OFFICIAL REPORT
AITHISG OIFIGEIL

Delegated Powers and Law Reform Committee

Tuesday 30 April 2024

Session 6

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 30 April 2024

CONTENTS

DELEGATED POWERS AND LAW REFORM COMMITTEE

14th Meeting 2024, Session 6

CONVENER

*Stuart McMillan (Greenock and Inverclyde) (SNP)

DEPUTY CONVENER

*Bill Kidd (Glasgow Anniesland) (SNP)

COMMITTEE MEMBERS

*Foysol Choudhury (Lothian) (Lab)
*Tim Eagle (Highlands and Islands) (Con)
*Oliver Mundell (Dumfriesshire) (Con)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Josie Allan (Missing People)
Raish Allan (Scottish Courts and Tribunals Service)
Tim Barraclough (Scottish Courts and Tribunals Service)
Fiona Brown (Scottish Courts and Tribunals Service)

CLERK TO THE COMMITTEE

Greg Black

LOCATION

Committee Room 5

Scottish Parliament

Delegated Powers and Law Reform Committee

Tuesday 30 April 2024

[The Convener opened the meeting at 09:34]

Decision on Taking Business in Private

The Convener (Stuart McMillan): Welcome to the 14th meeting in 2024 of the Delegated Powers and Law Reform Committee. I remind everyone present to switch off or put to silent mobile phones and other electronic devices.

The first item of business is to decide whether to take items 6, 7, 8 and 10 in private. Is the committee content to take those items in private?

Members *indicated agreement.*

Instruments subject to Affirmative Procedure

09:35

The Convener: Under agenda item 2, we are considering five instruments. An issue has been raised on the following instrument.

International Organisations (Immunities and Privileges) (Scotland) Amendment Order 2024 [Draft]

The Convener: The instrument amends the privileges and immunities afforded to the European Space Agency, the European Organisation for Astronomical Research in the Southern Hemisphere, and their representatives and staff.

In correspondence with the Scottish Government, published alongside the papers for this meeting, the committee queried discrepancies between the instrument and the explanatory note.

The Scottish Government acknowledged that the new paragraph 7 of schedule 15 to the order that is being amended—the International Organisations (Immunities and Privileges) (Scotland) Order 2009—does not operate as the policy intended. It confirmed that it intends to rectify the error at the earliest opportunity.

Does the committee wish to draw the instrument to the attention of the Parliament on reporting ground (i)—defective drafting—on the basis that the paragraph does not operate as intended, in that a director general, or a person acting in their place, who has a form of British nationality does not benefit from exemptions relating to social security as was intended?

Members *indicated agreement.*

The Convener: Does the committee wish to welcome that the Scottish Government intends to rectify the error at the earliest opportunity, which is anticipated to be in the autumn of this year?

Members *indicated agreement.*

The Convener: The Scottish Government confirmed that the explanatory note is incorrect in suggesting that the instrument affords immunities and benefits only to officers who have British nationality. It advised that it intends to correct the text of the explanatory note.

Does the committee wish to draw the instrument to the attention of the Parliament on the general reporting ground in respect of the error in the explanatory note?

Members *indicated agreement.*

The Convener: Is the committee content with the Scottish Government's proposal to correct the text of the explanatory note?

Members *indicated agreement.*

The Convener: Also under this agenda item, no points have been raised on the following instruments.

Disability Assistance for Older People (Scotland) Regulations 2024 [Draft]

Equality Act 2010 (Specification of Public Authorities) (Scotland) Order 2024 [Draft]

Equality Act 2010 (Specific Duties) (Scotland) Amendment Regulations 2024 [Draft]

Sea Fisheries (Remote Electronic Monitoring and Regulation of Scallop Fishing) (Scotland) Regulations 2024 [Draft]

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Instrument subject to Negative Procedure

09:38

The Convener: Under agenda item 3, we are considering one instrument, on which no points have been raised.

Charities (References in Documents) (Miscellaneous Amendment) (Scotland) Regulations 2024 (SSI 2024/111)

The Convener: Is the committee content with the instrument?

Members *indicated agreement.*

Instruments not subject to Parliamentary Procedure

09:38

The Convener: Under agenda item 4, we are considering two instruments, on which no points have been raised.

Patient Safety Commissioner for Scotland Act 2023 (Commencement) Regulations 2024 (SSI 2024/110 (C 9))

Tied Pubs (Scotland) Act 2021 (Commencement No 1) Regulations 2024 (SSI 2024/113 (C 10))

The Convener: Is the committee content with the instruments?

Members *indicated agreement.*

Document subject to Parliamentary Control

09:38

The Convener: Under agenda item 5, we are considering one document, on which no points have been raised.

Scottish Public Services Ombudsman: Child-friendly Complaint Handling Statement of Principles (SPSO/2024/01)

The Convener: Is the committee content with the document?

Members *indicated agreement.*

The Convener: The committee will now move into private session for the next three agenda items. We expect to resume in public for the evidence session on the Judicial Factors (Scotland) Bill close to 9.45 am, but not before then.

09:39

Meeting continued in private.

10:01

Meeting continued in public.

Judicial Factors (Scotland) Bill: Stage 1

The Convener: Agenda item 9 is an evidence session on the Judicial Factors (Scotland) Bill. Our first witness is Josie Allan, head of policy and partnerships at Missing People. Welcome, Josie. You need not worry about turning on your microphone during the session as it is controlled by broadcasting. Please do not feel that you need to answer every question; simply indicate if something is not for you to respond to. Finally, after the meeting, please feel free to follow up in writing your response to any question, if you wish.

I will start the questions. Can you tell us a bit more about your organisation and the role that it plays in supporting those affected by people having gone missing?

Josie Allan (Missing People): Missing People is a national charity providing support to people who are thinking about running away from home, people who have run away and have been reported missing, and families who are missing a loved one. We provide support for a national helpline that is free to access, as well as a range of services, including a dedicated family support team, face-to-face support services in some areas for children and young people and services such as SafeCall, which provides support to criminally exploited children.

The Convener: To help the committee's understanding, can you say how many people in Scotland are classified as missing each year? Also, in what circumstances do people go missing and what issues are faced by their family members and others left behind?

Josie Allan: Each year, more than 10,000 people are reported missing to Police Scotland. Thankfully, the vast majority of them will be found quite quickly, but the latest statistics show that around 15 people a year who go missing will stay missing in the long term. There are about 714 long-term missing people in Scotland at the moment. Obviously, that number can increase year on year—although, thankfully, some cases are closed after a period, some are not, so we expect that number to continually increase.

When someone goes missing in the long term, families are generally left devastated. Obviously, not knowing what has happened to a loved one is a huge emotional trauma. The term "ambiguous loss" is used to describe the sense of loss that families experience when they have no answers to the question of what has happened, which can leave them with mental and physical health issues. Many families never really give up the search; it becomes a constant part of their day-to-day life.

For some people, the problems that are created can be compounded by legal and financial issues. I will not be able to give you any specific details of that, because I do not talk about individuals, but I am sure that it is easy for any of us to imagine the difficulties that we might face in trying to manage the affairs of a partner, parent, brother or sister who went missing. There are, rightly, lots of protections to stop other people stepping in on your behalf. Those protections need to be in place, but they make it impossible for people to deal with the affairs of someone who is away unexpectedly, which is particularly complicated when there are shared assets, bank accounts or mortgages or when there are dependents to look after.

The Convener: Before we move on to look at specific parts of the bill, please tell us briefly, and in general terms, what you think about the bill that is in front of us. Will it help to address the issues faced by the families of missing people?

Josie Allan: It is really positive that judicial factors are being reviewed and there are changes that will benefit the families of missing people. However, I do not think that the bill goes far enough to ensure that the challenges that those families might face will be surmountable.

Oliver Mundell (Dumfriesshire) (Con): Your organisation's response to the committee's call for views says that Missing People supports the broad conditions for the appointment of a judicial factor, as set out in section 3 of the bill, but that you have some practical concerns about the application of section 3 in a situation where a person is missing. For the benefit of the record, please say a little more about those concerns. Are you seeking to have those concerns resolved by having more information in the bill itself, or would it be sufficient for your purposes to have accompanying guidance for the legislation?

Josie Allan: Our concern is that the bill is potentially unclear for families facing that situation. We are not sure that the bill as introduced sets out what evidence would be expected when families make an application. When someone is missing, the problem is that there is a dearth of information, so we question how a family would be expected to prove that the circumstances met the requirements for the appointment of a judicial factor.

I cannot say whether that would best be addressed by changing the bill or through secondary legislation or guidance. I have no concerns about that, as long as there is something that makes it very clear what evidence families will be expected to provide. That does not necessarily have to be in the bill.

I have a wider question about whether barriers are created by the fact that the bill does not mention missing people at all. In the conditions for appointment, it is important to ensure that judges, solicitors and sheriffs will be incredibly clear about what families must bring. I have worked with one family that was making an application under similar legislation in England and Wales. They were turned away because they had not met the requirements and because the judge did not feel that they had shown enough evidence that the person was genuinely missing.

The wording in the bill at the moment would invite more instances of that. How do you prove that

"it is not possible, practicable or sensible for that management or those actings to be carried out by the person who would ordinarily be responsible for carrying them out"?

How would you show that in the case of a missing person, when there might not be any evidence that they are unable to carry that out, apart from the fact that they just are not there?

Oliver Mundell: In practical terms, what should a family be able to produce? What should the evidential threshold be and what would that look like in practice?

Josie Allan: There could be some quite basic expectations, such as confirmation from Police Scotland that a missing person investigation is open, that efforts have been made to find the person and that no proof of contact has been found.

Some situations can be more complicated. I welcome the fact that the bill is quite open, because it might be that the police do not accept a missing person investigation. There is currently quite a lot of discussion about when the police will, or will not, accept a report if someone seems to have gone missing voluntarily, but that does not make it any easier for families who are left unable to manage affairs or are unable to contact the person. In such a case, evidence could be in the form of statements from other family members or from a workplace, or could be proof that the person has not accessed their own financial accounts. That would have to be provided by the financial organisation, because the family will not be given access to a person's accounts in their absence. It could be proof of publicity or appeals or attempts to make contact—there are a range of different options. I really appreciate the flexibility that the bill provides but we need to ensure that there will not be a postcode lottery—we do not want to have different courts making different decisions about what meets the threshold.

Oliver Mundell: That is helpful and there are certainly things that we can reflect on there.

In section 3, there are two co-existing sets of circumstances in which a judicial factor can be appointed. The first one is when it is

"not possible, practicable or sensible"

for the person who would otherwise do it to carry out the role, which you mentioned, and the second is when

"it would be to the advantage of the estate"

for a judicial factor to be appointed. In the case of a missing person, should the second condition take precedence? In a sense, that may be easier to demonstrate. When someone's presence is not known, it might be easier to prove that it would be to the advantage of the estate to have someone managing it.

Josie Allan: Yes, absolutely. An easy example is where direct debits might be draining an account, but those services are not being used, or where someone is going to default on a mortgage. It would therefore be clear that a factor would be beneficial.

However, that raises another quite challenging question about the purpose of judicial factors specifically for missing people—are we looking at the best interests of the missing person, of the estate or of dependents? I would argue that we always need to consider the best interests of the missing person, but those might conflict with the best interests of the estate.

For example, if the person had clearly wanted their dependents to be looked after and they had been paying for private care, education or healthcare, for example, would it be considered to be to the advantage of the estate to continue to spend potentially dwindling savings on the care of a dependent? Arguably, possibly not—it would be considered to the advantage of the estate to save any money if there was no more coming in or to make investments, for example. However, if the missing person's preferences or will would have been to spend everything possible on family and loved ones, how would those decisions be made if someone was appointed as judicial factor?

Oliver Mundell: I totally hear what you are saying and I understand your point, but I guess that the question would be: who else makes that decision in that circumstance if it is not the judicial factor? How do you resolve those tensions if the person is not there?

Josie Allan: It could be the judicial factor who makes the decisions, but they should be allowed to make decisions based on the assumed preferences of the missing person. It would become more about trying to honour the wishes of the missing person than about trying to protect the estate.

I noticed that there could be a parallel with what happens when a factor is appointed for a charity and the charity continues with its charitable aims. In that case, it is not about trying to protect an estate or to resolve affairs; it is about trying to continue the purposes of the charity—we could draw a parallel between that and the preferences of the missing person.

To go back to your point, the judicial factor could absolutely make those decisions, but I am not sure that the bill would allow them to do that. It might just be decided on a case-by-case basis whether the judicial factor's actions were perceived as fulfilling the responsibility of doing what was best to the advantage of the estate or whether there would be more flexibility in relation to the purpose.

Oliver Mundell: I guess that takes us back to thinking about whether the bill needs to be amended or whether there needs to be additional guidance in relation to missing people.

Josie Allan: Yes.

Oliver Mundell: Do you think that that needs to be looked at again by the Government?

10:15

Josie Allan: We would prefer that the bill specifically made provision for the families of missing people. As I said, that does not necessarily need to be at every stage throughout, but it is a specific enough experience that it could be excluded from some considerations if it is not explicitly included.

Bill Kidd (Glasgow Anniesland) (SNP): Thank you for those responses, because they are bringing something to life. It is very easy to fall into legal speak.

Section 4 of the bill sets out the qualifications that are required of a judicial factor, the main one being that the court decides that the person is "suitable" for that role. In Missing People's response to the committee's call for views, you supported the general idea that suitability for appointment does not come down to specific qualifications or other criteria. You said that families have to deal with practical concerns. For the benefit of the record, what barriers are there to a family member being appointed under section 4, and what steps can policy makers take to remove such barriers?

Josie Allan: My understanding is that, primarily, in the past, legal experts were appointed as judicial factors. Our questions on that were not necessarily about a problem with the wording of the bill—as we have said, it very much could work, and we appreciate the flexibility—but about its application. For example, would there be an expectation that someone would have to hold legal expertise for the court to consider them appropriate?

There is a real challenge in that and, potentially, even conflict. You need to have some sort of expertise to navigate legal systems. You may well need legal expertise to make an application—which, we argue, is unhelpful for families who might not have significant assets. You also need to have a decent understanding of how to manage someone's affairs—for example, you would not want to appoint a factor who was unable to look after their own affairs to step in on behalf of someone else. However, the purpose of the bill, and the reason why someone might want to step financially into the shoes of a missing person, is that they will need to make decisions based on what the missing person would have wanted. To do that, I cannot think of anyone better than a loved one—someone who understands the missing person and knows what they would need.

In addition, it would be prohibitively expensive for people to always need to pay for someone to fulfil that role. Not only would there be the costs of the initial application but, presumably, there would be quite steep costs in someone's continuing to fulfil that role—for example, creating a management plan, submitting annual accounts and continuing to meet the family and understanding what the missing person's best interests might have been. That would immediately exclude what I perceive as the normal person, who might not have significant savings or enough money to make it worth paying for on-going legal expertise to manage those affairs.

I stress that people go missing in every type of circumstance. There is no typical missing person. However, most people in the general population do not have huge savings accounts. They do not have endless money. A missing person might just have a shared mortgage with their partner that needs to continue to be paid off now that one of the incomes has ended, and they might have a small amount of savings that could support that and mean that the partner did not have to leave their home. The person might have a fairly sizeable pension account, but might also have three children who need money to be spent on them. Every penny that is spent on legal expertise will end up not being usable for dependents or for trying to keep someone's life together in the hope that they will return to it.

For us, that is the real crux. Will a judicial factory be primarily for those who have significant assets and businesses to look after, or will it be applicable to someone who just wants to look after the moderate affairs of the average person while they are away? Such a problem has happened in England and Wales with guardianship legislation, which does a small part of what judicial factories

already do and are hoped to do. It is prohibitively expensive. There have been significantly fewer applications than we expected through the legislation; unfortunately, people do not think that it is worth while doing in order to look after relatively small amounts of money, even though that leaves them with the practical challenges and emotional turmoil of watching their affairs fall apart.

Bill Kidd: Thank you for that, because it broadens out the discussion. Are family members regularly considered, or considered enough, by the court to be suitable persons? Could it be that, sometimes, the court might think that there are potential or perceived conflicts of interest among family members that might mean that appointing an independent person might be the best route to go down?

Josie Allan: In my experience, families would often have the skills to do that with support. It comes down to the support that is provided by the Accountant of Court, and to ensuring that expectations are relatively simple. Yes, you would need someone who was able to be organised and clear in their communications, and who could keep clear records and provide accounts to justify their decisions. However, if we expected all those communications to be in very legal language, families would not, in general, be able to fulfil that role. That aspect is not covered in the bill, but it is mentioned in the guidance with regard to the support that is available and the decisions around what is expected of factors.

With regard to a conflict of interest, there is a real positive in leaving a fair bit of flexibility. It would be helpful if, somewhere in the bill, it suggested that, if a missing person was having a factor appointed for them, the expectation would be that the factor would act in the missing person's best interest. That would set out a basic understanding that it is not an opportunity for someone to drain a missing person's accounts or to act in a way that the factor thinks would be preferable. Instead, the factor would have to justify that they were at least attempting to protect what the missing person would have wanted, which could be shown through patterns of behaviour before the person went missing; through support from other people in the missing person's life; and through previous examples of what anyone would reasonably understand to be making the right decisions.

An example that we were given in the past involved a family who had given a sizeable sum to each of their children as they reached the age of 18. It was reasonable to expect that the missing person would have wanted that for their youngest child, despite the fact that they were away once the time came. The money was there for that purpose. That type of justification could be used to show that decisions were being made based on previous behaviour and on what the missing person would have wanted.

However, I agree that the court should be able to challenge an application if it thought that someone was applying with ill intent or if the circumstances were so complicated that such an appointment would not be appropriate. For example, if multiple family members were trying to make applications and there was clearly conflict between them, it would be most appropriate to say that the factor would have to be someone who was independent, because there would be no way to know exactly what the missing person would have wanted.

I am sorry that I cannot give a totally clear answer, but flexibility is good because there should be discretion, with some common sense around what makes most sense based on a family's circumstances.

Bill Kidd: That makes sense.

As things stand, under current law, a judicial factor has to find caution, which is a specialist bond from an insurance company to protect against wrongdoing by the factor and specifically theft from the estate, which you mentioned. Under section 5, there is a policy change to abolish the requirement on a judicial factor to find caution, except in "exceptional circumstances". The committee has been looking into that. Do you think that a family member of a missing person should also be required to take out a bond of caution?

Josie Allan: I think that that should remain in the same framework as has been drafted under the bill. I do not think that it should be necessarily expected, and it should apply only in extraordinary circumstances in which there are additional concerns.

I saw a suggestion in previous evidence to the committee that caution should perhaps more commonly be expected for families of missing people, because of the risk of someone taking money from the missing person or not acting in their best interest. I disagree with that suggestion, which would add more cost. If there is a single applicant, and there are not hugely complicated or significant amounts of finance or wealth, I see no reason why a family would need to do that, and it would add to the barriers that people face when applying. However, if the estate was quite large and there was a bit more uncertainty about what good decisions would look like for managing it, it would be appropriate to ask a person to take out a bond of caution, because the money could be recouped from the missing person's estate.

That would need to be considered case by case, but I urge you to avoid in guidance and the bill

anything that would routinely add more cost. A lot of the families we have worked with are hoping to look after thousands of pounds, not tens of thousands, so if something were added that cost even 5 per cent of that, it would suddenly take money away from other things that they could do when managing the person's affairs.

The Convener: On how many occasions has a judicial factor or guardianship been put in place in England and Wales under existing legislation?

Josie Allan: That provision has been used only 13 times in almost five years.

The Convener: So the situation is not very common.

Tim Eagle (Highlands and Islands) (Con): I think that you answered my next question, in part, when you replied to the last couple of questions. Part 2 of the bill mentions the roles, responsibilities, powers and duties of the judicial factor, which you have made comments on. One comment was about a present for an 18th birthday. For the record, will you say whether the bill sets out the powers and duties that a family member would need to manage the estate of a missing person? You spoke a wee bit about having guidance or provisions in the bill. Do you have a preference about that?

Josie Allan: My reading is that the bill feels as if it is still primarily for the purpose of managing businesses when someone is unable to look after those affairs, and it does not seem to cover what families might want to use it for. There is a big question about best interests. Dealing with a missing person's affairs means taking a step a bit away from considering what is in the best interests of protecting the estate to considering what the missing person would have wanted. That is not balanced in the bill, and it would be useful to have something in it about that.

Ultimately, the best way to protect the estate would be to spend nothing in order to minimise outgoing costs. However, I have given examples to show that that is not necessarily what we think most missing people would have wanted. I do not think that the bill needs to include a list of exactly what is and is not included. It is helpful to have a certain level of discretion, because every situation is unique, but the bill could say that a judicial factor could make decisions to spend or sell assets, for example.

Another example, which is based on a family I worked with, is of a wife who had a shared mortgage with her husband. Her husband went missing, and because she had lost his income—obviously, because he had stopped being paid—she could not keep up with mortgage repayments. All that she felt able to do was to sell the house so that she could buy somewhere for her family to live, but she was excluded from doing so, because no legislation was available. In theory, was that in the best interests of the missing person's estate? Probably not. It would be only her name on the new mortgage, because her husband was not there to sign up to it, and technically he would lose assets, and a lot of that money would be spent elsewhere. However, the other option was that they defaulted on the mortgage because his wife could not keep up with payments, and she and their children would lose a place to live. I keep coming back to the point about including something specifically in the bill that says that a judicial factor should be able to act in the best interests of the missing person, on the basis of a pattern of behaviour.

The issue is really difficult. How do you prove, in someone's absence, that something would be in their best interests or what they would have wanted? Most people have no kind of will or clear information about what they would have wanted, because people go missing when they do not expect to do so.

10:30

Beyond that, I do not think that the bill needs a list of exactly what would be included. There is a list in one of the supporting documents to the bill—I do not remember exactly where it is—but I felt that, because it included a lot of stuff about business, it excluded other things. If you are going to put a list in the bill, it should include stuff about missing persons' estates. If you have no list, the issue is not a problem.

Tim Eagle: That makes sense. There could be a specific reference in the bill, but it could be backed up by guidance later.

Part 4 deals with ending the judicial factor arrangement and distributing the estate. You made comments on the link between that part and the Presumption of Death (Scotland) Act 1977. For the record, will you say a bit more about your concerns and whether you want to see something specific in the bill or in guidance?

Josie Allan: From reading the bill, my understanding is that someone would apply to end the judicial factory if the need for it ended. For example, I am not sure that a factory would be appropriate if someone returned, because they should be able to look after their affairs when they return, and that should be a clear end to the situation.

As for how part 4 of the bill interacts with the 1977 act, a significant proportion of people who are long-term missing will, sadly, have died. The family might not know that for certain but, at a later point, they may come to accept that that is what is likely to have happened. It is therefore quite likely

that there would be a natural transition from someone applying to become a judicial factor in order to look after the missing person's affairs to their eventual realisation that the most likely outcome is death and therefore making a presumption-of-death application. I see no issues in the bill; I simply want to ensure that the question whether there will be a natural progression or step has been considered.

On the flipside, I stress that families are unique in their perception, and their hope, with regard to what has happened. There should be no pressure on families to make a presumption-of-death application unless that is very much their choice. We have previously discussed whether, if the circumstances suggest that it is most likely that someone has died, the family should be encouraged to go straight to presumption of death. We do not think that that is appropriate because, without a body, people might not agree that death is what is most likely to have happened.

We know of many families in which there are quite a lot of indicators that the person has taken their own life—they might have been seen near a place that is known for suicide, or they might even have left a note or information—but families who do not know for certain that that is what has happened might not accept that. They may continue to hold out hope that the person left intentionally and went somewhere else. It is their right to consider that for as long as they choose to do so, and to hold out hope until they are ready to process what has happened. It should not be the case that there is a final point at which there must be a transition from judicial factory to presumption of death.

Tim Eagle: That makes sense. For absolute clarity on your previous points, is it your preference that, when a judicial factor is in place and the missing person returns, there should be as close to an immediate ceasing of that factory as possible? That would need to be stated in the bill.

Josie Allan: Yes.

Tim Eagle: That is great—thank you.

Josie Allan: It is incredibly unlikely, and I have never heard of an example of it, but someone could apply to be a judicial factor with ill intentions and might have been part of the reason why the person went missing. We want to guard against any circumstances in which the person who was appointed as judicial factor had control or power over the financial affairs of someone who had returned or who had declared to the police that they had returned.

In some cases, when a missing person is found even after a long time, they do not want to get back in contact with family, so they will not necessarily be able to go through a joint application process to end the factory. That might not be through any fault of the family. The person might have experienced a mental health crisis. They might be dealing with a trauma. That does not mean that the judicial factor should be penalised; it simply means that there should be a clear-cut end to the arrangement, and that should not be the judicial factor's decision.

Tim Eagle: Thank you very much for that.

The Convener: I will follow up that point. On the timescale, you indicated that, when a person who might have been missing for quite some time reappears, a rushed process to remove the judicial factor might not be in their best interests. Having flexibility is therefore really important because, fundamentally, it protects the person who was missing.

Josie Allan: Yes. Things are likely to be complicated when someone returns after a long time. As I have said, people sometimes go missing because of a mental health crisis. They might have experienced quite serious health issues while they were away. Would it be in their best interests to be suddenly dumped with a load of complicated financial and legal issues?

The approach should be flexible. Everything needs to err on the side of people getting back their autonomy and independence, but with support in place for decisions that are based on their best interests. Generally, that is how financial systems work. They tend to err on the side of the client, but with protection in place.

The Convener: I assume that support will differ on every single occasion, because everyone is different.

Josie Allan: Yes.

The Convener: There is no standard process that could be put in place to provide support with the removal of the judicial factor.

Josie Allan: No. It depends on the situation. I can think of examples in which people have been found or returned, and they have then had to be in hospital for a long period. Support would then centre around medical care and decisions about capacity.

Someone might return and be absolutely fine and be frustrated that a judicial factor was appointed, although in my experience, that is quite rare—it is possible, if unlikely. In that case, they might want to step straight in and completely void any decisions that had been made.

The biggest issue for us is that, if a judicial factor is acting in the best interests of a missing person, they cannot be held accountable for decisions that they made, as long as the decisions were made in the person's best interests. When a

missing person returns, the judicial factor should hand everything straight back to them.

The Convener: I can see the challenge if someone reappeared and was fine to take on the management of their finances and their estate again, and I can see the concern about the judicial factor being wound up in a quick process. The flipside of that is not wanting a judicial factor to be in place for an overly long period, while having an element of caution to get the best possible outcome for the person who has reappeared.

Josie Allan: Yes. Additional scrutiny might be needed at that point. As I have said, I think that such a situation will happen rarely.

If someone returns, that is an incredibly emotional time, and most families will be completely overwhelmed by what has happened. This is about making sure that the Accountant of Court is equipped to do a fairly fast turnaround on checking decisions. I cannot see this happening often, if ever, but there can be real anger when people return, if it is perceived that the missing person decided to leave. Additional checks would be wanted on decisions that were made from a place of poor motivation if someone still had control of a missing person's finances after they returned.

As I said, the situation is very unlikely, but that is why it is beneficial to have flexibility and some confidence in those who are responsible for making decisions or checking the decisions of the judicial factor in knowing that they can take additional steps and knowing what they should do in such situations.

The Convener: You have just highlighted another example of the impossibility of any Parliament, Government or politician legislating for every potential in life.

Josie Allan: Absolutely. I can imagine that people going missing is one of the most complicated issues to deal with, because they go missing for many different reasons and return in so many different circumstances. Sadly, it is not hugely common for long-term missing people to return, so we are having to consider the smallest number of situations that might arise. However, flexibility will be helpful in addressing the issue.

The Convener: Thank you. I call Tim Eagle.

Tim Eagle: To be honest, I think that Josie Allan has answered my next question with that relevant point. There are situations in which a missing person returns but needs support and, equally, a person might return and be perfectly able to take on their finances again. I do not know how it would be written, but could some of that be set out in the bill and the rest put in guidance? Could we have something that sets out a procedure that allows people who are perfectly able to take on their finances as quickly as possible to do so and a procedure for situations in which there might be a concern about the person in question? Does that make sense?

Josie Allan: Yes.

Tim Eagle: That is fine. Thank you.

Oliver Mundell: I think that my question has largely been covered in that exchange, but how would a return be defined? Would, say, a brief encounter with a person or their getting back in touch bring the judicial factory to an end? After all, people sometimes make contact and then drift away again. How would you define a person being back in touch sufficiently to take over their own affairs?

Josie Allan: That is a really good question. In that respect, the bill possibly provides a better alternative than if it were simply based on the person's being missing. A missing person investigation would likely end if the person returned even for a short period, although they might be reported missing again if they left and the police might feel that it was their responsibility to investigate.

I am sorry—I am having to think about this as I speak, as I have not really considered it.

It does not make a person's affairs any easier to deal with if they get back in touch momentarily and then leave again; that does not address any of the issues that the family will have been facing. I wonder whether the judicial factory should continue in that circumstance, because it will be most appropriate for the estate to continue to be managed in that way. After all, it will not otherwise be managed if the missing person does not try to take over their affairs. That said, it is difficult, because the missing person investigation would come to an end, and the justification for appointing a judicial factor would not necessarily exist any more. I do not know.

You have raised an interesting question, though. If a judicial factor is appointed because a person is missing, is the appointment tied to their being missing? Similarly, if someone who returned lacks capacity because of their mental health, would their affairs need to be transferred to a different type of guardianship? I am afraid that I do not have a clear answer to that. That is something for the committee to consider.

My preference would be that, if someone got in contact momentarily, the judicial factory should not end automatically, because that would feel really disruptive to families trying to cope in the meantime. However, that still raises the question of the missing person's best interests. What if they called to say, "I don't want you to sell the house"?

We are at risk of getting ourselves into too many hypotheticals and tying ourselves up in knots, but that is definitely an issue to consider.

10:45

Oliver Mundell: To go back to the previous exchange, I guess that that is where you are looking for some flexibility and, in those sorts of circumstances, some kind of assessment of what is in the person's or the estate's best interests. You are looking for that kind of re-evaluation in what you said was a small number of circumstances. Would the best thing be for the process to build in some flexibility to look at best interests?

Josie Allan: Yes, that would be preferable. It can then be based on common sense and best interests—on what is in everyone's best interests.

Oliver Mundell: That is helpful.

I do not think that this is necessarily a fair question for you, but I will put it to you. In a previous evidence session, we heard the suggestion that the judicial factor might be able to go back to the appointing court and seek advice. Do you think that having that provision would be helpful in those sorts of difficult circumstances?

Josie Allan: Yes, very much so, and I can think of other circumstances in which that might be helpful. For example, if someone has been a judicial factor for quite a long period and something new about the missing person's affairs comes up, it would be useful, with that kind of best interests question, to be able to go back to the court.

In England and Wales, an applicant would be expected at the point of application to give a rough overview of the affairs that they will be looking after and what they intend to do, and the judge would give an indication of whether they felt that that was appropriate or not. If the affairs dramatically changed, the guardian in England and Wales would be expected to go back and question that.

If, for example, a person suddenly came into significantly more money or if there was a massive loss of assets, it would be really useful for people to have the option to check that. You would probably want to make it clear that that should not be done with every decision. People are filled with a lot of uncertainty when their loved one is missing, and there is a risk that they might want to overcheck that they are doing things in an okay way. You would not want to encourage acts that are costly to the person and also probably not a good use of time.

Oliver Mundell: That is helpful. Thank you.

The Convener: How common is it for people who have been missing for quite some time and have reappeared to go missing again at some point after they have reappeared? I am thinking of what you have just said with regard to Oliver Mundell's question and the discussion that we had beforehand.

Josie Allan: We do not have many statistics on long-term missing people and what happens when they return. That is quite an underresearched and undermonitored area. I would say that that is pretty unlikely. However, it is difficult because people are incredibly likely to go repeat missing. Around 180,000 people go missing across the United Kingdom each year, but there are more than 300,000 incidents because so many of them will go repeatedly. However, that tends to be when people are missing for very short periods.

I stress that people probably should not apply for a judicial factor if someone has been missing for only a matter of days or weeks, although we need to be sensitive to the fact that financial issues can arise really quickly. We have previously considered that around three months is an appropriate time, because that is often when any grace periods on payments will come to an end, and there will be a higher expectation of people starting to sort out affairs.

If someone has been missing for over three months, I do not know what the likelihood of their going missing again would be when they return because they are not included in the repeat missing statistics, but I would say that it is quite low.

The Convener: Going back to the point about the flexibility of initiating a process, I was just thinking about the timescale of stopping the process if the person were to return. That is very helpful. Thank you.

Foysol Choudhury (Lothian) (Lab): The committee has been considering a suggestion from the Faculty of Procurators of Caithness that there is a need to set out a specific complaints process in the legislation. It is proposed that the complaint would first be to the Accountant of Court. If the person or body with a complaint is unsatisfied with the outcome, there would then be a role for the court. To help with the committee's deliberations, if, for example, one family member had an issue with how another family member as judicial factor was handling the estate, is there an obvious route in the bill for that first family member to express those concerns?

Josie Allan: Not in the bill, no, but I do not necessarily think that that needs to be included in the bill; it could be included in accompanying guidance.

It would be useful to have a complaints process. I feel that I have said this a lot, but although it is unlikely, it is possible that someone could act against the best interests of the missing person and it would be right for other family members to be able to challenge decisions that have been made. There should be a complaints process, and it makes sense that a complaint would go first to the Accountant of Court. If it could not be agreed, it could be escalated.

The only additional thought that comes to me is that, assuming that most judicial factories relate to businesses or significant assets and affairs, and that the role of judicial factor is often fulfilled by a legal professional, I suspect that the complaints that there might be from families could be more complicated to navigate because they would not necessarily be legal complaints that are clearly framed within expectations around legal acumen or decision making. They could come from a place of high emotion. That is another reason why I think that the Accountant of Court should be equipped to understand and to think through the emotional challenges that families of missing people might face.

I do not think that I am being very clear. Essentially, if a family feels really conflicted because some family members think that the missing person has died and others do not think that, that can create quite a lot of conflict and some real upset. A complaint might therefore be centred in that emotional trauma rather than necessarily in the legal decisions of a judicial factor. The complaints process would therefore need to take into account that some complaints might come from a very real place, but they might not necessarily be issues with the decisions that the judicial factor has made. That is just an extra consideration.

There is real confusion for me in the fact that the role would largely be fulfilled by legal experts, but it could be fulfilled by people who are experiencing extreme high trauma, and the support that is available to them needs to be appropriate for that.

Foysol Choudhury: If that is confusing for you, do you not think that it will also be confusing for the family?

Josie Allan: Yes, that is likely. It is all about how it is delivered. We strongly recommend that a framework is put in place that assumes that members of the public will make applications as a judicial factor, so overly high expectations of someone's legal communication should be limited.

As I am saying this, I realise that I am almost suggesting that it should be legal experts who are appointed as judicial factors, but I go back to the fact that that would exclude most families of missing people from making an application. For me, it is about ensuring that the supporting guidance—not so much the bill, because people do not tend to read the actual legislation—the processes and the language that is used in communications with judicial factors once they are appointed are all appropriate for the layman and things are not written in a way that expects legal expertise.

Foysol Choudhury: More generally, what types of skills do you think the Accountant of Court needs to effectively support the families of missing people? What types of support will the official ideally offer?

Josie Allan: The Accountant of Court should have a basic understanding of the experiences of families of missing people. That could be dealt with through a very short training course or even a guidance pack, to get people to consider some of the impacts.

I do not know about people in the room, but a lot of people do not consider the financial implications of someone going missing, so they might not have thought through what that is likely to mean for family members who are being appointed as judicial factors. I suggest providing some basic information so that the Accountant of Court understands what people are likely to be experiencing.

There should be no expectation that the Accountant of Court will provide emotional support—that is not the role of the organisation. However, having an empathetic approach to supporting people who are in a traumatic situation would be really beneficial.

It is hard to describe, but there are clear parallels with providing official support to someone who is looking after a person who lacks mental capacity, or to someone who is making decisions through a power of attorney, for example. There are parallels, and it is about having an empathetic approach.

We would also recommend that the Accountant of Court is made aware of our services, because we can provide emotional support. As a charity, we can take referrals. That might be an easy way to ensure that the Accountant of Court is not expected to fulfil a role if a family becomes incredibly upset, and that there is somewhere else to signpost them to.

The Convener: You have touched on my final question. Is it viable for a family member or a friend to undertake the role of judicial factor?

Josie Allan: Yes, it is definitely possible, and in some situations preferable, for a family member or friend to act in that role. The benefits are that they will know the best interests of the missing person and will understand what they would have wanted,

and the cost will be lower if they fulfil the role themselves.

The vast majority of families of long-term missing people just want the best for their missing person, so they will act very well on their behalf to keep their affairs in order for their return, or to look after dependants if that is what the missing person would have wanted. However, special consideration should be given to making the role accessible to them, if it has traditionally been fulfilled by legal experts.

The Convener: You have indicated that additional guidance would be helpful, along with potential amendments to the bill. Are there any other elements of the bill that you think could be changed, or is there anything else that could help with missing people?

Josie Allan: I do not think that there is anything that I have not been able to mention already. I have not necessarily thought through everything that would need to be in that additional guidance, but I would be happy to consider that on behalf of the charity at a later point.

The Convener: If you are able to do that and to write to the committee afterwards, that would be very helpful.

Oliver Mundell: We might test the patience of the convener, but I want to ask a further question.

Much of what you have been talking about has been specific to this legislation. Are you promoting and interacting with the role of judicial factor because this is the best legislative opportunity available, or do you feel that doing work on other legislation would be better or beneficial? Do you think that a judicial factor is the right vehicle for missing people, or is it just the best one available?

Josie Allan: I think that it could be the right vehicle, as long as there is a willingness to step back from seeing the role of judicial factors as one that is primarily for legal experts. I apologise if I sound like a broken record, but everything about the purpose of judicial factors makes sense for families of missing people—the fact that you can step into the shoes of someone whose affairs you are looking after, and the fact that it gives you quite a lot of powers on their behalf. However, if the primary purpose of the bill is to fulfil the needs of someone who is stepping in on behalf of a person who is unable to look after a business, or if there is not a willingness to make it appropriate for families of missing people, it probably will not work.

11:00

It is quite a unique circumstance, which needs to be considered separately from the wider net. Otherwise, it will end up being accessible for a small handful of people, as I think it has been. I have not been able to access clear data, but I am pretty sure that there has been a small number of occasions on which someone has become a judicial factor for a missing person under the existing legislation. It is rare, if I am correct about that.

I cannot give an exact answer, but I do not think that there necessarily needs to be a whole new piece of legislation specifically for missing people. However, special consideration needs to be given to missing people in the bill.

Oliver Mundell: Thank you. That is helpful.

The Convener: As colleagues have no final questions, Ms Allan, are there any points that you would like to put on the record that have not been covered this morning?

Josie Allan: No, other than to add that I have been quite negative about some aspects of the role because changes are needed. However, I stress again that flexibility would be really beneficial. As discussed, every case is unique, and decisions will need to be made on a case-by-case basis. Therefore, having some flexibility in how those decisions can be made and meeting the needs of people rather than having a very clear system that is immovable would be really beneficial.

The Convener: Thank you for that, and thank you for your evidence this morning. It has been tremendously helpful and thought provoking. The committee might contact you on further points, and you also indicated that you will write to the committee in the future. If there is anything that you want to highlight to us, please do so in writing. Thank you very much once again.

I will suspend the session to allow a changeover of witnesses and for a short comfort break.

11:02

Meeting suspended.

11:06

On resuming—

The Convener: Our second panel of witnesses are from the Scottish Courts and Tribunals Service. I welcome Raish Allan, who is the judicial factory case manager; Tim Barraclough, who is the executive director for tribunals and the Office of the Public Guardian; and Fiona Brown, who is the public guardian and the Accountant of Court.

I remind attendees not to worry about turning on their microphones, as that will be dealt with by the broadcasting team. If panel members would like to come in on any question, they should raise their

hand or indicate to the clerks. There is no need for all of you to answer every question; simply indicate that you do not need to respond to it. However, if you would like to come back to the committee after the meeting, you may do so in writing. We move to questions.

Before we get into questions on specific issues in the bill, will you tell us a little bit about the office of the Accountant of Court. Why did the office come into being and how long has it been in existence? Currently, what responsibilities are associated with that role?

Fiona Brown (Scottish Courts and Tribunals Service): Thank you for having us. The Accountant of Court is an historical office that has been around since the 1800s; the first legislation that appointed an Accountant of Court was enacted during the mid-1800s. Naturally, the role has progressed over the years. At the moment, it involves four main business areas; we are at committee to discuss the judicial factories role. As the accountant who is with the team and the AOC office, I am responsible for supervising and supporting those who are appointed as judicial factors. That can take many forms—formal or informal—throughout the lifetime of a case, which can also vary. In addition to our judicial factory role, we are responsible for supervising and supporting those who are in post as enforcement administrators, which is similar to the judicial factor role, under the Proceeds of Crime Act 2002.

In addition, we are responsible for administering—or supervising those who have been allowed to administer—any estates that have fallen to children in Scotland. If you are under the age of 16 and have inherited an estate or received a large sum of compensation or an inheritance, for example, the parties that are progressing that estate will come to the Accountant of Court for a direction. We have a few roles that relate to that. We can supervise a parent or guardian if they are allowed to continue to administer the estate, or we can administer the estate ourselves. Where there is complexity, it might be appropriate to have a judicial factor appointed in cases that relate to the Children (Scotland) Act 1995. That links to today's committee meeting.

Finally, we have a role that relates to consignations. Those could relate to a sum that has been consigned by or via a court order, or it could be a sum that is consigned to us by a liquidator who is winding up a company, as happens frequently. There could be a number of shareholders, for example, whose present whereabouts might be unknown and who are therefore unable to receive the sums that would otherwise be due to them. We look after those funds until they are either claimed or, after a seven-year period, paid back to the Treasury.

In all those functions, we have the general role of supporting, supervising and helping anyone along the way in those processes.

The Convener: Will witnesses tell us, briefly and in general terms, what they think about the bill that is before us?

Tim Barraclough (Scottish Courts and Tribunals Service): We welcome the opportunity to clarify and modernise some elements of judicial factory. Other than that, we see our primary role as implementing whatever legislation is passed. Our main purpose in being here today is to elucidate the practical implications of any changes that are contained in the bill. We do not take a particular policy stance on the bill. We welcome the opportunity to assist in providing the best possible scheme for the future.

The Convener: Does anyone else want to comment?

Fiona Brown: The bill is very welcome. We are dealing with dated legislation, so it is good to modernise that and to have this opportunity.

The Convener: Thank you. I call Oliver Mundell.

Oliver Mundell: In response to the committee's call for views, the Law Society of Scotland said that the bill as introduced is "a significant departure from" the Scottish Law Commission's draft bill. Specifically, the Law Society considers that there has been a watering down of the level of legal and accountancy knowledge that is required for the roles of accountant and deputy accountant. Do you agree with the Law Society's perspective, or do you take a different view? What, in your view, should the bill say in relation to the qualifications that are necessary to hold the posts of accountant and deputy accountant?

Tim Barraclough: Our position is that the bill, as drafted, provides the appropriate level of requirements for legal and accountancy qualifications for the Accountant of Court.

There are two considerations. First, is there a compelling argument to make a change from the existing practice? From the earliest legislation, there has been a requirement for the Accountant of Court to be

"versant in law and accounts".

That has been modified into more modern language, which follows what the Law Commission recommended in its original report. In that report, the Law Commission said that it would be

"unreasonable to require the Accountant to be formally qualified in both, or either, discipline".

I think that we would agree with that. I am not sure that any argument or evidence has been put forward to support an argument that there have been deficiencies in the way that the Accountant of Court has been run that would be addressed by requiring formal qualifications. In a sense, our argument in that respect is: "If it ain't broke, don't fix it".

The other important thing to realise in considering the qualifications for the Accountant of Court is that, under the Adults with Incapacity Act 2000, that office is conjoined with the Office of the Public Guardian. Therefore, when you appoint an Accountant of Court, you are also appointing Scotland's public guardian, who is responsible for all the matters dealing with powers of attorney and guardianships; in fact, that role is by far the larger of the two. The team that falls within the Office of the Public Guardian is more than 100 people strong, whereas the team for the office of the Accountant of Court is in single figures. It is important that, when you are talking about the qualifications for the Accountant of Court, they cannot be considered in isolation from the qualifications for the public guardian. When we are appointing that person, we need to look at the overall requirements for the role.

Oliver Mundell: On that point, are you envisaging that the people who are in the single figures would also be doing work for the Office of the Public Guardian and would not be specialising just in the—

Tim Barraclough: There is one small team that specialises in Accountant of Court cases. That is how things are set up at the moment.

Oliver Mundell: Why would you not be able to consider them in isolation, then? That is the bit that confuses me. If they are entirely specialists and working solely on this, why would you not do that?

Tim Barraclough: The team is not the Accountant of Court—that is Fiona Brown. It would be only the Accountant of Court who would have those specific requirements in legislation. That is what we are saying.

11:15

Oliver Mundell: And you think that that is okay, as they are performing more of a supportive role.

Tim Barraclough: That is correct. They are administrative staff, dealing with day-to-day cases.

Oliver Mundell: And they do not make the actual judgment.

Tim Barraclough: Absolutely. Raish Allan is the head of the team dealing with Accountant of Court cases.

Oliver Mundell: So, there is not a sufficient quantity of work that would stretch beyond the capacity that Fiona Brown or whoever was holding that role would have. That is effectively what you are saying.

Tim Barraclough: Fiona Brown, what is your balance here?

Fiona Brown: I will jump in. The administrative function is carried out by a very small team dedicated solely to AOC work. I and my current deputy public guardian have a dual role that is largely dedicated to the public guardian side, and that is based on the volumes of work that come through and the size of the team.

Oliver Mundell: But you think that you have sufficient capacity to ensure that, as these changes come through, you will not require anyone else meeting this level of legal and accountancy qualification.

Fiona Brown: We did a piece of work on the financial aspects. Although some new duties will arise as a result of the bill, there are also some efficiencies to be made, and when we did the costings, things came out as being cost neutral. We do not anticipate huge increases in the numbers across the board.

Tim Barraclough: Moreover, as a member of the Scottish Courts and Tribunals Service, the Accountant of Court has access to and can call on a wide range of legal expertise and specialisms outwith the limits of her own office.

Oliver Mundell: Going back to the second part of my question, what specifically do you think the bill should say in relation to the qualifications that are necessary? Are you happy with what is in the bill?

Tim Barraclough: We are happy with the wording as proposed.

Oliver Mundell: In response to the committee's call for views, the Sheriffs and Summary Sheriffs Association said that it thought that the appointment of the accountant should be made not by the SCTS directly but by the Lord President. Do you have a view on that proposal?

Tim Barraclough: That would be a significant change and would require amending parts of other legislation. At the moment, the Accountant of Court is a civil servant appointed under civil service conditions, and I think that that is something that we are, in a sense, content with.

I go back once again to my original point, which is that, at the moment, there seems to be no deficiency that would be addressed by changing such a requirement. There is no compelling argument for making that change.

Foysol Choudhury: Good morning, panel members. A judicial factor can be appointed to a missing person's estate, but Missing People and the Law Society have said that the procurator is not particularly accessible to the families of missing people. The Scottish Law Commission argues that the issue needs to be dealt with not by legislative changes but by guidance and advertising. In your experience, would the appointment of a judicial factor be a particular solution in most cases involving missing people, or are there barriers in that respect? To what extent is it the responsibility of the office of the Accountant of Court to advertise the procedure and to use it to support the families of missing people? Finally, are there any potential resource implications for you in undertaking that kind of advertising and support role?

There were three questions in there. If you want me to come back to any, I will do so.

Fiona Brown: That would be great—thank you.

The bill as drafted—and, in fact, the current legislation—allows a loco absentis judicial factor to be appointed to the estate of a missing person. The changes in the current draft and its being available to people to make an application in the sheriff court will make such a move more geographically—and potentially financially—accessible to families of missing people in Scotland. Although I imagine that you would still be required to instruct a solicitor to do the work on the application, it would happen at the sheriff court, so the costs would be vastly reduced.

The current draft of the bill does not preclude the appointment of a layperson, as long as the court deems them suitable as the judicial factor for that missing person.

The bill is open enough in its drafting that it would allow me and my team to adapt our process in relation to the documents that we use and would expect a layperson to complete, such as the inventory of the estate at the outset, the management plan and any annual on-going accounting thereafter. We could draft those documents in such a way that they would be more accessible and easier for a layperson to complete.

Similarly, we could adapt our supervisory role. The role is different when a layperson is appointed from when a chartered accountant or a solicitor is appointed. In addition, provisions around remuneration and commission in the role are suitably open in the bill, which would allow me and my office to make changes to reflect the circumstances of the case.

You have made the point that judicial factors are not widely known in the Scottish public. A promotional piece would therefore definitely be beneficial, and our office would certainly be happy to assist with that in any way that we can. That would include, as the witness from Missing People elaborated on earlier, working more closely with the public if we saw a rise in the number of, for example, missing people cases and related appointments, just to ensure that our provisions and the service that we offer meet their needs.

That is probably one area in which my other hat as public guardian comes into play. In the department, we are very used to dealing with family members who have been appointed in a lay capacity as financial guardian, for example, for a loved one who has lost their mental capacity—we supervise and support them throughout the lifetime of the case—and that correlates really well with what a missing person's judicial factor might do.

The plus of the current draft of the bill is that it is open enough to allow me to adapt those processes to accommodate a layperson's appointment.

Foysol Choudhury: Are there any barriers?

Fiona Brown: To such appointments?

Foysol Choudhury: Yes.

Fiona Brown: I do not see that there would be any. Again, as the witness from Missing People said, along with the bill, more could perhaps be put in the guidance that would allow the courts to vary the powers. The standard powers for a judicial factor, which schedule 1 to the bill sets out, are similar to what is used when looking at the past wishes and best interests of an adult with incapacity. There could therefore be some changes to the accompanying documentation, such as rules of court or the appendix, which would make the process more open and flexible to the court.

Bill Kidd: Section 5 of the bill covers caution. The policy argument for not requiring caution in all cases is that professionals who are appointed as factors will have their own professional indemnity insurance. In response to the commission's consultation in 2010, the then Accountant of Court—I presume that it was not you at the time—

Fiona Brown: No, it was not.

Bill Kidd: The then Accountant of Court expressed concern about whether accountants' professional indemnity insurance was an adequate substitute for a specialist bond of caution, saying that it might not cover such elements as embezzlement. Do you think that the Accountant of Court's concerns have been resolved during the policy development process? Can you offer any information on the scope of contemporary professional indemnity insurance?

Fiona Brown: I understand that my predecessor had some concerns, because of a previous case some years ago where the personal indemnity did not cover fraud—that came to light during the consultation, hence the comments that were made at that time.

Personal indemnity can vary widely, depending on the profession and the supplier. Where we would have a concern, for a start, is in ensuring that the size of the estate is adequately covered. If a judicial factor has multiple cases, we need to be sure that his or her PI covers the size of all the cases in the estate and the judicial factory. That would be one potential concern. It is not that PI would necessarily not have that cover, but you would need to be convinced that it did at the outset.

The other aspect is about deliberate fraud or embezzlement. We have seen PI cover in the past that did not have those elements attached to it. However, if there was a process around the caution or the cover within a case, whereby the PI was subject to a check in respect to both the volume of cover and the cover for fraud and embezzlement, that would perhaps satisfy the court's requirements as an alternative to a bond of caution via an insurer, which is what we are talking about.

Bill Kidd: Thank you. Does section 5, as it stands, cover that successfully?

Fiona Brown: I think that it is covered in the bill. Potentially, we could have a bit more guidance on the rules for the court, just so that there is a safeguard around who does the check. Whether that check was done by me and my team when caution or equivalent cover was requested, or whether that was something for the court to be satisfied with, it would mean that there were options other than bonds of caution open to professionals who were due to be appointed as a judicial factor.

Bill Kidd: The committee has heard evidence from the legal profession suggesting that the proposed threshold for requiring caution is now set too high, and that alternative forms of security to a bond of caution should be considered where those are required. Do you have views on that?

Fiona Brown: In the past, we have had cases in which PI has been accepted as another form of cover. That is already in the rules of court and is an option for the court at the moment.

On the threshold in the current draft, it would depend on the intent behind the provision. We absolutely agree that giving the court discretion over whether caution is required is a good thing. There are lots of reasons for that, some of which your earlier witness touched on, such as the cost to the estate and the availability of cautionary providers. There are definite benefits to the court having a discretion. Whether the threshold for the use of discretion should be as high as "exceptional circumstances" is a matter for the drafters and for the committee.

Under the Adults with Incapacity (Scotland) Act 2000, when the court orders it, a financial guardian is also liable to obtain a bond of caution. With my public guardian's hat on, and from experience, I would advise against it being an automatic no in the case of appointments of laypeople for missing persons, because we tend to see a higher risk of misadministration or deliberate fraud when a layperson is appointed, for a variety of reasons. We would certainly like there to be an option that is open to the court when a lay appointment is made.

Bill Kidd: I was wondering about that. With a layperson, you do not have any background on their expertise or whether they might be at it. Is that point well covered in the bill?

Fiona Brown: I think that it is. It is also open to the Accountant of Court's team to carry out checks, which could be added to the guidance. For example, we could do an Experian search on an individual to look at their credit history. There are other mechanisms in other pieces of legislation, such as the 2000 act, through which the suitability of the potential appointee is addressed and covered. There are mechanisms through which we could potentially increase the safeguards in relation to the suitability of the individual.

Bill Kidd: Tim Barraclough, did you have something to say on that?

Tim Barraclough: No. I entirely agree with Fiona Brown on that.

Bill Kidd: That is all really helpful, thank you.

Oliver Mundell: On the back of the comment about credit searches and other bits and pieces, do you think that there is more that the bill could do to put your office in charge of that? We are looking at legislation that has not changed in 100-plus years. Obviously, there is some case law, but we are looking at something that has been neglected when it comes to modernisation.

I just worry about having those sorts of tests, because at some point in the future, we might still be looking at people's Experian credit ratings rather than at whatever the relevant considerations might be. Does the bill do enough to future proof any checks and, indeed, what the right background might be for the person who occupies this role?

11:30

Fiona Brown: It might be quite difficult to define suitability, and I think that it is good that things have been left open in that respect. I suppose that the accountant could have additional powers to carry out additional checks on an individual's financial suitability, but obviously that would feed into the court process or would be something for the court to do. At the moment, there are other pieces of legislation and applications to the court that, for example, call for the potential legal proxy to make a statement, advising and declaring that they have never been declared bankrupt, that they are not party to any sort of trust deed arrangement and that they will notify the Accountant of Court's office, in this case, if that position changes and they are declared bankrupt or have financial difficulties.

There is definitely some work that we could do, but the bill is open to the AOC process being adapted to ask for that sort of information. The issue, then, is how that fits in with the court process, which technically comes first; we could work on that, and it is absolutely doable in the current draft, with perhaps some changes to the guidance.

Oliver Mundell: If you found something unsuitable, would you go back to the court with it? What would be the threshold of concern at which you would go back to the appointing court and say, "This individual is not right"?

Fiona Brown: Under the application process as it stands, it would be up to the court to decide whether the person was suitable. That is only right, and that position would continue under the current bill. If we were to receive some concerns or if we had some concerns of our own, it would, under the bill as drafted, be open to us to go back to court for a direction to resolve the matter.

Oliver Mundell: What would be the threshold for going back to court? The bill, as it stands, is not that specific, and you have obviously mentioned doing credit or other background checks. I guess that this is a tricky question, because we are dealing with a hypothetical situation, but what would the level be? Speaking as a layperson, I know that not everybody has a squeaky-clean credit rating; people will have had all sorts of things going on in their lives. Where do you draw the line?

Fiona Brown: It is quite difficult. One obvious line would be bankruptcy; if there were a live and active bankruptcy, that would be a flag, and in those circumstances, we would probably go back to the court at the outset.

It is more likely that, in carrying out our supervisory and support function throughout the lifetime of an order, we would come up against or discover other concerns in a case. It is unusual to be aware of such things at the outset, because it can take a number of months even for the inventory of the estate to be pulled together and for the judicial factor or my office to be aware of what is included within an estate. At the outset, though, bankruptcy would be a good threshold.

There might be other processes that the court could adapt at that stage, say, within the application. Usually, you have to make a declaration in an application linked to other legislation that you are a suitable person, or a suitability report or character reference might be attached to that. It would be perfectly doable for that sort of thing to be set out as an addition to the guidance. In all likelihood, though, we are more likely to come across a concern further into the lifetime of the case, and we have an option at that stage to go back to court, if required.

Oliver Mundell: Thank you.

Tim Eagle: Last week, we had a bit of a discussion about the register of inhibitions and whether that, as the bill suggests, is the correct place to put what is, in effect, the list of judicial factors. Do you think that it is the correct place? Last week, the Faculty of Advocates said that it was probably not the right place and that perhaps a new list could be created. If that were to be done, would that give you any resourcing issues?

Fiona Brown: Again, it depends on the intent and purpose of making that registration in the register of inhibitions. If you look at the Registers of Scotland website, you will see that, strictly speaking, the register of inhibitions notifies the public about individuals who cannot competently enter into property transactions, so there is a real property and conveyancing link there.

Traditionally, the purpose of the register of inhibitions is to block someone from being able to, for example, sell or take out loans against property when they no longer have the powers to do so. In that instance, the factor's powers would supersede the original owner's powers or the missing person's powers for however long the factory was on-going.

If the intent of the bill is to safeguard that block, it is justifiable to keep that section on registration in the register of inhibitions in the bill. If, however, the intent is to allow the fact that a judicial factor has been appointed in a particular case to be more widely available to the public, we already have the public register for adults with incapacity cases and it would absolutely be within our domain to use that. Resourcing wise, our new case management system, which will include the ability for that online public register to go public facing and be searchable, is currently in development.

Other than potential concerns around resourcing and the costs of such a register—because a new system would need to be developed—we could absolutely accommodate a public register for judicial factory appointments that was searchable by the public. We could manage that, as long as what could be available to the public in respect of that search was clearly defined in the act or the guidance, such as the case in the Adults with Incapacity (Scotland) Act 2000.

Do you have anything to add around costs, Tim Barraclough?

Tim Barraclough: The development of new information technology systems is already quite a substantial piece of work and such a register would involve additional costs, which we have not yet budgeted in. As Fiona Brown has said, if the intent is to provide a full public register rather than just a conveyancing-related block under the register of inhibitions—which seems to be a shortcut to having some kind of register without creating a new system—it would, indeed, be perfectly possible to create a new system that covered everything that would require to be covered. However, significant development costs—hundreds of thousands of pounds—would be associated with it.

Tim Eagle: It is my understanding that it was about creating that publicly available register, as opposed to the first option.

Once you have set up the register, the running costs presumably would not be huge, because you are doing that anyway. Do you have a reason for suggesting that it would cost hundreds of thousands? If you are already creating a very similar thing for another purpose, presumably you just replicate it but give it a different name, or is it really more complicated than that?

Tim Barraclough: We are not the experts in the IT. Our experience so far of developing those systems suggests those kinds of figures. However, we can come back with a more specific estimate; that figure is more or less off the top of my head.

It depends how much that public register has to link into other systems, for example, and on the cost of building those links. The register would not just sit by itself but would have to talk to case management systems and other systems across the piece. Those networks, which ensure that the right information goes to the right places, tend to cost quite a lot of money—we are dealing with very sensitive information, so we have to get that right. We can come back with a slightly better estimate if that would be helpful.

Tim Eagle: It would just be interesting to see the costs that are attached to that. To clarify the point, if we did not want to create that because of the cost involved, is there an issue with using the register of inhibitions as a public-facing register for the factors that are in place?

Fiona Brown: There is not necessarily an issue. However, similar to JF for missing persons, the consideration is more about promotion. The public is largely not aware that the register of inhibitions exists, that it is searchable and that you can pay a fee to search it—as I say, it is largely used for conveyancing matters at the moment. Also, within the legal field, we would hope that the bill itself will raise the profile of judicial factors and of any registration with the keeper. However, a promotional piece would definitely be required to do that, as would a bit of clarity on the purpose for a search if we were to expect someone to search that register for reasons other than conveyancing.

Oliver Mundell: The committee has been considering the judicial factor's investment power under section 17 of the bill. For the benefit of the committee, if a judicial factor asked you, in your role as the Accountant of Court, whether they were permitted to choose environmental, social and governance investments, but nothing was otherwise stated in legislation about that, what would your advice to them be?

Fiona Brown: The judicial factor has powers to invest at the moment, and they have access to investment advice. We would recommend that they do so in most cases, depending on the size and complexity of the estate. It would be open to the factor to obtain that.

In discussions with us, there would certainly be occasions in which an ESG investment might be suitable. The two examples that I can think of are longer-term cases, such as charity cases or trusts, where an ESG investment might fit better with the profile or the ethos of the organisation or charity. There is a difficulty, which previous witnesses have touched on, in that there can be an expectation that the JF will do their best to preserve, maintain and perhaps even benefit that estate during their appointment period. That puts a bit of pressure on the JF to make a gain for or to preserve the estate. However, there would be nothing precluding it from doing that at the moment, provided that the JF had taken advice from a professional and from us. There is nothing in the current draft of the bill that would stop a JF from doing that.

A previous question was whether we need to add to what is in the bill to make it clear that a judicial factor would have the ability to make an ESG investment. I suppose that something could easily be added to schedule 1 to make that clear and take away the potential for future criticisms of the factor were they to go down that route.

Oliver Mundell: That is helpful. On a slightly different topic, in the earlier session today a

question was raised around best financial return versus best interests in missing person cases. In that sort of circumstance, what would your advice be?

Fiona Brown: I think that the bill will lead to a real move toward the court discussing the long-term objectives of a case. Although there are general powers, it is also open to the court to grant additional powers. For example, the court might want to put in additional powers that are specifically linked to best interests and previous wishes if it is dealing with a missing persons case. Similarly, if a court is dealing with a charity or a trust case, it might wish to add powers and make it absolutely clear in the order that the judicial factor has those powers.

The Convener: In previous evidence, we have heard that, because the ESG is in the Trusts and Succession (Scotland) Act 2024, if ESG were to go into this bill, that could be considered as duplication. Would that be a fair assumption?

Fiona Brown: It depends on the type of case. If it is a trust case, one could argue that, but trusts are only one type of judicial factor, so having that in the bill would be covering all bases, I suppose.

The Convener: Thank you.

Foysol Choudhury: The committee has been considering the interrelationship of section 34 of the bill, which says that discharge usually ends a factor's liability, and section 38, which covers the investigatory powers of the Accountant of Court. What is your understanding of the relationship between those two provisions? What do you think the position is if a factor is discharged under section 34, but subsequently misconduct comes to light? What do you make of the view of the centre for Scots law, at the University of Aberdeen, that the interrelationship needs to be explained more in the bill?

11:45

Fiona Brown: It is a difficult one. For a judicial factor—like some similar appointments, such as a liquidator—there is currently an expectation that you are discharged of that liability upon your discharge, so it would be a significant change if that were to be drafted in a different way in this legislation.

Section 38, on misconduct, makes it clear that, in my role as the supervisory body over judicial factors, were I to discover or suspect that there had been any form of misconduct, there would be a clear course to the court while the factor was operating and the case was live.

The difficulty is where it is no longer a live case and potentially discharge has been offered. That is probably a matter for policy, to be honest. The only comment that I would make is that it might be a deterrent for someone to take the role as an officer of court and judicial factor if that liability extended beyond that period. However, it is more a matter for policy.

Bill Kidd: When the Scottish Law Commission spoke to the committee two weeks ago, there was some discussion of the requirement on the accountant, under section 38, to refer the judicial factor to their professional body in certain circumstances.

Section 38 appears to bypass the Scottish Legal Complaints Commission, which is the usual gatekeeper for complaints. Also, in respect of a referral to the Law Society, it may apply a higher threshold for referral than the main threshold appearing in the general legislation on regulation of the legal profession.

For the benefit of the committee, can you outline the approach that you take now for solicitors? To which body—if any—do you refer a solicitor at present and in what circumstances would you make that referral? Does the wording of section 38 give you any practical or policy concerns?

Fiona Brown: In the case of misconduct, we have powers to direct the judicial factor to, for example, supply information, supply copies, or come and meet us—a whole variety of things. When we carry out an investigation, we have the same powers to call for evidence from third parties as well, so, as things stand, we can conduct a fairly thorough investigation internally.

Fortunately, in my tenure and, as far as I am aware, in my predecessor's tenure—so, over the past 20 years, since 2004—we have never had to refer a judicial factor to their professional body. In fact, we have had a very small number of complaints in respect of a judicial factor's actings and, of those that we have had, none of them has been upheld to this event, so it is a hypothetical for me at the moment.

There is a clear route in section 38 and I am comfortable that, under the current draft, I have the appropriate powers to make those directions and carry out those investigations, were it to be a lower-level conduct element. Where there is the possibility of more serious misconduct, there is an absolutely clear course to the court, so that the court can determine the matter.

The one aspect of section 38 that I am a little bit uncomfortable with is the part where it says that, as the Accountant of Court, I "must" refer the matter to the professional body at the same time as making that referral to court. Ultimately, it is up to the court to determine whether there has been misconduct in a judicial factor's case, in their actings as judicial factor. I might suspect or feel that there has been misconduct. However, the

court may then overturn that or have a different opinion, by which point that referral would have been made to the Scottish Legal Complaints Commission or to another professional body, which would have serious ramifications for the professional concerned.

Potentially, the "must" refer part of the section could be amended to read "may" refer, or removed altogether. The bill could make it an option open to the court to ask me to refer the judicial factor to the relevant professional body should the court determine that there has been serious misconduct in a particular case. Perhaps a slight rewording or change to that part of the section would be beneficial.

Bill Kidd: Thank you for that. You are happy with the situation as it stands just now anyway, and it is not something that you have to deal with very often.

Fiona Brown: No. Absolutely.

Bill Kidd: It might therefore be a wee bit over the score to change it for the sake of it anyway.

The Convener: In relation to the information gathering powers for the Accountant of Court in section 39, there is an exception to the requirement to comply. That is for United Kingdom Government ministers and departments and bodies exercising reserved functions, such as His Majesty's Revenue and Customs. We have had evidence on that before. They can choose whether to comply.

It may be the case that a section 104 order is, ultimately, required to extend the full scope of the information gathering powers to UK Government ministers, departments and bodies, but we cannot yet be sure that that will happen. If that issue does not get addressed via a section 104 order, does what we have in the bill present any problems for the Accountant of Court? If so, how significant are those potential problems?

Fiona Brown: As we indicated at the start, I would not propose to comment on the policy intent or the fact that there is an exclusion for reserved bodies at the moment. From a practical point of view, subsections (6) and (7) of section 39, which are comments to clarify that the JF bill does not override the data protection legislation, may be used as a get-out clause for some organisations to not provide the information that I have requested. I appreciate that there is a similar section where the judicial factor can ask for information of third parties, and a similar subsection around the data protection legislation.

We need to make clear the intent, and how the two pieces of legislation work together. The way in which it is worded at the moment could potentially lead to practical difficulties. Time delays would certainly be my biggest concern. The longer that it takes to get the information that is required, either by the factor or by me, the more likely it is that there can be quite significant delays in the case. Sometimes it can involve getting specialist advice on responses, which can also be expensive. We want the judicial factories to be running as efficiently as possible in relation to time and costs. There is a potential issue, but it has not been a huge issue in the past.

I do not know whether my colleague Mr Allan would like to add anything about the practical issues that he has come across in previous years around obtaining information.

Raish Allan (Scottish Courts and Tribunals Service): I do not think that I can call to mind any situations where issues around data protection came into play.

The Convener: If the bill were not to be amended, would you be content with that section 104 process?

Fiona Brown: Yes.

The Convener: That is something that has come up in previous SLC bills. Committee members know about the section 104 order and have discussed and debated it a lot in recent years. The one challenge with the section 104 order is the length of time that it would take for the process and for it to be agreed. In one example, it was estimated that that would take about a year and a half. That was in relation to the Trusts and Succession (Scotland) Bill, which is now the Trusts and Succession (Scotland) Act 2024.

There could be a situation where some aspects are still operating under the old law and other aspects are operating under the law that we passed in December. Would that provide any complications for you if that type of situation were to play out?

Fiona Brown: I do not think so. We have workarounds under the current legislation. It would just mean that we would have a longer period between implementation of that particular area of the bill, which we could absolutely work around.

As I am in the Accountant of Court team, we do not routinely have to go to reserved bodies to request information. The judicial factor is more likely to need to do that in the course of fulfilling their duty, and they are therefore probably better placed to talk about any potential delays and ramifications.

Again, we have worked with the current legislation for a number of years now, and we could continue to do so.

The Convener: That is helpful, thank you.

Tim Eagle: In the past couple of weeks, we have discussed having a complaints process in the bill. There was a suggestion that if somebody was unhappy, the first port of call would be a referral to the Accountant of Court, and then to the court itself. Do you think that there is a need to have that explicitly laid out in the bill? I assume that that is how it already works in practice, but should it be spelled out, and do you see any issues with that?

Fiona Brown: We feel that the draft bill is in line with current practice and is sufficient as it is. Currently, if there is a complaint about the JF, it will come to me for investigation. If I do not uphold that concern and the party continues to have concerns, at each of the critical stages of a judicial factory, they have the right to enter into the action as a party in the cause.

The JF application is intimated upon all the interested parties at the outset. If someone were concerned about who was to be appointed, for example, they would have a route to make an objection at that stage. Further down the line, with the division of the estate or the discharge of the judicial factor, if a person was unhappy with the JF's actings throughout, they would have recourse by being able to enter into the action to make representations to court.

Aside from all that, a person could make a complaint about the judicial factor to me as part of the Scottish Courts and Tribunals Service, and I would investigate it. If they had a complaint about me, they would follow the SCTS complaints route. Therefore, there is a route to complain about the actings of the Accountant of Court, and if a professional has been appointed, such as an accountant or a solicitor, there is a route to make a complaint to their professional bodies as well.

There are various mechanisms just now for parties to be heard should they be dissatisfied with the conduct of any of those individuals or with the progress in any particular case. I think that the arrangements are quite sufficient as they stand.

Tim Eagle: Okay, that makes sense. You are saying that, outwith the bill, those complaints procedures are already in place, and that you have to abide by those rules. Therefore, in your view, it does not need to be explicit in the bill because you have to abide by the rules anyway.

Fiona Brown: Yes, that is right.

Tim Eagle: Okay, perfect. Thank you.

Foysol Choudhury: Regarding the costs that the bill might mean for the SCTS, paragraphs 24 and 25 of the financial memorandum say that adjustments to the SCTS's new case management system might be required because of the bill. Can you provide any more information on what would be involved and, in particular, on what cost you think will be incurred? Are there any other costs that you wish to highlight to the committee or that give cause for concern?

Tim Barraclough: As the financial memorandum says, it is quite difficult for us to know at present what the costs might be because of the timing. As we have been explaining, a new case management system is being introduced for the entirety of the Office of the Public Guardian in Scotland and the Accountant of Court, and it is being delivered in phases. The first phase, which is currently under way, relates to powers of attorney. The next phase is in relation to guardianships, and the final phase will relate to the functions of the Accountant of Court, which will be sometime next year, we think.

It might well be that any changes that are required as a result of the bill can be factored into the initial design, which is already accounted for in our budgeting for the costs. It might be that there are no costs, or particular additional costs, relating to this. If, however, there is any delay in the implementation of those provisions, we will have to set up the case management system to deal with the system as it currently is and then adjust it in relation to any changes that are required.

I would be plucking figures out of the air if I were to give an indication of those costs. As I have said, though, we have discovered that it is quite expensive to develop IT case management systems, and we would prefer to incorporate them into the original design of the new system when we get round to it, instead of having to put them in afterwards. However, it would be almost impossible to come up with a cost at present. I can go back to our procurement colleagues and ask whether they have any further indications in that respect, but I do not know whether there are any. Is that right, Fiona Brown?

12:00

Fiona Brown: Yes, I think so. Say the bill were to receive royal assent by, say, the end of January; as it stands, development is due to start next February for the AOC phases, and it will take roughly six months. Any impact on that development will depend on when the bill gets royal assent and goes through the implementation stages.

As Mr Barraclough has said, we can give you some ideas in that respect. The best-case scenario is that everything goes through on the timescales as roughly planned, and there is absolutely no financial impact whatever. Alternatively, we can come back to you with an idea of figures for any further development and implementation costs.

The other cost, of course, is one that I highlighted earlier. If you wanted the public register for judicial factories to be online, again, that could be built into the same six-month development and implementation phase. However, if the timescales for the bill proved to be out, an additional cost might be incurred at the end of the process.

As for other costs in the bill, the Accountant of Court's team charges fees for most of the work that we do, and we are fairly comfortable that any changes that the bill brings about will be cost neutral, so there will be no additional costs involved.

The Convener: Do colleagues have any final questions?

Tim Eagle: Convener, I missed a question earlier, so, if it is all right, I will just jump back to it.

Again, this was discussed last week, but the Faculty of Advocates has suggested that, in part 2, there could be an extra power to seek directions from the court where there might be issues during a factory. Could such a power be warranted in the bill?

Fiona Brown: A few sections in the bill already cover the bases that we have come across to date. For example, section 45 gives the JF the power to appeal a decision of the Accountant of Court—in other words, if the JF were to be unsatisfied with my actions, it would have the ability to appeal and go back to court—whereas section 11 allows the JF to add, remove or otherwise amend its powers and to make any changes that might be required throughout the lifetime of a case. Ultimately, it is the decision maker. In my experience, judicial factors have largely been officers of the court, but I appreciate that, if the number of missing people appointments were to increase, that might not necessarily be the case. There could be some lay appointments among those numbers, too, but it is always open to them to seek my advice and the advice of the team or, indeed, professional advice.

Therefore, we do not really consider the extra power to be necessary. However, if it were to be added, we would need to bear in mind the impact on costs. Every time you go back to court, there is an impact in respect of fees and costs—indeed, not only on costs, but on court time, which could create further delays in the judicial factory case. It is a balancing act.

Tim Eagle: Thank you for that.

The Convener: I see that there are no further questions from colleagues.

The panel has been asked a variety of questions, but are there any points that have not been touched on but which the panellists would like to put on the record?

Fiona Brown: I do not think so—we have covered everything.

The Convener: With that, I thank the panel once again for their attendance today and for answering our questions—your evidence has been extremely helpful. The committee might follow up in writing with some further questions, and you also indicated that you were going to come back on a few things, too, so we will get that response from you in due course. Thank you very much once again.

That concludes the public part of the meeting. We now move into private session.

12:04

Meeting continued in private until 12:15.

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

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

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

The Scottish Parliament
Pàrlamaid na h-Alba