The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

EDUCATION AND CULTURE COMMITTEE

Tuesday 23 April 2013

Session 4

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EDUCATION AND CULTURE COMMITTEE
12th 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:

Alan Cochrane (The Daily Telegraph)
Andrew Harries (The Scottish Sun)
Fiona Hyslop (Cabinet Secretary for Culture and External Affairs)
Magnus Llewellin (The Herald)
Professor Alan Miller (Scottish Human Rights Commission)
Greig Walker (Scottish Government)
Margaret Watson

CLERK TO THE COMMITTEE

Terry Shevlin

LOCATION

Committee Room 2

Scottish Parliament

Education and Culture Committee

Tuesday 23 April 2013

[The Convener *opened the meeting at 10:00*]

Decision on Taking Business in Private

The Convener (Stewart Maxwell): Good morning and welcome to the 12th meeting in 2013 of the Education and Culture Committee. I remind everyone to ensure that electronic devices are switched off at all times.

Agenda item 1 is a decision on whether to take in private item 3, and whether to consider in private at future meetings an approach paper on the McCormac review of teacher employment in Scotland and a draft report on the royal charter's implications for Scotland. Do members agree to do that?

Members *indicated agreement.*

Press Regulation

10:00

The Convener: Item 2 is an oral evidence session on the implications for Scotland of the proposed royal charter on the self-regulation of the press. Last week, we took oral evidence from two panels; this week, we will take evidence from a further two panels before hearing from the Cabinet Secretary for Culture and External Affairs and her officials.

I welcome to the committee our first panel, which consists of Magnus Llewellin, editor of *The Herald*; Alan Cochrane, Scottish editor of *The Daily Telegraph*; and Andrew Harries, editor of *The Scottish Sun*. Good morning, gentlemen.

Before I open up questions to the rest of the committee, I begin with some general questions. How does the editors' code of practice operate? How well does it work? What are the strengths and weaknesses of the system?

Andrew Harries (The Scottish Sun): We should, as journalists, be proud of the code. I was slightly concerned about some of the evidence that had been laid before the committee that pointed to the editors' code as being almost clubbable—a kind of gentlemanly agreement, or organisation for a game of poker in a pub. That is not my experience. The code is a binding agreement that we have with our journalists; it is written into their contracts. Breaches are taken seriously, by me as an editor and, further, by our human resources department.

The code codifies standards of behaviour by which journalists should abide. I am confident that it is an intelligent, reasoned and sensible set of standards for the operation of journalists both United Kingdom-wide and in Scotland. I do not see many weaknesses. The code is considered to be a gold standard for how journalists should behave, not only in the UK but by other academics further afield.

Both ethically and morally, the one element in which I could consider change is whistleblowing. As far as I remember, there is nothing in the code—I have it with me somewhere—that says that journalists have a right to blow the whistle on, for example, their own editors when they are not happy about something.

In the main, it is an effective code, and one that I am proud to abide by and adhere to.

Alan Cochrane (The Daily Telegraph): I agree that the code is a good document. Its biggest weakness—if it has one—is how it is perceived by the public. The public do not like it, and they do not think that it or the Press Complaints

Commission works. Editors and journalists must address that problem.

It is clear from the casual glance that I took at the PCC's website last night that it is still working. There were 500-odd referrals to the PCC last month and a similar number in January, most of which are resolved amicably to the complainants' satisfaction.

The PCC is heavily criticised; to a large extent, that is justified because of the lack of public appreciation of its work. A weakness of the PCC has been that two of the chairmen, Lord Wakeham and Sir Christopher Meyer, were seen as being too close to the industry. The last chairman—you will have to forgive me, because I have forgotten her name, but most other people did, too—was presented with evidence, or at least complaints, about alleged phone hacking but she did not feel able to pursue them.

The public perception of the code, and the commission, is the biggest weakness in my opinion.

Magnus Llewellin (The Herald): I agree with my two colleagues. Andy Harries is absolutely right. The code is taken incredibly seriously by every journalist whom I know. *The Herald* is in contact almost weekly with the PCC over one matter or another. As Andy Harries said, the code is binding and written into everybody's contracts.

I think that Alan Cochrane was right when he said that the public have probably lost faith in the PCC, and that the response to the allegations of phone hacking and criminal behaviour was generally regarded as inadequate. Laws may have been broken, but there is the danger that some editors possibly conflated ethical behaviour with legal behaviour. Campbell Deane touched on that last week. Perhaps that caused problems with how the PCC was perceived.

In general, as Alan Cochrane said, the PCC operates pretty well, but unfortunately it fell down on the job in some very important cases. That needs to be addressed in order to address the public's concerns if nothing else, as Alan Cochrane also said.

Andrew Harries: Last week, Lord McCluskey described the PCC as "totally and utterly ineffective." As recently as Sunday last weekend, in my Sunday paper I had to run a PCC adjudication with which I fundamentally disagreed—I thought that it was completely wrong. Nevertheless, because there is a binding arbitration process, I was obliged to run its full adjudication with its wording and a headline of its choice on a page of its choice, and I duly did that. To me, that is not a sign of something that is completely broken.

I wonder whether there is a difference between how we perceive what the public view is and the experiences of those who might seek to use the service of the PCC. Through working for a mass-circulation tabloid, my experience is certainly that there is a belief that, if a person goes to the PCC with a complaint, it will be dealt with adequately. The process does not always work in our favour—it certainly did not do so at the weekend—but nonetheless, we spend a lot of time dealing with complaints of all sorts from people who feel aggrieved by something that we have done, and we take them very seriously.

The Convener: Thank you very much for those answers, gentlemen.

I am interested in your views on the editors' code and the PCC. You have said that there is a failure of public perception in recognising the work that the PCC does. Do you honestly believe that that is the case and that that is the only problem with it? Do you believe that there is not a more widespread problem in its ineffective operation and its ability to deal with phone hacking, to use the obvious example—

Alan Cochrane: I think—

The Convener: Just let me finish, Alan.

The PCC failed completely to deal with phone hacking, and members of the public feel particularly aggrieved about a number of other issues across a range of subjects. Witnesses will come here today who are in that category. Is it just a matter of public perception?

Alan Cochrane: The problem that we have with phone hacking is that we are dealing with serious criminal activity, and the code was not designed to deal with that. I would have thought that the public's criticism of the PCC was that it did not point the police and criminal prosecution service in the direction of taking action against people who are deemed to have broken the law. It was a bit rich of Lord McCluskey to say last week that we want to be "above the law". Sixty journalists are currently charged with various serious offences, and Andy Coulson is charged with serious offences on both sides of the border. I do not think that there is any attempt by the press to be above the law. The press is saying that the editors' code was not set up to deal with criminal offences and, if criminal activity is determined, the appropriate authorities should proceed to deal with it.

Joan McAlpine (South Scotland) (SNP): Phone hacking notwithstanding, a number of cases in which people felt that they had been continually harassed and that there had been continual invasions of their private lives went before Leveson. I am thinking of the McCanns in particular. Why was the PCC not able to stop the repeated harassment of such people?

Magnus Llewellin: As far as I am aware, laws exist to prevent harassment, and as far as I can see, the McCanns were let down by the system. That was possibly a failure of the system as much as anything else. I think that we all agree that what happened to the McCanns was completely and utterly wrong and that the PCC failed in that case.

Alan Cochrane: I am not suggesting that the system is perfect and that we should not do anything about it.

Magnus Llewellin: No, but laws exist to deal with most of the issues that I am sure the committee will confront us with. There are laws in place to deal with criminal behaviour, invasions of privacy and harassment. Unfortunately, for whatever reason, the people who were subjected to some of that behaviour were let down by the system and not just by the PCC but by other authorities, too.

Neil Findlay (Lothian) (Lab): I was not at last week's meeting, but I have read the evidence that was given. Pete Murray from the National Union of Journalists Scotland said:

"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."

He went on to say:

"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."—[*Official Report, Education and Culture Committee*, 16 April 2013; c 2210-11.]

Do you agree with his comments?

Alan Cochrane: I did not hear all of that.

Generally speaking, everyone agrees that the system must change.

Andrew Harries: Yes.

Magnus Llewellin: Yes.

Neil Findlay: Pete Murray said that there is a general consensus among

"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".

Do you agree?

Alan Cochrane: Yes, that is pretty fair.

Andrew Harries: Yes. My concern about some of the things that Mr Murray said was to do with opting in and opting out, which I think is one of the bones of contention when it comes to what Lord McCluskey proposes. In his report, he proffers something quite different from Leveson, who tried to keep things at arm's length and to find a carrot-and-stick approach. I thought that there was some interesting detail in the report that was appended to the minister's letter, which I got over the weekend. It suggests that there are mechanisms by which a carrot-and-stick approach could be used. McCluskey appeared to rule that out, simply because aggravated damages do not form part of Scottish law; therefore, he felt that other methodologies could not be looked at. It is quite clear from that report that there are other ways of incentivising publishers to take part in whatever system we arrive at.

On the PCC, I was not saying that the system is perfect. As far as I am concerned, it is still a functioning arbitration process, but I think that there is general consensus among publishers and editors that, in a post-Leveson world, we need a different system. It is what form that system takes that is important.

Magnus Llewellin: I am sure that someone will mention this, but our concern about arbitration is that if a system of arbitration is brought in whereby papers could be opened up to vexatious complainants, we would be tied in knots, which I do not think would serve anyone's purposes particularly well. The papers that I talk to are incredibly concerned about the introduction of a form of arbitration that could lead to resources that are currently used for reporting on matters of public interest being tied up in dealing with all sorts of minor complaints, which could end up costing us a fortune. That issue will probably be touched on later, but I wanted to raise it now, because almost every proposal that I look at mentions arbitration in some form, and that causes us serious concern.

The Convener: I am sure that we will come on to deal with arbitration, along with other issues, in some detail, but I would like to clarify something that I am not sure that I understand. I think that Mr Harries mentioned that he had been involved in a binding arbitration process involving the PCC.

Andrew Harries: I was involved in a binding arbitration process under the PCC as it operates at the moment.

The Convener: Right, so given that there is binding arbitration at the moment, what is the problem with arbitration going forward?

Magnus Llewellin: Every plan that I have seen for arbitration involves opening up a system whereby complainants can start a financial action against a newspaper to seek small claims damages. As my colleagues next to me will know, complaints come in all the time about certain aspects of our work. They are often highly subjective. If the system that is advocated by some were to be set up, whereby the complainant would not face any potential costs but the paper

would, that would be hugely time consuming and would drain resources that are already extremely tight.

The Convener: Thank you very much. As I have said, I am sure that we will come on to that issue later.

10:15

Liz Smith (Mid Scotland and Fife) (Con): Last week, we had a very considerable discussion on whether it was necessary to have additional legislation or whether all we needed was for existing legislation to be implemented better and for something to happen to the code. Do we need an extra piece of legislation to solve some of these problems or should we simply adjust the code?

Magnus Llewellin: What do you mean by "extra piece of legislation"?

Liz Smith: Can we have better regulation either by amending the current legislation or by ensuring that there are few loopholes for the press to use, or do you think that the existing legislation is satisfactory and all we need to ensure is that the code works?

Magnus Llewellin: As we have said, the existing legislation covers a vast range of criminal activity and I am sure that we will all agree that laws are in place to deal with that. Moreover, in civil law, there are laws covering defamation, harassment and privacy. We have all agreed that the PCC failed in some particular and very high-profile cases and, because if nothing else the public's perception of the PCC has been very badly damaged, the industry has agreed that the PCC and that particular system of regulation need to change.

As for the question of the changes that should be introduced, Lord Black of Brentwood came up with a plan for a new regulator comprising a complaints committee and an investigations and compliance panel to oversee ethical standards. Although we are primarily talking about a small element of alleged criminal behaviour, the issue, apart from that, relates to transgressions of our industry's ethics. Why are we talking about changing laws in order to deal with people's ethics? I do not know, but I think that we would be going down a dangerous path.

Under Lord Black's plan, the investigations and compliance panel would be overseen by an independent trust board and we agree that, whatever regulatory body is established, it needs to be more independent to enhance the public's faith in the system that we the media and the press would set up. Just as important, the publishers would sign a five-year rolling contract with the regulator, would pay annual fees and, for any transgressions, would face legally enforceable penalties that would be enshrined in the contract. That approach would give the new regulator an enforceable legal basis on which to work without the need for any form of statutory intervention. That is vital and, as a result, I see no need for statutory interventions.

Alan Cochrane: In response to Ms Smith's question, I think that that is the important point. We are not talking about legislation; the only legislation that has been mooted is the royal charter, which is not really legislation but the sort of medieval anachronism that *The Daily Telegraph* normally supports. [*Laughter*.] There is no legislation other than criminal legislation that covers the press's activities.

Liz Smith: Last week, it was put to us that the phone-hacking scandal, for example, was not dealt with properly because the existing legislation was not properly enforced.

Magnus Llewellin: That was also a police failure. One journalist was sent to prison for phone hacking before the Milly Dowler case blew up. My view is that it was primarily a failure of the authorities to pursue the complaints that were made.

Liz Smith: So you are very much of the view that it is a failure of the existing system.

Magnus Llewellin: We all agree that the system itself, be it the PCC or the forces of law and order, failed. As I have said, changes need to be made. The royal charter itself—for want of a better cliché—crosses a Rubicon and sets a very dangerous precedent. We talk about light-touch legislation but, as far as I can see and certainly in Scotland, a whole slew of legislation will have to come out of the royal charter plan in order to make it work. I see no light-touch legislation here; all I see is a great slew of changes to the law in order to make it work up here—and those changes could at some stage involve the introduction of exemplary damages, which does not exist in Scots law and would break European human rights legislation. It would also mean that my colleagues and I would be treated differently under the law than the rest of you are, which would be discriminatory if nothing else.

Liz Smith: Thank you. If we were to pursue the royal charter, would you advise that we look at regulation on a UK basis instead of having a Scottish dimension? Can you expand on why you believe that?

Magnus Llewellin: As an editor whose newspaper is distributed both north and south of the border, the last thing that I want is to have two different regulators and to have to deal with, potentially, two different sets of rules. We would certainly like a UK-wide regulator.

Alan Cochrane: I second all the points that Magnus Llewellin has made, but in addition there is the practicality of the thing. It costs something like £2.5 million a year to run the PCC. A separate Scottish organisation would not cost anything like that, but there would be start-up costs. I have seen an estimate of £1 million, but that is probably too high; it may cost £500,000 to set up a separate body.

Another of John McCluskey's points last week was that, if organisations such as News International can afford to pay off executives for millions of pounds, they can surely afford £50,000 to set up a regulatory body. I was talking to another editor yesterday, and we agreed that £50,000 is the difference between profit and loss for a Scottish newspaper—there is no money in the press in Scotland to set up another body. Newspapers such as *The Daily Telegraph* and *The Herald*—in fact, all three of us—would pay twice because they circulate on both sides of the border. It is a practical proposition as well as what Magnus Llewellin said.

Liz Smith: How do you respond to Lord McCluskey's point last week that the problem is largely in Fleet Street and therefore Scotland should not get too wound up in that problem?

Alan Cochrane: Having spent 20 years in Fleet Street and then 19 years here, in my most recent incarnation, I agree whole-heartedly with what Lord McCluskey said. I have never seen any evidence up here of the malfeasance that happened in London. It was going on to a very great extent in London but it has not happened here.

Andrew Harries: I agree. Some of the evidence that the committee has heard paints a picture of an industry that I do not recognise. I have worked in Scotland for 22 years. I have edited the smallest paper for sale in the country and I now edit the biggest. If we accept that some of the extreme cases that were examined by Leveson are damning of the industry, that is one thing; however, we have never looked at Scotland's specific role and Scottish journalists' behaviour.

Magnus Llewellin: As you say, there is an irony in the fact that the Scottish press is basically being frogmarched into a punitive new system—Eamonn O'Neill made the point last week that we are being frogmarched into a system that could put many of us out of business, which would be a bad thing for the democratic process if nothing else—as a result of alleged crimes that were committed in the south-east of England. That strikes me as bizarre. The Scottish Parliament was set up to deal with Scotland-specific problems, but we are now discussing the creation of legislation to deal with a problem that arose in the south-east of England. That strikes me as perverse.

As Andrew Harries says, the Scottish press can be mischievous and annoying.

Andrew Harries: That is as it should be.

Magnus Llewellin: Yes. It can be infuriating and it gets things wrong but, in the main, it upholds the law. It is ethical, open and honest and it carries out a very useful democratic function, but what is being discussed here puts all that in jeopardy. I do not see the sense in that.

Andrew Harries: An important point that I wanted to raise with the committee is the fact that, in the many pages of evidence that you have seen and in the oral evidence that you have taken, one key word seems to have been largely omitted: readers. We should not underestimate the importance of readers in the process.

My paper sells just under 2 million copies a week but, overall, Scottish newspapers both large and small sell more than 6 million copies a week. According to the most recent audited figures, Scottish daily papers have 2.2 million readers every day, which means that more than half the adult population read a paper of some sort every day. That is a much higher proportion than the figure for the UK as a whole. We have a long and proud tradition of newspaper readership in this country, and it seems strange not to discuss the matter with—or at least have reference to—the readers. Ultimately, it is not compulsory to buy our papers; it is a consumer relationship that we have with our readers every day, and it is a fundamentally important one, even if Alan Cochrane says—

Magnus Llewellin: We can discuss that later.

Andrew Harries: Is it compulsory? Sorry.

The Convener: I will take you back a little bit because I am confused again. I apologise for my confusion. You said that you support a UK-wide system.

Magnus Llewellin: Yes.

The Convener: You then complained bitterly about being frogmarched into changes that were caused by the activities of journalists in the south-east of England.

Magnus Llewellin: Yes.

The Convener: You want a UK-wide system, but the UK-wide system is being proposed because of the activities of those journalists in the south-east of England.

Magnus Llewellin: The point that I was making was that, from what I can see, we are dealing with an alleged failure of ethical standards and we are now moving into creating new legislation to put the press into a straitjacket in some ways. The problems initially arose because of the failure of

ethical standards and, in a few high-profile cases, some criminal activity. We agree that the PCC—the regulatory body—needs to be changed and, as I said, the misdemeanours were carried out in the south-east of England, so there is an irony to that, but I would much rather that the regulatory body be changed on a UK-wide basis for practical reasons.

The Convener: I will come on to that. You said that there was a terrible difficulty in operating across two different regulatory regimes. Do any of your papers operate in the Republic of Ireland?

Magnus Llewellin: Mine does not.

Andrew Harries: Mine does.

The Convener: Do you have a difficulty in operating across two regulatory regimes, Mr Harries?

Andrew Harries: It depends what you mean by "difficulty".

The Convener: Mr Llewellin seemed to indicate that there was a terrible difficulty with that. I am just trying to understand whether you find that that is the case.

Andrew Harries: I can see inherent complications in it. Bear in mind that the Republic of Ireland is a very different animal. We operate two Parliaments—we have a Scottish Parliament, which is responsible for much of our daily lives, and a Westminster Parliament with certain retained responsibilities—whereas the Irish Government is the Irish Government. It has its own constitution and subscribes to the European convention on human rights, which guarantees freedom of speech. The fact that our publisher feels able to subscribe to the Press Council of Ireland does not strike me as the best analogy for how we should move forward. There would be inherent difficulties in running two systems, not least their funding, as has already been pointed out.

Magnus Llewellin: *The Irish Sun* is fundamentally a different product. It is edited and produced in Ireland.

The Convener: Yes, but it is under one company.

Magnus Llewellin: Yes, it is under one company, but we are talking about resource as well. *The Herald*, for instance, does not have specific London, Bristol, Manchester and Blackpool editions; it is simply circulated—not widely, but it is circulated—in England as well. Therefore, what we write might come under different interpretations.

In an article that he wrote a couple of weeks ago, Iain Macwhirter highlighted the fact that it is not possible to say certain things in Ireland. Kevin Myers wrote a piece saying, "Africa is giving nothing to anyone—apart from AIDS". It is a nasty remark and it is untrue, but he said it to make a point. He cannot write that now. As a journalist, I would be extremely concerned if some sort of straitjacket was introduced in England that meant that, if one of my columnists—Iain Macwhirter, for example—wanted to make a point and came up with a phrase like that, we would be hauled before the beak down south but it would be okay to publish it in Scotland.

Alan Cochrane: One of the problems that we have is that successive political leaders—the Prime Minister, the leader of the Opposition and the Deputy Prime Minister; I excuse the Scottish Government from this—told us that there would be no statutory control. Then, suddenly, in the dark watches of the night, up comes a plan for a royal charter, which is, in effect, a form of licensing of the press. It is not possible to have a free press if it is answerable to a regulatory body that is set up by the state, which is what the royal charter proposes. Although we want a UK system, the Telegraph Media Group does not want anything that is set up by royal charter and which is, in effect, statutory control.

Joan McAlpine: Before I go on, I should declare an interest as a columnist for the *Daily Record*. I forgot to do that at the beginning of the meeting.

Last week, Lord McCluskey said that all that you were being asked to do through the royal charter or legislation was adopt statutory underpinning of your own editors' code. Given that you have all praised the code and that you support it and say that it works well, he asked why you should have a difficulty with such statutory underpinning.

10:30

Andrew Harries: I feel very strongly about this. I am very much for the church and state separation principle when it comes to the idea that a Parliament of any shape or form, in any area, should have a foothold in a free press, which I think underpins the democratic process. I do not think that Lord McCluskey is right in his conclusions. His expert group went beyond its remit; it was not asked to produce a draft bill but did so. My issue is that even if we choose to try and keep the regulatory authority at arm's length from Parliament, and even if the appointment of what Lord McCluskey calls the recognition commissioner is under the remit of the appointments authority, that still by extension embeds or weds that person to Government.

Let us say that the Parliament chose to go down the route of the recognition commissioner. My concern is: if the recognition commissioner is there

to decide which body is operating effectively—I think that Lord McCluskey makes the point that we could have a UK-wide body that was recognised by a Scottish recognition commissioner—what would happen if no regulatory authority was proposed by the industry?

First, that situation would leave the possibility of a wealthy individual, a charity or a group such as hacked off proposing to form a regulatory authority and, provided that it ticked the boxes, the recognition commissioner might have to accept that. Secondly—Lord McCluskey spells out this scenario—if no regulatory authority was proposed, whether by the industry or anybody else, it would then be incumbent on the Scottish ministers to provide the framework for a regulatory authority. To me, that takes us back to the licensing of papers, which we have not seen since the 1600s. That is straight state intervention and straight state control of the press, and I am deeply uneasy about that.

Alan Cochrane: To pick up on a point that Magnus Llewellin made earlier, one of the problems with having two layers is that if there is a complaint to the regulatory body that is not dealt with to the complainant's satisfaction, there is nothing to stop them appealing to the higher body, which is controlled by the state or at least dependent on state control, and asking if that body can have another look at the issue. A sort of double jeopardy position is being proposed, which I do not think that the politicians initially intended.

Magnus Llewellin: To go back to Joan McAlpine's point about Lord McCluskey, as Andrew Harries rightly said, there is a scenario in which if the regulator is doing a job that the recognition commissioner does not agree with or thinks it is doing badly, you could just tear that up and you guys would then decide how we would do our jobs. Personally, I think that that is pretty dangerous. We are talking about a kind of Orwellian ministry of truth, and that is wrong.

Alan Cochrane: He said it, not us. [*Laughter*.]

The Convener: He has obviously been listening to Lord McCluskey on naming papers.

Colin Beattie (Midlothian North and Musselburgh) (SNP): Various members of the panel have referred to aspects of the royal charter, or the "medieval anachronism", as Mr Cochrane called it—I tend to agree with him. What is your opinion on what is on offer, which is the royal charter, probably with some sort of Scottish underpinning? Where do you see the real difficulties with that? There seems to be a general acceptance of it.

Magnus Llewellin: Of the royal charter?

Colin Beattie: Yes.

Magnus Llewellin: First, the royal charter was dreamt up over pizza at 2 am by a bunch of celebrities and a very small handful of politicians, leading to a deal for the Privy Council to set it in motion. Immediately, we have something that strikes me as being pretty unaccountable. Lord McCluskey said himself that it was "undemocratic", a "creature of the Government" and a "terrible example" to the rest of the world. I have to say that his alternative is worse. If anyone else has a better idea I would like to hear it, but what we are proposing is safer in relation to freedom of speech.

As far as I can see, this is legislation that has been made in haste. Although I am not a lawyer, I know that legislation made in haste is often bad legislation. It includes arbitration, which we have mentioned already. I have deep concerns about arbitration; my job is difficult enough without constantly dealing with complaints on a far more financial level than we deal with them at the moment. The issue of exemplary damages, which we have touched on already, also comes under the royal charter, but they are discriminatory and would not work in Scotland.

The royal charter crosses a Rubicon, which David Cameron said would not happen. It poses a threat of direct ministerial intervention at some future stage, given that only a two-thirds majority in the House of Commons is needed to overturn it. When we are all dead and buried, who can say that we will not get a Government down south that we do not like and which decides to do something very different?

Alan Cochrane: As committee members will know, one Parliament cannot bind its successor. We, the press, are being told, "Don't worry, a two-thirds or three-quarters majority is needed to overturn it." However, that would be perfectly possible to achieve, and it would also be possible that an incoming Government in a different frame of mind and facing different public opinion could easily amend the royal charter or on the back of it bring in legislation that effectively licensed the press. Actually, I consider that the proposal is already a form of licensing.

Andrew Harries: I do not hold the royal charter solution in as much disdain as do my learned colleagues beside me. I was struck by the idea that, at least from a church and state perspective, the charter kept the regulatory authority independent and at arm's length from the Government. My primary belief is that those two things should be separate.

To answer the point specifically, one of the biggest sticking points will be exemplary damages. That hurdle has not been cleared successfully. Exemplary damages already pose a specific difficulty within Scottish law, but it strikes me that the matter may pose a difficulty south of the

border, too. Effectively, we are left in a post-Leveson world with a choice of death either by stoning or by hanging. Neither option is preferable. However—with the greatest respect to this committee and this Parliament—anything that keeps parliamentarians' hands off control of the press has to be a good thing.

Colin Beattie: You clearly have deep concerns. How, specifically, would the royal charter constrain you in doing your job?

Alan Cochrane: One problem is that we do not know what the royal charter is going to say. We will not know that until 8 May, when it finally goes before the Privy Council and we see whether the draftsmen accept the amendments proposed by Fiona Hyslop. We will then see specifically how the charter will affect our daily lives. In essence, it creates a press licensing body. The regulatory body that we are trying to set up will be answerable in every respect of its daily life to the recognition body. I keep wanting to say that the body will be set up "by statute", but it is not by statute; it is by royal charter. The situation would amount to potential control of the press. We will not know how it is working until it works.

Colin Beattie: Do you think that taking the royal charter approach would mean a democratic deficit for Scotland?

Andrew Harries: That is an excellent question.

Magnus Llewellin: Lord McCluskey certainly thought so. However, as I said, his solution to that was worse.

There was a deal done at 2 o'clock in the morning, with pizza and cronies. I certainly feel that there is a democratic deficit. A precedent has been created whereby the Government—albeit only a handful of members of the Government—gets involved in press licensing.

Alan Cochrane: I am not sure what John McCluskey was saying. He said that the royal charter gives a sort of nod to the Mugabes and Putins of this world, but he is also veering away from statutory control by Parliament, so I am not sure which option he preferred. There is no doubt that, in a democratic situation, control by Parliament would be preferable, but not as far as we are concerned.

Magnus Llewellin: You ask why the royal charter would make life difficult for us. From what I have read, it seems that the charter includes plans for arbitration, which, as I said before, leaves us open to claims farming, third-party complaints—we have not touched on those, but they are a nightmare—and exemplary damages. You ask why we would object to the charter in our day-to-day job: it is because it is discriminatory and probably illegal. It would hamper our role, and that is not a good thing.

Liam McArthur (Orkney Islands) (LD): I should probably declare an interest as the son of a sometime contributor to *The Herald*. Looking at some of the stuff that he has published in *Fishing News*, he has probably sailed fairly close to the wind in terms of defamation.

I am interested in the point about Lord McCluskey's view that there is a democratic deficit. The answer to a democratic deficit is invariably to have more parliamentary involvement, but that is absolutely not what you are arguing for. I am struggling to understand where the misgiving lies in relation to the royal charter, although Mr Harries indicated that death by royal charter is perhaps the least onerous of the different forms of capital punishment.

My question is for Alan Cochrane and Magnus Llewellin. Can you enlighten the committee as to whether there should be more of a role for this Parliament—or for the Scottish Government and this Parliament—in the royal charter process, or would you see that as making a bad situation worse?

Alan Cochrane: I am trying to argue the case for no Parliaments getting involved in regulation of the press. That is the position that the press should adopt in a free society.

Liam McArthur: That was not the position of the National Union of Journalists last week, it must be said.

Alan Cochrane: The NUJ must speak for itself. I used to be a member of the NUJ, but I am not any longer—I will go into the reasons for that later if you like.

I do not want Parliaments to be involved in the regulation of the press. I want Parliaments to be involved in the criminal activity of journalists if it is seen to be criminal, but not in the day-to-day running of the press. David Cameron is trying to pretend—I think it was him who said this—that it is a "dab" of legislation, but you cannot have dabs: you either have legislation or you do not.

Magnus Llewellin: The recognition panel would be a creature of the Government, at the end of the day. It would be created by the Government, and the Government—albeit with a large majority—could change the basis under which it was set up. Therefore, that Rubicon is being crossed. The Blair Government did its best to suspend habeas corpus. What you are doing is setting in motion a chain of events that could potentially have catastrophic consequences for free speech.

Liam McArthur: We have heard acknowledgement this morning that there is a problem with public perception with regard to the

legal sanctions, particularly in relation to allegations of phone hacking and, beyond that, the treatment of the McCanns and other high-profile instances of similar behaviour. Alan Cochrane testified, from his time in Fleet Street, that the phenomenon is not new. There have been problems with the approach of the press over very many years.

Future Governments—or future Parliaments—at a UK or a Scottish level can take whatever view they like, so in a sense you are right that we can offer no safeguards in that respect. However, given the scale of the public perception problem, do you not at least acknowledge that something more than just a tweaking of what exists at present is absolutely essential?

Alan Cochrane: I think that it was David Mellor who said that the press is drinking in the last chance saloon, but he said that in about 1987, and closing time has been a long time coming. There is no doubt that the public believes that the press should get a kicking, and we accept that. However, I do not think that you can weigh in the balance the effective licensing or state control of the press as a way of resolving the problem of the criminal activities of some journalists. That is too big a price to pay.

The press in Britain is the most irreverent in the world. We just have to pick up an American newspaper or look at the privacy laws in France, which kept all sorts of things quiet for decades, to see that the press in Britain, for all its faults, is a much better and safer protector of democracy than the press anywhere else in the world.

10:45

Liam McArthur: Do you not accept that, given the scale of the public perception problem that exists on the back of the Milly Dowler case and indeed the Leveson inquiry, something more significant than simply amending the PCC is needed?

Alan Cochrane: Mr McArthur is absolutely right. We have to jump through hoops on this one to prove that what we are proposing to put in place of the editors' code and the PCC will really work. I thought that Guy Black's proposals were pretty good, but some of the other papers in Fleet Street—Alan Rusbridger in *The Guardian* is an example—did not. We have to come up with something incredibly good to sell to the public or we will be faced with legislation—I accept that.

Andrew Harries: I think that we are conflating part of the industry's self-flagellation over the issues that were brought up by Leveson with the idea that there is a public out there that is hungry for retribution and wants to see us reined in. That is simply not my experience. Although Scottish newspapers have declining circulations and declining revenue, they are still incredibly popular among readers and we provide a valuable service to them. The idea that there are armies of angry people marching with pitchforks towards our offices to try to rein us in is wrong. That is simply not my experience. In the whole post-Leveson period, I did not get a single letter from a reader to say that they had a view on Leveson or that they wanted a particular course of action to be taken. I fear that, in relation to the idea that we are all terribly contrite and the industry is something that we should be ashamed of, which is simply not the case either—

Liam McArthur: You made the point about readership again—you mentioned it earlier. I suppose the concern that that gives rise to is that the public choosing what to buy and what not to buy was, to some extent, the driver behind the problems that gave rise to alleged phone hacking. There was competition between the papers to get a different angle on the story that was not available through fair and acceptable means. Is not the danger in pursuing that line of argument that, in a sense, it seems to condone activities that did not just sail close to the wind but stepped over the line?

Andrew Harries: That is a valuable perspective. I was not trying to suggest that we should not try to proceed on the basis that our industry collectively is under pressure from the Leveson report. The point that I am trying to make is that we just need to be a little bit careful about the notion that there is a hugely angry public looking to you people—our parliamentarians—to do something about the out-of-control press, as Lord McCluskey put it, trampling over the democratic rights of ordinary citizens. Is that my experience of the way in which newspapers in Scotland behave, given all the good things that they do? Ultimately, I believe that newspapers are a force for good.

Liam McArthur: Any Government will tell us that, when it consults on something, it hears only from the people who are opposed to what it is doing. In a sense, as long as the public are persuaded that the UK Government or the Scottish Government is moving in the direction of considering the Leveson findings and trying to do something about them, they are hardly likely to be marching with pitchforks to your door, my door or anybody else's door.

The Convener: I do not think that that was a question. It was a point.

Neil Findlay: I have a follow-up comment on that. The fact that someone has a continued allegiance to a newspaper does not necessarily mean that they are satisfied with the way in which it has conducted itself over the years. Some

people buy a paper for the bingo, the racing tips, the football or whatever, so I think that that is a pretty difficult argument to make.

From our discussion this morning, I know what you do not want. You do not want McCluskey or the royal charter, and in the best of circumstances you do not want any regulation whatsoever. I think that that is a fair summary of what has been said.

Magnus Llewellin: Sorry—we do want regulation. We live with regulation day in, day out. What we are concerned about is legislation. There is a big difference.

Neil Findlay: Can you then explain to me in a few syllables what you want that would have provided protection to those people who were wronged and prevented the wrongs that were exposed during Leveson?

Magnus Llewellin: First, I want the existing laws to work. Laws exist to deal with all the alleged crimes and misdemeanours that we have touched on. Secondly, I mentioned Guy Black's proposals to create a new regulatory body that would impose fines of up to £1 million on papers that transgress agreed ethical standards. His contract proposal ticks all sorts of boxes, as far as we are concerned, in that it would create a UK regulatory body with no statutory underpinning. That is what we want.

Neil Findlay: Would newspapers have the option whether to join that scheme?

Magnus Llewellin: Every main trade body has agreed to it, and every paper has already signed up for it. As far as I am aware, under the Black proposals, papers would be given a kite mark if they joined, and if they did not get that it could damage advertising revenues, which are already under pressure. If a publisher quit, that would break the contract and the publisher would face costs, which could be fairly substantial. There will be some publications that do not join, such as *Private Eye*.

We will probably not create something that is absolutely perfect, but I fear that you are talking about coercion, which makes me very concerned.

Alan Cochrane: I disagree with Andy Harries, as I think that the public are concerned about the behaviour of the press—I think that they are very concerned. However, whether they are right or wrong, it is incumbent on us as journalists—as the press in general—to redeem ourselves, in the light of the horrendous stories that emerged during the Leveson inquiry.

The relationship between, say, the press and the police is being examined. Public officials have been arrested. As Magnus Llewellin says, the problem lies in the criminal law. Lord Guy Black's proposals on harassment and ethics are one aspect of it, but, in essence, the public is concerned about journalists breaking the law. Okay, the police inquiries were obstructed by some newspapers' management, but there was also collusion between the police and those newspapers' management that prevented proper investigation of those crimes.

It is hellish that we journalists have to say, "Make us more liable under the criminal law," but, contrary to what John McCluskey said, we do not seek to be above the law. If we break it, break us.

Magnus Llewellin: It is important to say that nobody has been prosecuted yet. As somebody pointed out, Lord McCluskey was casting all sorts of aspersions about News International. He is a judge; he should know better and wait until those people stand trial, rather than use parliamentary privilege to try and hang them before they are in the dock.

Andrew Harries: I want to make it clear that I am not suggesting for a minute that there is not public concern in a post-Leveson world; there absolutely is. I am just asking for a sense of perspective and proportion when people consider these very serious matters. We are at a turning point for press control.

Neil Findlay asked what we wanted, and I agree with Magnus. I want, in essence, a regulatory authority without statutory underpinning. I strongly believe that we can come up with a body that effectively safeguards the public's rights—the rights of ordinary citizens—without either the Holyrood Parliament or the Westminster Parliament intervening.

Clare Adamson (Central Scotland) (SNP): In her letter, the Cabinet Secretary for Culture and External Affairs raised the issue of

"ensuring appropriate respect in dealing with those who are recently deceased, where the only public interest in them is because of the circumstances of their death, and their near relations."

Would that be welcome in whatever solution comes forward and is that possible under the proposed royal charter?

Alan Cochrane: The case in question is pretty new to me; it happened before I came to work in Scotland. I have huge sympathy for the family, given the horrendous events that they have gone through with one child murdered and the other committing suicide, but the proposal is asking for defamation claims for the deceased. If there were errors in how a case was reported, they can be corrected, but I simply cannot see how we can have legal redress for the deceased. After all, the principal witness is dead. With all due respect to and sympathy for the family, I do not see how we could have such redress.

Magnus Llewellin: There is also a supposition that in our day-to-day workings we do not care about the dead. That is fundamentally wrong; we are, in general, an ethical industry. We do not go out of our way to hurt people unless those people need to be hurt by being exposed for wrongdoing or what have you. We do not go out to traduce or undermine the reputations of people who have died unless their reputations need to be investigated.

In the case in question, which applied to what was then *The Glasgow Herald*, what was done was wrong. Jack McLean's article was inaccurate and insensitive and, to my mind, should not have been published. If it had been an opinion piece, I would have defended his right or the right of anyone else to offend and I should say that, in this case, he was writing something that tried to make a very valid point about a young girl's treatment in the judicial system. However, he made the point badly. It was lazy journalism and, after the article was written, he and the paper should have apologised to the family and ensured that the offensive comments were not repeated.

Unfortunately, the article or at least elements of it were repeated; Jack McLean wrote about the issue again. What the Watsons went through was dreadful and my immediate predecessor apologised to the Watson family; however, trying to introduce some law of defamation for the dead or bringing in some regulatory approach in that respect would be fundamentally wrong. As I think Kenneth Roy has pointed out, such a move would make writing history pretty tricky. We devoted a lot of space to Margaret Thatcher's death, but I would not have wanted Mark Thatcher phoning us up and telling us, "You can't write those things about my mum, thanks very much."

It is a very difficult issue; after all, reputation is a personal matter. Everyone agrees that, in the Watson case, what was done was appalling. *The Herald*—or what was then *The Glasgow Herald*—does not normally do such things, but in many ways the mistake was made with the best of intentions. The murderer's treatment in the court system was an issue that was worth discussing, and that was what Jack McLean tried to do. However, he did it badly and wrongly, and the paper should have made amends after the initial article appeared. The editor responsible has been dead for 10 years, the case happened nearly a quarter of a century ago and I do not see how further shackling the press's treatment of dead people would help.

There was, for instance, a criminal called Kevin Carroll, who was known as the Gerbil and was shot dead in a car park in Robroyston. After his murder, the press—rightly—started to look at his background and made it clear that he had all sorts of criminal connections. Who is to say whether we would have been able to write that had members of his family or whoever been able to threaten us with some form of action under Fiona Hyslop's proposals or, indeed, some further form of legislation? That would make investigative journalism very difficult, which would not be a good thing. Although I sympathise whole-heartedly with the Watsons and apologise to them yet again, I have to say that what is proposed is wrong.

Andrew Harries: I do not think that any human being could fail to be moved by the Watsons' compelling evidence to the Leveson inquiry. They fought a brave and lengthy battle for a cause in which they truly believe. However, much like Alan Cochrane, I have reservations about introducing any change to the Defamation Act 1996 that might preclude newspapers from saying things about the deceased that others might not want to hear. I certainly do not think that the issue has a place in a framework of self-regulation or the regulation of newspapers.

That is not to say that the Watsons were not caught in the most appalling set of circumstances. It was 20 years ago, and I would like to think that my industry has changed since then. I cannot think of an editor today—I know many of them—who would ever let anything like that be written about anybody in any newspaper in any way, shape or form; it was just appalling.

11:00

Magnus Llewellin: If the law was different, how would we have reported Robert Maxwell's death? We all knew that the guy was a crook.

The Convener: Can I just clarify something? You seemed to suggest that something that the cabinet secretary suggested would lead to you being taken to court if you wrote things about—

Magnus Llewellin: No, I did not say that. What she has proposed would be under a new regulatory body. A level of respect for the dead is taken into account.

The Convener: The cabinet secretary's letter used the phrase "appropriate respect".

Magnus Llewellin: Yes, but what does that mean? As I have said, we ensure that already on a daily basis. Fiona Hyslop seems to propose putting something down in black and white that people who have an interest in not allowing the truth to be published could interpret in a way that would, in effect, gag the press.

The Convener: That is what I have been struggling with. How would

"ensuring appropriate respect in dealing with those who are recently deceased"

in a standards code gag you?

Alan Cochrane: Because the letter from the cabinet secretary states that

"in paragraph 8 of schedule 2 to the Charter, which sets out minimum requirements for a recognised Regulatory Body's Standards Code, there might be merit in making reference"

to that. From what I can see, she is asking for something to be enshrined in the royal charter that would—although the charter is not a statute—in effect place a legal responsibility on us to ensure "appropriate respect". The proposal is to enshrine that in some form of law. I am not a lawyer, so I am not sure how "appropriate respect" is defined in legal terms.

The Convener: I am sure that we will come to that when we ask the cabinet secretary for her views on the issue. I am not sure whether we hold the same view as you do of what the proposal is supposed to be. However, I am sure that we will ask the cabinet secretary about that.

Neil Bibby (West Scotland) (Lab): Will you give me your thoughts on Fiona Hyslop's possible amendments? You have touched on the idea of defamation of the dead. In her letter, she said that the other amendments are "largely technical". If you have had a chance to consider them, what are your thoughts on them?

Andrew Harries: The approach to what is on offer down south looks sensible, although nothing has been agreed and it is simply a proposal for a framework. I was interested to see that the idea that there may be a carrot-and-stick approach has at least been set in motion; it goes against McCluskey's opt-in-only approach, which states that, if publishers are not compelled to join a system of regulation, there is no other solution. It is evident from Fiona Hyslop's letter and the background stuff attached to it that there are other ways, which function specifically in Scottish law, that we can look at. It is a job for Parliament to look at that. I know that the committee must respond fairly rapidly to what is on the table down south, but nonetheless it seems to me that it is Parliament's job to decide what the carrots and sticks might be. I am perfectly easy with that.

Alan Cochrane: In general terms, I think that these are technical, explanatory notes. I do not understand any of them, but they all look fine to me. [*Laughter*.]

The Convener: They look fine to you, Alan. Thanks for that.

Alan Cochrane: In the sense that they mean that the cabinet secretary accepts that the royal charter can apply to Scotland and that we do not need a separate body.

Magnus Llewellin: I agree with that point. I note that she talks about carrots and sticks and that she is certainly sympathetic to some elements of how the press operates, which is a good thing.

Neil Bibby: One of the cabinet secretary's proposed amendments is to include the phrase "experience of Scotland". Have you any ideas about what that should mean?

Andrew Harries: I took it to mean that she has taken cognisance of some of the witness statements that were given to the Leveson inquiry and of some of the cases that Lord McCluskey touched on.

Neil Findlay: Mr Llewellin mentioned Robert Maxwell. A friend of mine was involved with the *Scottish Daily News* in the 1970s, when Maxwell took it over. My friend wrote a book called "The Trade Unionist and the Tycoon". He then received a lawsuit from Mr Maxwell, banning him from publishing the book until after Mr Maxwell's death—which he did. Would the proposed change, if it covered the defamation of the deceased, change such a situation?

Magnus Llewellin: It depends on what a book says. I assume that the book that you named was not terribly flattering. As far as I recall—it was a long time ago—Mr Maxwell's family were still pretty rich, thanks to the money that he had creamed off people's pensions and what have you. They could have used that money to tie a journalist or writer up in knots and to prevent them from publishing something that they felt needed to be published. That is dangerous. It is often part of our job to publish material that people do not want to have published. Sometimes, that will involve folk who are related to or associated with people who are dead.

Joan McAlpine: One thing that we have not covered, which Magnus Llewellin raised, is the arbitration procedure that would allow third parties the right to complain. He suggested that there were deep concerns about that. Will you elaborate on those concerns?

Magnus Llewellin: My concern is that the proposal would make what is a difficult and complicated job—as you know—even more difficult and complicated. I have deep concerns about opening up a system of arbitration, which would lead to an additional burden on our role. Opening up to third parties makes the system almost abstract—again, that adds to the burden.

Joan McAlpine: Could you give me a hypothetical example of what might happen?

Alan Cochrane: As a columnist, Joan McAlpine will know that people often take exception to our views—although not many, I am sure. That is where third party complaints could easily come in.

I would hate columnists to be subjected to such a draconian measure.

Andrew Harries: It could give the green light to any aggrieved party to collect issues and then complain about them. The weight of complaints that newspapers would suffer from would burden them to an extraordinary degree. I was thinking about a scenario involving the British meat council, let us imagine, which could act collectively in relation to the horsemeat in beef scandal. That could apply to every aggrieved party in every circumstance. Football fans who read match reports or stories that they do not like could complain under umbrella organisations.

Magnus Llewellin: We get lots of reaction to our coverage of the current problems at Rangers, and I am sure that *The Sun* does, too. Thousands of third parties could tie us up in knots for years. Such people have a lot to say, because the issue is particularly important to them and they will disagree with some of the stuff that is written about it. A paper such as *The Herald* could become involved with literally thousands of third party complaints about one particular issue.

Andrew Harries: Even if complaints were not upheld by the regulator, the paper could be left in a position—as we are with the PCC at the moment—where the first step in answering a complaint is to get a memo on the report in question. If it was a news story, that would be from the reporter or the agency, the photographer, possibly the subeditor and perhaps the editor of the day. All that information would then have to be collated before a response was drafted.

That volume of work would impact on small local papers as much as it would on the big nationals. We should not forget that operations with two, three or four reporters or journalists, which serve our communities, would be deeply impacted by such a provision.

Magnus Llewellin: We have not really discussed digital publishing. A small local paper could write something that, although it was a good piece of journalism, was controversial. It could end up attracting hundreds of complaints from people hundreds of miles away—not in the immediate circulation of the paper concerned—and those complaints would have to be dealt with.

The Convener: We have got the point about the issue.

Liz Smith: Much of the issue is about ethics. Is there anything in your existing code that you would seek to change?

Magnus Llewellin: The code's wording is very specific. It touches on ethics, on fair and reasonable behaviour and on not bringing one's paper into disrepute. From what I can remember—I do not have the code in front of me—I do not see much that needs to be changed, although its implementation perhaps needs to be changed in the light of the perceived failures of the PCC.

Alan Cochrane: Ethics are in the eye of the beholder and are difficult to quantify. Was it ethical for *The Daily Telegraph* to talk about how much money MPs spent on furnishing their houses? I would say that that was entirely ethical, but some politicians might not have thought so. Does the member have something in mind?

Liz Smith: No, I am just interested—

Alan Cochrane: I am sorry; I should not really be asking the questions.

The Convener: You are supposed to answer the questions.

Liz Smith: I am in no way an expert in this field and I am certainly not a lawyer, but I feel strongly from all that I have heard that a lot of the issue is about ethics. Is it your gut instinct that aspects of the code could be improved, amended or even removed to make the workings of your industry slightly better?

Alan Cochrane: Issues such as reporting in relation to children, the use of clandestine devices and the paying of witnesses are already dealt with in the code. In financial journalism, for city journalists to engage in share tipping, as they used to, would be a breach of ethics—it is also a criminal activity—that is dealt with in the code. Intruding on grief or shock is also dealt with in the code.

Andrew Harries: Incidentally, the measures on intrusion into grief or shock would have applied in the Watson case if we had had the current code when that occurred. There would have been a cast-iron adjudication against the newspaper concerned if the code had existed in its present form at that time.

Magnus Llewellin: An important point is that regulation must be about holding the press to account for failure to uphold our standards. That is fair enough, and the PCC failed to uphold our standards in certain cases. However, we must remember that regulation should not be about the breach of existing legislation, which is different. As Alan Cochrane pointed out, the PCC code is very wide ranging. In general, I do not see anything particularly wrong with the existing code, although how it is implemented and enforced is perhaps where it failed.

The Convener: I need to bring the evidence session to a close, but I have one final question, which I know is hypothetical. If the Government put in place a UK-wide royal charter, with the necessary amendments to make it applicable to Scotland and with a separate independent

regulatory body, what stories that you published in the past—for example, the MPs' expenses story or any corruption or other stories that have exposed wrongdoing—would you not be able to publish in the future?

Andrew Harries: That will be impossible to know until we see the substance of the royal charter next month. You are asking us to measure something when we do not know how long—

The Convener: You seemed to be fairly clear about what you were against and the fact that Lord McCluskey's proposals would cause problems. Two of you have suggested that there are also problems with the royal charter. Given that you had come to that conclusion, I assumed that you would be able to answer my question.

Alan Cochrane: It is a question of principle—I know that, when editors talk about principles, people should count the spoons—and of having a free press. The press cannot be free, in the worldwide acceptance of that expression, if it depends on state regulation of any description, which is what the royal charter proposes. Frankly, it has been a shoddy bit of work up to now. As Andy Harries said, we will have to wait and see what comes out of the Privy Council. Imagine that—the issue is decided by just half a dozen people with the Queen signing a bit of paper.

The Convener: I would have thought that you would be in favour of that.

Alan Cochrane: Normally, I like all that stuff.

Magnus Llewellin: The phrase that keeps coming up concerns the chilling effect of exemplary damages. Newspapers already face pressures from all sides. If we face the prospect of being treated differently under the law from anyone else simply for trying to expose wrongdoing, that may well have a chilling effect when investigations are being carried out.

The Convener: No one in Scotland is suggesting exemplary damages at the moment.

Magnus Llewellin: Not as yet, but who knows?

Alan Cochrane: I think that Lord McCluskey raised the possibility of loading the expenses—I do not remember the expression that he used.

The Convener: Thank you all very much for coming along this morning to give evidence. I will suspend the meeting briefly.

11:14

Meeting suspended.

11:19

On resuming—

The Convener: I welcome to the committee our second panel of witnesses this morning. We have Alan Miller, commissioner at the Scottish Human Rights Commission, and Margaret Watson, a witness in the Leveson inquiry. Good morning to you both.

Before I open up the discussion for questions from members, I will ask a general question of you both, which is the same question that I asked earlier. How do you feel that the current system of press regulation is operating, and what do you believe its strengths and weaknesses are?

Professor Alan Miller (Scottish Human Rights Commission): I would like to make three very quick points about what the regulation of the press needs to consist of.

My first point is that a free press is a foundation of a democratic society and has been recognised as such by the European Court of Human Rights and many other international bodies, but that that freedom of expression must be exercised with responsibility—that is also written into international human rights law. Therefore, press freedom must be balanced against respect for the reputations and rights of others in relation to whom the press exercises its freedom.

The second principle is the right to respect for private and family life, home and correspondence, which—nine times out of 10—is the right that comes up against a free press. That right can be proportionately interfered with by the press in exercising its freedom, depending on a number of factors, such as public interest.

The third aspect, which might be of particular concern during this session and might go to the nub of the convener's question, concerns the rights of victims, about which Margaret Watson will speak much more eloquently—on the basis of experience—than I can. One of the problems with the existing system is that the burden is very much on the victim to do something about what has happened, to get some kind of remedy or to obtain recognition of what harm has been done. An issue on which the committee has already canvassed opinion and which I am sure that Margaret Watson will speak about is the impact that press coverage can have on the lives of relatives of deceased victims and the need for that to be taken into account.

We now seem to be embarking on a carrots-and-sticks approach. The sticks—whether they involve an amber light in the form of exemplary damages or other measures—should certainly not have any chilling effect on the press; they must be a proportionate interference with press freedom. In

large part, the system of carrots and sticks that is adopted is a matter for the Parliament and the publishing industry to progress.

Broadly, the royal charter and the idea of incentives could be compliant with the European convention on human rights.

Margaret Watson: I just feel that the press are unaccountable when they write stories about people who are deceased, whether through murder or other circumstances. The deceased's good name should not be dragged through the mud without good reason. I hope that the Scottish Parliament will ensure that a provision is put in to give some protection and rights to families who have lost someone. I hope that the Parliament will take the issue seriously.

I have no doubt that the Parliament will not implement defamation of the deceased—I am quite aware of that from what I have read recently—but I make a plea for a provision to be put in whereby, if someone has a complaint against the media, they will be able to present their evidence before some kind of tribunal. It does not have to be a court; all that matters is that it is independent. That will put an end to families' distress, because they are under enough pressure without having to deal with the media at the same time. I can only implore the Scottish Parliament to put in some kind of provision that allows us to present our evidence in person.

The Convener: Thank you both very much.

Joan McAlpine: Margaret Watson, I do not know how much of the session with the editors you heard. It was acknowledged that you and your family were very badly treated, but one of the points that was made was that the editors' code that has been put in place since your family's experience specifically states that journalists should not intrude on private grief and that respect should be shown. Your family would now be covered by that. Is that your understanding?

Margaret Watson: No. I do not agree with that at all. They are good at saying things when they come to Parliament. I am not used to coming before committees, so excuse me if I make a mess of things. As far as I am concerned, the editors want to keep the status quo and do not want any regulation.

We are not asking the press not to report stories. Of course the press must report occasions when violence is involved—in fact, the press do not do enough of that to make the public aware of how much violence is going on out there on the streets—but columnists or journalists must not make up stories. Everybody keeps saying to me that Jack McLean was a columnist, so the situation was different and he was only giving his opinion, but surely an opinion must be based on fact; that is common sense. If a person is going to write something, they should at least base it on fact, please, and not demean the memory of the deceased.

If we had not fought, our daughter's memory would have been forever dragged through the mud. Articles came out through the years. In 2003, an article came out with a photograph of Mary Bell and the murderer of my daughter, Barbara Glover. The headline was along the lines of "Children who are victims of crime often go on to commit crimes." There was a Scottish Government report, but nothing was done about the matter. What is the connection between Barbara Glover and Mary Bell? There is absolutely none. Their backgrounds are completely different. When we complained about that, the Press Complaints Commission said that the headline was misleading, but it did not do anything about the newspaper that published it.

Joan McAlpine: I understand that you have since received an apology from *The Herald*.

Margaret Watson: I have not received an apology from *The Herald*.

Joan McAlpine: Have you not?

Margaret Watson: No. Are you talking about the wee bit that it put in? That is not what I am looking for. I am looking for my daughter's name to be reinstated. Why should I have to put up with this? It is not for me; it is for my daughter—she was the innocent party.

We should be allowed to go before some kind of tribunal, whether it has been set up by the Scottish Government or the press—as long as it is independent. We do not need the involvement of lawyers, and we are certainly not looking for money. I want to make that perfectly clear. I do not want blood money. I cannot have my daughter back, but I will not let anyone demean her memory. That is the only thing that we have.

Joan McAlpine: So you still feel that you have not had adequate redress, even after all this time.

Margaret Watson: No, I have not. Jack McLean could have been held accountable at the time, as could Meg Henderson of *Marie Claire* magazine. That article was worse. We keep going on about Jack McLean, but what about *Marie Claire*? That article was not factually correct at all, and Meg Henderson has never been held accountable for that, because we cannot do anything, as we have no legal standing.

Joan McAlpine: What kind of response did you get when you contacted the editor of *Marie Claire* about the article?

Margaret Watson: Jim and I had to go down to London. It should be remembered that we had lost both of our children at the time, and both of us had

lost our jobs. To be perfectly honest, our electricity and phones had been cut off, because nobody helped us at all—that is the usual for victims, right enough. We managed to get the money together to go down to London to see the editor of *Marie Claire,* and we presented evidence to her. Her lawyer was there, and they had a wee conference for around half an hour while we were left sitting in a wee room. The lawyer then came in and verbally apologised to us, but they did not put in a retraction; it was just a clarification, as they would say. It was not an apology.

Joan McAlpine: So you would like to have had more space to put your side.

Margaret Watson: Why should we have to have gone through that in the first place? That is what we are trying to say. If the press get it wrong, people should make a complaint. We made the mistake of going up to *The Herald*. We were immediately turned away. How dare we go up and ask to speak to a journalist or editor? We did not know who to turn to. There is no official body for victims to turn to.

Joan McAlpine: The current editor of *The Herald*, who obviously was not there at the time, told the committee that he did not think that that would happen nowadays and that practice is much better. What is your response to that?

11:30

Margaret Watson: What about Soham? A columnist in *The Herald* published an article about the Soham murders, blaming the parents for not taking their children to church instead of letting them walk about the streets. Was that not an insult to victims? I have a copy of it if anyone wants to see it.

Joan McAlpine: I should declare an interest in that I was the deputy editor of *The Herald* when that was published, although not on the day that the column was published. The columnist was sacked. Do you not think that that was adequate?

Margaret Watson: Yes, for him.

Joan McAlpine: He was sacked by the editor as a result.

Margaret Watson: But you may recall that a lot of Scottish newspapers jumped to the columnist's defence and offered him a job because they thought that it had brought him attention. He was held up as a hero within journalist circles instead of being condemned. Editors in Scotland were after him to have him on their newspapers. I think that he is working on a Scottish newspaper at the present time. Where are the morals there? Where are the ethics?

Liz Smith: In his opening remarks, Professor Miller raised three points that he thought were important. One of them was about the burden that falls on the victim, which is an important point for us to consider. You mentioned that a tribunal process would help with that. However, that would come into play only once the problem had occurred. Could other things happen to prevent journalists behaving in that way in the first place? What would you like to see put in place to help with that?

Margaret Watson: If you approached the newspaper—if you wrote to it, phoned it or went to speak to the editor or the journalist concerned—that would put an end to it as long as you had the evidence. I am not saying that newspapers should not report cases, as long as they stick to the facts. If they want to defend the accused, they should do that by all means, but they should not twist the facts to fit their agenda, which is what they did.

Liz Smith: Would you like to see more regulation put in place?

Margaret Watson: Yes. I would like to see stronger regulations.

Liz Smith: Do you have any recommendation for what those would cover?

Margaret Watson: Yes—defamation of the deceased.

Liz Smith: Thank you.

Neil Findlay: Joan McAlpine raised an interesting point in relation to the case that you are talking about, Mrs Watson. I do not know whether this is in order, convener, but it is a question for Joan McAlpine as well about the process of dismissing the journalist. How did the story get past the editor and into the paper? What is the process? I have never worked in the newspaper industry. How would the article have been sifted?

Margaret Watson: I can explain that to you.

Neil Findlay: That would be helpful.

Margaret Watson: I had a meeting at *The Herald* after I had stood outside its offices for six weeks with a banner demanding to meet the editor. I met Mr Kemp and Jack McLean, who had their lawyers there, as usual. Remember that we are normal people and do not have access to lawyers. In the meeting, Mr Kemp admitted that he did not edit his journalists' material—he trusted them to write whatever they wanted to write. I do not know whether that has changed. I cannot speak for what happens now, but he said that. Because we could not afford to have a solicitor with us, I asked for permission to have a tape recorder with me. I was allowed to have that and I have the tape recording of that being said. Jack

McLean was caught out with his lies, but still the editor kept him on his newspaper.

They know that we have no power—that is the problem. We have no powers, no rights and no legal standing.

Colin Beattie: What seems to be on the table at the moment is a royal charter, probably with Scottish underpinning to make it applicable here. What is your opinion of that? Is it sufficient? The question is for both witnesses.

Margaret Watson: I prefer Lord McCluskey's recommendation. I know that the Scottish Parliament as a whole does not, but I do because it takes in the internet. Since we gave evidence to the Leveson inquiry, seven or eight articles have been published on Kenneth Roy's website, "Scottish Review". To be fair to Kenneth Roy, he has always admitted that Jack McLean got his facts wrong, which is fair enough. However, he has always condemned us for being allowed to give evidence to Lord Leveson—how dare Lord Leveson allow us to give evidence? One of those articles was picked up by *The Guardian* and was splashed all over it. It is only his opinion but we have no redress.

Colin Beattie: Do you have an opinion, Professor Miller?

Professor Miller: Yes. One of the remedies in international law for victims is the guarantee of non-repetition of what happened to them. In my experience—and as Margaret Watson has been saying—that is what many victims want; they do not necessarily want money or anything else. One of the tests of whatever system is brought in, whether it be self-regulation of the press or the royal charter approach that it seems will be put in place, will be its effectiveness in ensuring that where misconduct is found, it is not repeated and that the culture that has clearly developed in certain parts is not sustainable. Time will tell whether whatever is put in place is effective, but those should be the criteria against which it is tested.

Colin Beattie: Witnesses from the newspapers have suggested that this is basically a south-east of England problem and that in Scotland the press tends to be much cleaner, to adhere more to the code and all the rest of it. Is such a view valid?

Professor Miller: I have not compared what has happened north and south of the border over the past 20 to 30 years, but I have heard that comment. One can take a view on whether it is completely accurate. However, even if it were the case, what I find difficult to understand is that people still have a problem with making the process subject to greater transparency and accountability through the system that is about to be put in place. I am not clear about what new burden in respect of standard of conduct newspapers north or south of the border would be under with what has been proposed. You were trying to probe that question with the previous witnesses and I did not hear from them—nor, indeed, have I heard from anyone else—what the additional burdens are in that regard. I understand that there are cost issues and so on, but that is where I would be seeking further clarification.

Colin Beattie: Do you have a view on that, Mrs Watson?

Margaret Watson: I do not have much to add. The Government has to make up its own mind, but I hope that it takes into account the evidence of the victims. As for the comment that this kind of thing is not prevalent in Scotland, I used to run a support group called Families of Murdered Children. Obviously we dealt with people who had been bereaved as a result of murder and on a few occasions we had to represent the family to newspapers because the papers got their facts wrong and then said, "Let's do an interview with you." Instead of correcting what they had got wrong in the first place, the newspapers just wanted to get more out of the victims and find a different angle to the story. When we ran Families of Murdered Children, I went to three or four newspapers. These things cause unbelievable pain to people; after all, they cannot cope with everyday life, without having that burden on top of everything else.

Neil Findlay: I think—and this is more of an observation than a question—that there are great difficulties with the claim that this is a south-east of England rather than a Scottish problem. After all, newspapers are published nationally and the person whom the journalists are writing about might be a Scottish citizen.

George Adam (Paisley) (SNP): Professor Miller, you mentioned the European Court of Human Rights. You will have heard the evidence from the newspaper editors, who would argue that some of the investigative journalism carried out and some of the stories produced have been in the public interest and of human interest, too. How can we strike a balance between ECHR and the type of investigative journalism that the editors referred to?

Professor Miller: With all due respect, I have to say that the balance is not between having a free press and what has been promoted as good journalism, and human rights.

Human rights are a framework. They provide the means for striking the necessary balance. A free press is a necessary foundation for a democratic society, but it is not an absolute right; it is not above the law. The European convention on human rights, which is what we are dealing with,

talks about the responsible exercise of that right. The European Court of Human Rights has said that that cannot be overstepped; there must be a boundary, and the rights and reputation of others must be part of the consideration of how the press should conduct itself.

The European Court of Human Rights has not yet been given a case on which it has had to decide what the best way is to regulate the press. The Council of Europe has said that self-regulation of the press is a good thing but, over the recent years, the Court has also begun to pay more attention to the rights and reputations of private individuals.

There are different ways for the Court to try to strike that balance, by for instance considering whether a story is in the public interest. If it is, particularly if it is about those who are in power, public life or authority, the balance of the Court's judgment will go very much towards a free press. If the story is about a private individual, the information was obtained in dubious circumstances, there is no public interest and the press behaviour went way beyond the professionally accepted standards in something like the editors' code, the Court is more likely to find in favour of the right of the individual if that person had a reasonable expectation of privacy with which the press interfered.

Human rights provide a framework for the balance to be struck, which happens case by case depending on the circumstances. Your question is one of the big ones. If there is a compelling public interest, the role of the press as a watchdog is an absolutely rock-solid part of the human rights framework. It is the foundation of any democratic society, but it is not beyond accountability, because nothing in society is.

George Adam: There was a lot of talk of ethics from some of the editors who give evidence today. They would say that their editorial ethical code would cover some of what you just said. Do you agree with that? They said that there were a couple of times when things did not work but, on the whole, the code is the correct one for them to follow.

Professor Miller: Do you mean the editors' code?

George Adam: Yes.

Professor Miller: I said at the outset that, from what is happening in London and the cabinet secretary's letter that we all got yesterday, it looks as if we are going down the road of the royal charter with sticks and carrots and the editors' code being the value base in that. That would be broadly compliant with the European convention on human rights. The test would be whether it is implemented—that would be determined by particular cases and experiences that came up—and then what happens. Would there be effective redress for a victim so that they did not have to go through everything that Mrs Watson and many others have gone through, and would it therefore not be repeated in other instances? The jury will be out on that for a number of years.

The Convener: You will have heard or read Lord McCluskey's comments last week on whether exemplary damages are ECHR compliant. What is your view on those comments?

Professor Miller: It is the typical lawyer's answer: it depends on the case. If the amount of damages or the amount of costs was regarded by the court as excessive, it could be considered to have a chilling effect on the free press and be a breach of the right to freedom of expression under the European convention. It depends very much on how much the damages are and what circumstances of the case are.

Let me use a traffic-light analogy. If you are thinking about introducing exemplary damages as part of the press regulation scheme, there is an amber light: be careful, because the interference with the free press must be proportionate. That means that the balance must be struck. How much money is a deterrent? What are the circumstances of the case? The European Court would look carefully at whether the amount of damages went too far and would have a chilling effect on the press.

11:45

Another element to consider in applying proportionality would be the size of the press. Did the case involve a blogger or social media? Would we be using a sledgehammer to crack a nut? That is a difficult issue, and an emerging phenomenon that the court would have to consider. Exemplary damages or costs may not have much of an impact on a big publisher, but they could be completely disproportionate for a smaller publisher and prevent it from carrying on.

Liam McArthur: Professor Miller, you spoke about proportionality and whether exemplary damages would be ECHR compliant. Another aspect of the potential discriminatory effect of exemplary damages is the idea that those who chose to sit outwith the scheme would be treated in a different way from those within the scheme. Is that a real concern? Is it likely that exemplary damages on that basis would fall foul of the ECHR?

Professor Miller: There has not been any identifiable case law on that point yet; it may well come from the UK in the years that lie ahead. I would have thought that a court's view—whether it is the European Court or a court in the UK—would

be that it is legitimate to take the conduct of the defendant into account, as courts do in other non-press-freedom related cases.

Let us consider a health and safety prosecution of a company, for example. The court would take into account whether the company had no regard for health and safety and it was therefore not a surprise that the worker was killed, or whether the company had done as much as could reasonably be expected—it had and implemented a code, and it signed up to all the professional standards—and there was just a tragic accident. Any court would look differently at those situations in considering which penalties to impose.

I would have thought that the European Court would, in considering something like that, say—and the Council of Europe has already said this—"We can see the point in self-regulation of the press and that it is in the public interest, and we would hope that it would be effective and that news publishers would be part of it." The Court would consider whether there should be some financial penalty—or an additional penalty—if a publisher had not been part of such a scheme, and weigh that up along with other factors.

The Court would not immediately reach for a red card. It would consider the whole circumstance of what the Government and Parliament of the country had tried to do, and the public interest in having some kind of press self-regulation. It would see that as being legitimate, and it would take into account the fact that the news publisher had not seen fit to be part of that.

The Convener: Clare Adamson, is your question on the same area or is it different?

Clare Adamson: No, it is different.

The Convener: Before we move on, then, I will ask Mrs Watson a question that I should have asked earlier.

You will probably have heard the argument that, if there was some sort of protection for people who are deceased in relation to what the press could and could not write about, the families or associates of individuals who are legitimate targets for the press—in other words, those who had perhaps carried out criminal activity—could tie the press up in knots and prevent legitimate stories about criminal activity from being published in the public interest. It is almost impossible to separate out the good from the bad in that sense. What is your view on that?

Margaret Watson: I would not agree with that at all. You can publish anything that you want as long as it is factually correct—that is all that we are saying. We are not saying, "Don't publish anything about Diane". Even if, after all these years, some journalist wants to publish something about Diane, there is no argument if it is factually correct. We are talking about defamation of the deceased. That is the only thing.

People keep on talking about Jimmy Savile. Let us be honest—a lot of people within the BBC knew about his activities and did not take the issue forward. Why would protection hold back the press from publishing? If the press had known about it, they would have published. If the man had been charged when he was alive, the press could have published. If people had gone to the authorities, the press could have published the fact that he had been arrested and charged with a certain offence. It was up to the people in authority who knew about the case to take it forward. Did the press know about it? It does not seem that they did.

The Convener: What do you think about the point that was raised that an individual who is deceased cannot be a party to a case? They cannot be a witness and give evidence in any way.

Margaret Watson: I understand that argument. I really and truly do. However, it is a question of being given proof, because what these people were writing was based on the trial. It took us over a year but eventually we managed to get the transcript of the trial. That is another injustice—that victims of crime have to pay for the transcript of the trial, but the accused does not if someone says something about them.

I do not know whether you are aware of what happened when Ian Brady sued for defamation of his good name—from Broadmoor prison. He got legal aid to pursue his case against a newspaper and the case was held in Broadmoor prison for him, yet his victims and his victims' relatives could not do that if something was written about them that was not true. You can see the anomaly there. It is not right; it is not just.

The Convener: Thank you for that.

Clare Adamson: Good morning. You touched briefly on internet publication. Although Lord McCluskey has said that it could be a compulsory element, he did not define in his evidence what would be considered to be journalism in internet publishing. Do you have a view on that issue? Is there a reasonable difference between online newspapers and individuals' publishing at a private level?

Margaret Watson: I am not taking the issue that seriously—although I like the idea of its inclusion—because more and more newspapers are publishing on the internet and in some cases stories that they do not put in the papers are put on their websites. At present, I am not too concerned about the issue. As time goes on, it might have to be addressed, but I am not asking you to take it too much to heart.

Professor Miller: It is a problem that we will all wrestle with for years to come until we get a handle on how to strike a balance. As I said earlier, I would not have thought that we would want to interfere disproportionately with small operators—either private individuals or online news publishers—if it would render them unable to continue legitimately expressing opinion. However, we must not be blind to the fact that this is a developing part of the industry and one that has increasing importance, and we therefore need some way in which to ensure that it does not bring about the situations that we are trying to avoid in the activities of newspapers. That point needs to be addressed. However, I do not have an answer, and I have not heard anyone else say that they have one.

The Convener: What do you think of some of the carrots and sticks that were mentioned earlier? In particular, what do you think of the idea of a fair, quick and inexpensive arbitration route? Arbitration is mentioned in the cabinet secretary's letter, which you mentioned earlier, Professor Miller. What is your view of that proposed solution?

Professor Miller: Broadly, I think that the carrots and sticks approach is something that is best decided on through what went on this morning—a dialogue between Parliament and the publishing industry. I do not profess to have any expertise in the relative merits of different carrots and sticks that have been proposed. I have made comments about an amber light with regard to exemplary damages.

I do not pretend to know enough about what is being proposed on arbitration or how it would work. If I were given the opportunity to look at what is proposed, one of my interests would be whether it is something that will help to prevent the repetition of whatever is found to have been misconduct. Will it facilitate the victim's access to some sort of remedy or justice without the burden that has been placed on people such as Mrs Watson? Those would be some of the criteria.

It is good to look at other ways of resolving matters that would not put the victim through very challenging adversarial proceedings, or legal or costly processes. If there was something that was more victim friendly and had the effect of the industry learning lessons and not repeating misconduct, it would be something to look at.

The Convener: You will have heard the evidence from some journalists and editors that they felt that any kind of system of regulation would be—I will use some of their words—a straitjacket and something that they would be frogmarched into. You yourself used the term "chilling effect" earlier.

In any of the proposals—Lord McCluskey's proposals, the royal charter or any other possible model—is there any risk of us ending up in a situation in which the press is frogmarched or has to operate in a straitjacket?

Margaret Watson: There is no risk at all. I do not know what those journalists are on about. They have a big printing press; we have nothing. If they are going to write stories, all that we are asking them to do is check their facts and, if they get them wrong, at least to correct that wrong and publish a full apology of the same length and prominence as the original offending article. I would like a leader on the front page on the complaint and the apology. To me, that would be enough.

We are not interested in money in any way; we just want to uphold the good name and reputation of the deceased when it is unjustly maligned in the press. The press makes up its own rules as it goes along. I read on Kenneth Roy's website that our complaints are nothing but a ragbag of old complaints. The death of our children and the fact that we were unjustly treated obviously mean nothing to him. He has that printing press; he has that power. We do not.

Professor Miller: As I asked at the outset, where do we want to get to? We want to get to a place where freedom of the press is a foundation but is exercised responsibly and does not disproportionately interfere with the privacy rights of individuals and families and to achieve that through a form of regulation—it now seems that we might have a form of self-regulation—that broadly is compliant with a human rights framework.

The Convener: As members have no other questions, I thank both witnesses for coming this morning. We are very grateful for your time, and I very much appreciate the effort that you have made to be here today.

11:58

Meeting suspended.

12:01

On resuming—

The Convener: I welcome Fiona Hyslop, Cabinet Secretary for Culture and External Affairs; Peter Willman, head of branch for broadcasting and creative industries at the Scottish Government; and Greig Walker, solicitor in the economy and transport division of the Scottish Government legal directorate. Good afternoon to you all. I invite the cabinet secretary to make an opening statement.

The Cabinet Secretary for Culture and External Affairs (Fiona Hyslop): Thank you, convener. I am grateful for the opportunity to give evidence to the committee. I read the transcript of the evidence given last week and I listened to the evidence this morning. I am sure that you will have been moved by the evidence of Margaret Watson, whom I will meet after the session for a further discussion.

I hope that the letter that I sent to the committee is helpful in setting out how the draft royal charter to implement the key Leveson recommendations would require to be amended for it to be extended to Scotland. As the letter sets out, the First Minister and I have been in dialogue with the leaders of the other parties and we have been trying to take the issue forward as consensually as possible. It remains to be seen how far we can move together on the issue, but I believe that it is right to try and do so. We have also been in dialogue with the UK Government on the royal charter and it would be possible, if we choose to do so, to make the charter reflect Scots law and fit Scottish circumstances. We also very much welcome dialogue with the committee.

The Scottish Government's position is that we should implement the key Leveson proposal that there should be independent self-regulation where membership of the regulator is voluntary but encouraged by incentives that are triggered by the regulator being recognised as having met certain criteria. Lord Justice Leveson clearly envisaged that the mechanism for recognising the new regulatory body would be through statute. Under the agreement reached by the three largest parties at Westminster, that new regulatory body would be a recognition body established by a royal charter. The content that is delivered by the charter is what Lord Justice Leveson envisaged delivering by statute. It is important to acknowledge that the hacked off campaign representing victims of press malpractice has acknowledged the charter and supports its terms.

Although the Scottish Government wants to take account of the committee's findings and further discussions with other parties, we think that Scottish participation in a charter would be a viable way of implementing the Leveson recommendations in Scotland. We would need to move reasonably quickly to secure amendment to the charter to reflect Scots law, because it is to go to the May meeting of the Privy Council. That is what the amendments that I forwarded to the committee would do.

Implementing the Leveson recommendations is not just about setting up a recognition body. The other part of the package is considering incentives to membership of the new regulator. Further detailed consideration can be given at a later date to incentives as a whole and their shape and form. It is clear that there are a number of options that can be used, but there is a longer timescale for us to consider the issue. Incentives that require legislation would go through the standard procedures and timescales for considering legislative change.

That is all that I want to say at the outset. I am sure that your questioning will be the most useful part of the session.

The Convener: Thank you very much, cabinet secretary. I ask members to indicate whether they would like to ask any questions. I will begin with a question on the cross-party talks that took place. I would be grateful if you could expand on what you have said by describing the sequence of events and the position that we have reached after the talks between the First Minister and the other party leaders.

Fiona Hyslop: It might be helpful if I take us back. On 29 November 2012, Lord Leveson published his report and, on 4 December, we had a debate in the Scottish Parliament. The first meeting with party leaders took place on 6 December. There have been a number of cross-party meetings since then with other leaders in the Scottish Parliament. On 12 December, we met the representatives of the press. On 6 March, we met the representatives of victims and, on 14 March, party leaders met representatives of the press. The report from the expert group on the Leveson report in Scotland was published on Friday 15 March.

Very quickly over that weekend, the three largest parties at Westminster reached agreement on the royal charter. The First Minister immediately wrote to the Prime Minister asking for dialogue with the UK Government and the next day we received a very positive reply from the Prime Minister agreeing to discussions between the Scottish and UK Governments.

On 28 March, we shared points with the UK Government on draft royal charter Scottish-compliance issues. On 4 April, as agreed with the Prime Minister, we met the Advocate General, Jim Wallace, together with the party leaders. It was always planned that the party leaders would meet press victims but also the UK Government. Since then, I have discussed the matter with the Advocate General, and our officials are also having dialogue.

The next meeting with party leaders is on Thursday 25 April, when we hope to reach agreement on whether to proceed with the royal charter. We want the parties to agree on that.

The one area of policy that we are trying to pursue with the UK Government—and on which the committee is taking evidence—is whether the

royal charter could be amended not just for technical reasons to make it Scottish compliant but to reflect how the recently deceased and their relatives are covered in the media.

I hope that that gives you an idea of the level and timescale of the engagement.

The Convener: Thank you. I am sure that we will discuss many of these issues as we go through the evidence.

Colin Beattie: Cabinet secretary, on the second page of your letter of 19 April you mention the issue of incentives. Could you share your ideas on what those might be?

Fiona Hyslop: If we are to operate a Scottish-compliant royal charter, we will need Scottish-compliant incentives that suit the Scottish legal system and which complement how we engage the media. The expert group on the Leveson report did not give detailed attention to incentives because it proposed a compulsory scheme. However, the group secretariat's briefing note gave a range of options to deal with that issue, of which some were suitable and some were not. I have indicated our interest in two of the options.

The first is the option of arbitration. The Arbitration (Scotland) Act 2010 provides a means by which we expect as a country to be able to have a better system of arbitration generally. On the matter of the media specifically, a strong arbitration system would be good for the industry and for Scotland. The Black and Hunt proposals—the system of self-regulation that the industry itself came up with—indicate that the press would have a functioning arbitration system. We would want to engage with the press on that and would be interested to see what it would look like in Scotland. We think that the option of arbitration would be an incentive for the press.

The second option that we might want to consider is public information notices, which are currently required to be published in the press. The Scottish Government has continued the use of public information notices as a means of support for the press as well as to provide information more generally. There have been requests from local authorities and others to change that. However, the Government is considering exploring with the media whether the continued use of PINs to support the media would be an incentive for them to take part in the scheme.

Those are two specific options that could be taken forward. They do not need to be determined now. If we want to put them into some kind of legislation, a number of bills will come before the Scottish Parliament during the coming months that we could put them into, but we do not need to do that now in order to agree to comply with the royal charter.

Colin Beattie: One of the key discrepancies or differences between Scots and English law that have been highlighted is the question of exemplary damages, which are a concept that we do not have in Scotland. Have you considered having a level playing field with south of the border by bringing in some form of exemplary damages in Scotland, or something similar that will act more as a penalty?

Fiona Hyslop: We do not necessarily need to have a level playing field. As you know, the playing field is not level just now because of the different systems. Under Scots law, different expenses and claims can be met north of the border. However, you are right to say that we do not have the exemplary damages system in Scotland; we have not had it since the 1920s. There are issues with it to do with compliance with human rights. The committee might have heard about that; I did not listen to the earlier evidence session as fully as I would have liked to.

We do not think that exemplary damages are applicable to Scotland, but expenses and the funding of civil litigation are being reviewed currently by Sheriff Principal James Taylor. If any changes are made in Scotland in relation to damages and litigation, that should not be done just in the context of the proposed royal charter. It should be done more generally. We do not see exemplary damages as a route forward unless, for some reason, there are recommendations for general changes to be made at some point in the future, not just for the press. We do not think that exemplary damages are an incentive for the media in relation to the subject matter that we are dealing with just now. Any change should be made to the wider system.

Greig Walker might have something to add on that.

Greig Walker (Scottish Government): The cabinet secretary is right to highlight that, when they are embarking on litigation, a lawyer will look at the potential level of damages and the potential for costs. It is right that the Government should look for the outcome of the Taylor review and see what his position will be on expenses more generally.

Fiona Hyslop: I am more interested in arbitration and public information notices than exemplary charges as a route for incentives.

Clare Adamson: This morning, the editors gave two different views of arbitration. One was quite robust about the current arbitration system, but the editor of *The Herald* indicated that he is concerned that there will be speculative complaints and that arbitration will tie the press and local press into

dealing with far more complaints. Will you address that concern?

Fiona Hyslop: I should make it clear that there is nothing in the royal charter about third-party arbitration. It mentions third parties only in relation to complaints, which are separate from arbitration. We should clear that up. There is nothing about third-party rights to arbitration in the royal charter as it is presented.

I do not know whether members have the royal charter in front of them, but paragraph 22 of schedule 3 covers arbitration. Importantly, it asks for transparent arrangements. Paragraph 22.c) says that the arbitration system should contain

"transparent arrangements for claims to be struck out, for legitimate reasons (including on frivolous or vexatious grounds)".

There is concern about what it would mean for costs, particularly for smaller newspapers, if a lot of vexatious cases made it into arbitration.

Leveson was also clear that any system should be proportionate and should recognise the concerns that were raised during the Leveson inquiry about regional newspapers in Scotland, for example. He singled those out for their exemplary behaviour, and said that any system should not cause expenses difficulties for those newspapers. Again, paragraph 22.g) says that the overall system should be "inexpensive for all parties".

12:15

A good arbitration system should not be a problem; by its very nature, such a system, be it for the media or other areas, should be seen as a positive solution. However, the media's regulatory proposals do not set out what such a system would look like. If the requirements in the charter prove inexpensive and ensure that vexatious concerns can be struck out, we will have a system that will work for the smaller newspapers. After all, we clearly would not want them to be overburdened in the kind of way about which concern has been expressed. I hope that that clarifies what arbitration might and might not look like; I think that some of the earlier discussion muddied the waters with the conflation of third-party complaints and arbitration. There is no third-party arbitration under the charter as drafted.

The Convener: So only complaints from those directly involved would be considered in the arbitration process.

Fiona Hyslop: Yes.

Joan McAlpine: The editor of *The Herald* felt that there was an imbalance in the system in that it would allow people to make complaints without having to take on any financial burden, while a financial burden would fall on the newspaper.

Fiona Hyslop: That refers to the complaints system, not the arbitration system.

Joan McAlpine: How will the public information notice incentive work? Does it mean that you will not place public information notices in publications that do not sign up to the regulatory body?

Fiona Hyslop: Or, alternatively, they would be placed only with publications that are recognised in the media's self-regulatory system.

Liam McArthur: On the issue of defamation of the deceased, which you touched on in your opening remarks, I know that you were unable to hear the previous panel's evidence, although I understand that you are meeting Mrs Watson this afternoon. Her testimony was extremely moving and I think that everyone will accept that the circumstances of the case are grotesque in the extreme. The various newspaper proprietors and editors have told us that the editors' code has been tightened up since then and that some provisions with regard to intrusion on private grief would now prevent an editor from allowing the publication of the original article. However, Mrs Watson disputed that in her evidence. What provisions in the royal charter would go some way to addressing the concerns that have been raised by Mrs Watson and others without falling into the trap of not allowing journalistic licence to comment on deceased figures, however recently deceased they might be?

Fiona Hyslop: This is a very important point. I think that we in Scotland are more acutely aware of concerns about the defamation of the deceased precisely because of the Watson case and the evidence that the Watsons gave to the Leveson inquiry. However, the question is whether the code of the industry's self-regulatory body takes into account how people in such a situation should be dealt with. I sincerely hope so, but the issue, then, is whether we make it a requirement in the royal charter that the self-regulatory body's code address the issue. All parties in Scotland agree that such a requirement should be in the code.

As you will be aware, there has been a great deal of negotiation over the content of the royal charter. Whether the UK Government will agree to our proposed insertion remains to be seen; having secured the agreement of all the parties at Westminster to the charter as it stands, it might well not want to open the royal charter up again for this policy area. That said, we in Scotland think that something could be inserted into the charter.

To be helpful, I can send you at the end of this evidence session the content of what we think should be in the charter. However, it might be helpful just now for me to read it to you so that you have it on the record. Paragraph 8 of schedule 3 of the charter states:

"The code must take into account the importance of freedom of speech ... protecting public health and safety ... preventing the public from being misled, the need for journalists to protect confidential sources of information and the rights of individuals."

We want to insert into paragraph 8, which is on page 18, the wording:

"and the need for appropriate respect and decency in reporting and commenting on the recently deceased, where the only public interest in them is in the manner and circumstances of their death, and their near relations."

Clearly, in the examples that you heard about, the public interest in Kevin Carroll, Robert Maxwell and Margaret Thatcher was more about what they did in life than it was about the "circumstances of their death", so we think that that is taken into account by that wording. Whether or not the proposed phraseology appears in the charter, we think that it would need to be in the code. What we are hearing from the press is that they think that the code as currently drafted under the PCC or the code that would be presented under the new system would take account of what we propose. We would prefer a stronger position to be set out to reflect our proposal, but we will wait to see what the consensus is. We have encouraged the party leaders in Scotland to liaise with their counterparts at Westminster to see whether we can get political support for our proposal both north and south of the border, but we do not know yet whether the UK Government would be in a position to open up the charter for policy changes, which is what our proposal would be, as opposed to doing so for the technical issues that would enable the charter to become Scottish compliant.

Liam McArthur: That is helpful. We have been provided with a note about the Scottish Government's earlier consultation on the issue, which I think dates back to January 2011. What does not appear to emerge, though, is consensus around what any change may be. I wonder why that is. Clearly, it is a terribly complex area in which the pitfalls are fairly obvious. However, have any conclusions arisen from the consultation process and the responses that you received that would provide assurances that the pitfalls can be avoided and that the policy intent that I think we would all wish to see can be safely achieved?

Fiona Hyslop: I think that the pitfall that people are concerned about is whether we would have enshrined in law the defamation of deceased persons. There was no consensus on that point in the 2011 consultation. The Scottish Government responded by saying that we would like to see what Lord Justice Leveson said in his report, but he did not recommend legislation in this area. Therefore, there is certainly no consensus on the issue. I think that that is because of the pitfalls that you heard about in the earlier evidence session around what could be defined as defamation.

Nobody is talking about defamation in terms of litigation and making claims; we are not in that territory. What we are saying is that the standards code should contain provision for our proposal. We have yet to see what the standards code will look like in its final form as proposed by Hunt and Black, but we expect the area of defamation of deceased persons to be covered. We would like it to be recognised that that aspect needs to be included. Regardless of that, though, we should have some confidence that the standards code should cover it, but we would like to see something in the royal charter to confirm that it should be included. However, you are right that there is no consensus about separate legislation on defamation. I think it unlikely that there will be such consensus.

Greig Walker is more familiar with the retrospective issues around consultation, so he will say something on it.

Greig Walker: I am not sure that there is anything to add, but I emphasise that there is a distinction between the sort of legal claims that can go to courts and that in future may go to arbitration, which was what the consultation was about, and Ms Hyslop's proposal of what should go into the charter about the ethical code—that sort of soft law. The debate has moved from the courtroom, as it were, into what may or may not be in the standards code.

Liam McArthur: One of the few points of agreement among the three editors from whom we heard this morning is that they do not want to see different approaches being taken north and south of the border. Notwithstanding that anxiety, if it proved to be impossible to open up the royal charter to the policy change that you have mentioned, would the Scottish Government consider with the other parties' leaders at some sort of soft-law provision for Scotland?

Fiona Hyslop: I would not want to pre-empt discussions with the party leaders on that until we get a response from the UK Government on whether it agrees to opening up the royal charter in that way. That is an issue for further and separate cross-party discussion, so I would rather wait to hear from the UK Government. It is not my place to speak on behalf of the other party leaders.

Liam McArthur: Is the matter enough of a red-line issue that you will, if a solution at UK level proves to be impossible to find, explore options for doing that outwith how the royal charter might apply to Scotland?

Fiona Hyslop: The issue would be for dialogue and discussion with the UK media—and with the Scottish media in particular. I have already embarked on discussions with them on how we

might deal with the issue in the editor's code, although we do not have conclusions on that. However, it is important that the issue be reflected in the code, whether or not it is included in the royal charter. The royal charter is about trying to ensure that the content of the code has effect. From what we are hearing from the media, the issue would be covered on a voluntary basis in the voluntary code. The subject is part of the discussions that we are having with the media.

The Convener: Is Clare Adamson's question also on that area?

Clare Adamson: My question is slightly on the same area. As has been said, there was consensus among the editors about having a UK solution. In some respects, I suppose, that pushes us towards having a royal charter because that is what has been proposed by Westminster. If the royal charter failed to bring about the changes in the press that we all want, would that in any way preclude Scotland—or, indeed, the UK—from taking a different view and introducing legislation at a later date?

Fiona Hyslop: No. Perhaps the million dollar question is whether agreement will be achieved on establishing a media recognition body. Everyone is trying to work to achieve consensus but—the UK Government will be in a similar situation—nothing precludes us, a future Government or a future Parliament from doing something different. However, on such an important issue, it is important to try to get cross-party agreement.

Once the body is established, there must be some separation because we need independent free media and a free press. What has been proposed would involve recognition by the recognition panel, which would be separately appointed by an appointments committee, which in the draft provisions would be separately established by the Commissioner for Public Appointments. That would mean that the body was sufficiently removed from the system to allow it to operate. However, Clare Adamson is right that we will need, if the charter does not work, to come up with another solution to implement Leveson.

The Convener: Thank you for clarifying that. If we assume that the royal charter will apply UK wide, could the Scottish Parliament in the future still decide to do something differently? To use a phrase that was kicked around last week, would there be no democratic deficit?

Fiona Hyslop: Currently, the royal charter would apply only to England and Wales. As a Parliament, we could decide—we will have an opportunity to do so during a debate next week—to agree to it for Scotland as well, for which we would be informed by the committee's views. Alternatively, it is open to us to decide not to take part in the royal charter but instead to come up with a different scheme.

My reading of the cross-party situation in Scotland is that a position that was based on consensus would command most respect. As I said at the outset, although Leveson did not propose a royal charter as a solution that would deliver the content of the report, but expected the body to be statutorily underpinned in a different way: it would involve the mechanics of a recognition panel that would assess whether people were complying with a code that addressed certain issues. Mechanically, that would deliver what is required for a Leveson-compliant system.

The Convener: Perhaps my question was not clear enough. I understand that we could choose the royal charter or something different, but if we choose the royal charter, what will be the situation after its implementation? Could we choose something different at some point further down the road?

12:30

Fiona Hyslop: Under the draft, in article 9, "Charter Amendment", which is on page 4, and in article 10, "Dissolution", which is on page 5, the charter is drafted for England and Wales. If we want to make the charter technically compliant for Scotland—again, this is to do with the two other amendments that I want to share with the committee—we would propose as an amendment to add a new article 10.1.a) as follows:

> "This Charter, and the Recognition Panel created by it, shall not be dissolved unless information about the proposed dissolution has been presented to the Scottish Parliament, and that proposal has been approved by a resolution."

For this purpose, "approved" could mean that either at least two-thirds or a simple majority of the members of the Scottish Parliament who vote on the motion do so in support of it.

The convener's question is about what would happen at some point in the future if we were to decide that the royal charter does not apply or is not working, or if we were to decide that we want to do something else. It is about whether there will be provisions for the Scottish Parliament to do something about those matters. Again, that is part of the technical amendments that we are currently discussing.

I have given the committee the technical amendments that will make the charter compliant for Scotland. We want to ensure that there is in the charter a role for the Scottish Parliament. In respect of England and Wales, the Scottish Parliament would have to be consulted on devolved matters. That is covered in one of the

amendments that I am happy to ensure is left with the committee at the end of the meeting.

The Convener: Thank you.

Neil Bibby: You talked about cross-party consensus—I would like a bit of clarity on that. Have the possible amendments that have been put to the UK Government been agreed across parties?

Fiona Hyslop: The amendments were sent to the party leaders at the same time as I sent them to the committee. We are in the middle of those discussions and I hope to achieve that agreement during the course of this week.

Neil Bibby: The amendments have not been agreed as yet?

Fiona Hyslop: The amendments that I sent have not been agreed. Most of them are technical amendments. The one that relates to the situation of recently deceased people reflects what the party leaders wanted when we met them on 4 April. That is what they asked us to do and that is what we have presented.

Neil Bibby: Okay.

Neil Findlay: In your opinion, did the expert group go beyond its remit?

Fiona Hyslop: Yes—the expert group definitely went beyond its remit in terms of the compulsory system. It produced a valuable report because the background and the points about Scots law are well presented. However, the report strayed beyond a Leveson-compliant voluntary scheme.

Neil Findlay: Initially, there appeared to be enthusiasm from the Government for what was coming out of the expert group. What has changed?

Fiona Hyslop: I am not sure that I agree with that reflection of the Government view. My response when I first read the report was concern about the compulsory element. The arguments are well made and consistent with one position that could be taken, but we did not respond by saying that we were endorsing the report. Indeed, to be fair to the expert panel, page 1 of the report makes it clear that the views are the views of the expert panel, and not the views of the Scottish Government. I agree with that.

Neil Findlay: Has the Government had further meetings with the expert panel since the publication of the report?

Fiona Hyslop: It has not, that I am aware of.

George Adam: The cabinet secretary has pre-empted some of my questions by saying that she has already been in discussions with the Scottish media, but I will go just a wee bit further.

Can you give us examples of the type of engagement that you have had with the media and whether that engagement is on-going?

Fiona Hyslop: As Cabinet Secretary for Culture and External Affairs, I have regular and on-going dialogue with the media through the Scottish Daily Newspaper Society and through other bodies, but as regards specific meetings on this issue, the most recent one—I am just checking the date—was on 14 March.

The committee has heard from the press representatives, the journalists and the editors that they are strongly of the view that they would prefer to stick with the PCC, that they do not want a royal charter and that they do not want any Government involvement in the form of a royal charter, in the form of entrenchment through the use of the UK Government's Enterprise and Regulatory Reform Bill or through the form of incentives from use of its Crime and Courts Bill. They articulated that position passionately and well, but we all know that there is a desire and a requirement to produce a Leveson-compliant system. That is the consensus view in Scotland across all parties.

We must acknowledge the press's strong difference of opinion, but regardless of whether the press agree in principle with a royal charter, the issue is whether, if a system arises in which a self-regulatory press body seeks recognition, we can ensure that it works in the best interests of everyone, including victims and the press. We must also be able to ensure—this relates, I think, to Clare Adamson's question—that the cost of arbitration is not excessive. We must have the dialogue; we are doing that and will continue to do so.

Liz Smith: Professor Miller said in evidence that there is a fine balance to be struck between having a free press, which is an intrinsic part of a democratic society, and ensuring that people have a right to privacy, and that support must be provided to victims and that they are not left feeling that they are the poor relations in such considerations.

How would a royal charter, compared with an improved code of conduct for editors—regardless of whether it has a Scottish dimension—enhance accountability of the press? From where will the extra accountability come?

Fiona Hyslop: I suspect that it will come from the recognition body recognising the self-regulatory press body. The recognition body must recognise the self-regulatory press body. If that body is recognised, that is when the carrots and sticks—the incentives—come in. If it is not recognised, the carrots and sticks cannot be applied as incentives.

On accountability, the royal charter says that the recognition body should present a report to Parliament—in the case of Scotland, it would be the Scottish Parliament—to say what has happened over the preceding year, whom it has recognised and so on. The laying of that report is the only route for that to happen. The difference is that under a royal charter a report would be laid by the recognition panel on what had happened by way of recognition over the previous year.

I do not think that the issue is about accountability and control. We must have a self-regulated press and a free press, so the issue is not about control. If we look at how the royal charter works, the appointments committee will be established by the Commissioner for Public Appointments—not by the Government. The commissioner will appoint an appointments committee, which will set up the recognition panel that, in turn, will deal with recognition of the self-regulatory press body.

I appreciate the argument that is being made that no parliamentarians, here or at Westminster, can have any association with the press, but the proposed arrangements are pretty detached as regards who appoints whom and the reporting process. Once the system has been established, it will be self-regulatory. That was the whole point of what Leveson proposed. As a Government, we have always said that we think that the press should be self-regulatory. It is absolutely not the case that the press will be accountable to Parliament, which I do not think any of us would want.

Liz Smith: I think that Professor Miller was making the point that the best possible scenario would be if the press acknowledged their responsibilities, engaged with them and were accountable.

The other point that he made quite forcibly was about the growth of the internet and whether it is defined as part of the press. Will you give your thoughts on what is a growing industry? Does it complicate matters?

Fiona Hyslop: In legal terms, it does complicate matters. In relation to interpretation, the expert panel is quite helpful in identifying which parts of internet presentation of news stories—as opposed to other matters to do with the internet—would be devolved issues.

On your first point about accountability, it absolutely must be about accountability of the media and the press by the press and for the press. I strongly support that—that is where it has to happen. It was interesting to hear an element of contrition from a number of the witnesses today. They accept that there must be change, although their view of what that change should be might differ from ours. Whatever happens, however, the issue for delivery—this is maybe where Liam McArthur was coming from—must be in what they do with the editors' code.

At the beginning of his evidence, Alan Miller said that we will know whether the system is effective in protecting human rights only once we have seen it in practice, and the only way we will see it in practice is in seeing how the self-regulatory code works in practice. How that works will take a bit of experience and history. Of course, it needs some kind of monitoring, but I am sure that everybody who has an interest in the issue—because of the importance of the Leveson report and the enormity of the problems and the difficulties that were caused for the victims of press abuse—will ensure that it is monitored by the public more generally. As you say, it must be about how the media conduct themselves under the code. If my understanding of what Alan Miller said is correct, the experience of that will indicate how effective it will have been.

The Convener: An issue was raised this morning that I want to ask you about. If the royal charter comes into effect and the recognising role is established, will the industry have to set up a regulatory body?

Fiona Hyslop: To be recognised, it would need to do so. The industry wants to set up its own self-regulatory body; the question is whether it puts it forward to be recognised.

The Convener: The point was made by one of the editors—I struggled slightly to understand it, so perhaps you can clarify it for me—that if the hacked off campaign, for example, set up a regulatory body that met the criteria, it would have to be recognised. Is that correct?

Fiona Hyslop: I will ask Greig Walker to check the legal reading of that. The point is that it would have to meet the criteria, which are clear about the content of the regulatory body, and it might be a challenge for a campaign such as hacked off—or, indeed, anyone else who was not of the industry, for the industry—to meet the criteria. The Leveson report also indicated that there might be more than one body seeking recognition, which is the other issue. That is why the criteria are critical.

In cross-party leaders' discussions with the hacked off campaign, they made it clear that the content of the criteria is very important to them. However, I think that it would be extremely difficult for any body that was not a self-regulatory press body to meet the criteria that are set out by the recognition panel. Paragraph 10.b.ii of schedule 2 on page 14 of the draft royal charter states:

"The Board of the Recognition Panel must ... inform Parliament and the public as soon as practicable if, on the first anniversary of the commencement of this Charter and

thereafter annually if ... in the opinion of the Recognition Panel, the system of regulation does not cover all significant news publishers."

Such a body would have to be of the newspaper industry, for the newspaper industry if it were to meet the criteria.

The Convener: That is helpful in explaining the point that was made this morning. Thank you for pointing that out.

My second question goes back to the incentives—not the one about arbitration, but the one about public information notices. Can you clarify how those would operate? You made the point that an incentive for people to sign up would be the fact that public information notices would go to publishers that were recognised as being part of the self-regulatory body. How would that operate for local newspapers? What would happen if they did not sign up and you did not provide public information notices through local newspapers? What other route would you use for public information notices?

12:45

Fiona Hyslop: Different mechanisms can be used; for example, notices can be placed on the internet. That is what a number of councils have done. Indeed, the Convention of Scottish Local Authorities has made representations to the effect that instead of spending their budgets on local newspaper notifications councils could instead publish such notices on the internet. I am not sure whether it was taken by this committee or its predecessor—I think that it was the previous committee—but evidence has certainly been taken on the reach of the internet and whether non-internet users are satisfied with their access to public information.

I am not saying that we have reached agreement on the matter, but we are certainly looking at it and want to engage with the industry on it. However, as Colin Beattie suggested with regard to exemplary damages, we might be able to consider alternatives and to find something different for Scotland.

The Convener: I just wanted clarification of whether the option is feasible and whether there are alternatives. Your response was helpful.

Members have no more questions, so I thank the cabinet secretary for coming along this morning. We very much appreciate your taking the time to answer our questions. The committee intends to write to you as soon as possible—indeed, by close of play tomorrow, at the latest—to inform the discussions both within the Government and with other party leaders that I know you are due to have on Thursday.

Fiona Hyslop: I thank the committee for its promptness on this matter and for the time and attention that it is giving it.

The Convener: The committee has agreed to hold the next item in private.

12:47

Meeting continued in private until 13:20.

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