficial for organisations such as ours to be able to get legal aid. That would allow us to move into the representation sphere to help fill that gap, particularly for the most vulnerable people, such as children and families.

The Convener: Thank you. That point is coming out a lot in our conversations, but, just for assurance and for everybody who might be watching the committee, we have two further round-table evidence sessions—one on equalities and one on human rights—and I have no doubt that access to justice will come up during those meetings, too. It is really helpful to get this grounding just now.

Jennifer Paton: Thank you—I am keen to come in on legal aid reform. We are now working towards a legal aid bill, which we were pleased to see included in the year 1 legislative programme that was announced earlier this week. As others have said, that is a huge opportunity and one that we absolutely must make the most of.

The things that we would most like to see—our key asks for reform—are around ensuring that access to justice is at the heart of the system, as others have highlighted, as well as reducing complexity and bureaucracy in the system, as Colin Lancaster highlighted, while retaining the wide scope of legal aid, which is a huge advantage of the system in Scotland. We want to retain the mixed model, which Colin touched on. There is work to be done on the specifics of what that looks like, but the mixed model is really positive and includes judicare, and it has publicly funded private solicitors at its heart.

It is important to build a system around trust in solicitors. It is also important that SLAB has the powers that it needs to effectively carry out its role and that the bill future proofs the system for years to come. As Colin identified, things have moved on a lot over the past 10 to 20 years, and we can anticipate that they will move on in future.

Those are all really important issues. However, by itself, legal aid reform at primary legislative level will not fix all the issues. I made a point earlier about adequate resourcing and a sustainable fee review mechanism. That is an important point that feeds into the wider reform discussion.

To go back to the point that Ms Lindsay made about the work that solicitors have to do at the moment to get paid for their work, we hear a lot about that from our members and about their frustration with the complexity and bureaucracy of the system. Work can definitely be done to address that in the context of discussions around the bill. However, work can also be done on the processes, and we are working with SLAB to address some of those procedure issues, where improvements could be made that do not necessarily need legislation.

I will briefly come back to the point about block fees. Block fees certainly have a place, but we quite strongly opposed the introduction of block fees for adults with incapacity cases when that was consulted on. There were a few reasons for that, but one of the main ones was that block fees do not always reflect the different circumstances that clients might find themselves in or the different ways in which solicitors might have to assist their clients in those situations. There is also obviously a question about what fee level is attached to the block fee, which feeds into the resourcing point.

With adults with incapacity cases in particular, we are talking about situations in which a court makes decisions about who can make quite wide-ranging decisions on behalf of an adult who cannot make those decisions themselves. That is obviously a very vulnerable group in society, so we need to ensure that we have robust safeguards for that group and that solicitors can do their job effectively when they are supporting either the people who make the applications or sometimes the adults themselves, who might oppose those applications. Block fees have a place, but they are not necessarily the answer in all circumstances, and we did not think that they were the answer in adults with incapacity cases.

The Convener: I will go to Rachael Kelsey.

Rachael Kelsey: This might not be the time, but I want to come back to a point that was raised before the break and follow on from something that Paul Reid and Ms Stevenson said about domestic abuse in civil matters. I do not know whether it is helpful to segue away from legal aid at this juncture. I am happy to do whatever works best for you, convener.

The Convener: The floor is yours. No one has indicated that they are looking to come in. Once you have done that, I will go to Paul McKinlay to float the idea of AI and courts. That is just a heads-

up in case anyone has any questions or responses on that.

Rachael, the floor is yours, so please go ahead.

11:15

Rachael Kelsey: I was going to pick up again on the distinction that Paul Reid made between the civil and criminal regimes, as it is particularly important when it comes to domestic abuse. As Ms Stevenson said, there are very much issues of financial abuse that we as a country need to be thinking more deeply and worrying about.

I will come back to where you started, convener, and your point about unintended consequences and thinking about the work that the committee will be doing in the coming session. I would say that domestic abuse in a civil sphere provides a really good example of the benefits of the kind of interrogation that this committee can carry out when looking at matters in a broad sense. Civil remedies in domestic abuse cases are a good example of one of the problems with a system that has grown incrementally—very much as the legal aid system has, as Colin Lancaster said, where we have a mishmash of different provisions in legislation that are not easy to access and are probably not fit for purpose in the current age.

The work done by the Scottish Law Commission has been very welcome indeed, and it is thinking about how we deal with, say, technological abuse, immigration abuse and economic abuse. I understand that it is hopeful that there will be a final report on civil remedies and a draft bill coming up early next year, and that work will result in our having for the first time a definition of domestic abuse in a civil matter, as distinct from a criminal context.

Going back to Paul Reid's point, that will mean that we can take a proper look at how we might have a system that is accessible. At the moment, we are looking at and having to cherry pick little bits from multiple pieces of legislation. That is, frankly, difficult for us as practitioners to deal with and is, I suspect, almost impossible—if not impossible—for those who are self-representing and/or where there are access to justice issues, because the person in question cannot readily access legal advice. I probably do not need to say anything else about that.

Just to round off this thinking about unintended consequences, I would suggest that there is another issue that you might want to stick a pin in, if it would be useful. I can highlight some really good examples of the dangers of our looking at things on a stand-alone basis—for example, the minimum age of marriage. Obviously, that has been referred to as part of today's agenda, but it might go beyond the scope of what we have time

for today. I can certainly come back to you on that from the perspective of unintended consequences, if that would be helpful.

The Convener: Thank you. I am seeing nods from Paul Reid on that crossover between the criminal and civil regimes. I would also say that we in the Scottish Parliament have an absolute duty to work across portfolios, too.

I know that I said that I was going to come to Paul McKinlay, but I wonder whether Paul Reid wants to add anything else on that specific point.

Paul Reid: Just to agree with what Rachael Kelsey said. On the issue of the accessibility of the law, I would say that it is, at points, almost impenetrable to those of us who are thoroughly trained in it, and that the rule of law is meant to be accessible to all citizens, not just legally advised citizens.

The Convener: Staying within our remit, I want to move on slightly to ask about digital and AI strategies. It is fair to say, again, that AI is seeping into a range of committees across the Parliament, but I certainly think that it is important that we discuss the issue and at least open up the debate on digitising court processes and the increased use of AI in that respect. What are the benefits? What are the potential risks? I would be keen to hear not just from Paul McKinlay but from Kyle Scott on his organisation's point of view with regard to individuals and the use of AI. I would like to get a response from both sides on the matter.

Paul McKinlay: No problem. I suspect that Kyle and I will have similar experiences with regard to users in this regard.

For the past decade, the strategy in the SCTS, particularly in civil justice, has been to have digital end-to-end processes. We have taken massive steps forward in that respect, partly driven by the pandemic and the need to have online hearings. We now operate a paperless system for civil cases, and paperless systems come with the ability to use AI agents for things such as document ingestion and automation of manual workflows and low-value tasks, which creates capacity.

The best use case that I can point to is a pilot that we have run in the all-Scotland personal injury court, in which we have seen massive increases in business. We use AI document ingestion to allow parties to lodge their papers in a way that suits them. They can still design their writ in the way that they did before, but they send it in through the civil online system and it becomes part of our case management system and journey using an AI agent. That saves a lot of staff time and work duplication.

On other things that we have looked at, we are now close to having transcriptions in a usable format in both civil and criminal cases. We ran a successful pilot for people who wanted access to their criminal case transcriptions in sexual offences cases. It was a way of making that process more effective and quicker, but it also works for civil cases in which there has to be a transcription for the purposes of a record and for appeal.

One of the big use cases, although it is probably not something that the SCTS would develop in isolation, is allowing interpretation and translation in court. There are similar use cases in other jurisdictions, too. It is becoming increasingly challenging in Scotland to secure the services of interpreters, and, away from the court process, we can see various use cases: solicitors taking instruction, organisations such as Citizens Advice trying to speak to people, and its use in social work departments. The national health service is the biggest user of interpretation services in Scotland, so that is a lot to do with it.

The issue for the SCTS and for all public bodies is that it takes pretty significant investment in the technology to make the use of AI work and to keep it running. We are running various projects to try to do that, but a lot of it comes from our own internal funding, and we recognise the pressures and challenges on that. However, we see the potential for transformation in that space. We do not expect AI to replace jobs, and we are very keen to point out that it will not be a decision-making tool or a judicial decision-making tool—that is not really a matter for the SCTS, but we are having ongoing discussions about it. The judiciary see it as a useful tool for things such as transcription, document ingestion and summaries, but it will not in any way, shape or form replace judicial decision making any time soon.

The Convener: Where do you see the potential risks?

Paul McKinlay: Interestingly, the potential risks are not around the use cases that we have now. We have noticed a real push from our service users to use AI in the submission of documents, including not only documents that the SCTS processes for its own purposes—things such as customer complaints—but legal documents such as writs, actions and motions that are lodged. The problem is that such documents might have the appearance of competence at first flush but they are often lengthy and we do not have the ability just now to do anything other than use our existing processes to interpret them. When a 150-page legal document comes in, we still require the administrative support to read it through and try to make sense of what it is. There seems to be a change, which has been very noticeable in the

past year or so, with people now turning to AI as their first port of call for legal advice and assistance and then going with it. However, AI is not often gifted with ability and it leads to unintended consequences for the user, in particular.

Kyle Scott: I appreciate that, Paul. We have lots to say about the digitisation of court systems—and all public services. We see it primarily when people who are very digitally excluded come to our bureau and need help to access a range of things. It could be for help to access their universal credit journal or, in the winter months, to get a warm home discount. Since the digitisation of the courts commenced, we are seeing more and more people coming through our doors every year for help with accessing online hearings. That is across the board, and we welcome the fact that the SCTS is in the process of developing a digital strategy. We have engaged with the SCTS on how best to support people in that process.

It bears reminding members that, when somebody comes to the bureau and says, “I can’t access my online hearing—how do I do this?”, it is a case of our adviser having to sit down with that person for a good few hours to explain to them how to get online, with all the safety aspects that go into that process. In a nutshell, it can mean teaching them what an email address is and about online safety, never mind helping them to get set up in a room, teaching them what a laptop is and showing them how to access their online hearing.

Colleagues across Government have probably used Webex since the pandemic started. That is a very unfriendly service for its users, and its use has always been pointed out as a point of failure. Clients and their advisers find it hard to engage with.

Our bureaux are, in essence, forced to offer a confidential room in which people can access their digital hearings, which takes hours out of the adviser’s day. It is a matter of fact that a lot of people do not have—and are not being offered—an alternative way to access their hearing.

I have a story here from Mark, who begged his local court to provide him with an alternative channel to engage in a simple procedure, but he was forced to use the normal procedure. When he told the sheriff that he was not digitally savvy and did not know how to use the civil online system, he was told that he would not be able to continue if he made any mistakes in the process, so he had to receive support from the bureau just to attend the hearing.

With any digitised service, we always ask for alternative channels, because we should think of folks who cannot access digital services for whatever reason. We have heard that, for folks who can use such systems, they can work well.

Some advisers in our bureaux somehow like Webex and have enjoyed supporting people to access online hearings, but that is a matter of personal preference, so it is a mixed bag.

Specific support is needed for people who are digitally excluded and those who could be digitally excluded at any moment. That support should look like alternative channels of access, whether they be in person or written.

I am pleased that the SCTS is pushing on with its digital strategy. We have had really good chats about what digital inclusion looks like and how we provide it. We should bear in mind that digital exclusion is a problem not only for the SCTS but for all public bodies that offer digital services.

The Convener: There are benefits and potential risks.

Paul Reid: I will make three points. First, the digital process is definitely a benefit. I remember a judge being in a civil hearing in Edinburgh and then having to drive to Glasgow to start a trial, which was delayed until 11 o’clock because the civil process was physically in Edinburgh and could not leave the building. For procedural hearings, that judge would now be able to join online from Glasgow. That is definitely a benefit.

However, we must be careful that the digital process does not necessarily lead to digital hearings, because there are substantial advantages to in-person hearings. The conversations that routinely take place among lawyers and the parties before hearings just do not take place online. Such conversations are an advantage to the justice system, because that is how things are resolved, how issues are narrowed and how agreements are reached, so people not being in the same building has a detrimental impact.

From a client perspective, particularly when emotive decisions are taken, there is the issue of someone clicking an end button and then sitting in their room with no one else there. If someone is physically in court, their lawyer is still there and services are available. Therefore, we must be very careful about creating a system in which in-person hearings are not available either when appropriate or when sought.

My two other observations are about AI. There are two strategic questions to think about. First, what role should AI play in civil justice? The question is not whether it plays a role but what role it should play. That has to be worked through. The justice system must be careful to go at a pace that society accepts. Society might come to accept or tolerate some routine decision making being done by AI. Society might accept parts of judgments—the summary of evidence, for example—being

prepared by AI, but it might not. People might think that the judge having to write that summary reassures them that they have heard, thought about and understood the evidence. The role that AI plays will depend on what society accepts, because public confidence in the integrity of the justice system is essential to the rule of law, so it cannot be compromised on the basis of efficiencies.

My second point on AI is that we must work out how civil law responds to it. How should administrative law respond to the increased use of automated decisions or AI-produced reasons? Reasons are generally required to satisfy the parties in court that someone has thought about the issues and come to properly reasoned decisions. If reasons are generated by AI, how should the law deal with that strategically? We do not have an administrative court or dedicated administrative judges, so are we talking about the preferences of one of 34 Court of Session judges? How can we get a strategic view without cases going to the appeal court, with the associated costs? That takes us into funding issues and so on.

From the committee's perspective, it seems to me that there is a role for the Parliament in thinking about how civil law responds to AI and the extent to which, as a society, we would accept it in decision making, because society's view on that, as opposed to the views of judges and the profession, is a legislative question.

11:30

The Convener: Thank you for that. There are a lot of questions there, but the nub of it is about what is acceptable across our society, which is a really important question.

Collette Stevenson: To go back to what Paul Reid said, we need to be careful when we are scrutinising the issue. If we are using AI in the courts, surely people in the courts should have access to that or should know that AI is being used and agree to that. Basically, there needs to be a level of transparency.

Paul Reid: There has to be transparency, because we have to have public confidence in the justice system. We cannot lose that public consensus through progress or technology. It seems to me that that is primarily an assessment for the legislature to make, as opposed to the lawyers, judges or others in the profession.

The Convener: Paul McKinlay, do you want to come in?

Paul McKinlay: I should say that, when Sir Geoffrey Vos gave the Judicial Institute for Scotland lecture this year, he made that exact point about validity.

The SCTS does not represent and cannot speak for the judiciary—there is a clear demarcation there. Our use of AI at present is really for administrative functions, and we are relatively transparent. If something has been prepared—such as a transcription—we can point to that and say that that is the case, and that is what we do. There will be information on the document ingestion piece, which is quite a small piece. However, there are two separate points, one of which is more fundamental than the other.

Holly Bruce: I would like to comment on that. There is the digitisation element, which I absolutely agree needs to happen. I am pleased that Kyle Scott highlighted the number of people who are not digitally enabled, as that is really important, especially because many hearings need to be done in private. Some people cannot do that in their homes or in a public library, so thought needs to be put into that. On AI, however—I am not going to lie—I am very nervous about the thought of AI being used in our courts. Paul Reid referenced, as an example, judgment summaries, although he did not show support for that. To me, that is really unnerving. We have in our papers comments from Lord Reed about judicial independence. To me, that would not be judicial independence; it would bring in robots and AI and other aspects of what we could say is politics. We need to be careful about where AI is used in court proceedings. I know that we have just started the conversation, that only a few examples have been given and that this will not be the end of the conversation, but I want to put it on the record that I am quite nervous about that.

The Convener: Thanks for that.

Just so that everybody has had a chance to speak, I will bring in Carol Mochan in a moment, if there are any areas that we have not covered, although we have covered a range of issues.

I am conscious of the time, but, on that specific point, we hoped to touch on judicial independence and the rule of law. The President of the Supreme Court recently stated that, although

“Populism responds to real problems”,

it can undermine

“support for judicial independence.”

Do you agree with that analysis? The AI question is a space where we can discuss the role of independence. We will not come to any conclusions, but it is one to touch on, reinforcing the point that Holly Bruce has just made.

Does anyone want to come in? Jennifer Paton, is there anything from the Law Society of Scotland on that? Alternatively, Jamie Speirs, Rachael Kelsey or Colin Lancaster can come in—anybody who would like to can jump in.

Jennifer Paton: Do you mean specifically on judicial independence and the rule of law?

The Convener: Yes.

Jennifer Paton: Unsurprisingly, the Law Society of Scotland recognises that the rule of law is a fundamental principle of a functioning democracy. Obviously, the independence of the judiciary and the independence of the legal profession are crucial to that, and they need to be recognised and protected.

I am not sure that I want to say too much specifically about the issues around AI that we have talked about and how those link with judicial independence, but there are big issues there that we and our members—like everyone else—are grappling with. We need to think about how we ensure that, going forward, we promote and protect the rule of law and use those new and emerging technologies and tools in a way that is safe, ethical and effective in the context of legal practice. That is all that I will say at the moment.

The Convener: Does anyone else want to come in on this topic?

Kyle Scott: On the rule of law, citizens advice bureaux play a crucial role in informing and educating the public about their rights and helping them to navigate processes such as those that apply in relation to public bodies that are more powerful than they are. From the perspective of CAS and bureaux throughout Scotland, we think that the rule of law needs to be strengthened, that the underlying principles of access to justice and equality before the law should be at its core and that there must be accountability when people have been treated unfairly or their rights have been violated.

Today's discussion has shown where the rule of law could be strengthened. It is fundamentally important that legal reform leads to meaningful change for people. On top of that—the committee will come on to this in a matter of weeks—I believe that a human rights bill for Scotland could be transformational, not only in enabling people to access justice and to realise and maintain their rights, but for the rule of law itself. In that way, we will ensure that everyone can directly experience the rule of law and have those rules and laws respected, so that people's rights are not just written on paper but are enforceable in practice.

The Convener: I think that Paul Reid wants to come in.

Paul Reid: The faculty should probably say something about this. Like the Law Society, we stress how important the rule of law is and how significant it is in a democracy. A number of years ago, Lady Hale put it this way:

"Democracy values everyone equally even if the majority does not."

Unpopular minorities come in various shapes and forms, and their having their rights protected invariably comes down to an independent legal profession representing them. Ultimately, those rights are protected by an independent judiciary, quite often in the face of a majority that has strong views about whether the rights of an unpopular minority should be protected. That is really important, because the judiciary is the final safeguard against the tyranny of a majority.

Lord Reed touched on that recently, and I think that it has practical consequences for the work that the committee is considering. We must take care when it comes to the role that we want our judiciary to play in a more political—with a small p—sense. As we have seen with the devolution settlement and the Human Rights Act 1998, the judiciary make decisions that challenge the majority view more often. With devolution, they can challenge the settled will of this Parliament by reference to external factors.

If that role is to be expanded, proper education needs to be provided on why the role of the court is fundamental and why it is important that a judge steps in to protect the rights of a very unpopular individual, contrary to the wishes of the majority, and restraint needs to be exercised by political figures who are disappointed or frustrated by judicial decisions. There is an appeal court to deal with the disappointment, and, no doubt, you have your friends and colleagues to deal with the frustrations.

It is notable that Lord Reed made the point about how often the reaction is to the outcome, rather than the reasoned decision. We must remember that judges never make a whimsical decision; it is always reasoned. As a society, we often hold inconsistent views about judges, viewing them simultaneously as an out-of-touch elite who are frustrating the will of the majority and as the only solution when we call for a judge-led inquiry to sort out the thing that the politicians were trying to sort out when they passed the bill.

I have two final points to make. It is conspicuous that a vacancy on the US Supreme Court is headline news in the United Kingdom, but changes in the UK Supreme Court barely make the print media, let alone the broadcast news. We should be zealous in protecting the fact that we have a judiciary that does not attract the attention that it attracts in other democracies.

Reference has been made to Lord Reed's speech, but I commend "The Rule of Law" by Tom Bingham—modestly titled, as Tom Bingham is the former senior law lord Lord Bingham—which is

very accessible and beautifully written. He says that

“belief in the rule of law does not import unqualified admiration of the law, or the legal profession, or the courts, or the judges ... It does, however, call on”

all of

“us to accept that we would ... much rather live in a country which complies, or at least seeks to comply, with the”

rule of law

“than in one which does not.”

The judges, the lawyers and the law are not immune from criticism and should be challenged at points, but that has to happen in a context that respects the fact that, without, in particular, having independent judges at the end of the line, you do not have a democracy. They are not undemocratic, and they are not unaccountable; in fact, they are the ultimate protection of a democracy.

I might be on a little bit of a faculty soapbox, but I think it important that we say those things out loud.

The Convener: Thank you for that. It is always helpful to have a suggested reading list. Perhaps, over the session, we can build up a library, and our colleagues from the information centre can keep us right.

Colin, did you want to come in on that point?

Colin Lancaster: Just very briefly, convener, and it might connect what Paul Reid has just said with Ms Stevenson's earlier question about what we might want this committee, and the Parliament, to do about legal aid in this session.

One of the questions in the Government's consultation is on the purpose of legal aid, which I think is conspicuous by its absence from existing legal aid legislation. It exists as a thing, but there is, if you like, no guiding principle behind it. As a result, when we consider what it should support, and how it should support it, that guiding star is not there, and it is important that it is built in.

We can talk about whether the purpose of legal aid is to support access to justice, but underpinning that is, I think, its support for the rule of law. Indeed, that is a key component in making everything that Kyle Scott and Paul McKinlay have talked about a reality, and one of the things that the Parliament should consider when looking at any legislation in this area is how effective it will be in supporting the rule of law.

The Convener: Thank you.

Carol, did you want to come in on any points? I thought that I would invite you in if you felt that there was anything that we had not already covered.

Carol Mochan: No, I do not think so. On the points that people have been making about the rule of law and the independence of the judicial system, what I have noted down is the ability for everybody to have access. What we need to work on are the issues that have been raised about making these things accessible to everybody.

I would also share the view that there are places where AI might be useful, but when it comes to people's individual right to the law, we, as legislators, need to be very clear about what we mean by that in order to help the judicial process.

The Convener: Yes, I have written down a note about transparency of systems, which I think is a key issue.

Do members have any other questions? I was hoping to take this evidence session until about quarter to 12, so we still have a few minutes left. I was going to invite Kate Nevens to ask some questions, but do any committee members have anything else that they want to ask?

Holly Bruce: I just wanted to deviate slightly from some of the questioning to ask about an issue that is based on my experience of working with Queer Families. It is a family-specific law question about parental rights within the LGBTQI space and the parity with heterosexual couples. Is there any parity in Scotland? Are there any gaps in that respect in our current legislative system?

The Convener: Rachael, I do not know whether, as a family law specialist, you want to touch on any areas in that respect.

Rachael Kelsey: There are gaps, and I think that we have got better at identifying them in recent years. I am trying to think of any immediate gaps that come to mind—I should, no doubt, be able to tell you off the top of my head exactly what the issues are.

Interestingly, when I act for LGBTQ individuals, I find that a lot of the issues are not about specific legal provision not being there but about accessibility, education and people not being able to navigate the legislation. There is also the issue of accessing advice.

11:45

I started out 20-odd years ago and I worked a lot with LGBTQ individuals when there was still a significant degree of disenfranchisement in those communities. Happily, that does not exist to the same extent any more. There were a lot of issues about education and practical access to the court system where there were concerns about privacy and so on.

There are some particular issues around parentage. That is one of the main areas. There are issues about recognition of parentage at an international level and the ability to port parentage from one jurisdiction to another. I was involved with some work that was done on that recently with the Hague Conference on Private International Law, but that is not going to go anywhere for the time being.

The main area where there are still significant challenges for LGBTQ individuals is probably recognition of parentage. Happily, there are fewer issues in relation to financial matters or the breakdown of relationships, whether people were cohabiting or married or in a civil partnership. Those are the obvious things that come to mind.

The Convener: Thank you for that. Jamie, I invite you to add briefly to that. As I said, I will then bring Kate Nevens in. Having said that we had time, I think that we are now in danger of running over, so it would be helpful if you could be brief.

Jamie Speirs: Absolutely. This comment is from my personal experience as a family solicitor. One of the barriers that I see is that there is still a lot of prejudice in the judicial system against LGBTQ couples and individuals. It can be quite blatant from solicitors and I have seen it from sheriffs as well. Further education in that sphere would be helpful.

The Convener: Thank you. We have discussed the importance of the rule of law, and that topic may come up again in our other round-table sessions so that we can explore it a bit further.

Kate, you are welcome to ask any questions that you wish. I note that any member of Parliament is entitled to attend any committee and they may ask questions if there is time.

Kate Nevens: Thank you, convener. I have a question, although I am worried that it might be a bit too big. It is great that Scotland provides legal aid to people with no recourse to public funds, but I wonder whether there are any challenges in ensuring that such people know that legal aid is available in relation to different issues that they might be facing. Are people working on that?

Kyle Scott: Thank you for the question. Citizens advice bureaux across Scotland are seeing significant rises in the number of people with no recourse to public funds who are seeking a legal aid solicitor, primarily in relation to asylum and immigration casework. Where there are barriers, they will eventually come through our door to try to find a solicitor. One of the major barriers is the reduction in available solicitors that provide immigration and asylum services, which is most notably felt across Glasgow and in Edinburgh but is likely also to exist across other parts of Scotland.

Where possible, there are really good links between citizens advice bureaux, local organisations and law clinics and law centres in order to get people the legal support that they need, but our advisers have noticed a stark drop-off in the number of available solicitors and the levels of support that the solicitors who are available can offer.

I spoke to our lovely colleagues at Parkhead citizens advice bureau about that issue. When I started at CAS seven years ago, I did my shadowing there. When a person with no recourse to public funds was looking for a legal aid solicitor, we used to print off four double-sided A4 pages with details of every solicitor that they could access locally. When I spoke to Parkhead CAB at the end of last year, I learned that we can now get them on one side of A4. It is not just about people's awareness of the solicitors and of accessing legal aid; it is about the dwindling supply of legal aid solicitors. That is why we are talking about the need for reform.

The Convener: Colin, I will bring you in, and I will then have to wrap up the discussion, I am afraid.

Colin Lancaster: The market is very concentrated in this area, and it always has been. Our analysis suggests that 90 per cent or more of the casework that is undertaken in this area under legal aid will be done by fewer than 10 firms. That is due to the nature of the specialisation that is required. Traditionally, that work has been geographically concentrated in Glasgow. We know that that is a challenge in relation to, for example, the position in Aberdeen, but that has certainly been the case historically.

I also note that those firms will be stretched in terms of capacity because of significant increases in the volume of work over the past few years. However, one of the beauties of the legal aid system is that it can expand to cope with that. As a result, our expenditure in that area has increased, and we anticipate that continuing, particularly if what is currently proposed in relation to appeals processes and Home Office clearing of asylum backlogs happens. We would expect to see that capacity being stretched for some time to come.

The Convener: Thank you for that.

That concludes our round-table discussion. If you suddenly think of any other points that you should have raised, please feel free to get in touch with the committee clerks, who will ensure that the information is passed on.

It has been a wonderful and really insightful discussion for the committee, and I hope that you all enjoyed it. Thank you for your attendance.

We will move into private session to consider the remaining items on the agenda.

11:51

Meeting continued in private until 12:25.

This is a draft *Official Report* and is subject to correction between publication and archiving, which will take place no later than 35 working days after the date of the meeting. The most up-to-date version is available here:
<https://www.parliament.scot/chamber-and-committees/official-report>

Members and other meeting participants who wish to suggest corrections to their contributions should contact the Official Report.

Official Report
Room T2.20
Scottish Parliament
Edinburgh
EH99 1SP

Email: official.report@parliament.scot
Telephone: 0131 348 5447

The deadline for corrections to this edition is 20 working days after the date of publication.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot



The Scottish Parliament
Pàrlamaid na h-Alba