The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 16 April 2013

Session 4

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EDUCATION AND CULTURE COMMITTEE
11th Meeting 2013, Session 4

CONVENER

*Stewart Maxwell (West Scotland) (SNP)

DEPUTY CONVENER

Neil Findlay (Lothian) (Lab)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Clare Adamson (Central Scotland) (SNP)
*Colin Beattie (Midlothian North and Musselburgh) (SNP)
*Neil Bibby (West Scotland) (Lab)
*Joan McAlpine (South Scotland) (SNP)
*Liam McArthur (Orkney Islands) (LD)
*Liz Smith (Mid Scotland and Fife) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Annette Bruton (Care Inspectorate)
Lawrie Davidson (Care Inspectorate)
Campbell Deane (Bannatyne Kirkwood France & Co)
Stella Everingham (Association of Directors of Social Work)
Anna Fowlie (Scottish Social Services Council)
Mark Griffin (Central Scotland) (Lab) (Committee Substitute)
Rt Hon Lord McCluskey
Pete Murray (National Union of Journalists Scotland)
Eamonn O'Neill (University of Strathclyde)
David Sinclair (Victim Support Scotland)

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 1

Scottish Parliament

Education and Culture Committee

Tuesday 16 April 2013

[The Convener *opened the meeting at 10:02*]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): Good morning. I welcome members and the people in the gallery to the 11th meeting of the Education and Culture Committee in 2013. I remind everybody to ensure that all electronic devices are switched off—in particular, mobile phones.

Agenda item 1 is to consider whether to take item 6 in private. Do members agree to do that?

Members *indicated agreement.*

The Convener: Thank you. I welcome Mark Griffin to the committee as substitute for Neil Findlay, who has sent his apologies.

Taking Children into Care Inquiry

10:03

The Convener: Item 2 is oral evidence in our inquiry into decision making on whether to take children into care. We have to date had a considerable amount of written evidence, so we now move to the phase of taking oral evidence. We published prior to the Easter recess an interim report that asked a number of particular questions of the Scottish Government. Over the coming weeks, we will take oral evidence from a number of witnesses.

I welcome to the committee Annette Bruton, who is the chief executive of the Care Inspectorate, and Lawrie Davidson, who is its head of inspection, criminal justice and young people's services; Stella Everingham, who is head of integrated children's services at Scottish Borders Council, and who is today representing the Association of Directors of Social Work; and Anna Fowlie, who is the chief executive of the Scottish Social Services Council. Good morning to everyone.

If you do not mind, I will begin with a question that has arisen from a number of visits that we have done and people we have spoken to—in particular, young people. At issue is the length of time for which they have been left before being taken into care. The majority of people we spoke to who had been through the care system expressed to us that although they had been identified as having been in neglectful situations, and social work and other support services had become involved—sometimes through schools and sometimes not—and despite identification of a particular problem, they had been left for many years with little or no improvement in their position. The reason for their eventual removal from the parental home was their behaviour rather than the neglectful situation in which they found themselves and in which they had been for a number of years. Can you please try to explain to us why that seems to be a common experience for young people who are going through the care system?

Annette Bruton (Care Inspectorate): Thank you for giving us the opportunity to come along and speak to the committee. I do not know whether this will explain the situation—it certainly will not excuse it.

We have observed that one of the contributory factors in the length of time that it can take for a young person to be taken into care is often that there is a particular incident or episode in which there is an intervention by the professionals, and an assessment around that particular incident or episode, and when the intervention has laid to rest

the perceived problem, there is a drawing back from the family again.

We have observed that where professionals—particularly multiprofessional groups—take a longitudinal view and look at the sum of the parts rather than just at the most recent episode—quite often the episode in itself is not enough to take a child into care—as children do themselves when they look back, the pace at which children are given the support that they need when they need it can increase. We have seen a bit of improvement in that sense and have observed that more holistic and longitudinal assessment can make a tangible difference.

Stella Everingham (Association of Directors of Social Work): This probably goes to the core of how social workers work with families, because social workers focus on helping and supporting parents in their parenting task. There is in social workers quite often a sense of optimism that there is the capacity for families to make changes, and that the parents will make changes. Social workers work alongside families, looking for change; they will see some incremental change and improvements, and will keep working.

However, they are not necessarily, as is sometimes acknowledged in the profession, seeing enough of the all-round picture of what is going on in families. If they did, they might start to think "Well, maybe this isn't good enough." However, there are then difficulties about framing grounds for going to a sheriff on neglect, for example, which are much more difficult than incidental grounds—there is more clarity in respect of getting evidence around an incident. To get evidence around neglect requires consistent long-term assessment, which can be much more problematic.

There is also the tension between parents' rights and children's rights, because there is a focus on wanting to support the parent and on wanting to ensure that they can achieve. The parents themselves are quite often well intentioned, so it is about how we can identify whether their parenting capacity is going to be good enough. I think that there is a sense in the profession that we are quite often overoptimistic, because if we were not and did not really believe in change, we would not be doing the job that we are doing. However, that overoptimism sometimes lead us down the route of seeing change and thinking that it will stay, so we then move out of families—as Annette Bruton said—only to come back to them later and find that things have slipped right back, because we have not understood whether parents had the capacity to make a change permanently for their children.

The Convener: You will not be surprised to hear that the phrase "overoptimistic social workers" is not new to us in this inquiry.

How can we change the system? How can it be improved and be made more akin to what young people who go through the system expect or have a right to demand?

Anna Fowlie (Scottish Social Services Council): I will make a brief comment on that. It would be helpful to look at timescales from the child's perspective. Timescales can feel to adults like just a short time; as we all know, time passes more quickly as we get older whereas, for a child, three months or six months is a very long time. We need to change people's awareness so that they think of the child's perception of time rather than about adults' perception of the timescales of processes.

The Convener: I agree; I am sure that that is true. However, the kind of timescales that we are talking about are not related to a child's perception of time but to actual time. We are talking about four years up to more than 10 years between initial contact from professionals to eventual removal of children from the home. In all the cases that we have heard about—although this might not be the case everywhere—we were told that the reason for removal was the extent to which the young person's behaviour had broken down. That is nothing to do with the point that you make. I put that on the record simply because it is an important point for us to address.

Annette Bruton: I will make a point that is linked to my first point. We have seen some practice that seems to be making a difference. When a child has been monitored for a significant length of time—they might be on the register, they might be being considered for the register or they might be being looked after at home—it seems to make a difference when the social worker who undertakes a case review takes a longitudinal view. When their manager reviews the case with them, that seems to create a bit of pace in the decision-making process.

However, a practice that we have seen recently is local authorities and their partners bringing in independent people to chair case reviews. That seems to be making a significant difference, because it brings a fresh pair of eyes to proceedings. I agree with Stella Everingham that optimism is a positive thing, as well as sometimes being an inhibitor to social work professionals. It can sometimes help to get a fresh pair of eyes, in the form of an independent reviewer, to look at a situation from a different perspective long before the children's panel stage. That is a piece of good practice that we have highlighted recently.

Stella Everingham: In some of the developments around getting it right for every child, real steps forward will be made in giving social workers the tools that they require. We have new risk-assessment tools that are very helpful, and which need to bed in. We are starting to use chronologies much more effectively. When we look at an issue such as neglect, chronology is extremely important and is to do with identifying all the issues in a child's life. A chronology provides the longitudinal view that Annette Bruton mentioned. Instead of just saying, "There has been an incident today," a chronology makes it possible to see that the same incident occurred the previous year or that the most recent incident happened in the context of what happened previously. That is helping us; social work is becoming much more conscious of the usefulness of chronologies.

I know that the committee has heard in evidence that health and education professionals often feel that they understand what is going on in children's lives and try to tell social workers about it, but that social workers indicate that the thresholds are not met. The much more integrated assessments that we are starting to do are much more effective at bringing in such agencies' perspectives. We might previously have taken the view that a particular incident did not reach the threshold. Perhaps it did not, but perhaps the life of the child concerned as seen through the eyes of the classroom teacher or of the health visitor is much more to do with the long-term eroding effect of the lack of nurture that we know is a consistent factor in neglect cases.

I genuinely think that the change that we are starting to see in the way in which people are doing assessments is having an effect. That change is not radical—multi-agency assessments have always been undertaken—but assessments are now much more integrated. They involve the various partners understanding one another's views and taking a longer-term perspective of children's lives. Although that will start to improve practice, it comes back to having skilled professionals who know what they see. We can give people the best risk-assessment tools in the world, but unless they are good professionals who know how to use them and who understand the nature of the evidence that they see, assessment will not improve.

The Convener: I have a final question before I bring in Liz Smith. A difficult issue is particular factors that might be seen—certainly on the surface—to lead to neglect. I am talking about alcohol misuse, domestic violence and drug misuse. I know that we want to deal with all cases individually and to treat every child as an individual, but is it unreasonable to use such factors as part of the evidence when we consider whether we should go in earlier or more often, instead of ignoring them and dealing with every case on an individual basis? I know that that is a difficult question from the point of view of stereotyping people, but given the correlation between neglect and those factors, is it unreasonable of us not to take those factors into account?

Stella Everingham: In the Children's Hearings (Scotland) Act 2011, which will come into force soon, some of the grounds are very specific. For example, if a child is living in a family in which domestic abuse, drugs and substance misuse or alcohol abuse are potentially taking place, those things are viewed as factors and are grounds on which we can start to gather evidence.

10:15

As we said in our submission, every case is different. The ways in which alcohol impacts on families might differ, but that does not mean that we should not take that factor into account. If we see a multiplicity of such factors, we start to get really anxious. We will look at the situation and say, "We need some really good evidence that those factors are not having an impact", rather than approach it the other way round. We would not do it by numbers—for example, adding up four of those factors so that they come to 10, and then taking the child away. That is not how we look at the situation, although we certainly view such factors as being significant.

Annette Bruton: When we inspect children's services, we look at exactly how the risks are identified and whether they are taken into account. We believe that they should be taken into account in the decision-making criteria, although not by themselves.

In our submission, we have presented some of the findings from our second round of child protection inspections, which are due to be published in the next few weeks. One thing on which we will report is that, where professionals and experts are working with adults in a family to address drug and alcohol addiction, sharing information with children's social workers seems to make a difference. However, we will also report that we are disappointed in how slow those two separate services have been in developing joint plans for families.

We believe that, although there is a much better attitude to information sharing in that area, there is potential for more joint working between the services that support parents with drug and alcohol addiction problems and the services for children. It is right that children and adults have separate social workers because they have different needs, but we would like to see a faster joining-up of those endeavours.

Liz Smith (Mid Scotland and Fife) (Con): The ADSW states clearly in its submission—Stella Everingham has repeated it this morning—that such cases are enormously complex, and that if we are going to get the right answer we must deal with each case by addressing its own complexities. However, that highlights the biggest issue that the committee faces in handling the problem: a number of those who have given evidence to us, including local authorities, have said that they want much more consistency in the decision-making process throughout Scotland. The two things do not quite go together. Where should the balance lie? Should we focus on one particular aspect?

Stella Everingham: The two things are not mutually exclusive. If we train professionals to understand the nature of their task and what they are looking at, they should start to come up with similar answers when faced with instances of similar circumstances.

I hope that there would, if we were to have a room full of experienced social workers working on a case study, be a high level of consistency among them on the issues on which they were focusing. I think that we can move forward with that approach.

The lack of capacity for keeping experienced, qualified social workers on the front line bedevils most of what we do. People who have a number of years' experience and are prepared to stay are like hens' teeth. In my authority, we are currently facing a real struggle to get people who have been qualified for a number of years. We get newly qualified workers who are very enthusiastic, but they do not have the appropriate level of expertise. People need to work through a number of cases to begin to understand—as was mentioned—the level of consistency in what they are seeing.

We can give people tools to do that. For example, we have a tool in the Scottish Borders—I am sure that a lot of other authorities have similar tools—that focuses on keeping our children safe. It outlines the thresholds at which social workers undertake certain interactions—there are thresholds for child protection and for concerns about wellbeing. Development of that nationally would be helpful so that we can work together. However, if we want consistency, we need to train people to a very experienced level, with more emphasis on national training programmes. There is a child protection certificate that people can work towards, and there should perhaps be an emphasis on getting people to do that so that there is a consistent approach.

Liz Smith: Your written evidence mentions that there being insufficient experience is

"influenced by the fact that there is no professional or financial advantage for social workers to remain in this field".

What must we do to ensure that that can be reversed?

Stella Everingham: That is a difficult question. Many local authorities had opportunities to do that, but through single status they found it a real struggle to identify people along a scale of doing different things, because we are talking about the sort of consultant social worker who remains on the front line. If we look at job evaluation schemes, they do not come out very well from that. The changing lives programme was very clear that we should look at the autonomous practitioner and at being able to develop people who can stay on front-line practice. Maybe a discussion needs to take place with ADSW on how we can influence our local authorities on understanding that.

There are other factors. It is a very demanding and difficult job to stay on the front line, with the nature of cases such as we have been talking about and the distress that people deal with. Publicity in the media is not helpful. When the baby P issue hit, social workers took a real blow. We lose people from the profession and people in the children side of social work say that they do not want to stay there and will go and do something else that is not quite so much in the front line. I am not sure where in social work they would go where they would not be so much in the front-line, because that is becoming much more of a factor.

The support that can be given to the profession and children and families social workers is a factor. In Scotland, that support has been much more effective, up to this point, than it has been in England, although more could be done to support the profession. It is certainly helpful when there is political support behind what is being done.

Liam McArthur (Orkney Islands) (LD): To go back to Liz Smith's point about consistency, Stella Everingham, as someone from the Scottish Borders Council, is probably familiar with the argument that I get in relation to Orkney, which is that as a smaller council it is not that you are not dealing with many of the same issues, but that you are not dealing with them at the same level. Is there a consistency issue that is more a reflection of the size and scale of councils and social work operations than it is a reflection of the individual decisions that individual social workers make?

Stella Everingham: I have worked in Shetland and London; the issues are the same, although the scale might be different. Scottish Borders Council might have fewer resources than, perhaps, the department in Glasgow; our office might have two child protection cases coming in on an afternoon, and I have only one social

worker, but in Glasgow there might be five or six cases coming in and they have three social workers. What we see is very similar.

Some bigger authorities can support workers more effectively because they have better structures. On the balance of whether volume will overwhelm, there are critical factors about resources. Cities can sometimes develop better resources—for example, families can walk to a volunteer drop-in centre. If I have got somebody up a track in the Ettrick valley, they are not going to be able to do that. There is an issue about how people can access services.

The development of services has to be based around the nature of the community and what we can do. That does not have a massive impact on decisions about when a child comes into care. There are individual practitioners whose thresholds will be developed by working in particular environments and that is why good supervision is required to ensure that people are constantly checking out how they make decisions.

Liam McArthur: The message that I get from some constituents is that were they in Edinburgh, Glasgow or even Aberdeen or Inverness, they would be less likely to have come to the attention of social work than is the case in Orkney, simply by dint of the fact that they are in a community of 20,000 as opposed to one of half a million.

Stella Everingham: Communities have different tolerance levels, so one community might see something and expect agencies to do something about it. However, all children go to school and have general practitioners, so the nature and coverage of which professionals are going to be seeing children and raising concerns are very similar. Communities will be different because of visibility.

Neil Bibby (West Scotland) (Lab): I want to ask the panel about training issues. The centre for excellence for looked-after children in Scotland recently described a lack of understanding and assessment skills displayed by social workers in decision making. How can we improve training among social workers in those areas?

Anna Fowlie: I cannot avoid answering that question, because the SSSC regulates training of social workers. The social work degree will have been in place for 10 years next year, and we are about to review it. The review will address consistency in decision making, which we have just been discussing, and which was one of the drivers for reviewing the degree. One key element is around assessment, with measurement and quality assurance against the standards in social work education that the Scottish Executive introduced in 2003.

Assessment is absolutely key. People are trained in assessment while they are at university. They get the tools, the knowledge and all the stuff around assessment. Then, they go to a practice placement and they have to operate in that world. They are assessed during the placement on their assessment skills. When they return to the learning environment, they are encouraged to reflect on that. The degree process involves assessment skills, reviewing skills, gathering evidence, risk management and all the stuff that goes together to inform a good assessment. Assessment is one of the key strengths that social work brings to the multidisciplinary context of child protection and looked-after children's issues.

As Stella Everingham mentioned, and as we have just been discussing, the assessment process and the decision-making process are not just down to social workers, although they play a key part. Increasingly, other people's assessments are being integrated into the process. Psychologists, teachers and early-years professionals—who, until recently, were never considered as part of the process—are now very much part of it. Children and parents are also contributing. It is important for all those people to be heard.

The social worker is the one who is best trained—usually—in using assessment skills, which are included in the degree. The degree has been in place only since 2004, and a lot of work is required with people who have been in the profession for longer so that they can maintain their skills. Councils and other employers of social workers carry out that work regularly.

Supervision forms a key part of assessment. It involves talking to people regularly about why they have made decisions and why they have arrived at their views in the assessment process. Reflection is an important part of learning, and it is particularly embedded in the social work profession. Referring to the decision-making process, it is needed for children's panel members, too. They are not doing assessments, but they are assessing assessments, in effect. They need to understand the process and the importance of speedy, good decision making.

We cannot underestimate the impact of children's panel members, and I suspect that, when local authority representatives were discussing inconsistent decision making, they were referring to panels and sheriffs. Work needs to be done with those people, too—although that is not my territory, so I will not stray into it.

Annette Bruton: I will pick up on one point that Anna Fowlie has just made about assessment needing to come not just from social work professionals. They have key skills in assessment, as Anna said, but teachers, for example, are

giving better assessments than they gave in the past. Traditionally, teachers would have said something about the child's attendance and behaviour, as a minimum. As part of our children's services inspections, we are raising the bar on what we expect to see from the teachers, health professionals and community learning development workers who work with a family. It is a matter of their contributing and discussing their experience of the child's wellbeing; it is not just about the things that are easy to measure. Potentially, that makes the assessment process more complex, if also potentially richer. That goes back to the convener's question about how we can speed up action where it needs to be taken.

The point about social workers being good at assessment is well made, but that in itself will not do. In our inspections, we will be looking to see that everybody is contributing effectively to the assessment process and not just holding in their head the things that they think are broadly relevant; normally, for example, teachers would just comment on behaviour and attendance in schools.

10:30

Neil Bibby: I think that there is a consensus that increased and improved training is needed in those areas, but we know that multidisciplinary decision making is varied across the country. Obviously, lots of professionals are involved in the decision-making process in relation to children in the system. Is there a need for improved training broadly across the spectrum or should it focus on any specific areas or professionals? For example, does a health visitor need as much increased training as a teacher?

The Convener: Before that question is dealt with, I will read out a quote from this week's *Times Educational Supplement*.

Anna Fowlie: Is that from me?

The Convener: Yes. On the training of social workers, you said:

"We don't have the kind of standards you would get in a Scandinavian country, but we are ahead of the rest of the UK in relation to enforcing qualifications and trying to drive up standards."

Anna Fowlie: I was referring not only to the training of social workers but to the qualifications of people working with children in care.

The Convener: Given that quote and Neil Bibby's questions, perhaps you could expand on that.

Anna Fowlie: We are the only part of the UK that is looking at qualification-based registration for the whole of the social service workforce. Wales and Northern Ireland also have, for example, qualifications for residential childcare workers, but we have led the way on that and we are developing, as commissioned by the Scottish Government, a degree-level qualification for people working in residential childcare. All the evidence—it is why the decision was made as a result of the national residential child care initiative a few years back—is that children who are with people with qualifications have better outcomes. The qualification makes a difference, whether that is in early years services, residential childcare or wherever.

Our register is based on that approach—having qualified workers means having skilled and confident workers, too. Obviously, we are not involved in other areas or professions that were mentioned. However, there is a clear need—it has been recognised, I think, through the work on the common core skills, GIRFEC, integrated assessment and all the work that has been going on for years—for all those professions to have more and better training, particularly on child development, and on assessment and decision making.

The common core skills will make a difference, but we need more multidisciplinary training so that the words used mean the same in the same context, because the language that is used is different for different professions. People have different tolerance levels and expectations and they come at it from a different world view. The more people are training together, the more that separation of world views can be broken down. That is important.

Neil Bibby: I have one last question. The SSSC's written evidence referred to the proposal to move from two Scottish vocational qualification awards to one. Why do you support that? Obviously, I understand the reasons behind merging the two, but is there a danger that, by moving from two specialist awards to a general one, that specialism is being diluted? Is that a concern?

Anna Fowlie: We will take that into account and ensure that that does not happen. The proposal is about breaking down silos, so that, for example, people who work in early years services are not looking at education rather than children and that people who work in other services who are looking at the social or health aspects of a child, look at the child as a whole. That is important. Therefore, the SVQ should cover all those aspects. People have to meet a level—there is no way that the qualification would be diluted to the extent that you would be fearful of. They must meet specific standards and we will ensure that they meet those standards.

Liam McArthur: I want to tie up Liz Smith's question and what Neil Bibby has been pursuing

with the attrition rate that Stella Everingham referred to. Is there any indication about whether the training that is done through the current or revised qualifications will address the attrition rate, or does more need to be done on continuous professional development to deal with that problem, rather than up-front or multidisciplinary training?

Stella Everingham: The route for social workers beyond their qualifying training is not as well defined as it should be. In the ADSW, we quite often discuss how we get experienced professionals who can develop their skills.

Risk assessment and assessment are grounded in understanding not only the use of evidence and information but child development. There are many added things that social workers cannot necessarily get in their degree course. They get a lot but, when they graduate and start to practise, they realise that it is complicated. The course is much more generic and then they focus in on a particular area.

In Scotland, social workers can do a certificate, a diploma and various other things, but not everybody gets the opportunity to do them. We are not consistent enough in ensuring that social workers get those opportunities. We need multi-agency training, but we also need confident professionals who are able to know what they see.

In Scottish Borders Council, we try to ensure that all social workers who have done two years get to do the child protection certificate. We do not particularly go beyond that, so we are not paying for many people to do the diploma. That is a real shame, because there are people who should go on and develop.

A much stronger pathway for post-qualification development would help.

Mark Griffin (Central Scotland) (Lab): I will ask about training, support and guidance from Government. A number of key skills are listed in the "National Framework for Child Protection learning & development in Scotland 2012". The list includes the ability to analyse, appraise, identify, evaluate, reflect and review. The skills that the Government identifies are good, but do social workers have time to reflect on and review cases before the next urgent case lands on their desks?

Stella Everingham: They do not necessarily always have that time. In the social work profession, one of the skills that people learn is to juggle lots of things at the same time, prioritise constantly and see what is important. Social workers have their cases, as they are called, in which they try to work consistently over a long period, but urgent things come in. That is the balancing that social workers do.

You will have heard about the mystical process of supervision. Supervision is critical. It is the period in which social workers stop doing all those things and, with their managers, reflect on where they have got to, think about the decisions that are being made and talk about their ideas. If you think about human behaviour, you see that we are all subjective. Social workers are trying hard to take similar decisions in each case and not think, "I don't like that case." It is about being able to apply certain principles to cases, so supervision is critical. Of all the things that social work needs to protect, the most important is the capacity for social workers to take time to reflect. However, there is no doubt that, on busy days or in busy offices, it is extremely difficult to create that space. That is why social workers sometimes get exhausted.

Social workers constantly have to meet all the demands that I mentioned. They have people on the phone saying that they need to do a certain thing, families in distress and people from head office asking them to fill out some form, for example. They are constantly balancing all those things and asking what the most important thing that they do is.

Mark Griffin: What is the general picture throughout Scotland on resources for social work departments? Tell me if you are not able to answer. Are resources going up or down? How is that impacting on a social worker's ability to create space to reflect and review?

Stella Everingham: I am not in a position to answer that. In Scottish Borders Council, some of our resources will go down. I imagine that that will be the case in most of the authorities because of the public sector finances. However, I cannot answer the question.

Mark Griffin: If resources go down, will that impact negatively on the ability to reflect and review?

Stella Everingham: We must adjust to what we have. Things change. Whether that will be negative is a good question, because other things come along. One of the thrusts that is coming through under GIRFEC is a change in how we use universal services and how sensitive such services and early intervention are.

I am genuinely hopeful about early intervention. I have not necessarily been hopeful in the past, but real progress is being made on catching issues earlier and on other professionals being able to deal with them if they are given support from social workers. Professionals are not feeling left alone in dealing with some things that, in the past, they would simply have handed over to social workers. They are now saying, "Yes,

perhaps we can deal with this much more effectively."

The Convener: You commented a moment ago on when a social worker would have the opportunity to discuss cases with their line manager, or a senior social worker. The Care Inspectorate highlighted the importance of strong line management. The only way in which I can get an answer to this question is to ask it directly: how good is senior social work management in Scotland?

Stella Everingham: Again, I cannot answer that. I think that some senior managers are wonderful and some are struggling. In the social work profession, someone comes in as a new social worker and works through all the processes and gets some experience in very complex cases. The hope is that they will stay on the front line for a number of years so that, when they get their first line management post, they have the expertise to deal with it. Unfortunately, as we have said, lots of people leave the profession, so there is a narrowing or tapering of the number of people who will come in as managers and they may not have a lot of experience. We may employ people sometimes who do not have the experience. We think that they can develop, but they have not necessarily got the required level of expertise. However, the position is variable in that regard and I genuinely believe that the profession has some very good people and that there are some very good line managers.

The Convener: I asked the question because the Care Inspectorate said, in effect, that it is very important that there is strong management to support strong decision making by front-line social workers. If the position is variable and there is inconsistency across the country—I do not deny that there are very good people out there doing a tremendous job—it is of concern that individual social workers are doing their best but do not have back-up from their line management. Are you concerned that that is the position across the country, or is there no more variation than you would expect in any profession?

Stella Everingham: In the discussions that we had when preparing our submission—they are probably the best evidence that I have, because we do not always sit around discussing such matters in a way that would allow me to respond to you other than anecdotally—there was a level of concern that, because people do not stay in the profession, it is hard to keep good people in as managers. Some may stay in the profession but not in children's services, moving perhaps to mental health or adult services, or they move to the voluntary sector rather than stay in local authorities.

I certainly think that there is a case to be made for having post-qualifying support for the role of supervisor of cases, which involves a very different process from that for a social worker undertaking cases. I always used to think of it as being like doing social work with oven gloves on, because we do not necessarily have the family in front of us or have all the evidence, which we have to tease out from the social worker. That is a different process that involves facilitating, helping and supporting somebody else to do the task that the supervisor might have been quite good at. However, they may not be very good as a supervisor, so there is some testing out as well.

The Convener: Given that it was the Care Inspectorate that made the point about management, what is your view and Lawrie Davidson's view on the issue?

Annette Bruton: Lawrie Davidson may want to talk in a minute about how management looks at front-line services. However, we made the point about management because we found in the first round of child protection inspections that, where there were weaknesses in services, management was often a critical point because supervision was loose or not sufficiently robust or timeous. When we went back to reinspect councils about which we had concerns, we saw improvements where the situation had been highlighted. We therefore think that there is evidence that there has been some improvement in that regard over the past six years. Having said that, I think that the position is still variable.

Stella Everingham described the juggling that social workers do, but their social work managers are often juggling as well. That leads to the very episodic types of assessment to which I referred earlier and which are counterproductive and not holistic for children. We believe that supervision and the view of a supervising senior social worker are critical to not missing things, ensuring that the pace is picked up and helping with social work practice. We think that there has been some improvement but that there is still quite a lot of variability across the country.

10:45

Lawrie Davidson (Care Inspectorate): In measuring, we now use quality indicators in the inspection of children's services. That includes looking quite closely at management and leadership in those services, and reporting on that. We know from service-led inspections that the quality of a service is very much dependent on the quality of the management and leadership in that service, and there is no reason to believe that that would not be the same for the authorities that commission services for children.

In management and leadership, it is key to have an overview of both the implementation of the training, ensuring that it has the best impact and outcomes for children and families, and the strategic responsibilities of the authority, the social work department and perhaps the services that are being used to support children and families. Management and leadership are very much a key issue.

Anna Fowlie: We are doing quite a lot of work to develop leadership and management pathways, but we are conscious of the fact that people are focusing primarily on leadership at the moment while the "and management" part gets a bit lost, although it is really important. We are doing some work on pathways for people as they move through their careers, giving them tools that they and their employers can use to plan their development of those skills. Supervision comes up in just about every context, and social work has a good model of supervision that other professions could learn from. Having the time to do it properly is crucial, as is having those skills, as Stella Everingham said, so, in the coming six months, we will do quite a bit of work on supervision and trying to develop those skills.

Joan McAlpine (South Scotland) (SNP): In the course of our inquiry, we have spoken to care leavers and an issue that has come across strongly is their dissatisfaction with the number of moves that they have had during their childhood and the inappropriate moves that they have had—say, across local authority boundaries—when they have been separated from siblings. The Care Inspectorate has also told us, in its written evidence, that permanency planning is still not good enough although there are some examples of good practice. Where are those examples of good practice, and how can we move more quickly to proper permanency planning?

The Convener: Who would like to start on that?

Lawrie Davidson: That sounds like a question for the Care Inspectorate. We are very much aware of the delays in permanency for children. In our joint inspections of children's services, we are seeing an improvement that comes back to the issue of management, leadership and supervision. Where authorities are performing better in that area, it is because they have established new posts in the fostering and adoption services and front-line staff are getting support in looking at the blockages and working towards undoing them to move forward with permanency for children.

Out-of-authority placements are not just an issue for fostering or permanency for children; they are also an issue when children are separated from their families and siblings to go into residential childcare. The Care Inspectorate is keen to work with the Mental Welfare Commission for Scotland, for example, on the journeys that children make and the impact on them of those journeys. That will help us to better establish what interventions currently take place and how they can be improved for the future.

Annette Bruton: We see good and speedier practice where local authorities have invested in specialist staff in fostering and adoption. Social workers play a number of different roles, and, where there are specialists who can support the children's social workers, that can move the process along more quickly. We also see better practice on keeping families together and moving the children to permanency more often.

We keep coming back to the point about moving away from episodic assessment and actually taking a view, but it is relevant to Ms McAlpine's well-made question about why it is taking so long. If we move more quickly to take a view when it is necessary to take children into care, we can begin to plan for permanency right away. That can be quite tricky with younger children and siblings, although there is another difficult, vexed question about older children and getting them into permanency. However, a combination of specialist staff and early action following holistic assessment is making a big difference, and children are telling us it is making a difference to their lives.

Stella Everingham: Joan McAlpine's question is a huge one as it covers a range of different things. I think that that is why I was slightly thrown by it. I will take a couple of areas and see whether I can offer some comments on them.

One critical area is to try to get work from an early point on planning for permanency. In some cases, we know that children are not going to be able to make it in their families, if you like. There will be families from which a number of children have already been removed and the parents have not changed, and in such circumstances the child will be removed. We need good pre-birth planning so that we start before the baby is born. That involves working with people to understand what they will be able to offer as parents, and we need to try to work with some consent around that.

We are seeing some good examples of such work being done across Scotland. In those examples, babies are being placed with carers either at or just after birth, and there are some quick processes. We have a team in the Scottish Borders and we have seen examples of babies being adopted by eight months. That is phenomenal. It is a year earlier than before. It involves a lot of work and they are exceptional cases, but there are more of them. We can do more of that work. It is really helpful if we can identify them pre-birth. That requires good connectivity with midwifery services, because that is sometimes where difficulties in families are

identified. A lot of work is being done across Scotland on early identification, and there is a move to that.

There are some difficult things in the permanency process. Some of our legislation is a bit convoluted and a number of steps in it are creating blocks that are slowing things down between the children's hearings system and sheriffs and what happens around that. There would probably be some benefit in looking at that. Also, the court system itself sometimes slows things down. There is what we call a revolving door of assessment whereby we have already assessed a family and we have an opinion but we feel the need to go round and assess them again. Sometimes I ask my workers, "Why are we assessing this family again?" That relates to the point about overoptimism. The lack of confidence that people will have sufficient evidence when they appear in front of the sheriff and the belief that they have to redo it is slowing things down.

Once children get to a certain age—I will not say which age—it is difficult to find permanent families for them. People are often looking for younger children. Sometimes we get people who are looking for older children, but it is much more difficult to place them. When children get to a certain age, their chances of getting a permanent placement start to drop with their age. That is very hard for them. A distressed, unhappy child can push the boundaries and carers can feel that they can no longer cope with them. In some cases, we see children start to move. Once they have moved once or twice, they start to feel rejected and there are difficulties with their capacity to engage with parents and accept another family. They push against the boundaries and we see them move on again and again, which is not what should be happening.

Authorities are struggling to recruit enough foster carers in the right places and for the right ages. In the Borders, we have difficulty in getting carers who will take adolescents, who are seen as much more problematic and difficult, although sometimes they are not.

There is a whole set of things that build in difficulties. A piece of work needs to be done in Scotland on permanency. It needs to look at the barriers and at the court processes, because social workers can only do so much. Sometimes we cannot speed things up. We need to look at some unnecessary kinks that the legislation has put back into the system—some permanency professionals are much more au fait with the issue, but the profession is encountering that problem and we could do something to speed things up.

There is a tension between the rights of parents and the rights of children, because removing a baby from someone for ever is a huge issue in respect of the rights of the parents. People are very circumspect about making such a difficult decision.

Joan McAlpine: Notwithstanding the legal difficulties that the witnesses outlined, you all said that there are examples of very good practice and areas where things are not working well. How can we ensure that there is good practice throughout Scotland? If things are being done right somewhere, why cannot we roll out the good practice, so that more children benefit?

Annette Bruton: In our supplementary written evidence to the committee, we provided links to examples of good practice. In our capacity as the Care Inspectorate, we can certainly draw attention to good practice. It might be possible to issue new guidance or guidelines in relation to permanency, so that we build on good practice, as Stella Everingham suggested.

There is nothing to stop social workers and other professionals—all the professionals need to be involved, including those in health and education—looking at good practice and trying to adopt it. Not all practice transfers, but if we can identify critical success factors in more than one place, we might feed them into the review or guidance on permanency that the committee might be seeking to get out of this inquiry.

Clare Adamson (Central Scotland) (SNP): The convener mentioned the care leavers whom we visited, who talked about their experiences. Often, a trigger for their removal from their families had been the behaviour that they were displaying, which brought them to the attention of other agencies. They expressed concern that younger siblings were often left behind and that those siblings' outcomes were no better than theirs were—in some cases, tragically, their siblings' outcomes were much worse. Has the approach changed? The witnesses talked about taking an holistic view; is it an holistic view of the family? Is the experience of the older children reflected in decisions about the younger ones?

Annette Bruton: That is a very good question. There are tensions at work: we want to try to keep siblings together, but sometimes we make decisions based on the children as a group, to the detriment of individual children. We sometimes find that an individual child's needs are not met because we are seeing the children or the family as a group, rather than as individuals. A child in a family might have additional support needs that are different from their siblings' needs. Every child needs an individual plan.

I recognise what you are saying, and you are absolutely right. What you said is something that practitioners hear from children all the time: a

child's behaviour tips them into a situation that is sometimes better for them, but they are deeply conscious that they are leaving siblings behind—the child is often the oldest in the family and very often the oldest boy in the family. I am not sure that I know the answer, but we know that there is a tension between seeing children as a family group and necessarily meeting their individual needs. I do not think that I have an easy answer to your question, Ms Adamson.

The Convener: It has gone slightly dark, but we will carry on. The microphones are still working. Does Clare Adamson want to ask a follow-up question?

Clare Adamson: No.

Colin Beattie (Midlothian North and Musselburgh) (SNP): One or two key points are jumping out at me. The Care Inspectorate and the ADSW both raised issues to do with training and variable practice. For example, the Care Inspectorate referred to

"variability amongst staff making recommendations".

The centre for excellence for looked-after children in Scotland has expressed concern that

"As well as demonstrating a lack of knowledge about all child development, not just attachment ... social workers were often unable to exercise any analytical or critical thinking skills."

Again, according to the inspectorate,

"Performance inspections ... found that two thirds of assessments in children's records were of a good or better standard."

I would not say that two thirds represents a particularly good proportion; moreover, I ask the Care Inspectorate to define the term "better", because it does not sound like it equates to "good". In that respect, the real pass rate might be less than two thirds.

The tendency is to look on the enforcement of compliance as a police action. To what extent does the Care Inspectorate contribute to the learning side of things, which, according to a number of sources, is clearly substantially deficient?

11:00

Annette Bruton: On your first question, our inspections are based on a six-point scale ranging from "Unsatisfactory" to "Excellent". "Good" is the fourth point on the scale, which then goes to "Very Good" to "Excellent". Two thirds of the assessments are at least good, but some of them will also be "Very Good" or "Excellent". What we are saying is that a third of the assessments are only adequate or worse; in other words, they are not passing muster.

Your second point is very well made. The Care Inspectorate seeks—and, indeed, the three previous bodies that came together as the inspectorate sought—to bring together both strategic inspections and the inspection of regulated services. One of the pieces of work that it has been asked to carry out by Scottish ministers and which in fact it has been instructed to carry out by our board is to focus more effort on the improvement agenda, which I think is what you are asking about. Having gathered up all this learning and put together all these reports, we are seeing at first hand where the good practice lies, and our three-year plan, which has just been approved by the cabinet secretary, proposes that we spend more time on focusing on supporting improvement and unlocking for the profession some of the learning that we have gathered. That represents a significant sea-change for our organisation both in the way it carries out its role of evaluating the impact of services on children's lives and in the fact that we will be putting more effort and resources into supporting improvement. In that respect, we will obviously need to work very closely with other public sector partners, particularly the SSSC. In any case, over the next three years you will see a significant change in the inspectorate's efforts to support improvement.

Colin Beattie: With regard to your process and in light of CELCIS's comments about social workers' skills, to what extent do you assess social workers' professional judgment in the course of inspections? For example, do you observe their interaction with clients?

Annette Bruton: In our strategic inspections of children's services, we examine a statistically relevant number of individual children's cases—in other words, a number from which we could draw conclusions—read the case files, speak to social workers, the children, their families or foster carers and attend review and panel meetings in an effort to follow the pattern of an individual child's experience and examine how effectively their needs are being met and whether they are getting interventions when they need them. From the 50 or 60 cases that we might look at if we were inspecting, say, the Scottish Borders, we then extrapolate certain lessons that we might learn from them. Although our strategic inspections do not look at every single child who is receiving an intervention, we look at a reasonable number, follow the process from start to finish and interview the children involved.

We are also looking at methodologies that help children to tell us about their experiences in a more effective way; after all, it is not easy for children to sit down with an inspector whom they have never met. Some looked-after children are working with us on, for example, a computer game that will allow them to express what their life is like

and which we will use as part of the inspection methodology.

We are also trying to understand the child's perspective through recruiting—very successfully, I should say—young people with experience of care, who come on our inspections and act as young person inspectors. That is making a significant difference to our perspective in inspections.

Colin Beattie: Do you believe that your current process—the sampling and so on—allows you to have an overview of social workers' professional judgment?

Annette Bruton: I do not believe that it allows us to comment on each individual social worker's professional judgment, but if we see poor practice it would be reported to the SSSC as a matter of course. What we can do is look at the impact of that judgment overall on the group of children that we sample as part of the inspection.

The Convener: I thank the witnesses for what has been a very interesting opening oral evidence session in this part of our inquiry. There will no doubt be a number of questions—I can think of one or two already—that we would like to follow up in writing, so we will do so if the witnesses do not mind.

11:05

Meeting suspended.

11:07

On resuming—

Press Regulation

The Convener: The next item is an oral evidence session on the implications for Scotland of the proposed royal charter on self-regulation of the press. We will take evidence from two panels this morning, and further evidence at next week's meeting.

I welcome our first panel: the Rt Hon Lord McCluskey, chair of the expert group on the Leveson report in Scotland; Campbell Deane, a partner with Bannatyne Kirkwood France & Co and a specialist in defamation, contempt of court and Press Complaints Commission complaints; and David Sinclair, head of communications at Victim Support Scotland and a member of the expert group.

I begin with a general question for Lord McCluskey. Can you outline the nature of the work that your group did and the report that you produced, and comment on the proposed royal charter that will go to the Privy Council very soon?

Rt Hon Lord McCluskey: The Leveson inquiry heard 630 witnesses and received submissions over a year. We were asked in three months to consider the Leveson recommendations; to accept the principles that Leveson had adumbrated after his inquiry; and, in particular, to accept the notion of statutory undertaking and to consider how that might work in Scotland.

We were appointed on 12 December, and technically reported on 15 March, as that was the day on which I signed the letter and the report was officially handed to the First Minister. We accepted the need for statutory underpinning and the essential principle that there should be a regulatory body fashioned by the industry and independent of the press and of politicians and Government in general, and that there should be a second body—a recognition body, as it was called—to ensure that the regulatory body was up to speed and Leveson compliant. On that basis, we proceeded to look at the position in Scotland.

However, we also came to the view—unanimously and early on—that the Leveson proposal that members of the press industry, however that was defined, should be asked to opt in and were free to opt out would never produce a Leveson-compliant system, because we knew that a number of bodies, such as *Private Eye*, *The Spectator* and the *Daily Express* group, and probably others, would not join such a system, and so would be free from regulation. In other countries, we have seen that if some people have been allowed to opt out, others have asked why

they should bother to opt in and to subject themselves to regulation when others are not subject to it.

The important difference between our recommendations and the Leveson recommendations was that we came to the view that the purpose of Leveson was to examine the mischief, or rather the crimes and misdemeanours—many of them are crimes—that journalists and newspaper publishers committed, and to decide how we could curb them in some way. We looked at a number of parallels, one of which is the Contempt of Court Act 1981, under which a person who publishes—whether online or in the printed press—material that is likely to prejudice forthcoming judicial and, in particular, criminal proceedings can be found guilty of contempt of court and dealt with not by prosecution but by a special procedure. That was an example of extending jurisdiction to those who engage in activity that is harmful to the rights of others or to the rights of the state in relation to the administration of justice.

We then drafted a bill that is only illustrative but which would help to deal with the situation in which the press never come up with a Leveson-compliant regulatory body. That is the position that we are in at the moment, because the industry has not come up with a regulatory body that all significant newspaper publishers would join in with. We dealt with that in the draft bill, which is in appendix 3 to the report, which goes under my name.

In relation to funding, we accepted what Leveson said, which was that the funding should be provided by the industry. In legislation that the Scottish Parliament has passed in recent years, when the decision was taken to set up a regulatory body for lawyers, whether advocates or solicitors, the Parliament decided that the funding for that should come from advocates and solicitors as a levy. In other words, it was not a case of the polluter paying; it was decided that the whole industry should pay for the running of that industry. I could illustrate that in detail.

The first version of the royal charter was produced on 12 February, by which time we were well into our thinking. We had on our committee a number of people of different political perspectives and none, who had views about the royal charter, and we felt that we could not properly pronounce on it without extending our period of examination considerably and, indeed, obtaining evidence on it, because a royal charter is a very unfamiliar animal. I do not suppose that anyone who is present has ever seen one, and very few people will have much idea of what it means. Therefore, although I want to talk about the royal charter if I am given the opportunity to do so, we felt that we should not express a view on it without hearing evidence. David Sinclair, who was a member of the group, might take a view of the royal charter that is wholly or slightly different from mine; I think not, but he might, so we have to speak for ourselves.

I do not think that I need say more at the moment, but I hope to be able to comment on some of the inaccuracies in Campbell Deane's article, which has been placed before the committee.

The Convener: Thank you very much.

I ask members to indicate when they want to ask about particular issues as we proceed. We will begin with Liz Smith.

11:15

Liz Smith: Lord McCluskey, in light of the comments that you have just made, why specifically do you believe that there is a need for another piece of legislation? After all, the press are already regulated by several pieces of legislation; you mentioned the contempt of court legislation, but one could also mention data protection legislation, the Bribery Act 2010 and human rights legislation.

Lord McCluskey: My specific reason is the issue that Leveson identified and which formed the basis of his inquiry—namely that even without committing any crimes forbidden by the Bribery Act 2010, the Protection from Harassment Act 1997 and so on, the press can do enormous damage to others' democratic rights. For example, under the Human Rights Act 1998 there is a democratic right to a degree of privacy. However, when one looks at the invasion of J K Rowling's rights by the press in Scotland, Gordon Brown's rights in relation to his hospital records, the rights of the McCanns with regard to the appalling way in which they were treated without crimes having been committed and the rights of the Watson family—as the judge at that trial, I have a degree of insight into what happened in that instance and indeed have followed the issue over the years—one sees that the press were not engaging in crime. I have to say, though, that News International was engaged in a huge amount of crime here and in Australia, but such matters can be dealt with through ordinary criminal processes as long as the police are not bribed.

The press accepted the need for regulation, which was why the Press Complaints Commission was set up. The trouble was that the press treated the commission with contempt; because they paid the piper and they called the tune. The commission was totally and utterly ineffective.

What we need is an effective body. It does not have to be statutory, although Leveson said that, unfortunately, if such a body is not made effective by the industry itself it will have to be statutory. That is the kind of statute that we are calling for: we want a statute that creates not a regulatory body but a recognition body that checks that the regulatory body is up to scratch and doing its job.

Liz Smith: We have been advised, mainly by the Parliament's legal office, that such a proposal comes with huge complexities, particularly in relation to issues such as exemplary damages, which exist south of the border but not in Scots law, and with regard to certain European convention on human rights difficulties. Given the discussions that you have had with your own group, are you able to comment on how we might possibly get round some of those very strong difficulties? After all, there is a very important tradition to Scots law.

Lord McCluskey: First of all, there is no problem in Scots law. We do not advocate the awarding of exemplary damages; Leveson does. We are saying that the problem for Scotland is that it does not have such a provision. We would have to get the Scottish Law Commission, the Lord President, the professions, the insurance industry and so on to give evidence on whether exemplary damages should be introduced. As a result, we could not proceed in that direction quickly.

As far as ECHR is concerned, we apply it every day in the courts without any particular problem. In England, the problem with ECHR is that you cannot have exemplary damages, because it is thought that they are contrary to the convention's freedom of speech provisions. That issue does not arise in Scotland. We are saying, "Don't bother with these things." Instead of proposing that we entice the press to join a club under whose rules they would be regulated, we are saying that we should identify the mischief—the interference with people's democratic rights—and then put in place machinery to make such interference punishable.

Liz Smith: Given that response, do you accept that going down the road of separate regulation in Scotland would take a considerable amount of time, require a very substantial period of deliberation and involve very careful examination of much of the legislation that exists in Scotland?

Lord McCluskey: I do not accept that. I do not know—and I would like to—who is advising you on the matter. You have mentioned ECHR and exemplary damages, but what else is there? If someone can tell me what the problem is, I will address it and tell you what the answer is—if I can think of it.

Liz Smith: I think that we have been advised of potential difficulties—

Lord McCluskey: Such as?

Liz Smith: Well, exactly the issue that I have just raised. You seem to be denying that the exemplary damages issue is a problem, but the committee's most fundamental difficulty is the very short space of time that we have to deal with this matter. Making certain changes might have implications and ramifications for other aspects of legislation and we need time to think them through and to recognise how such matters might articulate with other potential changes.

Lord McCluskey: The system that we advocate in the so-called McCluskey report altogether avoids any problems arising from exemplary damages or ECHR. The offence of interfering with the administration of justice under the Contempt of Court Act 1981 can be committed only by a group of people defined under the act and essentially covers the printed press and its online versions. Exactly the same provision could apply in Scotland. These people are obliged to observe the editors' code of practice, which they wrote themselves, was largely approved of by Leveson and is contained in the royal charter and, indeed, in our bill. You simply set up a regulatory body with an obligation to entertain complaints about breaches of the editors' code. By the way, if, like much of what News International encouraged over the past few years, the breach is also a crime, it can be dealt with in the criminal courts. However, that issue is quite separate from what we examine in our report.

Liz Smith: Finally, on a different issue, I understand that the plan under the McCluskey report is for the chair of the Scottish recognition panel to be appointed by ministers; however, south of the border, that appointment would be made by a judge. Why exactly have you recommended that such a decision be underpinned by Government?

Lord McCluskey: If, as Campbell Deane has suggested, the royal charter does not apply to Scotland—although I have to say that I do not know where he has got that idea from—and if Scotland decides that it has to go it alone and develop its own system, one would naturally expect a Scot to be the chair of a Scottish recognition panel—

Liz Smith: I am sorry, but I was asking whether Government ministers should be responsible for that appointment.

Lord McCluskey: It is not a ministerial appointment. If you look at what we say and what Professor Walker has very carefully articulated in various articles, we are suggesting that the ordinary procedure for appointments to public office be used. A separate independent body—not

ministers—would appoint the members of the regulatory and recognition bodies.

The Convener: Perhaps at this point I should ask Campbell Deane to respond to Lord McCluskey's questions about some of the comments in his written evidence.

Campbell Deane (Bannatyne Kirkwood France & Co): My understanding is that, given the way in which the royal charter has been drafted, it applies at present only to England and Wales, not to Scotland. That is why I have said that I do not think that it has any applicability to Scotland.

The Convener: As it currently stands.

Campbell Deane: Indeed.

The Convener: But it could be amended.

Campbell Deane: I am not a constitutional lawyer, but I presume that there will be some method of piggybacking on to the royal charter to make it applicable to Scotland.

Lord McCluskey: You cannot amend the royal charter.

Campbell Deane: But it is in draft form at the moment. You could amend the draft to bring applicability to Scotland into play.

Lord McCluskey: What Campbell Deane says in his paper is that the original draft was altered by the UK Parliament. That is complete nonsense—the UK Parliament had no input into it at all. It had a debate about it in which many members spoke approvingly of it, but the charter is a creature of the Government. The charter is written by three or four members of the Privy Council who are convened for that task and is signed in the name of the Queen. It is a wonderful example for Vladimir Putin, Robert Mugabe and other dictators that the UK regulates the press by not allowing the democratically elected Parliament to have a say; we do it all with the Queen signing a document that has been written for her by the Prime Minister—who, incidentally, has a lot of influential friends in the press.

The Convener: I return to the evidence that you submitted, Mr Deane. Referring to Lord McCluskey's group's report, you state:

"his methodology is to put the cart before the horse."

What did you mean by that?

Campbell Deane: I will expand on the matter a little bit before I go into that. The report is well structured, well reasoned and innovative in many of the things that it does, particularly in relation to the universal jurisdiction issue. My concern, however, relates to the questions of necessity and proportionality regarding the Scottish media. I have been involved in legalling newspapers for 20 years. I have undertaken activity daily and throughout the day, including in the evening and in the early hours of the morning, advising newspapers with respect to what they can and cannot report on.

Reading the Leveson report as a whole, I do not see the same London-centric issues appearing north of the border. Leveson himself makes it absolutely clear in his report that the regional press have behaved to a relatively high standard. At page 152 of his report, he states:

"I should also, perhaps, make it clear that the regulatory model proposed later in this report should not provide an added burden to the regional and local press."

In my submission, that is possibly what the expert panel's report would result in.

At page 718 of his report, Leveson says:

"I have already exempted the regional press from the generality of my findings".

Scotland's press is part of the regional press. I have been involved in the industry for 20-plus years, and I think that the Scottish press should not automatically be punished—that is how it reads to me—for sins that have been going on elsewhere. That is not to say that there is not a need for reform. Everybody accepts that there is a need for reform. The press have got it wrong to that degree.

Lord McCluskey disagrees with me regarding the issue of victims—he made that clear in his letter to *The Scotsman*. In particular, he draws attention to the Margaret Watson case. I do not seek to diminish in any shape or form what the Watson family had to go through, which was appalling. If there were inaccuracies in the reporting, or rather in the information on which the comments that were written by Jack McLean were based—it was not reporting, as Jack McLean was not a news reporter but a commentator—that was clearly wrong. I have no knowledge as to why the editor of the paper would not initially meet Margaret Watson to discuss all the issues that were going on but, on the matter of holding up the Watson case as a cornerstone for the need for reform in Scotland, I point out that that was more than 20 years ago, and that things have moved on.

As a general rule, the press in Scotland behave very responsibly in relation to the statutes that they must apply, including the Contempt of Court Act 1981, the Defamation Act 1996 and privacy legislation. There has been a moral and ethical diminishing, however, whereby editors will form the view that, if something is legally okay, it is ethically okay. That is where the newspaper industry in Scotland has fallen foul. Editors try to uphold their code, however, and they do so regularly.

When I am asked to legal copy, the questions are not just about whether something creates a substantial risk of serious prejudice and what the rights of the individual are; we are regularly asked whether something complies with the code of practice.

Editors try to uphold their code of practice, but they get it wrong at times. Editors have to make judgment calls. The easy situation is one in which an editor or a lawyer looks at something and says that there is a straight prohibition on publication. For example, the press cannot identify a child under the age of 16 who is an accused person in a criminal case. Those are not difficult situations. The issues become much more difficult in a situation in which the editor has to make a decision as to whether he steps over the law and ethically steps over the boundaries contained in the regulations—the press code.

For example, there is not a single piece of legislation in this country that says that editors cannot identify a rape victim, but they do not. Editorial convention dictates that they do not; they act responsibly when it comes to that. Editors form the view that it would be wrong to identify those people; there is nothing statutory that stops them doing it. In my view, editors do their utmost to uphold the code and I think that as a general rule they act ethically.

11:30

Joan McAlpine: Lord McCluskey, your report differs from Leveson in not allowing an opt-out, and that is because of the absence of exemplary damages in Scotland. Did you consider any other means to encourage the press to take part that would fall short of compulsion? Were there any other carrots, so to speak, that you considered and dismissed?

Lord McCluskey: The press made it plain—I do not know whether you have read the Leveson report—

Joan McAlpine: I have.

Lord McCluskey: You have? Congratulations, you are the first person I have ever met who has read it.

Campbell Deane: The second. [*Laughter*.]

Lord McCluskey: *The Spectator* said that it would not sign up to any regulation at all. *Private Eye* said it would not sign up. The Express group, which includes the *Daily Express*, the *Sunday Express*, *The Daily Star, OK!* or *HELLO!* magazine—I cannot remember which—and various others, said that it would not sign up; it even dropped out of the PCC, which was a toothless tiger. Others have also made it clear that they are not going to join.

We made a judgment that the opt-in, opt-out system would not work, and if it would not work in England, in our view it certainly would not work in Scotland because we could not provide the same carrots and sticks, even in relation to expenses. The question of expenses is dealt with by Leveson under the heading of costs. We have a different system in Scotland, but that system is currently under review by Sheriff Principal Taylor and we did not want to interfere with his recommendations.

There are many, many problems in following a Leveson style opt-in, opt-out system, and we say that it is crazy to do it that way. We do not do that with lawyers; we say to lawyers that if they choose to practise as an advocate or a solicitor, they must accept the rules that we have laid down. What was just referred to as "the regulations" is the editors' code. That is what we are talking about—the editors' code, which was written by the editors years and years ago and which has been modified from time to time by the editors in the light of experience. What is the harm in asking the press to obey the code? If, as Campbell Deane says, the Scottish press are virtually free from the kind of wrongdoing that was revealed in England, what have they got to fear?

My final point is that it is complete nonsense to say that the *Daily Record* and *The Scottish Sun* are somehow regional press in the same way as the *Yorkshire Post* or something of that kind. *The Scottish Sun* is owned by News International and the Scottish *Daily Record* is owned by the Mirror Group, and I do not know that *The Scotsman* or *The Herald* would like to call themselves "regional newspapers" anyway.

Joan McAlpine: I agree with that last point. I should have done this earlier, convener, but I declare an interest in that I am a columnist with the *Daily Record* newspaper.

The Convener: It is as well to put that on the record.

Joan McAlpine: I find Mr Sinclair's position very interesting, as he has many years' experience of the press as a journalist but now represents victims. What is your feeling about the aspect of compulsion? It would be fair to say that it has drawn quite a lot of criticism from the press in Scotland.

David Sinclair (Victim Support Scotland): The timescale that we, as a group, were given to report did not allow us the benefit of hindsight. Fortunately, the panel members had the benefit of foresight.

It is probably not widely known but, in a collegiate way, I was responsible for the National Union of Journalists returning to the original Press Council in the late 1980s. I sat on the Press

Council for one year, and I can assure members that one year was more than enough to make me realise that everything that I had ever heard about it and about the reasons for the NUJ having pulled out some eight years earlier was fully justified.

The council was genuinely a toothless tiger where complaints were listed and senior figures from national newspapers went off to have a lengthy good lunch—to which we were never invited, which very much upset me—and returned to present the outcome to us. That is not the way that it should work, nor is it the way in which anybody would want it to work. Anyone who has worked in or been associated with the media over many years knows the problems with the Press Council and the Press Complaints Commission.

Campbell Deane was not quite correct in saying that newspapers do not identify rape victims. Every member sitting around this table will probably be able to recall cases in which rape victims have been identified. There may be an argument about the stage at which they are identified, but there are laws that limit when they can be identified.

Is the Scottish press free from guilt? Certainly not. Everything that has been reported in the case of the McCanns, the Dowlers and, more recently, the Riggi family—including the pictures that have been presented from inside prison of a convicted person in relation to the Riggi family—constitutes abuses that cause enormous hurt not just to the direct victims but to their wider families and does not represent the best interests of the Scottish or the national press. The Scottish press consists of papers such as the *Daily Mail*, the *Express* and all the other tabloids that circulate nationally and across Europe, and all those reports are repeated in them.

I have been a journalist for more than 50 years and, sadly, I have experience—from the NUJ perspective, as a working journalist, and now as someone who is trying to represent the interests of the victims and witnesses of crime—of some of the abuses that those people suffer in the newspapers. I have come to the realisation that the press will never put its own house in order and that it requires a very firm conviction from Government to determine that the press should be treated in much the same way as solicitors when it comes to dealing with complaints.

Joan McAlpine: The UK Government intends to proceed with the royal charter. Lord McCluskey, you have said that you have points to make on that. I and other members are concerned about the fact that there would need to be a two-thirds majority in the UK Parliament to change it and the fact that the Scottish Parliament would have no input to it at all. Is that a concern of yours as well?

Lord McCluskey: I have a number of points to make on the royal charter, although they have already been explained in some ways.

Leveson sat for a year and had 635 witnesses and submissions, but the words “royal charter” were never used in the entire inquiry except, in passing, in relation to the BBC. He never considered the merits and demerits of the idea; it suddenly emerged on 12 February in circumstances that are well known to the press, after the pressmen laid down a number of red lines for the Government negotiator—the Conservative Party negotiator, I should say. A royal charter does not go through Parliament and is not subject to the Sewel convention or legislative consent motion in Scotland, so you would be denied a voice.

Let us take, for example, the important question of who should be brought within the jurisdiction of the body. We have said that it should be the printed press and the online versions. We have pointed to various definitions in other countries and various other statutes. The decision on who is to be within the range of the administrative body ought to be taken by an elected Parliament, not through a royal charter. In the draft bill in our report, we adopted the same definition as is in the royal charter—we all took it from the Department for Culture, Media and Sport—but the issue ought to be looked at by legislators and not decided in the smoke-filled rooms—I think that it is pizza-filled rooms nowadays—of the Privy Council, which consists of those to whom the Prime Minister says, “Come to the meeting.”

I have already made the point that Putin and Mugabe must be rubbing their hands with glee at the idea that they can just issue a decree in which they determine all the rules. What a terrible example for us to offer to the world: we bypass the legislature in all these matters and let them be decided instead by the unelected head of state.

In relation to Scotland, I should have mentioned the *Daily Mail* and the *Daily Express*. The idea that the Scottish press is immune from what happened in England is complete nonsense. Of course, as David Sinclair has said, the words of Glenn Mulcaire, Goodman and all the other fellows who have been identified in England, whether they worked for News International or simply sold the proceeds of their crimes to News International, were printed in Scotland. I cannot emphasise enough the importance of the four cases that figured—the Brown, Rowling, Watson and McCann cases. The idea that the Scottish press is somehow free of blemish is hogwash.

Joan McAlpine: Given those comments, how should Scotland proceed? Should Scotland opt out of or ignore the royal charter?

Lord McCluskey: If Campbell Deane is right, as he might well be, that the charter is not written in Scottish terms or, in other words, that Scotland is not mentioned in it, apart from the fact that the Scottish ministers cannot be members of the recognition body, it probably does not apply to Scotland. As the regulation of the press has been devolved to Scotland, if the royal charter does not apply Scotland has no regulation at all. Our advice plainly is that we can do it in Scotland. To that extent, we have drafted a provisional bill. Through a bill you, as elected members, can define to whom the jurisdiction should apply. You can enact that.

By the way, in Ireland, where the same process was gone through, the *Daily Express*, *The Spectator* and everybody else conforms to the code because, otherwise, they would not get into Ireland. The Irish Government made it plain—I have quoted the stuff in various places—that if the press did not sign up it would introduce legislation to make that compulsory.

The answer is that, in Scotland, we should not by statute write the regulatory code—we let the editors do that—but in the background there has to be an enforcement mechanism that says, "If you do not behave in the right way, we will have to move in and regulate you ourselves."

Clare Adamson: I have two questions. The first is a quick one about the drafting of the royal charter. Will it, in conjunction with the editors' code, prevent future defamation of a deceased victim?

Campbell Deane: No, I do not think that it would.

Lord McCluskey: The royal charter does the right thing, which the original DCMS draft bill did not do, in that it picks up the first 23 recommendations of Leveson. The 23rd recommendation does not concern us, because it is to do with opting in and opting out. The charter gives the possibility of an ultimate enforcement mechanism—an effective mechanism for enforcing the editors' code. There is no such mechanism at the moment.

Members ought to read Tom Watson's book. I dare say that, if you have read the Leveson report, you will have read that. When you read about how Nick Davies was treated by the press when he exposed phone hacking, you realise that there is a problem that has to be grasped.

11:45

Clare Adamson: My second question is on how the opting in or opting out would work in Scotland. You made a comparison with the regulatory body for advocates and solicitors in Scotland, but how would you define journalism as such? Would it include online communication, such as people's blogs and tweets? How would that be controlled?

Lord McCluskey: If I may respectfully say so, that is an excellent question. We do not define that, but we say that it is possible to write the definition in such terms that it includes blogs—we do not advise that, but we say that it is possible to do it. For example, under the Contempt of Court Act 1981, if in your private blog you write something that prejudices the interests of justice, a complaint can be made to the court and the court can deal with that as contempt of court.

The short answer is that we do not define journalism in that way. We say that it is possible for the definition to be very broad, but in our bill, which adopts the same definition as in the royal charter, the definition is much more limited.

I would be happy to exclude blogs and so on with the knowledge that, if, as might happen, blogs become a huge and growing problem—Leveson talked about this as the elephant in the room—and if the kind of thing that happened to Lord McAlpine becomes commonplace, it might be necessary to extend the jurisdiction.

By the way, if the jurisdiction is created by an act of Parliament, you can amend the act of Parliament. However, if it is created by a royal charter, you can forget it, as you need a two-thirds majority in both houses and, apparently, the agreement of each of the leaders of the three political parties.

One other point is that Scotland was not consulted about the royal charter. We were not invited to attend—the Prime Minister knew that we were sitting, as I have seen a letter from him to that effect—and the Scots editors were not invited to attend. Scotland was totally ignored in all the deliberations, even by the Labour Party, which is strong in Scotland in some regards. There was no reference to Scotland at all in the drawing up of the so-called royal charter.

Liam McArthur: Lord McCluskey referred earlier to what happens under the regime that is in place in Ireland, and members' papers for today's committee meeting make reference to the situation in Denmark and Iceland. It would be helpful if Lord McCluskey and Mr Sinclair could elucidate the experience in those three countries, or in any others that they looked at, in addressing the concerns that have been raised about political interference, the nature of the stories that can be broken and what redress victims have through the relevant mechanisms in those countries.

David Sinclair: The system in Ireland has been in place for some time and it works exceptionally well. No newspaper publisher has excluded itself from the operation of the system in Ireland. Most

cases are dealt with in a mediation process and, if a retraction is required, that can be done. From memory, I think that only two or three cases have actually proceeded during the time in which the system has been in existence.

As for continental countries, although some of those countries have press controls that I would not advocate to anyone—press freedom is a fundamental issue for me, as I am sure it is for everyone here—some of the Scandinavian countries have imposed controls that are working well and that publishers participate in. Of course, in some cases, there is a requirement on publishers to participate, which is exactly what we are advancing to you.

This is a window of opportunity. Nobody is convinced that there is insufficient evidence that, since the creation of the Press Council in the early 1950s, the press has failed to police its own activities. If we as a country—and you as MSPs in the Parliament—miss this opportunity, we know that we will be sitting here again in five, 10 or 15 years' time saying that we wish that we had grasped that opportunity.

Lord McCluskey: Let me give the committee the specific reference. The matter is dealt with in a mere 26 pages in Leveson: volume 4, chapter 5, pages 1708 to 1733. All the countries are looked at. In Denmark, the press and journalists are strong and insist that, when wrong reporting is corrected, the wrongdoing must be published in the newspaper with the same degree of prominence and not as a footnote on page 93. It is important that it should be noticed.

Practice in different countries is summarised in Leveson and, more particularly, in a marvellous paper on international comparisons by Lara Fielden, which the committee should look at if it has time and of which Leveson greatly approved. Lara Fielden said that there are countries in which the press are good at regulating one another but that that is not the case in this country.

I have been censored by a newspaper only once in my life; I was censored by *The Times*. I wrote an article for *The Times*, which included a criticism of the *News of the World*—a short, one-sentence criticism. When the article was published, the sentence had been excised without my permission and contrary to our understanding that columns would not be edited. When I complained, *The Times* wrote back and said, "We can't criticise a newspaper in the same stable. Even a columnist in the paper cannot do that." I phoned up and spoke to Magnus Linklater, who said, "John, dog does not bite dog." The press are incapable of regulating one another and still less capable of regulating themselves.

Liam McArthur: Does experience elsewhere—whether we are talking about Ireland or Denmark—suggest that the public interest defence, or whatever it might be, is sufficient to enable journalists to operate in the way that we would all wish to safeguard, as Mr Sinclair said, whatever emerges at the end of this process?

David Sinclair: That is the experience. I cannot think of a single major news story in the past 20 years whose publication would have been affected by what has been advanced by the McCluskey group's report. Every major news story, from MPs' expenses to the McCanns, could be reported; the only significant difference would be that the story would have to be accurately reported. What happens in so many stories—I keep mentioning the cases of the McCanns and the Dowlers—is that the fundamentals of the story are there but the add-ons to the story create the damage.

I am a single journalist, but almost every journalist that I know is ashamed of what happens in newspapers these days. However, they have no control. That is why we flagged up the NUJ code of conduct, which is an unusual thing for an independent group to do. It is important to working journalists that they have some defences, because they are ordered to do things and if they refuse they are effectively dead in the water. Their careers could well be over. That is why the whistleblowing clause is of fundamental importance if we are to move forward, so that a journalist—man or woman—can know that in extreme circumstances there is someone to whom they can go and say, "I fundamentally disagree with this in principle and I do not want to do it, but I am being forced. Help."

Lord McCluskey: I differ from David Sinclair on one point. It is about not accuracy but fairness, ultimately. We cannot compel a newspaper to be accurate, but we can compel it to be fair. If it tells an untruth, we can say, "This is the truth: please acknowledge it", and so on. Accuracy is something entirely different.

As you know, the Office of Communications has rules for the BBC and ITV that run to 135 pages—the editors' code goes on one sheet of A4, incidentally. That is the difference in relation to the regulation of journalists such as Jim Naughtie and John Humphrys, who work under a code. Does it affect their ability to do their job? Not at all.

Liam McArthur: Is there anything in the international experience that would raise concerns about the future viability of the regional and local press? It has already been accepted that the regional and local press is a key feature of the press market in the UK. As Leveson himself acknowledged, it is seen to be above some of the main criticisms that he levelled at the industry. Has a financial burden from a compulsory system of

oversight led to a diminishing of the regional and local press in, for example, Ireland or Denmark?

David Sinclair: There is certainly nothing about that in Lara Fielden's report or others.

I am sure that most people will realise that a principal problem for the press is that technology has moved on and the press did not recognise at a sufficiently early stage how to apply its product to that technology to maintain its sale.

The ready online availability of alternative products is what is causing the damage to the newspapers. We have come across no evidence to suggest that forcing the press to be part of a system of regulation has any impact on its ability to fund its operations.

Lord McCluskey: The cost of running the PCC was about £2 million per year. The cost of paying off Rebekah Brooks was £10.9 million. The cost to News International of fighting years and years of battles in the courts in England was well over £10 million.

There is a huge amount of money splashing around in the press and the cost of running the PCC is quite modest. On this, our position is exactly the same as that of Leveson, which the industry did not challenge: it can afford to pay.

As far as I can tell, the local press has not been guilty of the kind of activity that disfigured the run-up to the Leveson inquiry. It has nothing to fear. Of course, it has real problems in relation to the competition, as all the printed press has, but that has nothing to do with regulation or applying the code.

Neil Bibby: Lord McCluskey, you mentioned earlier that you handed the report to the First Minister on 15 March. I know that you had a telephone conversation with him about the publication date. Have you discussed your proposals with him?

Lord McCluskey: No. I have to say—I hope someone will tell him—that he has not even written me a thank you letter yet. No doubt he will. I will wait until Christmas before I come to a final conclusion about that.

There has been no communication whatever with the Scottish Government or the First Minister since I spoke to him on the phone on 13 March.

Neil Bibby: Has there been no contact even with his officials or the Cabinet Secretary for Culture and External Affairs?

Lord McCluskey: The officials have done a kind of tidying-up job. They told us that the committee would meet and would ask us to give evidence—that is all. We have not met them. We are going out to dinner with them on Friday night because they did an excellent job for us. We are happy to entertain them; I hope that that is not illegal.

We have had no contact at all with our own officials, who were excellent, or the First Minister's officials.

Neil Bibby: Do you have any idea whether the First Minister or the Scottish Government support your proposals?

Lord McCluskey: I have not the slightest idea. The First Minister is often a wise and astute man, so he probably does.

Joan McAlpine: I have a quick supplementary on Clare Adamson's question on the inclusion of different kinds of electronic media, which as has been mentioned has not yet been decided on.

One of the industry's criticisms was that, if it funded the regulatory body and the body passed judgment on misdemeanours by a website that was not signed up, the industry would be paying for the regulation of electronic media that are outside it. Do the witnesses recognise that as a difficulty? I think that Mr Deane does.

Campbell Deane: Absolutely. In such a situation, the Scottish industry would have to pay. To be fair to Lord McCluskey, he has mentioned that he does not necessarily think that bloggers should be brought into the equation. However, if there was a blogging site that was large enough to become involved and that individual blogger was brought forward to answer before the regulator as to a certain practice that had fallen foul of regulation, the industry would pick up the costs of that. The individual concerned can post whatever he wants.

At a time when the industry as a whole is suffering financially, that seems to be an especially strong hardship—in particular, as I said earlier, given that the regional press and the local press came out of the Leveson report if not in a shining light then certainly in a much better light than the mainstream press.

12:00

Lord McCluskey: On a point of information, Leveson deals with that issue at some length and in particular by reference to the marvellous paper by Lara Fielden. If you want to know about regulation in relation to online stuff, Lara Fielden gives an answer to every question that you can think of. Please look at that paper, because there is regulation by Ofcom and by Europe as well as several other things and she details all that regulation in her paper, which is available online. Just look up "Lara Fielden" and "press regulation" and you will see the answers. You can get your officials to summarise the paper.

Campbell Deane: Can I make one point? Is that possible just now?

The Convener: I was about to ask you a question so perhaps you can include your point in your answer—or is your point in relation to what we have been discussing?

Campbell Deane: It is to do with the Leveson principles more than anything else. The point that I raised at the outset in relation to necessity and proportionality was that the panel were invited to consider how the recommendations would need to be modified to take account of the Scottish context. I do not see that happening here; I see a considerable extension of Leveson.

I said at the outset that the McCluskey report is an innovative report. Things come into play that Leveson did not recommend or did not suggest. Leveson states in his report:

"I recognise in the result that my Report may be less helpful to those with decision-making responsibilities in Scotland, Northern Ireland and Wales, but I have sought to set out my analysis and conclusions in a sufficiently explicit and reasoned way to enable the experts within the devolved jurisdictions to see as readily as possible how they could be made to fit."

My reading of that is that the panel was asked to propose a system that fits within the existing framework, but the McCluskey report goes considerably further than that. For example, Leveson did not recommend compulsion. Lord McCluskey's view on that is that the press is going to fail anyway, but that is not Leveson's view. Leveson has clearly given the press a last opportunity to get its house in order. He is not saying that the press is going to fail. He is saying, "Follow my regulatory system and there will be no need to come back before me ever again."

When looking at the carrot-and-stick argument, for example, Leveson recommended alternative dispute resolution, the costs issue and exemplary damages. I whole-heartedly accept that exemplary damages cannot play a part because they are not part of Scots law. Unless we amend Scots law, we cannot bring in exemplary damages, but why throw away everything on the basis of that one issue? We have costs and we have alternative mechanisms. If exemplary damages are the overriding factor, they need to be looked at, but if they are not, why throw away everything with them?

Why do we not proceed on the basis of a royal charter, if we are able to do that, with the removal of the issue of exemplary damages? Why not bring in other aspects? Why not bring in provision in relation to costs whereby the rules of court can be amended? For example, in cases where a pursuer is entitled to an uplift in their costs in the event of success—as they are entitled to in the current regime—why do we not include in that entitlement that, if there is a media news-related defendant who has not joined the regulatory body, additional costs can be awarded?

Likewise, in relation to damages, why do we not make it a provision that, if a newspaper or a news organisation has not signed up to the regulatory code, that is a matter that the trial judge can take into account in assessing damages? As a general rule, our damages are not that much lower than damages in England in relation to libel cases. Since the 1990s and the Elton John case, the English courts have been required to look at the level of damages on the basis of damages for personal injuries, and the level of damages in England has gone down.

There are mechanisms. Our costs in relation to libel cases are nowhere near as high as they are in England, where they are completely out of control. If the fear is that the costs are going to eat into the award that an individual gets, we should just allow the costs to be increased.

The Convener: You have moved into the area that I was going to ask you about. I was going to ask you, given that you do not agree with the McCluskey expert group's recommendation on press regulation, what you believe the solution is. It seems that you believe it is a kind of royal charter plus.

Campbell Deane: It is a royal charter plus or a royal charter excised. You have to excise the issue of exemplary damages.

The Convener: Under the proposal that Leveson put forward, exemplary damages are important in terms of the royal charter because they represent, if you like, a motivation for joining the body in the first place. We do not have exemplary damages.

Campbell Deane: We do not, but we could provide another motivation by saying, "You'll get increased costs awarded against you in the event that you do not—"

The Convener: I am no expert on the law, but how could costs be increased in this context?

Campbell Deane: An individual is entitled, under the rules of court, to apply to the court for an uplift in relation to their costs.

The Convener: Yes.

Campbell Deane: In those circumstances, if an individual sues a newspaper and it has not joined the code, the courts could say that the costs that the newspaper has to pay will be higher because of their failure to join the code.

The Convener: Maybe it is the definition of the word "costs" that I am struggling with.

Campbell Deane: Their legal expenses.

The Convener: Would it be reasonable, then, for a court to say, "You can apply for your legal expenses—your costs—but that would include the fact that you have not joined the regulatory body"?

Campbell Deane: No, this is against the press. It is an encouragement for the press.

The Convener: Lord McCluskey wants to comment.

Lord McCluskey: First of all, it is possible to get an uplift for expenses, as we call them in Scotland, if the case is of exceptional complexity, difficulty or importance. No doubt you could by statute, but not by rules of court, amend that so as to make it a penalty. However, that would instantly run into problems with the ECHR—exactly the problems that have been identified by counsel on behalf of the press in relation to costs and exemplary damages. This is not a solution to the problem, and I have yet to hear what the carrot is.

I have one other point on the costs of expenses. A company that can dismiss one of its ex-editors and pay her £10.9 million as a golden goodbye is not going to be frightened by an award of £50,000 of extra expenses in Scotland.

Campbell Deane: But a local newspaper almost certainly would be. If a local newspaper was concerned about running a particular story, it might ask whether it is worth running it given the damage that could be sustained.

Lord McCluskey: I thought the question was whether it should opt in or opt out, and not whether it should run a story.

The Convener: The evidence has been very interesting, but I have one final question that I suppose is more for Mr Deane than for the other panel members, although I am happy for everyone to respond to it. Hypothetically, if it is not compulsory to join the regulatory body and certain individual newspapers, groups, online publications or whatever else is covered simply turn around and say, "Well, we're not joining", what do we do?

Campbell Deane: Leveson has made it perfectly clear that if they continue to breach on that basis the only solution is statute.

The Convener: Do Mr Sinclair or Lord McCluskey have anything to add?

David Sinclair: We came to the same conclusion. What always rings in my mind are the words of Leveson himself, who said that he was not prepared to allow the media to continue to drink at the last chance saloon.

Lord McCluskey: Our report refers to—and the Leveson report fully covers—the fact that the Irish made it plain that, if the press did not sign up, it would be made compulsory to sign up. As a result, all of the press has signed up. The *Daily Express*, which did not sign up to the Press Complaints Commission, *The Spectator*, *Private Eye* and so on circulate in Ireland as members of the Irish body. Do you think that they would stop selling newspapers in Scotland if we had a separate regime? Certainly not. It is absurd to suggest that the press is really frightened of this. As Lara Fielden has pointed out, the press is united about only one thing, which is to preserve its uniquely privileged position of being above the law.

The Convener: On that point, I draw this evidence session to a close. I thank the panel very much for their evidence and I suspend the meeting briefly to allow a changeover of witnesses.

12:11

Meeting suspended.

12:15

On resuming—

The Convener: I welcome our next panel of witnesses: Pete Murray, a journalist from NUJ Scotland, and Dr Eamonn O'Neill, lecturer in investigative journalism at the University of Strathclyde. Good morning, gentlemen, and thank you for coming.

I will begin the session by asking you both for a general overview of your opinion on the situation with regard to, first, the Leveson report; secondly, the royal charter; and lastly, the McCluskey report. I know that that is a lot to cover, but I would appreciate it if you could do so in one or two minutes. I would like to establish your view on those three pieces of work and where you think the strengths and weaknesses are.

Eamonn O'Neill (University of Strathclyde): I will kick off and be as brief as possible. The picture is obviously complex and, from the perspective of someone who practises investigative journalism nationally and internationally and who teaches it, it seems that the issue of how we go about our business and our trade has become very foggy and muddy.

Some interesting, innovative and clever ideas have come out of the Leveson report. The notion of arbitration and shared costs and the idea of using a carrot-and-stick approach are innovative and could be taken forward. On Leveson's stance on compulsory membership of a regulatory body—which we heard about from Campbell Deane, Lord McCluskey and David Sinclair—I would go along with Campbell Deane's interpretation, which was that it is very much the last chance.

Bringing a royal charter into being is an interesting manoeuvre. I note Lord Leveson's suggestions and provisions, and the way that he

talked about how Scotland could fit in with them. That was interesting, and he was mindful that the situation with the law is different north of the border.

I welcomed many aspects of Lord McCluskey's report. I am not entirely sure what people who practise investigative journalism would think of the notion of compulsory membership—I am not sure how that would work in practice. I am mindful of the notion that local newspapers would be impacted for the reasons that the committee has already heard about in detail this morning, so I will not go on about that. However, I note that local newspapers—especially in Scotland, and throughout the United Kingdom—do not do much investigative journalism, so curiously it is not an area that would apply to them. The situation is different for tabloids, which are a completely different sector.

I am not entirely in agreement with Mr Deane on the notion of damages. Scotland has been a sensible example in the past, with the notable exception of the Tommy Sheridan case up the hill, in which the figure of £200,000 was awarded, although I am assured that not a penny actually changed hands. An award of that degree was a watershed in Scotland—before then, and certainly since, there have been very few cases in which such figures have been mentioned.

The convener did not ask me about my reaction to the Irish example, but I will speak about it briefly. The Irish system has been interesting where it has worked. I suppose that it could apply to Scotland, which is a smaller geographical jurisdiction. All the editors know one another very well, so they took on board very quickly the notion that, if they did not sign up, they would be dealt with severely.

The situation in Ireland is not quite as great as the Irish think when they congratulate themselves on how perfectly their system works. In broadcasting, there have been brutal breaches within investigative journalism in the past 18 months. A particular case, which involved RTÉ, ended with enormous damages having to be paid out and the Broadcasting Authority of Ireland levying a huge fine on RTÉ.

For us as investigative journalists, the picture is complex. It applies in some ways to investigative journalism but so many investigations now involve cross-border co-operation that the jurisdiction situation is getting complicated and it will be interesting to see how it plays out.

The Convener: The horsemeat scandal is a classic example of something that does not recognise political boundaries or borders. If Scotland brought in a marginally different or completely different system from that in the rest of the UK, how would that cause difficulties that do not already exist for investigative journalists who operate across borders on the kind of story that you are talking about?

Eamonn O'Neill: There would be very little difference, frankly. The majority of the serious investigative journalists whom I know tend to adhere to the excellent NUJ code of conduct; they would already be signed up to that. You have to remember that such serious and sober investigative work is legalled to within an inch of its life anyway. Investigations that are seen in the press or are broadcast have sometimes been conducted carefully to the point of absurdity.

The horsemeat example is a good one. The majority of the journalists whom I know would be responsible within their own jurisdictions, and on top of that they would take into account the fact that their work could be published across different platforms, as well as digitally. To answer the question, there would not be much difference.

The Convener: Thank you.

Pete Murray (National Union of Journalists Scotland): It was useful to be able to listen to Lord McCluskey and his colleagues. We agree with an awful lot of it and it is particularly encouraging for us to hear about the Irish model and the ombudsman model. The NUJ presented that model during its evidence to the Leveson inquiry, because we were involved in setting up the ombudsman model in Ireland—we operate in the UK and Ireland.

There is a danger that the royal charter is now seen as being the only game in town because it is the option that has been pushed forward at Westminster. However, if this committee and Parliament were to consider other options—as laid out in the appendix to the McCluskey report, perhaps—you might want to take a more detailed look at how an ombudsman system might apply as a way of regulating the press in Scotland.

The crucial thing for the NUJ is that the press regulator should have teeth. That was mentioned earlier. The regulator should have teeth, and it must be independent. When it comes to applying codes of conduct and so on, we would recommend—of course we would—our own code of conduct. We think that it is informed, and it has been built up on the basis of years of practice and of people working in newspapers, broadcasting and elsewhere. It also has the additional conscience clause, which David Sinclair mentioned when he was talking about the fact that an editor can apply pressure on a working journalist to go off and do a story that they might find obnoxious, immoral or potentially illegal, and their career might be under threat if they refuse to undertake that job. The conscience clause is a

crucial rider to all that. Indeed, when Lord Leveson asked Rupert Murdoch whether he thought that it was a good idea, he said that it was quite a good idea. There is no reason why other editors should not apply it.

Having worked at the BBC for a long time, I am familiar with how royal charters operate and how they govern the BBC. I also worked in Zimbabwe for a long time, so I am familiar with how the press operates there. That was before the worst of Mugabe's regulations took effect, I have to say, but I know how both situations operate.

One of the concerns that the NUJ has expressed—I expressed it to this committee a couple of months ago when I was talking about the BBC—is that media proprietors such as Rupert Murdoch had put the Government under considerable pressure in 2010 when the renegotiation of the BBC licence fee was being discussed. That does not directly affect the BBC charter, but it shows how some powerful forces can influence how the BBC operates. We are concerned that, unless the regulator is genuinely independent of Government, the proprietors and the editors, its operation might come under undue influence.

We welcome the tone of what Leveson has said, and the tone that Lord McCluskey has struck in the appendix that contains the draft bill: press freedom should be at the core of all this work. We absolutely reject the suggestion that Rupert Murdoch's son, James, made in Edinburgh a couple of years ago that press freedom is guaranteed by the search for profit. We think that the search for profit is one of the reasons why many of the newspapers got into trouble in the first place.

I hope that we might have a chance to discuss the financial underpinning of not the regulator but the press in Scotland, because we think that a serious problem underlies the reasons why the press got into difficulties and we are concerned about what might happen in the future. We do not think that regulation of the press in Scotland can be separated from our wider concerns about the way in which the Scottish media are being forced to operate and the lack of support for quality journalism at the moment.

The Convener: Members should indicate when they want to ask a question.

Joan McAlpine: Lord McCluskey raised concerns about the royal charter, with regard to its undemocratic nature and the fact that the Scottish Parliament will have no say in its wording and will be unable to amend it later. As journalists, how do you feel about that?

Pete Murray: The regulator needs to be independent, and that means independent from politicians as well. It is important that the model that is set up is underpinned by statute. That must involve democratic oversight of the whole procedure. If there is to be a separate Scottish model, MSPs should have considerable input into that.

The important point is that, although the model should have statutory underpinning, it should then be absolutely independent of politicians and proprietors. Of course, that is a difficult operation to undertake. I have no view on the matter other than that. It has to be independent of politicians as well as proprietors.

Joan McAlpine: You say that it must be independent of politicians but, as Lord McCluskey said, only certain politicians have drawn up the charter—only the Prime Minister and those whom he deemed worthy of being let into the inner circle. In that sense, it is very much a political creature, is it not?

Pete Murray: It is, yes. That is one of the points that we have consistently criticised since the publication of the Leveson report. We have consistently argued that the royal charter is not sufficient as it is at the moment, and that there should be opportunities for politicians—yourselves included—to amend it if possible. If the Scottish press refuse to take part in the system, because it is unsatisfactory, we recommend that you and the press adopt a sort of ombudsman model, such as the one that exists in Ireland. It is reassuring to hear that that might still be on the cards at some point. That was inherent in what Lord McCluskey was saying.

Clare Adamson: Dr O'Neill mentioned arbitration. If we were to adopt a royal charter plus or a royal charter minus—whatever you want to call it—what role, if any, do you see arbitration taking thereafter?

Eamonn O'Neill: The process is very complex. In considering the issue over the weekend and from speaking to some lawyers in London, I suppose that there is a sense that arbitration is central and very important, but my own take on the issue, which echoes views that I have received, is that arbitration would work only with difficulty. Obviously, everyone would need to be signed up to the idea, so allowing people in any shape or form to opt out of taking part in arbitration would have an impact on how the process would work. I could go on about this at length, but the summarised version of my take on the issue is that arbitration is central; how it would work in practice remains to be seen.

12:30

Clare Adamson: Does Mr Murray want to respond as well?

Pete Murray: Of course, arbitration would be a complicated procedure to operate and draw up. In some cases there might be binding arbitration and in other cases there might be more a process of conciliation, so there are several different models that one could adopt. The regulator might wish to apply binding arbitration in some cases and a more conciliatory approach in others. In a sense, that is the beauty of the Irish model and one of its successes, in that it is flexible. We would like to see that applied here as well.

Clare Adamson: My second question relates to the McCluskey recommendation for a whistleblowing option. You have mentioned some of the pressures that are put on journalists, and the NUJ evidence is quite brutal in its description of some of those instances. Is provision for whistleblowing necessary? Why does employment law not cover journalists in that context?

Eamonn O'Neill: I will be brief, because I know that Pete Murray will have a lot to say on this. The reality is that, in practice, that just does not work. Journalists often consider that they undertake what is as much a vocation as a job. In the workplace, they are often put under the most extraordinary pressure—especially, I am sorry to say, in the tabloids—to do things that they would not normally do. Over the 25 years in which I have been in the business, I have heard innumerable examples, including of young journalists being told to pretend that they are policemen to get photographs of the deceased after an accident. Things like that are just appalling, absolutely horrific and horrendous. People are put under that kind of pressure by bullying individuals, who tell them, "I can stop your career from advancing."

One of the few lights at the end of the tunnel has been the NUJ stance on the issue. I have seen people who have been reduced to wrecks, for whom the only place where they could seek any recourse, or even a fair hearing, has been by going to the union. Even non-members have approached the union to say, "Look, I never thought that this would happen, but it has happened."

The worst thing is that such things often happen at the beginning of a journalist's career, perhaps when the journalist has come through the route of applying for a very junior position at the age of 18 or 19—although that does not happen as much now—or at the age of 22 or 23 or when they are doing work experience while at university. When people are at their most impressionable and at their most ambitious, they might encounter someone who is literally bordering on psychotic in forcing them to do something that goes against every shred of their conscience, both professionally and personally.

Pete Murray: When we gave evidence to the Leveson inquiry, our counsel had to argue that some of our evidence could be given anonymously because it involved testimony and witness statements from a number of working journalists. They said that things had become impossible: they had breached the code; they had breached wider ethical codes; and, in some cases, they had been asked to break the law in search of a story. They did not want to do that, but the reason that such things happen is because there is a bullying environment in the newsrooms where they operate.

We do not think that it is a coincidence that many of those workplaces are places where the NUJ is not recognised. Some people might say, "Well, we would expect the NUJ to say that", but in practice, where the union is visible and strong and where people feel that they can approach a union rep for support if they feel that they are being bullied or being forced into doing something that they do not think is right, those things are stopped or are at least not as bad as elsewhere. At Leveson, we argued the case that recognition of trade unions such as the NUJ should be part of the regulatory code. It was perhaps a step too far for a judge of Lord Leveson's stature to recommend union recognition, but it is important to restate that it is not a coincidence that the worst abuses happened in places where the NUJ is not recognised.

We also think that it is a function of overwork that so many people are being put under such stresses and strains. Again, that links into the wider problem of lack of staff on newspapers and so on. The committee will be familiar with that, but it is worth restating.

Clare Adamson: I declare an interest, as previously noted, as I am a member of the NUJ.

The Convener: It is wise of you to do so.

Liz Smith: There are those who argue that some of the worst excesses around phone hacking happened because existing legislation was not appropriately applied and that there are as many questions to be asked about the police, for example, as there are about the press. Do you accept those views or do you still think that something extra has to happen?

Eamonn O'Neill: Laws are useful only as long as they are enforced. Nick Davies uncovered phone hacking in his stories stretching back years and before that in his book "Flat Earth News", when he discovered it almost by accident when someone came to him. The answer to your question is that the journalists who embarked on phone hacking and the police—some at the highest levels—who were involved in that corruption just did not give a damn what the law

was. They thought that they were completely above the law and, in full knowledge that they were breaking the law, they went about doing that regularly because of the cash involved. They put their personal profit above any respect for the law of the land.

Liz Smith: Is that because the existing legislation is either badly drafted or not adequate, or is it because the people who are interpreting that law are not doing their jobs properly?

Eamonn O'Neill: I think that it is both. It also comes down to the individuals and the editor involved. In any investigation that I have ever been involved in, if I turned up with a very good story and spoke to my editor, the first questions that a responsible editor would ask are, "Where did you get this? Who did you speak to? What did they have to say? What exactly took place at the meeting?"

From what I have read and have been told, what seems to have happened with phone hacking and so on is that those questions were simply never asked because it was an endemic part of the recognised culture in the workplace at those publications that corruption took place morning, noon and night. They simply thought that they were above the law, because it was all about getting as many readers as possible to buy the newspapers. The approach was damn the law, and if they got into trouble with the law, that was a problem for Tuesday morning, 48 hours after the story had been published, and anyway they had very deep pockets to handle those problems. It was very cynical and very black and white; there was no debate about it as far as I could see.

Liz Smith: What makes you confident that if we were to have another piece of legislation to ensure that the whole situation was tidied up, it would not be ignored in the same way that the existing legislation was?

Eamonn O'Neill: I see where you are going, but it has all come out now, it has happened and the Leveson inquiry has reported. In other words, we know what was going on and it would not just be a case of the new legislation or charter coming into effect without the public knowing what has happened. Such was the shock and depth of feeling, even to journalists such as myself—I was talking to Nick Davies on Saturday in London and he was saying the same thing—that we were absolutely floored by what was going on.

In case any member of the committee thinks that that kind of stuff was widely known among people who do investigative journalism, I should say that I had never heard of it in my entire career and I know that Nick Davies was exactly the same. That was why for him it was an investigation into almost a foreign culture.

Liz Smith: Finally, if there was to be another piece of legislation, would you recommend that regulation should be mandatory rather than voluntary?

Eamonn O'Neill: That is complicated. I need to give you a longer answer on that. As journalists, we are not keen on anything that would abridge any more freedom of the press; we do not want that. The whole strange academic question that has to be wrestled with is how to regulate a free press. That does not in itself work, even intellectually, but in this particular case any approach would have to be based on what I mentioned earlier when we talked about arbitration. It would have to be a carrot-and-stick approach and it would have to be worth while for the press to get involved, for the right reasons as opposed to more cynical ones. I like to think that we could end up in a situation, as Pete Murray said, such as they have in Ireland with the ombudsman, but I am not entirely sure that the legislation can make that come about. There has got to be a will as opposed to the press just following the way.

The Convener: I want to follow on from that on the difference between the royal charter proposals and the McCluskey report proposals. In essence, it boils down to the one difficulty about compulsion versus carrot and stick. On a level playing field, there might be an easier choice, but we are not operating in the same legal context. Given that we do not have exemplary damages, if we accept the royal charter model, what is the motivation for publishers to join any regulatory body?

Pete Murray: That is an interesting question. We agree with Leveson when he says that, if the publishers do not accept a voluntary regulatory regime, it will be forced on them, and it will then be up to Parliament to decide how to enforce that.

We think that there needs to be a system of regulation. Since well before the hacking inquiry, we argued that the PCC was not working and could not work under a configuration in which the regulator did not have the power to enforce a lot of its decisions and the press proprietors and editors were able to opt in and opt out.

The system has to be underpinned by statute so that there is a difference between regulation and legislation. Eamonn O'Neill and Liz Smith discussed the police, and there was an issue around whether the Metropolitan Police applied the law in time. It was mostly the probing work of Nick Davies and, for example, the *Financial Times* that made the police take some of the issues a bit more seriously before the Leveson inquiry began.

The phone-hacking scandal and the Leveson inquiry have exposed a great deal of what is going on in the press. There is a unanimous view among

the editors, proprietors, politicians and working journalists that a new system of regulation will have to be enforced and that there is no option to do otherwise, regardless of whether there are punitive damages.

This week, the Westminster Parliament will consider new defamation legislation. We are encouraged by some elements of that. In relation to punitive damages, the Scottish libel laws might be coming closer to the position of the defamation law south of the border.

Eamonn O'Neill: One of the elements that could be taken into account is that, as is the case in Ireland, we could say to a newspaper editor or publisher that it is worth their while being involved in the regulatory regime because the fact that they are a member—that they signed up to the principles whole-heartedly and for the right reasons—will be taken into account if, for example, a case for defamation comes to court and the judgment goes against them and damages are awarded. Also, if it were hinted that legal costs would be involved, that would act as part of the carrot, as it were.

On whether the regulatory regime should be compulsory or voluntary, it is ironic that, although Scotland played very little part in the phone-hacking mess, which was predominantly a south-east of England problem, Lord McCluskey's report goes down the compulsory path and Leveson leans towards voluntary membership. That irony has not been picked up on too often.

Neil Bibby: Have you a view on the local and regional press being involved in the regulatory regime at UK or Scotland level? I know that Leveson excluded local and regional press—

Eamonn O'Neill: He also excluded online journalism, to an extent. It was dealt with in a hasty way, which is ironic, given that most investigative journalism these days is conducted online. Certainly, the majority of it is presented in a multi-platform digital way.

As far as local press goes, very little investigative journalism is done at that level. That is the case usually for the most straightforward of reasons—for example, editors do not know what that kind of journalism entails, so they do not touch it with a bargepole; or there is some sort of verbal code that is never written down that says, "We don't do this because it might cost us money in court."

The local printed press across the UK has been contracting and withering in recent years, so I suppose an argument could be made that it would be unfair to require local press to sign up to something at a time when it is being brutalised economically. That said, it might be to its benefit ethically to sign up. I can see the arguments on both sides. It is a complex picture for the local press across the UK, including in Scotland.

12:45

Pete Murray: It was useful that, when Lord McCluskey spoke to the committee, he mentioned the fact that *The Scottish Sun* is part of the News International stable. Johnston Press is a cross-border operation, and Newsquest is an international proprietor. There is a danger of complacency among some elements of the Scottish press. There is a view that, because they were not named and shamed in the Leveson inquiry and the evidence to Lord Leveson, they are somehow better than that, and that they have their own ethical code that has not been breached in the past five years or so. It would be a mistake to see the situation in those terms.

We in the NUJ believe that all parts of the press, including the national press—I include *The Herald* and *The Scotsman* in that category—and regional and local newspapers, should be subject to regulation, and we would like it to be the kind of regulation that the NUJ is involved in. That is the model that the Irish ombudsman operates and we believe that it would be a useful model to adopt for the whole UK—not just for Scotland.

Liam McArthur: I am intrigued by Mr Murray's observations. I think that you are right about the unacceptability of the status quo—there is unanimity on that. Nobody believes that it is not necessary to make some form of change, but that appears to be where the consensus breaks down.

I accept everything that has been said about the importance of having some form of protection that allows those who feel under pressure in the workplace to express that in a safe and secure environment—whether through the whistleblowing route or something else. However, I have yet to find a journalist in this institution who has many good things to say about the recommendations of Leveson, and journalists have even fewer good things to say about the recommendations of Lord McCluskey.

I am finding it difficult to get a handle on precisely how the journalism profession, from its perspective, believes we can protect free speech and investigative journalism while accepting that the status quo is not working as it should. Dr O'Neill has testified that the legislation and the safeguards that are in place have been routinely—and, in many cases, systematically and cynically—disregarded. I am struggling to understand where the journalism profession thinks we ought to go in order to strike the most appropriate balance.

Eamonn O'Neill: The answer depends on whom you ask. Journalism is a broad church, as I am sure you appreciate. Oddly enough, those of

us who do serious investigative work and are involved in it at various levels regard the phone-hacking scandal as a triumph for investigative journalism because of the fantastic work of Nick Davies. He was routinely threatened and put under pressure. It was a really harsh and harrowing experience for him, as he told me recently.

At the—if you like—serious end of the business, colleagues whom I know have, to put it simply, abided by the rule book for decades. The reality is that the phone hacking was happening at the tabloid end of the business. I have great friendships with colleagues who work at that end and they deliver fantastic work that reaches a lot of people and tells a lot of important stories.

That said, the reality that emerges from the phone-hacking scandal is that one part of the industry—in fact, it is almost exclusively a part of the business that is owned by one proprietor—had, for reasons that are still not entirely clear, fostered a prevailing attitude in the workplace that allowed and encouraged regular phone hacking. If those people had not been caught, outed, arrested and so on, I have no doubt that this morning they would be getting on with that, that money would be changing hands and that private investigators—who have nothing to do with the profession that I love dearly—would be making cash off the back of it. I am sure that there would be more Milly Dowler stories and more breaches along the lines of what happened to the McCanns and all those awful things.

The committee will not hear much from that end of the business or from the people who are still in a way tied to that approach and are still using it. They are still trying to massage their way out of it and to say that it was not so bad, and so on.

Other colleagues whom I know, who are in the majority, would say that they are keen for the industry to be helped and assisted. They want legislation or any other measure to be proportionate and thorough, and to involve an understanding that it was not the entire profession that was at fault. One part of the profession, because of the egregious acts of a very small number of people, has caused ructions. The majority of the colleagues whom I know went about their business and actually reported on the issues in a proportionate, detailed and factual way. Anything that the committee can do to show cognisance of that, and to be delicate but thorough, would be good.

As journalists, we greatly value our freedom and independence, but we are aware that, in reality, unless we make it tough for some people, they will routinely push hard at the edges, and will break the law if they think that they can get away with it. I am sorry to say that, no matter what is brought in and no matter what arrangement this Parliament or Westminster eventually comes to, I have no doubt that, the minute that it is passed, certain sections of the press will try to find ways to get round it in the name of a story. That is because, unfortunately, the corruption was not at the low levels but at the highest levels and involved senior figures in the press industry as well as senior officers in the Metropolitan Police. I have no doubt, given the amounts of money that we are talking about, that as far as those people are concerned, laws are there to be tested, because money has to be made.

Pete Murray: Members will be familiar with the cliché that, if you put two economists in a room, you will get three different opinions. It is much the same with journalists and in the National Union of Journalists. I have spoken to colleagues in the Parliament and attended a couple of NUJ meetings here, as well as many other meetings throughout Scotland, the rest of the UK and Ireland, and in all cases there have been frank, honest and full exchanges of views. There was considerable debate in the NUJ about what attitude to take towards the Leveson inquiry when it was first set up and what our attitude should be to any system of regulation. Debate is continuing inside the NUJ on issues such as regulation of online media, which is one of the issues to which Lord McCluskey refers in his report.

That debate is continuing, but I can tell you that our views on regulation are informed partly by our experience of the ombudsman in the Republic of Ireland and partly by the experience of my general secretary, who worked at the *Daily Express*. Although she did not experience some of the more recent troubles, she has certainly clashed with editors and news editors on a regular basis when asked to do things that she did not approve of and that she felt went against the code of conduct. Our view is also informed by a number of academic members of the NUJ who consider ethics and how to apply the code of conduct.

At the moment, that is broadly our settled view within the NUJ about how we should proceed. It is not cast in stone, but the fact is that we are not fearful of regulation per se; we welcome it.

I have worked for many years under a system of regulation at the BBC—partly under Ofcom, partly under the BBC's producer guidelines and partly under the BBC trust. Being subject to that system of regulation does not affect the work of Brian Taylor, Jackie Bird or John MacKay. We believe that a system of regulation can help the press in Scotland and the rest of the UK to work better.

The Convener: Is there any evidence that journalists in countries that have compulsory regulatory systems are unable to do the kind of investigative work that we have been talking

about, to uncover wrongdoing, to expose corruption and to do all the other things that we want the press to do?

Eamonn O'Neill: I am involved in an expert panel that has been set up by the European Parliament to consider the funding of international investigative journalism. As part of my remit on the panel, I have looked across the 27 member states, and the picture that has emerged is complicated. The situation in each country depends on its individual historical culture. Some of the original 12 or 15 member states that signed up in the 1970s and 1980s—France, Portugal and Spain—which would be regarded as being highly developed western economies, have a fairly brutal track record when it comes to investigative journalism. The issue concerns not so much signing up to compulsory bodies but how the courts handle investigations, with some extremely high damages being awarded. That seems to frighten people away from engaging in investigative journalism.

In other countries, including those in the Scandinavian region, there is a robust culture of investigative journalism that is well funded and well legalled, with legal checks coming at the beginning of the process of investigation, throughout the process and at the end of the process, which means that projects very rarely end up in court. Poor investigations can end up in court, of course. We must also bear in mind the situation that we had in the 1980s and 1990s when, because the libel laws were so punitive against the press, someone such as Robert Maxwell could issue writs left, right and centre—even if the story were demonstrably true—which could have a chilling effect on investigations.

The evidence is so complicated that I cannot give a straight answer to the question; I cannot say whether signing up to a compulsory body makes it more or less likely that good investigative journalism will take place. We simply cannot consider that question without considering the wider legal context and the historical backdrop of individual countries.

The Convener: I accept that, but you seemed to indicate at least twice during that answer that, irrespective of the regulatory system, the fear of being sued is a bigger fear than the regulatory system itself.

Eamonn O'Neill: I indicated that it was one of the factors. It depends on the country and on the publication. Some papers have deeper pockets than others and can better withstand that kind of environment. I was trying to say that you cannot look at the situation out of context. If there is a harsh legal environment in place and libel laws are way too strict, it is difficult to do serious journalism, no matter how truthful it is, because that would be no defence if a journalist were tied up with writs.

The Convener: My second question concerns compulsion or, rather, the threat of compulsion. Am I right in thinking that that is the situation in Ireland—that the press was threatened with compulsion, and everybody signed up to avoid that?

Pete Murray: Yes.

The Convener: We have heard this morning, and on other occasions, that the Leveson report says that this is the last chance saloon and that, if the press does not sign up, compulsion is the only place left to go. However, in the UK, all sorts of groups have indicated that they are not going to sign up to the regulatory regime. What is the difference between the threat that Ireland made and the threat that seems to be present in Leveson? Is it the case that people here do not treat the threat seriously? Do they not really believe that that is where we will end up?

13:00

Eamonn O'Neill: That seems to be the case at the moment. Literally, nobody knows. In Ireland, the threat worked and was, along with the Government's input, sufficient to achieve the desired result. The picture in London is complex because there have been political divisions about the right way to move forward, and manoeuvring is taking place—quite openly in some cases—by people who do not want to sign up to any regulatory regime. There does not seem to be such a harsh threat hanging over them, even after Leveson. The threat seems to have been watered down and the impact of Leveson seems to be starting to dissipate—today's meeting of this committee notwithstanding. In Ireland, there was a quick and coherent process and everyone took the threat seriously. I am not entirely sure that that is what is happening in London at the moment.

Pete Murray: I hesitated to answer your question initially, but Eamonn has cleared the ground a little bit.

It comes down to political decisions and, to a large extent, to the fact that David Cameron blinked first in the negotiations that have led to where we are now. It is a question of political will. If politicians and people like us believe that regulation is the way forward, we can argue about the form of that regulation, but it will have to be binding regulation. It is not surprising that lobbying was carried out before and during Leveson and is continuing now, but it is alarming that the Westminster Government has caved in and that we have lost the bridgehead that we had immediately after Leveson. We have also lost the cross-party consensus to which David Cameron

said he wanted to hold. It seems that he and the Conservatives have broken that consensus, which is disappointing. We might be able to create consensus again in a way that might allow a regulatory system with a statutory underpinning to be placed back on the agenda.

The Convener: Thank you both for your attendance. Obviously, we have only two weeks to come to a view on the matter, given the timetable for the royal charter.

13:03

Meeting suspended.

13:05

On resuming—

Children and Families Bill

The Convener: Agenda item 4 is consideration of a legislative consent memorandum on the United Kingdom Children and Families Bill. The committee is required to report on the LCM and, in doing so, it should consider first whether the general merits of the relevant provisions in the bill are identified in the LCM and the devolved impact is clear, and secondly whether there is justification provided for the use of a legislative consent procedure in respect of the provisions.

The committee is not obliged to recommend to Parliament whether to agree to the draft motion, including the LCM, but I think that that would be what usually happens. Do members have any comments about the LCM?

Liam McArthur: As I read through the LCM, I was slightly intrigued by a couple of references in paragraphs 5 and 10 to the UK Government's legislation carving out Scotland. It then goes on in paragraph 11 to suggest that it was thought to be entirely necessary and desirable that Scotland should—given its different adoption policy, process and procedures—go its own way. I have no difficulty with the substance of the LCM, but am a little intrigued that we are using terms such as "carve ... out".

The Convener: Where is that phrase? I am struggling to see it.

Liam McArthur: The phrase is on page 4 in paragraph 5 and then at the end of paragraph 10. It seems to be a slightly jaundiced expression, when in paragraph 11 there seems to be a recognition by the Administrations north and south of the border that, given the differences, this is an entirely desirable route to take.

Following on from that, in relation to the substance of the policy, it would be interesting to know what the implications would be for adoptions that may need to take place cross-border—more particularly, I suspect, in relation to what is referred to as specialist matching, where as wide an opportunity as possible to look at the options is almost certainly necessary.

Liz Smith: That is a fair point.

The Convener: I am informed that we have time to deal with the LCM next week, if members would prefer to do that. The question of cross-border adoptions is a relevant one that we should clarify. The language is perhaps just the language, but I think that the more substantive point that Liam McArthur made is reasonable. Are members

content for me to write to the Government on that point and for us to reconsider the LCM next week?

Members *indicated agreement.*

Subordinate Legislation

Individual Learning Account (Scotland) Amendment Regulations 2013 (SSI 2013/75)

13:08

The Convener: Agenda item 5 is consideration of a statutory instrument that is subject to negative procedure. The committee considered the instrument at its last meeting before recess and agreed to ask the Scottish Government for further information before making a decision. The Scottish Government's response has been included with this week's committee papers at annex A, along with a copy of the SSI and accompanying notes. Do members have further comments?

Liam McArthur: A couple of points were made at the previous meeting. I think that it was Neil Findlay who asked for details of the profiling, which has been provided; also requested was any response to the consultation that it was indicated had been undertaken. I do not see much reference to that, although there is reference to the fact that this committee considered and accepted the changes to the 2012 regulations. I do not know whether it was assumed on that basis that further responses from stakeholders were unnecessary.

The Convener: I took that to be the case, given that the making training work better review or consultation exercise, and the resulting proposals, covered that point, although I take Liam McArthur's point. To be fair to the Government, it has covered our request for a response pretty well.

Does the committee agree to make no recommendation to the Parliament on SSI 2013/75?

Members *indicated agreement.*

13:10

Meeting continued in private until 13:21.

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e-format first available
ISBN 978-1-78307-795-3

Revised e-format available
ISBN 978-1-78307-812-7

Printed in Scotland by APS Group Scotland