



OFFICIAL REPORT
AITHISG OIFIGEIL

Equalities, Human Rights and Civil Justice Committee

Tuesday 8 October 2024

Session 6



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EQUALITIES, HUMAN RIGHTS AND CIVIL JUSTICE COMMITTEE
21st Meeting 2024, Session 6

CONVENER

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

DEPUTY CONVENER

*Maggie Chapman (North East Scotland) (Green)

COMMITTEE MEMBERS

*Meghan Gallacher (Central Scotland) (Con)

*Marie McNair (Clydebank and Milngavie) (SNP)

*Paul O'Kane (West Scotland) (Lab)

Evelyn Tweed (Stirling) (SNP)

*Annie Wells (Glasgow) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Siobhian Brown (Minister for Victims and Community Safety)

Kavita Chetty (Scottish Government)

Walter Drummond-Murray (Scottish Government)

Shirley-Anne Somerville (Cabinet Secretary for Social Justice)

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP) (Committee Substitute)

CLERK TO THE COMMITTEE

Katrina Venters

LOCATION

The James Clerk Maxwell Room (CR4)

Scottish Parliament
Equalities, Human Rights and
Civil Justice Committee

Tuesday 8 October 2024

*[The Deputy Convener opened the meeting at
10:30]*

Interests

The Deputy Convener (Maggie Chapman): Good morning, and welcome to the 21st meeting of 2024, in session 6, of the Equalities, Human Rights and Civil Justice Committee.

We have apologies from Evelyn Tweed. I therefore welcome to the meeting Elena Whitham, who is attending our meeting remotely as Evelyn's substitute. You are very welcome, Elena.

Our first agenda item is to invite Elena Whitham to declare any relevant items of interest.

Elena Whitham (Carrick, Cumnock and Doon Valley) (SNP): Good morning. I have no relevant interests to declare for this morning's meeting.

Decision on Taking Business in
Private

10:30

The Deputy Convener: Our second agenda item is to agree whether to take item 11, which is consideration of today's evidence on the human rights (Scotland) bill, in private. Do we agree to do so?

Members *indicated agreement.*

Human Rights (Scotland) Bill

10:31

The Deputy Convener: Our third item is an evidence session on the delayed human rights (Scotland) bill. I welcome to the meeting Shirley-Anne Somerville, Cabinet Secretary for Social Justice, who is accompanied by supporting Scottish Government officials Kavita Chetty, deputy director of human rights and mainstreaming, and Trevor Owen, head of the human rights strategy and legislation unit. Thank you for joining us this morning.

I refer members to papers 1 and 2, and invite the cabinet secretary to make a brief opening statement.

The Cabinet Secretary for Social Justice (Shirley-Anne Somerville): Thank you, convener, and good morning. I am very grateful to the committee for inviting me along today. The committee will have noted my letter last month on the next steps for the human rights bill, and I will cover some of that ground in my opening statement.

Last month's programme for government set out our commitments to strengthen the implementation of human rights and to advancing proposals around extended rights protection. It restated the Government's commitment to legislation that will incorporate international treaties into Scots law, developing proposals and engaging with stakeholders.

I reiterate at the outset that the Scottish Government remains absolutely committed to the deliverance of human rights and to bringing forward the human rights bill. As the committee knows, it was our intention to bring forward that bill during the current session. However, we have decided instead to continue working on the bill over a longer timeframe and to introduce it in the next parliamentary session, subject to the outcome of the 2026 election.

I will briefly explain the rationale underpinning that decision, but first I acknowledge the deep frustration, concern and, indeed, anger that have been expressed by civil society and others who have worked to shape the bill to date. The decision to postpone introduction and continue the development of the bill was not one that I took lightly. It is the Government's view that, given the significance and complexity of the bill, there is more that can and should be done now to test and refine proposals further to ensure that the bill delivers the improved human rights outcomes that we all want it to achieve.

In particular, it has become increasingly clear to me that the constraints in the devolution settlement that were highlighted by the United Kingdom Supreme Court judgment on the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill present a significant challenge to our ambitions for the human rights bill and, as a consequence, our ability to make law that extends protections for human rights as far as we want it to.

The judgment exposes the limits of the settlement as it currently stands, and how far we can go in practice to advance rights through treaty incorporation. Proceeding now would mean a bill with duties on public bodies of significantly reduced scope, complexity for duty bearers and rights holders and, therefore, challenges in making those rights real on the ground.

Up to this point, we have had to—to an extent—accept that challenge as an outcome of the Supreme Court judgment that we had to live with. However, things changed over the summer. The general election has presented, for the first time in 14 years, an opportunity to engage constructively with a UK Government—a Government that appears much more willing to address issues together, including how devolution is working in practice. My ministerial colleagues welcome that constructive and collaborative tone in the early discussions that we have had on a range of matters, and I hope that that will continue to be the case.

We are determined to make progress on addressing issues relating to the proposed human rights bill. Following publication of the programme for government, I wrote to UK Government ministers seeking to establish early dialogue. Officials have been tasked with convening an event before the end of the year to bring together key stakeholders to look at the challenges with rights incorporation and devolution following the UNCRC incorporation bill judgment.

We also want to use this next period to further consider our proposals on the incorporation of treaties concerning women, disabled people and people who experience racism. Stakeholders have pressed us to go further, and that needs careful consideration.

In the period ahead, I am seeking to take early action to advance rights now and to prepare the public sector for new domestic human rights duties in the future. That includes building the public sector's capacity and capability to embed a human rights-based approach in everything that we do, as well as considering the development of an accessible tracker tool to support the implementation of international treaty body recommendations. I am happy to go into more detail on that, should the committee wish me to.

Even though stakeholders are deeply frustrated—I know that the committee heard that frustration directly last week—I very much hope that they will stay the course and work with us on that path. We are determined to make progress, and we must work together to allow that to happen. I look forward to the discussion today.

The Deputy Convener: Thank you very much, cabinet secretary. I will open up with a comment and then a question. In your opening statement, you referenced the human rights sector's anger and frustration, and you said that you want to continue to work with the sector as work on the bill progresses, with its potential introduction in session 7. Given that the engagement and work with stakeholders have gone on for a long time—nearly 10 years—one of their frustrations is about how they were informed that the bill would not be introduced in this parliamentary session. Why did you choose to tell some stakeholders about the bill's delay via correspondence, very close to the programme for government's publication? Most stakeholders heard about the delay only because the bill was not included in the programme for government, so how can you rebuild trust with them?

Shirley-Anne Somerville: That last point, about rebuilding trust, is the important one for me, because I have heard directly that trust has been severely dented. When I looked at what we could do to ensure that people were aware of what was happening, one of the huge challenges was the limitations that presented themselves in relation to the programme for government. I could not tell groups of stakeholders what was in the programme for government, or we would have been in more difficulty in another way, but I totally appreciate that that led to a very difficult set of circumstances when the programme for government was introduced.

We undertook work to try to get the message out as much as possible. I met the Scottish Human Rights Commission to update it on our decision on the bill, and officials met the Human Rights Consortium Scotland on the day of the programme for government's publication to update it on our decision. Other letters were sent because that was the quickest way, on the day of the PFG's publication, that we could inform as many people as possible.

I will give another example of how I took that work forward in my diary. Shortly following the PFG's publication, I spoke at the inaugural human rights conference, which was attended by more than 150 civil society and human rights stakeholders, to hear directly from people.

The Deputy Convener: Annie Wells wants to come in to make a similar point.

Annie Wells (Glasgow) (Con): Good morning, cabinet secretary. You touched on this in your opening remarks, but what is your response to stakeholders who feel deep disappointment about the decision to delay the bill and say that there has been a betrayal of trust and that they were blindsided by the decision.

Shirley-Anne Somerville: In my response to the deputy convener, I tried to deal with the criticism about being blindsided. As I said in my opening remarks—I will reiterate this once again—I absolutely understand people's deep frustration and anger. I have a job of work to do to build trust and to show that my decision to delay the bill was made because there is an opportunity to make the bill stronger, which did not exist during the other years in which I have been involved in this work.

Forgive me—I am not trying to make a political point about that. It is simply the case that there has been a change in approach. That meant that I was left in a position over the summer in which we could have decided to go forward with the bill, as we had intended to do, but I know, in my heart of hearts, that if we had done that, it would not have been as strong as it could have been.

I appreciate that, last week, the committee heard evidence that suggested that we could introduce the bill and simultaneously make it better. I hope that we will have time to go into why I genuinely do not see that as a realistic and practical option. I am happy to go into further details on that later, if that would help the committee.

The Deputy Convener: We move on to questions from Elena Whitham.

Elena Whitham: Good morning, cabinet secretary, and thank you for coming along. In your opening remarks, you made it clear that you still intend to forge forward with the incorporation of international human rights treaties. If that is still a priority for the Government, could you please explain to us how you will prioritise that during this session of Parliament?

Shirley-Anne Somerville: There is a great deal that we can still do in this area. I reiterate that we are absolutely committed to the incorporation of UN treaties into Scots law, and that we are absolutely committed to delivering the human rights bill. Therefore, we need to keep up the momentum on the delivery of what we can do in the meantime. There are areas of the bill in relation to which we can still test and refine proposals.

We are very conscious of the fact that it would help if civic society could see how far things have developed. We are not asking civic society to go through the consultation that it has already gone through or to repeat the process that it has been

through. I fully appreciate that people have fought for many years for what was going to be in the bill and that they are tired. They have spent a lot of their time and capacity on that, and they do not want to waste time.

Therefore, I am very conscious that we need to move forward with specific proposals that we can implement in the next 18 months. Key to that is our relationship with the UK Government and how we can demonstrate that. Those are the areas that I am keen to work on. We need to use the next 18 months to demonstrate that, together, we have made progress and that we can use those 18 months to make further progress. I hope that, for the first time, a conversation can take place between the Scottish Government, the UK Government and stakeholders about how things can develop.

Elena Whitham: Some of the witnesses at last week's meeting argued that it is incoherent to delay the human rights bill, given that the Scottish Government's clear priorities include ending child poverty and addressing the housing emergency. How would you respond to that view?

Shirley-Anne Somerville: I appreciate the basis for that challenge. The whole purpose of the Scottish Government bringing forward proposals for a human rights bill is that we believed—and we still believe—that the best way to protect those rights is for them to be enshrined in Scots law. However, I go back to the point that the bill that we could have introduced at this point was not strong enough to be able to deliver on the hopes and expectations of civic Scotland on the matter.

We have seen the limitations of what could be achieved with the UNCRC incorporation bill after a reconsideration stage. That is not a position that I wanted to be in with delivering the human rights bill. We have an opportunity to do something stronger and wider, and to look at things in a way that we did not have the opportunity to do when the UNCRC incorporation bill was going through. That is an opportunity that I believe cannot be missed. That cannot be done at the same time as delivering the most complex bill through the Scottish Parliament.

10:45

Elena Whitham: Finally from me at this point, we heard last week from Professor Alan Miller about his work with the national collaborative to represent individuals who are experiencing substance use issues. The collaborative has been working at pace the length and breadth of the country to develop a charter of rights for individuals who are seeking assistance in that regard, and that was to be incorporated into the human rights bill that was to be brought forward.

Last week, it was mentioned that the delay in the bill might give rise to an accountability gap. People have been working on the charter of rights without the accountability framework that goes along with it. How are we going to ensure that individuals will, without the right to achieve a high standard of physical and mental health, be able to get the support that they need from their local areas?

Shirley-Anne Somerville: I put on record my appreciation and admiration for Professor Miller's work in that area. He is, once again, leading us all in demonstrating how work in the area can be progressed. Even with the bill being taken forward on a longer timescale than we had initially proposed, we must continue to take steps to further embed human rights culture across public services, and the charter of rights that Elena Whitham highlighted is a tangible example of that. Many of the rights in the charter are already in law, but people are not aware of them. The charter is a tool by which to raise awareness of those rights and empower people to claim them.

We have already seen some examples of where the charter is being adopted and embedded, which I think is important. Professor Miller's work highlights one of the areas in which we are, across Government, still determined to take forward human rights in a practical and demonstrable way until the bill is ready for delivery early in the next session of Parliament.

The Deputy Convener: Before I bring in Paul O'Kane, I want to follow up on Elena Whitham's second question, about the specific issues that people were expecting to be able to talk about and deal with, although that is perhaps putting it too simplistically. When Parliament considered the bill that became the Good Food Nation (Scotland) Act 2022 earlier in the session, there was some discussion about the right to food. We were told to hold off on that aspect, however, as it would be addressed in a human rights bill.

Similarly, in going through and coming out of Covid, we have heard a lot about how disabled people have not had their rights upheld in so many different areas of life, and a lot was being pinned on the proposed human rights bill.

What can we say to stakeholders and to citizens who were pinning a lot of hope on that bill, given 18 months of what they might see as inaction?

Shirley-Anne Somerville: One of the key points for me to demonstrate is that we will not have 18 months of inaction, but 18 months of action that is different from what stakeholders may have wished for. One example is our work on the mainstreaming strategy. That was also linked to the development of a human rights bill moving

through to become an act, but it can still continue without that.

On the Good Food Nation (Scotland) Act 2022 and the issue of a right to food, members will be aware that there is a proposed member's bill that touches on that area. I have met the member concerned to see whether there are ways in which we can learn more about what is planned for that bill, and officials are keen to work with the member on that to be able to see what the art of the possible is. However, we are at the very early stages of that work, so I would not want to either raise or dash expectations; we need to see what is actually proposed in that bill and then work out the practicalities. That is one of the areas in which we have turned quickly—I hope—to be able to demonstrate that, while we will still wait for the human rights bill, we will take forward those discussions.

On the frustrations of disabled people, I am very conscious that disabled people's organisations were telling me that the bill as it was proposed to be introduced did not go far enough—I heard that very clearly. As I said in my opening remarks, our ability to incorporate, given the current situation and the powers that we have, made for a weaker bill than I was comfortable with. One of the points of seeking a longer timeframe for the process is to see what can be done about that.

I again point to the limitations of what was to be covered in the human rights bill around incorporation. I point to the frustrations that members raised in their speeches in Parliament when we had the reconsideration of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Bill—we heard about all the acts that were not going to be included because of the difficulties around scope as a result of the Supreme Court judgment. I can absolutely see those types of discussions happening once again around the areas that the human rights bill impacts on. I am not comfortable with that, because we have now seen the limitations of what the Supreme Court judgment means in reality for legislation that is within scope.

I again go back to the point that, for the first time, we have an opportunity to consider that those limitations might not be the case. As I said in my opening remarks, relations with the UK Government have changed markedly, but both Governments need time to work out the practicalities of that. That is an important part of the process that we need to go through, because I do not want to have another debate, as we did during the UNCRC bill reconsideration final stages, in which members list things that cannot be included.

The Deputy Convener: Okay. Thank you.

Paul O'Kane (West Scotland) (Lab): Good morning to the cabinet secretary and her officials.

I have a question about the point that you made about the reconsideration of the UNCRC bill. The Supreme Court passed its judgment on the bill three years ago. I think that everybody knew that there was going to be a general election this year. Given the intervening three-year period, it would be useful to understand why it has taken until now to abandon the human rights bill. Does the cabinet secretary accept that organisations feel led up the garden path?

Shirley-Anne Somerville: For a start, we have not abandoned the bill. In fact, I hope that it is one of the areas where a Labour UK Government and the Scottish Government can work together. Therefore, talk about abandoning the bill is not helpful for that relationship—if I can put it like that. I am genuinely reaching out to work with Labour colleagues in the UK Government on the issue.

Clearly, there was going to be an election. With the greatest respect, Mr O'Kane might think that he knew, all those years ago, what the result was going to be, but we had to allow the process to happen. We also had to test the tone and whether what had been discussed beforehand about a reset was actually going to happen.

We are still in the early days of the new UK Government, but we have very much seen a change of tone—the dialogue is in a completely different space. However, we now need to get past that and work out the genuine practicalities of how to deal with the Supreme Court judgment.

The Scottish Government cannot just come up with a solution. Actually, I will rephrase that—we could have gone to the UK Government with a list of demands right at the very start of its days, but that would not have been the reset that the First Minister has tasked his cabinet secretaries with making. I am keen to sit down with the UK Government and together work out solutions that allow us to get past and deal with the Supreme Court judgment, if the UK Government wishes to do so. However, we cannot do that unilaterally.

I want to have that discussion in a completely different way from how we had it when we previously had the opportunity. With the greatest of respect, that is why it could not have been done until the new UK Government ministers were in place.

Paul O'Kane: I used the word “abandoned”—and I accept what the cabinet secretary has said about that—because I think that people feel that the bill has been abandoned for this session of Parliament. I think that it is fair to say that we will not have a bill this session. That is certainly the language that has been used to me by human

rights organisations, and I am just trying to relay that back.

I absolutely accept what the cabinet secretary has said about the need for a renewed relationship. That is important, and we have heard a lot of evidence about avenues that could be explored. However, I am trying to understand what honest conversations the cabinet secretary has had, in the three years between the UNCRC judgment and now, with the stakeholders that we have talked about in which she has said what she has just said to me about the need for further work to be done, and what avenues she has explored. I might well talk about one in particular, but it would be helpful for the committee to understand what work has been undertaken during the three-year period.

Shirley-Anne Somerville: I am happy to bring in my officials if they wish to speak, but I will give an example that I hope will help. Again, I appreciate that others have been using these particular words, but I am keen to make it clear that that has not been the case.

Throughout my discussions with stakeholders, I have said to them that I am exceptionally uncomfortable about the bill not delivering what they want. All the way, I made it very clear to them that, with the Supreme Court judgment, the limitations of the settlement left me such that I could not deliver what they asked of me and what I wanted to deliver. I raised my concerns in those discussions.

Paul O’Kane: When did you come to the conclusion that you could not deliver what the stakeholders wanted, cabinet secretary?

Shirley-Anne Somerville: I have been very clear in, for example, my discussions with stakeholders that the way in which we had to incorporate treaties on disability did not allow us to do what disabled people’s organisations wanted. That has been a part of our discussion for as long as I can remember since I have been in this post. They were asking us to incorporate in a way that we genuinely did not think was possible if we were to stay on the right side of the devolution settlement.

The discussion then moved on to another question. How far could we get under the settlement as it stood—that is, in the bill as we would have been able to introduce it—or did we have to take a step back and try to change things? Those kinds of conversations with stakeholders about my uneasiness at not being able to deliver what they were asking for—not that I did not want to deliver it—went on for some time.

Paul O’Kane: Given that you had had three years of conversation, why did people such as the Scottish Human Rights Commission, Amnesty and

those who were referenced in Maggie Chapman’s and Annie Wells’s questions react in such a visceral way?

Shirley-Anne Somerville: I have heard directly from many of the organisations about their deep disappointment. They told me that they had pinned a lot on the bill, as the convener has said, because it was the answer to their being able to deliver on human rights obligations. I can absolutely appreciate their frustration—I not only understand it; I share it—that I cannot bring forward the type of bill that I would have liked to have brought forward.

As you heard in last week’s evidence sessions, much of this comes down to some people’s opinion that we could have introduced a bill as intended; could have reset relationships with the UK Government and worked together on solutions; and then could have amended the bill that was going through the Scottish Parliament, all at the same time. I have had that conversation since the PFG was published, and I genuinely and utterly disagree that that was possible. You also heard evidence last week—particularly in the second evidence session—from Professor Andrew Tickell and others that they did not think that that was possible, either.

11:00

That was where I was coming from. I just do not think that it can be done at the same time as bringing forward the most difficult and complex piece of legislation that the Parliament has ever seen. Again, I hold to that decision, because of my experience of the reconsideration stage of the United Nations Convention on the Rights of the Child (Incorporation) (Scotland) Act 2024 with what was only quite a small number of amendments.

I appreciate that there was a different UK Government at that time. However, we would be trying to utterly change the way in which two Governments work while at the same time looking at how we could amend the bill. Given how long it took to get that to work with regard to the UNCRC act, I genuinely, hand on heart, cannot see how we could have done that work at the same time as delivering the legislation.

I appreciate that others have come to a different conclusion, but I point to the evidence that the committee took from academics last week. I do not want to speak for them, but the quotations that I have read from the *Official Report* of that meeting suggest that they, too, thought that that would be an exceptionally difficult, if not impossible, thing for us to do.

Paul O’Kane: Last week, Professor McHarg provided a number of suggestions or a range of

options for exploring this issue with the UK Government. To what extent has the Government considered that paper? It would be helpful to understand the cabinet secretary's intention as to what will form the basis of her discussions with the UK Government.

Shirley-Anne Somerville: Professor McHarg's work in this area is exceptionally important, and I point to some of the difficulties that she raised in her remarks. Her work is absolutely being taken into account, and it is one of the areas that will help form the basis of the event that I have mentioned, at which we are keen to ensure that we work with stakeholders to discuss the limitations that the Supreme Court judgment places on the scope and on how that work can be taken forward.

That work has been examined. Other alternatives, proposals and solutions might come forward, but we need to have that discussion at pace so that we can work with the UK Government on a solution that both Governments are keen to take forward.

Paul O'Kane: I appreciate that my colleagues might well pick up on that point, so I will hand back to the convener.

The Deputy Convener: Thanks, Paul. I call Marie McNair.

Marie McNair (Clydebank and Milngavie) (SNP): Good morning. Last week, we heard from Dr Andrew Tickell about the constitutional issues and the complexity with regard to any bill on this matter and the need for Governments to work together to address them. Can the cabinet secretary comment on the discussions that she has had in that respect with the UK Government? From this morning's discussion, it does not look as though the process has started yet, but as far as the issues with the Supreme Court are concerned, when is it likely to commence? I am quite concerned about that.

Shirley-Anne Somerville: We have begun those discussions with the UK Government. Indeed, Angus Robertson had a very useful meeting about resetting relations. That was certainly useful from our perspective, and I hope that the Secretary of State for Scotland felt that it was useful, too.

I have also written to my counterparts about our desire for a reset and for us to work together. I have not had a reply to that yet, but I do not mean that as a criticism, because we are asking for something that is quite fundamental and exceptionally complex. Therefore, I hope to be able to take up those discussions at ministerial level later this year.

As members would expect, discussions at official level are a foundation that is already well in place, and there will be further discussions about this issue in the next few weeks with senior officials at UK Government level. Again, that process has begun. I appreciate that this is a new UK Government and that it has a lot in its inbox, but in respect of what we are asking of the UK Government in this particular area, I would say that, although the tone and some of the practicalities have changed—for example, I shared a platform at an anti-poverty event with the Secretary of State for Scotland yesterday, something that I could not have imagined happening previously—we still need to get past that initial, and really welcome, level of engagement to address those practicalities. It is a big ask for the UK Government, and we are keen to work with that Government collaboratively and constructively on how we can take that forward.

Marie McNair: The Supreme Court judgment raises a lot of issues, and I am glad to hear that there will, I hope, be positive dialogue.

At last week's committee meeting, witnesses mentioned the need for clear communication with stakeholders, and the issue has been mentioned again this morning. With that in mind, how will you keep in touch with stakeholders? Obviously, there will be discussions about the programme for government and so on, but how will you do that in a positive way that allows them to work alongside you?

Shirley-Anne Somerville: I am very keen to continue to work with stakeholders on this area. I have said this before, but I think it important to reiterate that I utterly appreciate that they are tired and frustrated and that we need to build up trust again with regard to the usefulness and purpose of engaging with the Scottish Government on this matter. I need to build up that trust with them.

In my view, we have an opportunity to take forward specific work on the bill and its further development. In my opinion, we do not need a full consultation again—we know what people's views are—but there are areas that we can continue to strengthen.

There is also a need for us to work differently. A final session of the bill advisory board is coming up, and stakeholders will have an opportunity to sit with me and go through in detail how we will use that time. I do not want to spend too long talking about how we are going to use the next 18 months—I just want to start using them—because that is another crunch point.

We should also remember the work that is continuing. I mentioned the mainstreaming strategy earlier; we are also determined to take forward areas from the second national action plan

for human rights—SNAP 2—and further work is on-going on the public sector equality duty. There is work that we can be getting on with in the meantime, and it is important that we keep people updated on that.

However—and I appreciate that this is a difficult thing to ask—I ask people to give us a little bit of time to work with the UK Government in a private space. I am conscious that I do not want to give a list of demands to the UK Government, as that would put the UK Government in a different position. The question is this: how can the Scottish and UK Governments help stakeholders appreciate where we are at different stages? That will be key. I do think that together, the UK Government, the Scottish Government and stakeholders can work well to take advantage of the next 18 months.

Marie McNair: I certainly welcome your comments, cabinet secretary.

Meghan Gallacher (Central Scotland) (Con): Good morning, cabinet secretary and officials. The Scottish Parliament is one of the most powerful devolved Governments in the world, but there have been issues in relation to the Scottish Government acting outwith devolved competence when it comes to particular legislation that has gone through the Parliament. On the stakeholder engagement that has happened on the human rights bill over the past 10 years, has the Scottish Government overpromised and underdelivered when it comes to the bill's timeframe and what the Government can do within its competence?

Shirley-Anne Somerville: I think you meant to say that the Scottish Parliament is not one of the most powerful devolved institutions in the world, as demonstrated by the Supreme Court decision. I think that what has not lived up to stakeholders' expectations is the devolution settlement.

Meghan Gallacher: I disagree with that completely when it comes to what this Parliament can do within its devolved scope. We talk about issues such as the housing crisis and the right to food, with reference to the human rights bill. Those areas come under devolved competence and are therefore the responsibility of the Scottish Government.

Looking ahead, does the Scottish Government intend to bring the bill back before the next election in 2026, or will it hang on until after that election?

Shirley-Anne Somerville: We have been very clear that the bill will not be delivered during this parliamentary session. I will give some examples of what we cannot do, using the UNCRC incorporation bill as an example. There are major pieces of legislation on education and on children's rights that are not covered—and that is

with the "powerful" Scottish Parliament that Ms Gallacher is content for us to have. I do not think that that leaves incorporation of the UNCRC in a robust place. Certainly, not as many children's rights are protected as I wanted to see. Meghan Gallacher may be content with that, but I certainly am not. However, we have to work within scope, and I respect the Supreme Court's judgment.

I will explain where I would like to be able to get to. Ms Gallacher and I can trade thoughts on whether this is the most powerful devolved Parliament—we can have that debate—but I am not entirely sure how that moves forward our ability to increase the scope of what we are entitled to do in protecting rights. I am happy to have that discussion—or the Parliament can genuinely work with the Government, across political parties, to see how we can deal with the Supreme Court judgment in a way that increases that scope. I hope that Ms Gallacher and I would agree that the Scottish Government should work within scope, but that scope is exceptionally limiting, as shown by the example of the UNCRC incorporation bill. I am not happy with that, and I hope that Ms Gallacher is not happy with it, either. Let us see what we can do together to include more rights than we have been able to. Having demonstrated what is not included in the UNCRC incorporation bill, that is not a place that I would want to go with a human rights bill.

Meghan Gallacher: We can take that point, and we can look to work together on these important issues, but the human rights bill is not coming into place so that we can scrutinise, debate and inform it. The right to food and the right to housing have been mentioned by other colleagues. Are you disappointed that we cannot have discussions about the right to housing and the right to food, which could have been incorporated in the bill?

Shirley-Anne Somerville: With the greatest respect, there is nothing to stop us having such conversations as part of our work over the next 18 months. Those are issues for the committee to address. I point that out again. Taking the right to housing as an example, I am mindful of how many acts of the UK Parliament our housing legislation is based on, and of how many things may be outwith the scope of any bill that is introduced.

Let us have a discussion about the right to food. I have already said that such discussions are on-going. Let us have a discussion about the right to housing. While we do that, however, let us bear in mind all the legislation that would not be within scope—using just the two examples that Ms Gallacher has given.

Meghan Gallacher: It is about looking at what the Scottish Government can do in relation to issues here in Scotland that are within its devolved remit. That is where I think the cabinet secretary

should focus her interest regarding housing or the right to food. However, we do not have a bill where we can stack that up.

I thank the cabinet secretary for her time this morning.

Shirley-Anne Somerville: With the greatest respect, convener, I would push back on that again. We cannot discuss the right to housing—which I give as an example—without considering what would not be within scope. The human rights bill is limited in scope because of the Supreme Court judgment. I want to change that, because that would increase what is in scope on housing, for example. It is because we want to strengthen the bill that we want to go further on some aspects. I am acutely aware of the limitations on what the Government can do on the human rights bill, and I want it to go further. I hope that Ms Gallacher does, too.

The Deputy Convener: Elena Whitham wants to come back in.

Elena Whitham: My final question is on a point made by Professor Katie Boyle last week. Cabinet secretary, you have clearly set out our limitations with reference to the Supreme Court's decision, and that could give rise to a Pandora's box with lots of legislation that we have already passed being examined retrospectively.

Would you consider establishing a group of custodians on the bill's development to date? That would transcend any changes that might happen after the upcoming Holyrood election, and it would provide some certainty for the people who have been working on the bill for such a long time that nothing will be lost.

11:15

Shirley-Anne Somerville: I have listened with great interest to the proposals and suggestions on that, and I completely appreciate why they were made. This Government is determined to carry on its work with the human rights bill, and we are keen to work closely with civic society and public bodies on that.

We need to look at refreshing the governance arrangements, as those were set up with the intention of introducing a bill. The bill is not being introduced to the same timeframe; we also want to strengthen it further. Therefore, we need to look at the issues of specific interest that we want to work on and at how we can have a governance structure that enables an eye to be kept on what can be done in the next 18 month and is not just about what is in the bill.

I encourage everyone who is interested and remains, as I am, fundamentally committed to delivering the human rights bill to carry on that

discussion with the Government. I feel that frustration, and I have heard about it directly. We can still do a great deal to move things forward in the next 18 months, and I am absolutely committed to leading that work on behalf of the Government.

The Deputy Convener: I want to understand a bit more the tracker tool that you referred to in your opening remarks. You talked about using the time between now and the election in 2026 to build the capacity of those in the public sector to collect data and understand their obligations and duties, and to develop a tracker that would allow us to monitor our performance against international treaty obligations. Will you say a bit more about that?

Shirley-Anne Somerville: Sure. There are two areas in particular where we can make demonstrable progress over the next 18 months. One is capability-building activities; the other is the tracker tool. The work that people wanted us to do on the tracker was outlined in SNAP 2. It would, in effect, monitor and support the implementation of human rights recommendations from the international treaty bodies. We have worked together with international partners to understand what already exists and how that might need to be adapted—or not—for Scotland-specific circumstances.

I am very keen to see what can be done on the tracker tool quickly, to look at what we can learn from those who already use it and to see whether stakeholders would be content for us to move forward quite rapidly on that measure.

Things are made slightly more difficult, if I can put it that way, because we are not a signatory to treaties. However, we need to get past any practical difficulties. I hope that our very different relations with the UK Government might help us to make progress on that.

The Deputy Convener: That is helpful. You talked about learning and identifying what trackers and monitoring tools are used elsewhere. The Human Rights Measurement Initiative has tools at state level. Colleagues round the table who have not come across it should take a look, because it is great fun to play with. I do not think that it provides full coverage yet, but it is trying to get to that point. It tracks UK parameters—as you have just said, Scotland is not a signatory to international treaties.

Will you undertake to explore something like the HMRI for Scotland and what we would need to provide that? Would it require a change in how we collect data and who collects it? Could we do that? I have had fun playing with the tool and looking at other countries. I would love to be able to do that for Scotland. It would show some really interesting

stories that we could then use as ways to promote human rights in Scotland.

Shirley-Anne Somerville: You are quite right to demonstrate how that tool could be used. I will bring in Kavita Chetty to respond on some of the practicalities that we are already looking at.

Kavita Chetty (Scottish Government): There is a plethora of monitoring and scrutiny tools and databases at UN, regional and national levels. There is, for example, a tracker for England and Wales on treaty body recommendations that apply there.

We are working at official level to scope all the options to establish what the best solution might be for Scotland, given our context. The ultimate aim behind the tool is to strengthen implementation and follow-up from UN treaty bodies in a systematised way and to support better scrutiny—from civil society and committees such as yourselves—with full transparency as to the range of obligations that sit in Scotland, within devolved competence.

We are meeting our human rights bill implementation working group later this week, where we will begin to unpack some of that. We hope to work with stakeholders to take that forward.

The Deputy Convener: It is those pictures that tell stories that we can use not only to understand how we are doing but to increase citizens' awareness of what they should expect from us, public bodies and others.

As there are no further questions from colleagues, that brings us to the end of this evidence session. I thank the cabinet secretary and her officials for joining us this morning and for the evidence that they have provided.

We will now suspend the meeting briefly before we move on to our next item. I hope that Karen Adam will be able to join us remotely.

11:21

Meeting suspended.

11:32

On resuming—

Subordinate Legislation

Sheriff Court Fees Order 2024 (SSI 2024/235)

Sheriff Appeal Court Fees Order 2024 (SSI 2024/236)

High Court of Justiciary Fees Order 2024 (SSI 2024/237)

Court of Session etc Fees Order 2024 (SSI 2024/238)

Justice of the Peace Court Fees (Scotland) Order 2024 (SSI 2024/239)

Adults with Incapacity (Public Guardian's Fees) (Scotland) Regulations 2024 (SSI 2024/240)

The Convener (Karen Adam): Good morning. I thank Maggie Chapman for convening the first part of the meeting. I am attending remotely as I am out of the country. I ask members to bear with me just in case there is any lag or there are any delays.

Our fourth agenda item is consideration of six negative Scottish statutory instruments. I refer members to paper 3. I welcome to the meeting Siobhian Brown, the Minister for Victims and Community Safety. She is accompanied by her supporting officials: Walter Drummond-Murray, who is the head of civil courts and inquiries at the justice directorate; and Emma Thomson, who is a solicitor with the Scottish Government legal directorate, for courts, tribunals, inquiries and access to justice. I ask the minister to speak to the instruments.

The Minister for Victims and Community Safety (Siobhian Brown): Thank you, convener, and good morning to the committee. The Scottish Government is committed to ensuring that courts are funded to deliver a civil justice system that is accessible, affordable and provides a high-quality service to those who have cause to use it. Beyond that overriding objective, the Scottish Government believes that the fees that are charged to court users should recover the cost to public funds of providing those services when that can be done while protecting access to justice. That means that those who make use of the services of the courts should meet, or contribute towards, the associated cost to the public purse, when they can afford to do so.

A generous system of legal aid and court fee exemptions is the most important means by which access to justice is protected. Over recent years, we have enhanced such protections. For example, people who apply for domestic abuse interdicts or exclusion orders are automatically exempt from paying court fees, and, in 2022, people with environmental cases within the meaning of the Aarhus convention were exempted from paying court fees in the Court of Session. I want to go further in the future, when resources allow.

The instruments that are before the committee establish statutory fee-charging regimes, which the Scottish Courts and Tribunals Service administers, so the Scottish Government works very closely with the SCTS on its fees policy. Court fees have generally been reviewed every three years, with the latest full round being implemented in 2022. We do not increase fees annually in line with inflation, but we need to increase them when it is necessary to reflect increased costs. That is why the SSIs are before the committee today.

The wider context of pressure on public finances that has been brought about by significant reductions to the funding that Scotland receives from the UK Government, as well as the inflationary pressures that we are all well aware of, means that it is unsustainable not to consider court fees increasing. As a result of high inflation and increased costs falling on the SCTS, the rate of recovery dropped significantly to 57 per cent in 2023-24.

In my letter to the committee, I set out reasons why the SSIs are necessary and the potential impact on the SCTS should it not receive the additional funding that is being sought through court fees. The expansion of the civil online system in the sheriff court is one example of something that might have to be curtailed, essential improvements to the Office of the Public Guardian's systems is another, and work to develop a trauma-informed domestic abuse court is a third. Beyond the examples that I mentioned in my letter, there is simply the risk of increasing delays, which would be to the detriment of all those involved in the court system, as a result of a shortfall in projected income of about £4 million per year.

We cannot ignore the fact that we face financial challenges, and we have sought to balance those challenges against maintaining a robust £141.3 million fund for legal aid and court fee exemptions to protect people who could not otherwise afford access to justice.

I urge the committee to pass the SSIs to ensure that courts get the increased fees that they need to reflect inflationary rises and can continue their work in providing justice to those who seek it.

The Convener: Thank you. We move to questions on the instruments. Members should indicate if they wish to come in.

Marie McNair: Minister, court exemptions were discussed last week. Are you likely to review them?

Siobhian Brown: Yes. I want to review them in the future because of inflationary pressures. We cannot address that issue at the moment, but we will in the future.

Marie McNair: You mentioned the impact that there will be if we do not pass the SSIs. Will you expand on that?

Siobhian Brown: As I set out in my letter to the committee last week, the expansion of the civil online system in the sheriff court is one example of something that might have to be curtailed, essential improvements to the Office of the Public Guardian's systems is another, and work to develop a trauma-informed domestic abuse court is a third. Beyond the examples that I mentioned in my letter, there is simply the risk of increasing delays, which would be to the detriment of all those involved in the court system, but it would be up to the SCTS to decide where to make cuts if it did not get the £4 million a year.

Marie McNair: Thank you.

Maggie Chapman (North East Scotland) (Green): Good morning, minister, and thank you for the letter that you sent last week and for your statement this morning. I will ask a couple of questions to delve into the costs in a bit more detail. You mentioned in your statement the cost recovery figure falling to 57 per cent. The most recent figure that I could find was for 2017, when cost recovery was 87 per cent. It seems to me that more than just inflation is going on. Can you say a bit more about that change?

Siobhian Brown: We know with the inflation over the past couple of years that that figure has gone to 57 per cent in the past year. I do not know the history going back to the figure that you mention, but I will bring in Walter Drummond-Murray, because he will know the history and be able to speak to that.

Walter Drummond-Murray (Scottish Government): That figure was provided by the Scottish Courts and Tribunals Service, which follows its methodology for analysing costs to the civil justice system. Specific examples are pay, most obviously, and the inflationary pressures that we are all aware of on energy, building maintenance and so on. The significant investment in digital also explains it, and that is really as much as I can say. It is the SCTS's responsibility to provide a figure, and that is the one that it provided for the most recent year.

Maggie Chapman: You talk about pay and inflation being the assumed pressures, given the figure that you have from the SCTS. I appreciate that it is the SCTS's figure and its methodology. In the Scottish court fees 2024-25 consultation document, there is an analysis of inflationary pressures, and other than one year when the fee increase was more than 10 per cent, all the increases are under 10 per cent. What is the rationale for the 20 per cent increase for some court fees?

Siobhian Brown: I can answer that. Although the fee increases are more than in previous years, they should be seen in the context of the soaring inflation that we have experienced over the past few years, and the increased associated costs, which Walter mentioned. In 2021, there was no fee increase due to the pandemic; in 2022 and 2023, the increase was 3 per cent; and in 2024, it was 2 per cent.

There are no plans for further increases until 1 April 2026. The total increases are considered over a five-year period, which would be in line with the post-pandemic inflation as measured by the consumer prices index. One other thing to highlight is that the fees that have been selected for the higher percentage increase were chosen because they are lower in nominal terms, thus minimising any impact to access to justice. Specific examples, which I mentioned in my letter to the committee last week, are fees for the sheriff court caveat, which are proposed to rise from £48 to £58, and the fee for lodging a motion, which is proposed to rise from £54 to £65.

Maggie Chapman: I appreciate what you say, but at no point in the past three years has inflation approached 20 per cent. Even if the fees are lower in absolute terms, it is a pretty steep increase. I do not see evidence for that increase. The consultation document talks about CPI being 5.4 per cent last year and 0.6 per cent this year, and the retail prices index being 8.1 per cent last year and 1.2 per cent this year—those are the Scottish Government's figures in its consultation document. Given that we have already had a 2 per cent rise this year, I do not see how we can justify a 20 per cent in-year increase.

Siobhian Brown: I will bring in Walter in a moment on inflation rates, because he will be able to go over the history of the past five years. The money to fund the court system is needed due to inflationary pressures over the past couple of years. Access for the most vulnerable who need justice is covered by the exemptions and by legal aid. When you seek litigation, the legal fees are usually a lot higher than the court fees. For example, solicitors' rates in Scotland, depending on the type of work and the experience, start at

£125 per hour and go up to anything over £300 per hour.

Walter Drummond-Murray: I just want to make the point that you are right that inflation at any point over the past couple of years has been around 10 per cent, but looked at over three or four years, you quickly get to around 20 per cent, which is the overall effect of the order. Although some fees have gone up by 10 per cent and some have gone up by another 10 per cent on top of that, the average is probably around 13 to 14 per cent, and that is what we are trying to achieve. It is just a reflection of inflation but over a longer period than the past 18 months.

11:45

Maggie Chapman: I have a final question—well, maybe it is a statement rather than a question. Last week, we were told by people who support citizens who are seeking justice that quite a lot of them fall through the cracks of legal aid. You said that, if people are struggling, they will be covered by legal aid, but they are often not covered by legal aid, either because the professionals do not exist in areas where they are needed or because people need to travel to find that legal aid support. Therefore, I am sorry, but I simply do not agree that legal aid provides the cushion that you have claimed that it does, given how patchy access to legal aid is across Scotland.

Siobhian Brown: I would like to respond to that point. That issue is one that has been raised. Legal aid is demand led. Last year, it had a budget of more than £141 million. If, during the course of a year, the level of legal aid goes over the budgeted level because of demand, the Scottish Government will have to pay for that.

I know that the Scottish Legal Aid Board is currently looking geographically at the areas that need legal aid and at how we can solve that. We are working with SLAB and the legal profession on how we can improve access to justice through legal aid.

Maggie Chapman: Okay. I will leave it there.

The Convener: We move on to questions from Elena Whitham.

Elena Whitham: Good morning. I have a few questions. Do you have any analysis of or statistics on what proportion of court fee income is paid for by banks, the insurance industry or similar large bodies, and what proportion is paid for by individuals? Do you have any such information?

Siobhian Brown: No. SCTS does not track who is litigating in a form that would allow us to provide those specific statistics. However, we can say that a significant proportion of the litigation is conducted by large organisations from the public

and private sectors. Specifically, the insurance industry is a major litigant in the field of personal injury. Thanks to qualified one-way costs shifting, it meets the expenses of both the parties in the large majority of cases.

Elena Whitham: Thank you for that answer. Do you know what the average cost to an individual of a court fee is?

Siobhian Brown: I do not have that exact price at the moment. It would be useful to have the data that allows for the fee to be broken down in that form, but the cases differ depending on how much of the court's time is used, so it is unique to each individual case. Many cases will settle without a hearing. Accordingly, the fee might be low. However, some cases might involve lengthy hearings in the Court of Session and multiple motions, which might make them more expensive. Therefore, it is very difficult to pinpoint an average cost.

Elena Whitham: If we cannot pinpoint an average cost for that, is there a comparison that we can make with our neighbours in the rest of the United Kingdom? How do our fees compare with those in the rest of the UK?

Siobhian Brown: I will bring in Walter Drummond-Murray on that, but it is my understanding that our court fees are lower than those in England and Wales. I note that, in England and Wales, the fee for a divorce is £593, but, in Scotland, it is only £150. That is a comparison for one of the fees.

Walter, do you have any further information?

Walter Drummond-Murray: I simply add that it is difficult to make such comparisons because of the different legal systems. The system in England and Wales is more front loaded, with a higher initial fee, but then there are lower fees throughout the course of a case.

However, it is fair to say that the fees in England and Wales are higher on average, as the minister indicated with her example. In particular, their system is more predicated on the value of the claim. A case involving a claim of £100,000 would have a £5,000 fee, which would be much higher than the fee that would normally be incurred here, unless it was a case that involved extremely complex hearings.

Elena Whitham: Thank you for that.

Finally, minister, in the letter to the committee, you outline how the system is created with fairness baked into it, as far as possible, to allow people access. I take on board Ms Chapman's comments about access to legal aid, and you have set out the impact on the court service if the instruments are annulled, but could we look beyond that, at the associated tribunals and

chambers, where there are generally no fees for the public to attend? What impact would annulment have on those settings, given that we are looking for people to have access to justice when it comes to housing, and to the Mental Health Tribunal for Scotland, for example? What could the consequences be for people?

Siobhian Brown: As I said previously, it would be up to the Scottish Courts and Tribunals Service to determine that, if the funding of £4 million a year was not raised on its behalf. As I set out in my letter to the committee, the expansion of the civil online service in the sheriff court is one example that it has been mentioned might have to be curtailed. Beyond all the examples that I have mentioned today and in my letter, there is simply a risk of delay and detriment to the court system.

The Convener: Thank you. We have no indication of other members wishing to ask a question. Therefore, that completes our evidence taking on the SSIs, and we will now move on to the various motions to annul the instruments. Once again, I will pace myself and take my time, because I am taking part remotely today and I want to ensure that you can clearly understand everything that I am saying. I thank members for their patience.

The next agenda item is to consider a motion to annul SSI 2024/235, the Sheriff Court Fees Order 2024. A motion to annul has been lodged in the name of Maggie Chapman. Having had the opportunity to question the minister on the SSI, I invite the committee to dispose of the motion to annul.

I invite Maggie Chapman to move motion S6M-14789, in her name, and to make any brief additional comments that she wishes to make.

Maggie Chapman: Thanks, convener. I thank the minister for her comments.

My comments cover all the motions, so I will say all this only once, you will be pleased to know. I am grateful to the minister and the Scottish Government for responding to the concerns that we have heard and discussed both this morning and at previous meetings. For me, and for many in the sector who provide advice and advocacy as well as legal support, the response is not sufficient to allay those concerns. That is why I am moving my motions this morning.

There are, in my view, four areas of significant difficulty. The first is the assumption that full cost recovery is a necessary goal to which we should aspire. On the contrary, many experts and legal scholars, as well as social justice advocates, believe it to be deeply problematic. Justice is a matter of public and common good—a benefit to the whole society, not just to the participants of a particular case. If justice is presented as a

consumer luxury—one that only the privileged can choose to indulge in—all our communities will be harmed, our trust in the rule of law will be threatened and our human rights will no longer be universal. That is recognised in the context of many tribunals, including following the Unison case in employment tribunals. That principle should, as the Human Rights Consortium Scotland suggests, also be applied to human rights, equality law and public interest cases—situations in which the very fundamentals of this committee's work are centrally concerned.

The second problem with the orders is the lack of justification for such steep hikes in fees—10 per cent to 20 per cent—in addition to the regular annual increases. Costs, including energy, have increased, as the minister has noted, but wages have not risen in line with inflation, so the burden falls more heavily on struggling individuals and families than it does on institutions. As the Human Rights Consortium Scotland has highlighted, the rises will disproportionately impact those who are already marginalised—those who, without litigation, are unable to obtain their basic human rights, including their rights to an acceptable standard of living, to privacy and family life, to freedom from discrimination, to independent living and to inclusive education. Some of those people, but not all, will be exempt from fees, and some will be eligible for legal aid but, again, not all. The shortage of legal aid solicitors means that even those who are eligible may need to pay privately for legal assistance or to bring cases in person, with the latter course representing a significant cause of delay in and expense to the court system.

The third difficulty is that we have not received enough clarity from the Scottish Government about the proportion of the overall SCTS budget that is expected to be dependent on the fee increases. We have seen a list of projects that the minister tells us may be under threat, but no detailed costings or indication of priorities. Evidence suggests that higher fees deter claimants from embarking on litigation in the first place, so we cannot be confident of the overall financial effects of such a dramatic rise. I also suggest that, although many of the initiatives are laudable and some, such as the remote provision of evidence by police and expert witnesses, will benefit other bodies and individuals, few of them are more important than the maintenance of access to justice in itself.

My fourth and final concern is about the wider access to justice barriers that we see in Scotland today. That broader context represents my primary concern. The Human Rights Consortium says:

“the Minister's letter misses the mark by not engaging with the underlying crisis in civil legal aid that many people are facing today.”

As I mentioned, that crisis is not only about eligibility but about accessibility. It is of little use to know that you qualify for legal aid if it is impossible for you to find and consult a legal aid solicitor. The fact that legal aid advice and representation are so prohibitively expensive should not be an excuse for raising court fees; it should be an incentive to make real and overdue change.

The Scottish Government's failure to comply with its Aarhus commitments, its failure to include legal aid reform in the current programme for government and its failure to reverse the devastating cuts to the early resolution and advice programme—ERAP—stream 2 funding must all, along with the fees instruments that we are considering today, be matters of deep disquiet to the committee. I invite us to act upon those justified concerns and I urge colleagues to vote with me on the annulment of the instruments.

I move,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Sheriff Court Fees Order 2024 (SSI 2024/235) be annulled.

The Convener: Thank you, Maggie. I invite any other members, followed by the minister, to make any further brief remarks that they wish to make.

Paul O'Kane: Unfortunately, I was absent from the committee when we took evidence on these issues. However, obviously, I have read some of the evidence. There is much in the arguments that Maggie Chapman has made that is important and needs to be put on the record and explored, particularly the point about wider access to justice. I hope that the Government will reflect on those points and particularly the one about what it is fair to call a crisis in legal services. That is particularly the case with access to lawyers in criminal defence trials and the availability of lawyers through legal aid. I have had a number of constituency issues relating to the pursuers panel and pursuing solicitors who are at fault.

There is a range of issues that need to be looked at in the round, and I hope that the Government will take that on board. I have a degree of sympathy with Ms Chapman's approach, but I am concerned about what would happen to the court system if we annul the instruments. I appreciate the costs that are involved and the arguments that have been made. I would be much more comfortable if the minister would say, in summing up, what further action she intends to take as a result of this discussion. However, I share the concerns that annulling the instruments might have a knock-on impact.

Marie McNair: Thank you. Ms Chapman, having heard from the minister about the impact if we were to annul the SSIs, have you taken into consideration the impact on the courts, and

particularly on the tribunals service, if your motions were successful?

Maggie Chapman: Convener, that is a direct question to me. Do you want me to answer?

The Convener: Yes, please.

Maggie Chapman: Okay.

Marie McNair: I mentioned your name, but obviously you did not pick that up.

12:00

Maggie Chapman: I am sorry—I thought that we were just making contributions for or against the motion.

As I said in my remarks, I hear the minister's concerns and have heard what she said about the impacts, but there is actually no detail on any of that. We know that, for the last year for which we have figures, civil court running costs were £40 million, and the minister has mentioned a £4 million value for the fees. We have no information of what the SCTS will do differently if the motions are not passed and these increases do not go through. Despite having asked the minister in a letter previously, we do not know what the exact impact will be. We have heard general words about the fact that there will be an impact, but there has been no quantification of that at all either in this morning's meeting or in writing previously.

Meghan Gallacher: I associate myself with Paul O'Kane's comments about the fact that access to legal services is vitally important to everyone. We have been speaking about human rights this morning. We need to ensure that people can access legal services when they need to. I share the concerns about the annulment as it is presented in the motion. That is not because I do not believe that the matter should be looked into. It absolutely should be looked into.

I seek reassurance from the minister with regard to the review of legal fees, which she touched on briefly in her opening statement. The committee could explore that or the Scottish Government could pursue it directly on the back of what we have discussed today. It would be helpful if the minister could address that when she sums up. I sympathise with the points that have been raised about ensuring that people can get access to justice support when they need it.

Elena Whitham: Like my colleagues, I have some sympathy with the motions that Maggie Chapman has lodged. We all want a system that has fairness baked into it and that provides access across the board. As a former Women's Aid worker, I have seen time and again the issues that women face in trying to access justice. We have heard from the minister about the fact that we

have already dealt with some exemptions in that area, which were very welcome.

I take on board Ms Chapman's comments about the fact that we do not have a level of detail about where the Scottish Courts and Tribunals Service would seek to make changes in relation to the difference of £4 million, but £4 million will make a difference if we do not proceed with the instruments that the minister has lodged. I sympathise with Ms Chapman's points, but the committee has been clear about seeking more information in the future about how we deal with access to legal aid and justice. I hope that that information will come forward in future evidence sessions.

The Convener: There are no further requests to speak, so I invite the minister to respond.

Siobhian Brown: I urge committee members to support these SSIs to fund the Scottish Courts and Tribunals Service. Budgetary pressures mean that we cannot ignore the impact of inflation over the past couple of years.

I take on board the points that members have made, and I will come to the matter of legal aid, but access to justice is protected by legal aid and court fees exemptions. As we know, court fees are generally a very small part of the cost of a legal action. Legal advice is far more expensive and a bigger issue.

The Scottish Government totally acknowledges the importance of access to justice and the reform of the legal aid system. The Scottish Government has taken significant steps to assist legal aid providers, which has led to an increase in legal aid fees of 25 per cent since 2019.

As I said previously to Maggie Chapman, the number of legal aid solicitors can fluctuate for a variety of reasons, and the issue of solicitor availability is being explored by the Scottish Legal Aid Board. It is currently undertaking a comprehensive analysis that will look in detail at legal aid activity at geographical level and subject matter level. I will continue to work with the legal profession and others to identify measures to improve Scotland's legal aid system.

If the instruments are agreed to today, as we move forward to the next consultation in 2026, I would be happy to commit to a further consultation that would have the public's interests at heart as part of the next fees review.

The Convener: I invite Maggie Chapman to respond and to indicate whether she wishes to press or withdraw motion S6M-14789.

Maggie Chapman: I will not repeat what I said, but I flag to colleagues that the main reason given for the changes is inflationary pressures. We have heard, in response to questions earlier, that the

Government is looking for an average increase of about 13 per cent in court fees. However, let us not forget that, as the minister outlined, there have already been increases—3 per cent in 2022, 3 per cent in 2023 and 2 per cent this year in April—so it is not as if it is starting from 0 per cent. We need to take that into consideration.

On that basis, the increases are out of line with what is appropriate—never mind my earlier point that I do not believe that full-cost recovery in the justice system is an appropriate approach. Justice should be universally available and not just for those with the ability to pay. I press my motion.

The Convener: The question is, that motion S6M-14789, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Gallacher, Meghan (Central Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
O’Kane, Paul (West Scotland) (Lab)
Tweed, Evelyn (Stirling) (SNP)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 5, Abstentions 0.

Motion disagreed to.

The Convener: Was my vote not counted?

Maggie Chapman: I am not sure that we could see your hand on the screen, Karen.

The Convener: I apologise. It was out of shot.

Maggie Chapman: For the next votes, put your hand closer to your face.

The Convener: Apologies—that was the first hiccup.

We move to agenda item 6, which is consideration of motion S6M-14790. A motion to annul has been lodged by Maggie Chapman. I invite Maggie Chapman to move the motion and to make any brief additional comments that she wishes to make.

Maggie Chapman: I will not say anything further.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Sheriff Appeal Court Fees Order 2024 (SSI 2024/236) be annulled.—[*Maggie Chapman*]

The Convener: I invite any other member present to make any brief remarks that they wish to make.

No member has any comments to make. Minister, do you wish to make any remarks?

Siobhian Brown: I have no further comments to make.

The Convener: The question is, that motion S6M-14790, in the name of Maggie Chapman, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gallacher, Meghan (Central Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
O’Kane, Paul (West Scotland) (Lab)
Tweed, Evelyn (Stirling) (SNP)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: Agenda item 7 is consideration of motion S6M-14791. A motion to annul has been lodged by Maggie Chapman.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that the High Court of Judiciary Fees Order 2024 (SSI 2024/237) be annulled.—[*Maggie Chapman*]

The Convener: The question is, that motion S6M-14791, in the name of Maggie Chapman, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gallacher, Meghan (Central Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
O’Kane, Paul (West Scotland) (Lab)
Tweed, Evelyn (Stirling) (SNP)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: Agenda item 8 is consideration of motion S6M-14792. A motion to annul has been lodged by Maggie Chapman.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Court of Session etc. Fees Order 2024 (SSI 2024/238) be annulled.—[*Maggie Chapman*]

The Convener: The question is, that motion S6M-14792, in the name of Maggie Chapman, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gallacher, Meghan (Central Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
O’Kane, Paul (West Scotland) (Lab)
Tweed, Evelyn (Stirling) (SNP)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Motion disagreed to.

12:15

The Convener: Agenda item 9 is consideration of motion S6M-14793. A motion to annul has been lodged by Maggie Chapman.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Justice of the Peace Court Fees (Scotland) Order 2024 (SSI 2024/239) be annulled.—[*Maggie Chapman*]

The Convener: The question is, that motion S6M-14793, in the name of Maggie Chapman, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gallacher, Meghan (Central Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
O’Kane, Paul (West Scotland) (Lab)
Tweed, Evelyn (Stirling) (SNP)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: Agenda item 10 is consideration of motion S6M-14794. A motion to annul has been lodged by Maggie Chapman.

Motion moved,

That the Equalities, Human Rights and Civil Justice Committee recommends that the Adults with Incapacity (Public Guardian’s Fees) (Scotland) Regulations 2024 (SSI 2024/240) be annulled.—[*Maggie Chapman*]

The Convener: The question is, that motion S6M-14794, in the name of Maggie Chapman, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Chapman, Maggie (North East Scotland) (Green)

Against

Adam, Karen (Banffshire and Buchan Coast) (SNP)
Gallacher, Meghan (Central Scotland) (Con)
McNair, Marie (Clydebank and Milngavie) (SNP)
O’Kane, Paul (West Scotland) (Lab)
Tweed, Evelyn (Stirling) (SNP)
Wells, Annie (Glasgow) (Con)

The Convener: The result of the division is: For 1, Against 6, Abstentions 0.

Motion disagreed to.

The Convener: That concludes our deliberation on the SSIs. I thank the minister and her officials for their attendance.

12:19

Meeting continued in private until 12:32.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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