JUSTICE 1 COMMITTEE

AGENDA

31st Meeting, 2004 (Session 2)

Tuesday 5 October 2004

The Committee will meet at 3.00 pm in Committee Room 4.

1. Declaration of interests: Bruce McFee will be invited to declare any relevant interests.

2. Item in private: The Committee will consider whether to take item 5 in private.

3. Petition PE477: The Committee will give further consideration to petition PE477 by Mr John McManus on behalf of the Miscarriages Of Justice Organisation, calling for the Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a half-way home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court.

4. Petition PE763: The Committee will consider a petition by the Consumers’ Association calling for the Scottish Parliament to urge the Scottish Executive to urgently implement the findings of the Parliament’s Justice 1 Committee inquiry into the regulation of the legal profession.

5. Emergency Workers (Scotland) Bill: The Committee will consider its approach to stage 2 of the Bill.

6. Proposed bill to protect children and prevent sexual offences (in private): The Committee will consider a list of candidates for appointment as adviser in respect of the proposed bill.

Alison Walker
Clerk to the Committee
Tel: 0131 348 5195
Papers for the meeting—

Agenda item 3

Note by the Clerk  J1/S2/04/31/1

Agenda item 4

Note by the Clerk  J1/S2/04/31/2

Agenda item 5

Note by the Clerk (PRIVATE PAPER)  J1/S2/04/31/3

Agenda item 6

Note by the Clerk (PRIVATE PAPER)  J1/S2/04/31/4

Papers for information—

Inquiry into the effectiveness of rehabilitation programmes in prisons—

Correspondence from Families Outside regarding evidence to the Committee on 22 September 2004  J1/S2/04/31/5

Families Outside, Scottish Prisoners’ Families Helpline – Annual Statistics, April 2003 – March 2004 (hardcopy – members only)  J1/S2/04/31/6

Families Outside, Annual Report 2003 – 2004 (hardcopy – members only)  J1/S2/04/31/7

Apex Scotland, A positive future (hardcopy – members only)  J1/S2/04/31/8

Emergency Workers (Scotland) Bill—

Correspondence from the Minister for Finance and Public Services  J1/S2/04/31/9

Documents not circulated—

Copies of the following have been supplied to the clerk—

- Scottish Executive, Punchbag (video referred to in annex A of the Minister for Finance and Public Services’ letter [J1/S2/04/31/9 above];
- Sheriff Court Rules Council, Consultation paper on proposals for further extension of the use of information technology in civil cases in the sheriff court.

Forthcoming meetings—

Wednesday, 27 October 2004, CR5;
Tuesday, 2 November 2004, CR2 (joint meeting with the Justice 2 Committee);
Wednesday, 3 November 2004, CR3;
Wednesday, 10 November 2004, CR2 (joint meeting with the Justice 2 Committee);
Wednesday, 17 November 2004, CR3;
Wednesday, 24 November 2004, CR1;
Wednesday, 1 December 2004, CR4;
Wednesday, 8 December 2004, CR2;
Wednesday, 15 December 2004, CR1;
Wednesday, 22 December 2004, CR3.
JUSTICE 1 COMMITTEE

Petition PE477 by the Miscarriages of Justice Organisation

Note by the Clerk

Background

Petition
1. Petition PE477 by the Miscarriages of Justice Organisation (MOJO) was lodged on 8 March 2002 and calls for the Scottish Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a halfway home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court. The petition was referred by the Public Petitions Committee to the Justice 1 Committee for further consideration.

Previous consideration by the Justice 1 Committee
2. The Committee last considered the petition at its meeting on 16 June 2004 and the paper circulated for that meeting, J1/S2/04/24/3, is attached at annex A for information.

3. At that meeting, the Committee noted a response from the Scottish Executive indicating that it is considering what practical steps might be taken to provide a new service, separate and distinct from that available to ordinary ex-prisoners. The Committee then agreed to forward responses from Safeguarding Communities-Reducing Offending and HOPE and the progress report on the Home Office and Citizens Advice Bureau Miscarriages of Justice Project being piloted by the Royal Courts of Justice Advice Bureau to the Executive, inviting it to take them into account in the context of considering what steps to take in relation to providing a service for victims of a miscarriage of justice and asking it to provide the Committee with a timescale for this work.

The Scottish Executive
4. The Scottish Executive responded on 10 August 2004 and a copy of the response is attached at annex B. In it, the Minister for Justice advises that a member of Executive staff has been seconded to Citizens’ Advice Scotland to assist in developing detailed proposals for an advice and assistance service in Scotland. The minister goes on to state that she expects to receive these proposals in September and will then consider how best they might be taken forward. The minister also reiterates that an exploratory meeting with the Miscarriages of Justice Organisation Scotland has been provisionally arranged for early October.

Procedure
5. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.\footnote{1 Public Petitions Committee, 7th Meeting 2003 (Session 2), 12 November 2003.}
Proposed action

6. Courses of action that the Committee could take include—

(a) agreeing to monitor developments in this area and writing to the Minister for Justice, noting the commitments in her letter and asking to be kept informed of progress in relation to this matter; and/or

(b) in the light of the commitments in the minister’s letter, writing to the petitioners, forwarding all recent correspondence regarding the petition, explaining that the petition has been examined thoroughly and advising that it plans to take no further action in relation to it.

3 The Scottish Parliament, Standing Orders, Rule 15.6.2(a)
Background

Petition
7. Petition PE477 by the Miscarriages of Justice Organisation (MOJO) was lodged on 8 March 2002 and calls for the Scottish Parliament to urge the Scottish Executive to provide assistance in setting up an aftercare programme in the form of a halfway home to help people who have been wrongfully incarcerated and have served long terms of imprisonment or whose conviction has been annulled at the appeal court. The petition was referred by the Public Petitions Committee¹ to the Justice 1 Committee for further consideration.

Previous consideration by the Justice 1 Committee
8. The Committee considered the petition at its meeting on 25 February 2004² and the paper circulated for that meeting, J1/S2/04/8/3, is attached at annex A for information.

9. At that meeting, the Committee agreed to accept the referral and carry out further consideration of the issues raised in the petition. The Committee also agreed to write to the Minister for Justice, asking that the Scottish Executive reconsider its position in relation to the petition, and to Safeguarding Communities–Reducing Offending (SACRO) and HOPE (Helping Offenders' Prisoners Families), seeking their views on the issues raised by the petition.

The Scottish Executive
10. The Scottish Executive responded on 24 March 2004 and a copy of the response is attached at annex B. In it, the Minister for Justice agrees that “there is a need to establish a new service, separate and distinct from that available to ordinary ex-prisoners”. The minister goes on to say that she has instructed officials to consider what practical steps might be taken to provide such a service and will report back to the Committee as work progresses.

HOPE
11. HOPE responded on 22 April 2004 and a copy of the response is attached at annex C. Firstly, Hope recognises that “there can be little argument that those who have been the victim of miscarriage of justice have needs that are specific to them, especially on their release after a long period of imprisonment” and that, having been wrongfully convicted and consequently having entered a system that believes that convicted persons are guilty, only after a long period of time would they be able to receive credibility or advocacy in respect of their claim to be innocent.

¹ Public Petitions Committee, 7th Meeting 2003 (Session 2), 12 November 2003.
² Justice 1 Committee, 8th Meeting, 2004 (Session 2), 25 February 2004.
12. HOPE supports MOJO’s position that there is a “real need...that should be the responsibility of the Scottish Executive, and that is not discharged by indicating that a compensation scheme exists”. HOPE’s view is that (a) victims of miscarriages of justice have specific needs that should be addressed as early as possible in the process and certainly on release and (b) such victims need not only to be declared as such but also to be treated as such.

13. HOPE believes that throughcare provision currently being rolled out would not have the range or depth of services to handle adequately victims of miscarriages of justice and that services for such victims should include an “in-depth assessment of need, emotional and personal counselling, help with family and relationships, accommodation, living skills and employment support if necessary”. The response does not go as far as supporting MOJO’s proposal to establish a halfway home but does state that a voluntary organisation should be involved, in liaison with statutory services.

14. The response goes on to highlight the position of families when a family member is imprisoned. HOPE sees such families as innocent victims of crime in need of support and services to address, for example, the damage to children in terms of development within the neighbourhood and at school and all the more so when the imprisoned family member is a victim of a miscarriage of justice.

15. Finally, HOPE comments on difficulties with obtaining funding from the Scottish Executive for a need that is unfulfilled by current provision, particularly in the case of applications for a grant under section 10(1) of the Social Work (Scotland) Act 1968, and sympathises with MOJO in this respect.

Safeguarding Communities–Reducing Offending
16. SACRO’s response of 28 April 2004 is attached at annex D. SACRO stresses that it claims no special expertise in providing services to wrongly convicted prisoners but, as a major throughcare provider, has a long history of helping ex-prisoners resettle successfully in the community and is therefore very familiar with the needs of discharged prisoners, legislation and guidance in this area and the Scottish Executive’s current policy initiatives in throughcare.

17. SACRO makes a number of points about voluntary assistance for discharged prisoners who are not offenders. Whilst acknowledging that such prisoners are entitled to seek advice, guidance and assistance from local authorities, SACRO believes that national throughcare standards and current Executive throughcare policy initiatives are, whilst welcome, aimed clearly at offenders rather than non-offenders. In support of this view, SACRO notes that the objectives contained within the national throughcare standards refer to “offenders” and reducing the risk of “reoffending” and that the standards and guidance do not address working with or any special needs of wrongfully convicted persons; SACRO also notes that the Executive’s throughcare policy sets out clear categories of people to whom priority should be given, namely high risk offenders, young offenders and those who show a commitment to addressing their offending behaviour or who take up assistance under the Scottish Prison Service’s transitional care scheme for drugs.

18. SACRO also states that resources allocated to voluntary assistance are likely to be “thinly spread” and therefore even many of those in the priority categories may
not receive any assistance. In light of these observations, SACRO doubts that wrongly convicted, discharged prisoners would be likely to receive a service appropriate to their needs under voluntary assistance.

19. SACRO goes on to comment on the petitioner’s proposal that an aftercare programme for those who have suffered a miscarriage of justice should be set up in the form of a halfway home. SACRO does not believe that planning services around a “bricks and mortar” resource to be the best approach as it can lead to the type of service that may be offered being determined by the nature of the establishment rather than by the needs of the service user. The response goes on to conjecture that such an approach may be particularly inappropriate for people that have been wrongly incarcerated for a long time, believing that such people are likely to need a person-centred package rather than placement in an establishment. SACRO also points out that a resource in such a form would, in terms of being a national resource, be limited by the location of the halfway home.

20. SACRO goes on to recognise that there would be some merit in such a service being provided by an agency with no direct links with the criminal justice system. SACRO also notes that there would need to be expertise in understanding the effects of institutionalisation in addition to the impact of being seriously wronged by powerful state institutions.

21. SACRO also refers the Committee to the Home Office and Citizens Advice Bureau Miscarriages of Justice Project in England and Wales, currently being piloted by the Royal Courts of Justice Advice Bureau. This project is discussed further below.

Other evidence - Miscarriages of Justice Project in England and Wales

22. On hearing from SACRO of the Committee’s consideration of the petition, the Royal Courts of Justice Advice Bureau (RCJ), which is piloting the Home Office and Citizens Advice Bureau Miscarriages of Justice Project, contacted the clerks and offered to provide the Committee with an account of the project. A copy of the RCJ’s progress report is attached at annex E.

23. In 2000, the Home Office National Probation Directorate convened a working group to consider how a service might be provided to assist prisoners released after successfully appealing against conviction. On the basis of a scoping study conducted by an independent consultant, the working group recommended that such a service should be established; that the service should initially be run as a pilot for a period of 12 months with an option to extend in the light of monitoring and evaluation, and that the pilot should be delivered by the National Association of Citizens Advice Bureau with funding from the Home Office. The project became operational in January 2003.

24. The RCJ progress report highlights issues encountered in relation to access to housing; access to appropriate, specialist mental health treatment; the length of time take by victims to recognise that they need help, particularly in relation to mental health, and access to benefits, which are reserved.
Procedure

25. According to the Standing Orders, where the Public Petitions Committee has referred a petition to another committee, that committee may take such action as it considers appropriate.³

Proposed action

26. Courses of action that the Committee could take include—

(a) forwarding the responses received from SACRO and HOPE and the RCJ progress report to the Scottish Executive, inviting it to take them into account in the context of considering what steps to take in relation to providing a service for victims of a miscarriage of justice and asking it to provide the Committee with a timescale for this work; and/or

(b) deferring further consideration of the petition until the Executive reports to the Committee what action it will take in relation to establishing such a service.

³ The Scottish Parliament, Standing Orders, Rule 15.6.2(a)
SCOTTISH EXECUTIVE

Minister for Justice
Cathy Jamieson MSP

Pauline McNeill MSP
Convener, Justice 1 Committee
c/o the Justice 1 Committee Clerks
3.11 CC
The Scottish Parliament
EDINBURGH
EH99 1SP

Dear Pauline,

Thank you for your letter of 8 July in connection with the Petition PE 477 by the Miscarriages of Justice Organisation. Your letter requests an indication of the planned timescale for developing a separate and distinct advice and assistance service for ex-prisoners who have suffered a miscarriage of justice.

At the request of Citizens' Advice Scotland (CAS), we have made available a member of staff who is being seconded to CAS for a short period to assist them in developing detailed proposals for an advice and assistance service in Scotland. I would hope to receive proposals from CAS in September and we will then consider how best they might be taken forward.

As you are already aware, I have also asked my staff to make arrangements for an exploratory meeting with MOJO Scotland, and a date has provisionally been arranged for early October.

I am grateful to you for forwarding the related correspondence from SACRO and HOPE and I note what they have said on the subject. I am sending a copy of this letter to the Clerk to the Justice 1 Committee.

Best Wishes,

CATHY JAMIESON

ANNEX B
JUSTICE 1 COMMITTEE

Petition PE763 by the Consumers’ Association

Note by the Clerk

Background

Petition
1. Petition PE763 by the Consumers’ Association was lodged on 30 August 2004 and calls for the Scottish Parliament to urge the Scottish Executive to urgently implement the findings of the Parliament’s Justice 1 Committee inquiry into the regulation of the legal profession. The petition was referred by the Public Petitions Committee (PPC)\(^1\) to the Justice 1 Committee for further consideration and is attached at annex A for information.

Consideration by the Public Petitions Committee
2. An extract from the official report of the PPC’s meeting is attached at annex B for information. The PPC also received correspondence in respect of the petition from the Law Society of Scotland, which is attached at annex C.

Former Justice 1 Committee inquiry into the regulation of the legal profession
3. The Committee considered the recommendations made by the former Justice 1 Committee in its 11th Report 2002: Report on Regulation of the Legal Profession Inquiry at its meetings on 25 February\(^2\) and 23 June 2004\(^3\).

4. On 25 February, the Committee agreed not to re-open the former Committee’s inquiry but to monitor whether the recommendations have been implemented; to write to the Minister for Justice seeking an update on the Scottish Executive’s response to the recommendations and to write to the Faculty of Advocates for an update on progress.

5. On 23 June, the Committee considered what progress had been made in relation to implementing the recommendations made by the former Justice 1 Committee and agreed to write to the Executive asking for a timescale for its public consultation on the former committee’s recommendations and, once it is published, to consider whether the consultation paper adequately reflects those recommendations; to write also to the Law Society of Scotland in relation to the former committee’s recommendation in favour of a joint complaints procedure and to the Faculty of Advocates seeking clarification in respect of its response, and to invite the Scottish Legal Services Ombudsman to give oral evidence to the Committee.

6. The Committee has also considered correspondence in relation to the transparency of legal fees and has agreed to include this matter in the evidence session with the legal services ombudsman. The Committee will consider an update paper on these issues and take evidence from the ombudsman when time allows.

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\(^1\) Public Petitions Committee, 13th Meeting 2004 (Session 2), 15 September 2004.
\(^2\) Justice 1 Committee, 8th Meeting, 2004 (Session 2).
\(^3\) Justice 1 Committee, 25th Meeting, 2004 (Session 2).
Procedure

7. According to the Standing Orders, where the PPC has referred a petition to another committee, that committee may take such action as it considers appropriate.\(^4\)

Proposed action

8. Given that the Committee has already agreed what action to take in respect of the former Committee’s recommendations, it may wish to agree that the petition does not merit further consideration and to write to the petitioner, explaining the rationale for the decision.

\(^4\) The Scottish Parliament, *Standing Orders*, Rule 15.6.2(a)
To the Scottish Parliament

We, the undersigned, declare that Scottish consumers are currently poorly served by the current complaints systems operated by solicitors.

A recent survey of people who felt they had shoddy service from their solicitors carried out by consumer magazine Which? found that some solicitors are failing to follow the most basic codes of professional conduct. Unprofessional behaviour, negligence, mistakes being made and non-responsiveness were among the top reasons for complaints.

Many people told us they had not pursued complaints because of the difficulty of the system. Others said they were unhappy with the way their complaint was dealt with.

Complainants in Scotland clearly faced many of the difficulties experienced in England and Wales, and we believe Scots may be experiencing even longer delays during the complaints process.

The present system in Scotland is, as Ministers accepted after the Justice Committee report in November 2002, in need of reform to increase public confidence in its fairness, efficiency and effectiveness.

Consumers' Association is concerned that while the Clementi Inquiry is likely to result in positive reforms in England and Wales, Scotland runs the risk of falling behind with a fairer and more modern legal services complaints procedure to the severe detriment of Scottish consumers.

The Petitioner therefore requests that the Scottish Parliament calls upon the Executive to urgently implement the findings of the parliament's Justice 1 committee inquiry into the regulation of the legal profession, which recommended in November 2002 that:

- There should be a single gateway for all complaints against the legal profession.
- The Ombudsman should be granted powers to investigate the decision made by professional legal bodies, enforce recommendations, conduct general audits, prescribe timescales for dealing with complaints, direct professional bodies to investigate complaints, and make recommendations on complaints procedures.
- The Law Society should create firewalls to separate the interests of the complainant and the solicitor subject to the complaint.
- The definition of complaints against solicitors should be redefined in statute to be simple and widely drawn to avoid consumer confusion over definitions of complaint.

Consumers' Association, registered in England No 556128, and its subsidiary, Which? Limited, registered in England No 877055. Registered office 2 Marylebone Road, London NW1 4DF

We are committed to
- Empowering people to make informed consumer decisions
- Achieving measurable improvements in goods and services
● Compensation should be available to complainants where it is established that loss has been suffered as a direct result of the solicitor’s conduct. Currently there is no facility to award compensation if a complaint is about an individual solicitor’s conduct.
● The maximum compensation awarded should be substantially increased with a mechanism for annual upgrading in line with inflation. At the moment the maximum award of £1,000 has not been increased since 1990.
● The Executive should ensure that where redress is provided through the guarantee fund and the Master Policy, complainants do not face long delays in settlement.
● There should be a simple procedure for dealing with complaints involving both solicitors and advocates.

Julia Clarke  
Consumers’ Association

Contact details: Julia Clarke, Consumers’ Association. The Executive Centre, 7 North St Davie Street, Edinburgh EH2 1AW. Tel 0131 524 9624. Julia.clarke@which.co.uk.
Legal Profession (Regulation) (PE763)

10:30

The Convener: Our next petition is PE763, from Julia Clarke on behalf of the Consumers Association. The petition calls on the Scottish Parliament to urge the Scottish Executive to implement urgently the findings of the Parliament's Justice 1 Committee's inquiry into the regulation of the legal profession. Julia Clarke and Ajay Patel are here to give evidence in support of the petition. Welcome to the committee. You have three minutes, after which we will ask questions.

Julia Clarke (Consumers Association): Following a survey carried out by our consumer magazine *Which?*, the Consumers Association believes that Scottish consumers are poorly served by the complaints system currently operated by solicitors. We have heard about complaints to do with unprofessional behaviour among solicitors, negligence, mistakes made, excessive delays and dishonesty—yet more than 40 per cent of the people who told us that they had received poor service did not complain. They said that there would have been no point or that it would have been too stressful an experience. Three quarters of those who complained to their solicitors said that their complaint was not resolved, and many people told us about their confusion, frustration and distrust, and about the lengthy misery that their experiences had caused them. Several gave up simply because the process made them ill.

The majority of people have cause to use the services of a solicitor at some point in their life—usually when buying or selling a house, for a divorce, or after a bereavement. Those are stressful experiences in their own right, and people have the right not just to high standards of legal care but to a decent, independent complaints process if things go wrong. The Consumers Association does not believe that that is happening in Scotland at the moment.

Last year, the Law Society received more than 2,000 letters of complaint, which it then investigated. It also received 923 letters that it termed "miscellaneous" and did not investigate. From the legal services ombudsman’s own research, the Law Society took an average of 78 weeks to investigate complaints. The ombudsman found that a fifth—21 per cent—of the complaints that she looked into had taken the Law Society more than two years to investigate.

In her annual report this year, the ombudsman says that complaints to her rose by 61 per cent over the past year. She found that the Law Society had failed to investigate adequately 42 per cent of the cases that she had examined. Too many
people are not having their complaints adequately heard at the moment. That is an obvious injustice.

After its inquiry into the regulation of legal services in November 2002, the Justice 1 Committee made a series of recommendations to the Executive. We believe that the implementation of those recommendations would greatly improve fairness for consumers who use legal services. They include a single gateway for all complaints against the legal profession and increased powers for the ombudsman to investigate decisions, prescribe timescales to cut down on delays and increase compensation to a decent and meaningful level. The maximum award of £1,000 has not been increased since 1990.

We are concerned that, although the Government is currently reviewing the legal profession in England and Wales, Scotland risks failing to move forward with a fairer and more modern legal services complaints procedure that is easily understood by people, independent, transparent and effective. The current system is mired in the past, is not user-friendly or transparent and needs urgent updating. We therefore seek the Public Petitions Committee's support for the implementation of the Justice 1 Committee's findings.

Jackie Baillie: I have read your Which? report and considered the methodology used. Would I be correct in saying that, in your sample, 30 people from Scotland responded?

Julia Clarke: We had more than 700 responses from throughout the United Kingdom; half of those people came back and completed questionnaires, and 12 per cent of those were from Scotland. We had around 36 or 37 responses from Scotland.

Jackie Baillie: I just wanted to put the information in context. When you talk about the "Law Society", are you talking about the Law Society of Scotland?

Julia Clarke: Yes. I am sorry; I did not make that clear.

Jackie Baillie: I asked the question just to avoid confusion, because it is a UK study and there are obviously differences in law, and different bodies are involved.

Are you aware of what has been happening in the past six months to a year, since the Justice 1 Committee's report was published? There has been quite a bit of movement and what I would call welcome progress.

Julia Clarke: There has indeed. We welcome what the Law Society of Scotland has been doing. It has put lay people on some of its committees, which is a help in speeding up the process of dealing with complaints. It has also advised solicitors to send a letter of estimate, so that people know what they are in for when they hire a solicitor. That is a great help, but it goes nowhere near resolving all the issues—the complaints that are not properly dealt with by the Law Society of Scotland—that either fall by the wayside or pitch up at the ombudsman's office. There is a great deal to be done to make the service properly available to consumers.
Helen Eadie: I am interested in your petition. I notice from a letter that we received from the Law Society of Scotland that a memorandum of understanding has been entered into between it and the Faculty of Advocates, dealing with an improved procedure for complaints involving solicitors and advocates. If you are aware of that, could you comment on it? To what extent will it help to improve the situation?

Julia Clarke: I was not aware of the memorandum of understanding. While it is welcome, the primary problems are that there is no single gateway, the system is not independent and the Law Society of Scotland is investigating complaints about its own members, when its primary function is to represent those members. It is difficult for it to do both. It tries to, but the system does not work.

Ajay Patel (Consumers Association): Many of the improvements have existed for some time in England, but I have been involved in the current Clementi review of the regulation of legal services,

which has not produced significant improvements. The problem of poor handling of consumers' complaints about lawyers has existed for upwards of six to 10 years. A lot of changes have been implemented to improve the way in which complaints are handled and to speed up the complaints process, but unfortunately they have not yielded results. We need a more radical overhaul of the system.

Helen Eadie: Are you aware that the Law Society of Scotland fully supports the proposal that compensation for inadequate professional services should be uprated from the current maximum of £1,000 to take account of inflation since 1990?

Julia Clarke: I was not aware of that. Again, that is welcome, but apart from anything else there is still the problem that complaints are not properly heard. They are falling by the wayside, through the gap whereby the Law Society of Scotland chooses not to investigate complaints. Many complaints that, in the ombudsman's opinion, should have been investigated—42 per cent of those that she examined—turn up at her door, which is a great concern. No doubt there are many complaints that do not turn up at the ombudsman's door—people just go away without justice.

Ajay Patel: I understand that the ombudsman's caseload in Scotland has trebled over the past three years. That shows two things: first, consumers are more willing to complain and are more aware of their right to complain to the ombudsman; and, secondly, there is dissatisfaction with the way in which lawyers at the grass roots handle their clients and fail to resolve complaints in-house.

John Scott: If so many people are complaining, why did so few take part in your survey?

Julia Clarke: You have to be extremely highly motivated to respond. We put adverts in the Scottish and UK press, but to respond in detail over an event that perhaps has been extremely stressful and upsetting takes a great deal of focus and determination. People are required to fill in a lengthy questionnaire about their experience—they have to be quite committed to follow up the situation.
John Scott: I presume that it has been an issue of concern to your organisation for some time.

Julia Clarke: Yes.

John Scott: Did you give evidence to the Justice 1 Committee inquiry when it took evidence on the matter?

Julia Clarke: The Consumers Association opened a Scottish office just after that time, so we were not here bodily to take part, which of course is a matter for regret.

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John Scott: Did you write to the Justice 1 Committee or make representations in any other way?

Julia Clarke: No, not at the time. As I said, we did not have a Scottish office in operation at that point.

John Scott: Presumably you still represented Scottish consumers.

Julia Clarke: That is a fair point. It would be better if we could travel back in time and make the appropriate representations at that point. However, we are trying our best to address the situation as it stands and to help Scottish consumers. We are doing a piece of work that really needs done.

John Scott: We are all trying our best in that regard.

In light of the recommendations that were made by the Justice 1 Committee, many of which have been implemented, what other recommendations would you now make?

Julia Clarke: The single gateway approach is still not clear to consumers, so we recommend that that be clarified. Further, the ombudsman could be given extra powers to investigate cases and carry out audits. There are failings in the system and they need to be addressed in a fairly radical way. It is good that incremental change is happening, but it will not be enough to address the problem.

John Scott: I am trying to draw out of you what changes you think should be made other than those that were recommended by the Justice 1 Committee. In essence, are you recommending only that there be a single gateway?

Julia Clarke: There should be an independent single gateway.

Ajay Patel: We would like there to be a clearer separation between the representative roles of the professional bodies, particularly those of the Law Society of Scotland and the Faculty of Advocates, and their regulatory powers. Therein lies the key problem of the way in which complaints are handled, which leads to perceptions of bias by consumers who see a closed shop looking after its members. That does nothing to promote consumers' confidence in the profession.

On specific measures that we would recommend, a single gateway is important. I am not sure whether that is already on the agenda, but I will illustrate why it is important. A consumer does not know whether they are dealing with a solicitor or a barrister;
they think that they are simply dealing with a lawyer. Often, they are purchasing a service that is carried out by non-lawyers. For example, a personal injury claim will be managed by a claims management company. Whether the element of the service that a consumer is purchasing is regulated depends on the status and qualification of the person who delivers that service. For instance, if a claims management company sells you a poor insurance policy, you may well have a complaint against that company but there is no regulatory back-up for that, whereas if a solicitor has made a mistake or has done something wrong, you have recourse to the Law Society. Such anomalies need to be dealt with. While having a single gateway will not resolve all of them, it will give consumers confidence that they are taking their complaints to the right place and will not be bounced between various regulators or have to face the complexities of a difficult regulatory system.

Julia Clarke: The issue is also to do with timescales. Some 21 per cent of the complaints that go to the legal services ombudsman take more than two years to be investigated by the Law Society. That is a long time for people to have to be dragged through the process and to have the matter hanging over them. People have described to me how the complaints process has taken over their lives and has ruined their health and relationships. The process is difficult for ordinary people to go through.

We would like the ombudsman to have powers to call for problems to be dealt with within a certain timescale so that people would know when matters would be properly investigated to the ombudsman's satisfaction and they would have an outcome. At the moment, investigations can drag on and on and people are often put off from embarking on the process because they know what can happen to them.

Campbell Martin: The Executive has taken forward some of the recommendations of the Justice 1 Committee. Do we know whether that committee has been made aware of the reasons why the Executive does not intend to take forward all the recommendations?

Jim Johnston (Clerk): As far as we are aware, the Justice 1 Committee is still monitoring the situation.

Campbell Martin: Is the Justice 1 Committee in contact with the Executive and asking why it does not think that the recommendations are good ideas?

Jim Johnston: Yes. As you will see, one of the recommendations is that members of the Public Petitions Committee may wish to refer the petition to the Justice 1 Committee as part of its continuing monitoring of the report.

Campbell Martin: Julia Clarke does not know why some of the recommendations are considered to be good ideas and some are not.

Julia Clarke: Some of them will require primary legislation—that is the difficulty. I understand that, but a lot of people are suffering under the system at the moment. It
has been nearly two years, and we are concerned that the matter will stay on the
shelf. It really needs to come off the shelf and the recommendations need to be
implemented, and that is what we seek.

10:45

Jackie Baillie: I will attempt to be helpful. The representatives of the Consumers
Association are right that it is hugely important to have confidence in the legal
profession and we therefore need to avoid generalisations. I am conscious that,
although we can produce horror stories from two years ago, the reality in the recent
past is there is now 50 per cent lay representation on more of the Law Society's
committees. That is welcome progress; the firewalls are starting to be put in place.
You are absolutely right—it is a two-stage implementation process. One stage
requires primary legislation, and finding a slot for that will be critical. I do not want to
spoil the debate, but I will make a recommendation. Given that the Justice 1
Committee has said that it wants to monitor progress and ensure that its
recommendations are implemented, we should refer the petition to that committee
because that is its natural home.

Rosie Kane: I, too, would like the petition to go before the Justice 1 Committee. I
presume that to empower and improve the system will improve the profession as a
knock-on effect because expectations will be higher. Have you worked out how
much the maximum award would be—

Julia Clarke: If it were brought up to date?

Rosie Kane: Yes.

Julia Clarke: I am not sure that we have; the figure is beginning to be lost in the
mists of time. We have not worked how much it would be, but no doubt that could be
done easily.

Rosie Kane: It has been £1,000 for more than 14 years.

Julia Clarke: Exactly.

The Convener: Jackie Baillie recommended that we should refer the petition to the
Justice 1 Committee as part of its monitoring of the situation. Do members agree that
that is the right course of action?

Members indicated agreement.

The Convener: We will remain in dialogue with the Justice 1 Committee and monitor
the situation. We will get back to you when there is some progress.

Col 991

Julia Clarke: Thank you.
TO ALL MEMBERS OF
PUBLIC PETITIONS COMMITTEE

By e-mail

Dear Member

PETITION NO 763 – THE CONSUMER’S ASSOCIATION

The Society has noted the Petition by the Consumer’s Association regarding implementation of the Parliament’s Justice 1 Committee Inquiry into regulation of the legal profession.

The Society is of the view that the Association’s research was not robust or exacting. In particular the sample of Scottish responses was very small.

The Justice 1 Inquiry into regulation of the legal profession in Scotland has resulted in a great deal of regulatory development since it was published in 2002.

For example the Committee’s recommendations regarding the provision of delegated powers to the Society were effected in the Council of the Law Society of Scotland Act 2003. That Act directly led to the implementation of Justice 1’s recommendation regarding 50% lay membership of Client Relations Committees and 50% lay membership of the Professional Conduct Committee (which sets standards in relation to matters of professional misconduct). The Council of the Law Society of Scotland Act 2003 also speeds up the decision making process on complaints and empowers the solicitors and non solicitors on Committees to make decisions in such a way that the Society’s Council is not involved in the decision making process.

In addition the Scottish Executive has formulated a Research Working Group which is examining the regulation and competition aspects of the legal services market in Scotland and the Justice Minister has already indicated that a planned consultation on improvements will be forthcoming based upon the Justice 1 Committee’s deliberations.

The Society supports the position of both the Scottish Parliament and the Scottish Executive in looking for Scottish solutions for Scottish issues.

In respect of the Association’s other points, a Memorandum of Understanding has been entered into between the Law Society of Scotland and the Faculty of Advocates which deals with an improved procedure for complaints involving both Solicitors and Advocates.
The Society also agreed with the proposal that compensation for inadequate professional services should be uprated from the current maximum of £1,000 to take account of inflation since 1990.

I hope this information is of assistance in respect of the Petition which is before the Committee.

Yours sincerely,

[Signature]

Michael P. Clancy
Director
Dear Mr Reilly

FAMILIES OUTSIDE EVIDENCE TO THE MEETING HELD ON 22 SEPT 2004

We appreciated the opportunity to speak to the Justice 1 Committee about families affected by imprisonment at its session last week.

We have now had the opportunity to review our evidence as noted in the official report and have identified three areas where we thought brief additional clarification might be helpful for committee members.

Column 1118

Firstly, we were asked about the numbers of individual families (as distinct from total calls) who contact us though the Scottish Prisoners Families Helpline. Due to repeat calls and sometimes the preferred anonymity of the caller it is difficult for us to be sure of the accuracy of this figure. Having reviewed the data that we collect we think that the number of families is closer to 1000 than the 1500 referred to at the evidence session.

I enclose an overall statistical analysis of calls to the helpline between April 2003 and March 2004 for the Committee’s information.

Column 1121

Secondly, in the discussion about the travel problems that families face, an example was given of when families travel from Sheffield to Edinburgh and are 10 minutes late and not allowed into the prison. We wish to clarify that this example was an amalgam of two problems: one being a more general problem arising at a number of prisons when families have been refused access due to late arrival.

The reference to Sheffield relates to a specific visit difficulty due to the change of visiting hours for convicted prisoners at Edinburgh. This case has been resolved through constructive discussion between the prison and ourselves to the satisfaction of the family member.
Thirdly, in the discussion about the change of visiting hours at Edinburgh, our comment on the SPS own figures on visits to remand and convicted prisoners referred to HMP Edinburgh only not to the whole prison estate.

I hope this clarification is helpful. I have also copied this letter to the Governor of HMP Edinburgh for his information.

Finally, I enclose copies of our annual report which has just been published which I would be grateful if you would distribute to Committee members.

Thankyou for your assistance

Yours sincerely

Angela Morgan
Director
Dear Pauline

PROTECTING PUBLIC SERVICE WORKERS

When I appeared before the Justice 1 Committee on 9 June, I confirmed that the Emergency Workers (Scotland) Bill was a crucial part of a range of actions the Executive was taking to reduce verbal and physical abuse towards all public service workers. I am pleased to note that the Committee’s report on the Bill expressed support for this wider package of measures.

As you will know, the Executive-commissioned report, “Protecting public service workers: When the customer isn’t right” was published recently and copies have been sent to your Committee’s members.

We are now working with the STUC and others, to implement the report’s recommendations through a package of measures to be developed over the coming three years. That package will include ways of helping employers meet their legal obligations to minimise risks of verbal or physical violence towards staff; training in preventing and handling abuse; and a model reporting system. We will also seek to support and build on the good practice already being undertaken by employers and trades unions.

I am delighted to be able to tell you that our partnership approach to tackling this problem has already borne fruit. On 14 September, I launched a public awareness campaign, “Abusing workers is bang out of order.” The multi-media campaign will raise awareness of this issue; show the personal impact of even non-violent situations; and hit home the message that verbal and physical abuse of public service workers should not and will not be tolerated. A more detailed breakdown of the elements of the first stage of the campaign is attached at Annex A.
Clearly, it is imperative for the public to start to think about this issue, and to begin to challenge their own assumptions about what is and is not acceptable. The first stage of our campaign has focused on the fact that public service workers are abused, and that such behaviour is unacceptable. It is our intention to build on these simple messages over the next three years. Following an interim evaluation of the impact of the first stage of media coverage, we will refresh and refine our messages for future years.

I note that the Committee’s report on the Emergency Workers Bill agreed that it should be part of a wider package of measures, including a campaign of public awareness and education. I hope you will agree that the launch of this awareness campaign marks an important step in tackling both perceptions of work related violence and the behaviour itself. Underpinned by the range of measures outlined above, I am confident that this activity will be to the benefit of all public service workers.

ANDY KERR
Abusing workers is bang out of order: Public Awareness Campaign

September

Publication of “Protecting public service workers: when the customer *isn’t* right”

Ministerial launch of media campaign – national television coverage, national and local press.

Scottish Radio Holdings “Life Matters” slots on the issue of violence towards public service workers

Talking Scotland slots from three public service workers who have been affected by the issue of work related violence.

September/October

Punchbag adverts televised (still from advert attached – video enclosed) through to end October (run up to Bonfire Night).

November

Poster campaign, using 340 bus shelter sites. Executive’s Media Group currently liaising with range of industries (e.g. public transport, NHS) re. potential for tailoring generic punchbag campaign to more specific interests.

December

Re-run of television adverts up to Christmas.

Scottish Executive
September 2004
Abusing workers is bang out of order.