

# **JUSTICE 1 COMMITTEE**

Wednesday 25 February 2004  
(*Morning*)

Session 2

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## **JUSTICE 1 COMMITTEE**

† 8<sup>th</sup> Meeting 2004, Session 2

### **CONVENER**

\*Pauline McNeill (Glasgow Kelvin) (Lab)

### **DEPUTY CONVENER**

\*Mr Stewart Maxwell (West of Scotland) (SNP)

### **COMMITTEE MEMBERS**

\*Bill Butler (Glasgow Anniesland) (Lab)

\*Marlyn Glen (North East Scotland) (Lab)

\*Michael Matheson (Central Scotland) (SNP)

\*Margaret Mitchell (Central Scotland) (Con)

\*Margaret Smith (Edinburgh West) (LD)

\*attended

### **COMMITTEE SUBSTITUTES**

Roseanna Cunningham (Perth) (SNP)

Helen Eadie (Dunfermline East) (Lab)

Miss Annabel Goldie (West of Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

### **THE FOLLOWING ALSO ATTENDED**

Dr Laura Piacentini (Adviser)

### **THE FOLLOWING GAVE EVIDENCE**

Hugh Henry (Deputy Minister for Justice)

### **CLERK TO THE COMMITTEE**

Alison Walker

### **SENIOR ASSISTANT CLERK**

Claire Menzies Smith

### **ASSISTANT CLERK**

Douglas Thornton

### **LOCATION**

The Chamber

† 7<sup>th</sup> Meeting 2004, Session 2—joint meeting with Justice 2 Committee



## Scottish Parliament

### Justice 1 Committee

*Wednesday 25 February 2004*

*(Morning)*

[THE CONVENER *opened the meeting at 10:38*]

### Civil Contingencies Bill (UK Legislation)

**The Convener (Pauline McNeill):** Good morning. I welcome everyone to the eighth meeting this year of the Justice 1 Committee. I have received no apologies; we have full attendance this morning. If members do the usual and turn off their mobile phones, that will be helpful.

Our first item this morning is consideration of the Civil Contingencies Bill, which is a UK bill, and I refer members to a paper that provides some background to it. I welcome to the meeting Hugh Henry, the Deputy Minister for Justice; Max Maxwell from the police and civil contingencies division of the Justice Department; and Robert Marshall, who is from the office of the solicitor to the Scottish Executive. I see that the minister has also brought along some other officials, whom I welcome to the meeting.

Minister, I believe that you will make an opening statement.

**The Deputy Minister for Justice (Hugh Henry):** Thank you, convener.

Although planning for emergencies is something that often goes unnoticed, we rely on such work when an incident happens. Indeed, such planning can take place over a range of issues and there has been a long history of co-operation among local authorities and others in planning for and responding to incidents.

However, because of recent history, we have had to reflect on the robustness of our arrangements and to ask ourselves whether we are sufficiently prepared for the type of events that could happen. Although some thinking about and discussions on the matter had taken place before the events of 11 September 2001, that work has clearly been brought into much sharper focus by what happened on that day.

The Scottish Executive and the UK Government were concerned that the statutory framework for civil protection, which originated in the 1920s, had not been significantly revised since the start of the

cold war and did not properly reflect the world in which we now live. As a result, we undertook a consultation exercise, which confirmed that there were good working relationships at local level. However, local responders indicated that there was significant support for extending the draft Civil Contingencies Bill's provisions to put civil contingencies work on a modern statutory footing in Scotland. Consultees thought that doing so would improve the situation for responders, who would be given greater clarity of purpose, and for the public, who would thereby be able to have confidence in local civil protection standards wherever they live in the UK.

After reflecting on the results of that consultation, we concluded that there should be a common civil protection framework across the United Kingdom. After all, many of the threats that we face do not respect national boundaries. We want to ensure that Scotland has the same standards of civil protection that are available in the rest of the UK and vice versa. As a result, we agreed with UK ministers that, subject to the approval of both Parliaments, part 1 of the Civil Contingencies Bill, which covers a number of devolved issues, should apply to Scotland.

Although there are clear benefits in working together with other parts of the UK and in having a common framework, I must emphasise that, in an emergency, devolved responders would remain accountable to the Scottish ministers and the Scottish Parliament. That is why the bill would confer powers on the Scottish ministers to regulate the activities of Scottish emergency responders. As I have said, we intend to establish a common framework throughout the UK; however, the detail of how responders prepare for and respond to emergencies in Scotland should fit our specific circumstances.

Not all the bodies that respond to emergencies carry out devolved functions. Some bodies such as the Maritime and Coastguard Agency normally report to UK ministers; regulations for such reserved bodies will be made at Westminster. However, the Scottish ministers will be consulted on the content of any regulations to ensure that the work of those bodies in Scotland is taken into account.

Although we realise that the arrangements might sound complex, we are trying to achieve a satisfactory balance between retaining the powers that we should exercise and meeting the need for a consistent approach across the UK in dealing with very unusual and specific circumstances. We want to develop regulations that are right for Scotland's emergency community. However, that cannot be achieved quickly. We want to work with responders to produce a draft that takes account of their priorities.

We will also continue to work closely with our colleagues in Whitehall to ensure that the relationship between the different sets of regulations is as close as possible. That also takes time. We intend to publish draft regulations this summer and to consult on them before they are submitted for Parliament's approval. We also intend to ensure that the bill's proposals are as resource neutral as possible, which means that they should not impose significant cost burdens on those who are required to respond.

We believe that this is an opportunity to provide a reformed and modern statutory basis for emergency planning in Scotland, and the emergency planning community in Scotland has widely and warmly welcomed it. I hope that we can agree that the best way of moving forward is to work in partnership with our UK colleagues on a national framework and a consistent approach, but to have responsibility vested in the Scottish ministers where appropriate.

**The Convener:** Thank you.

What will category 1 and category 2 responders be expected to do to meet the bill's requirements?

**Hugh Henry:** They will need to be able to demonstrate that they have considered sufficiently any planning requirements, and that they are sufficiently prepared to respond quickly to an emergency. Local authorities, for example, will identify individuals who will be responsible for emergency co-operation. Each organisation will have to demonstrate that it is properly planning for emergencies and that it has carried out a proper assessment of the type of risk to which it might be appropriate to respond and what that response might be in relation to the organisation's impact on the community.

Organisations will have to consider, in the context of each of their functions, how to advise the public in an emergency, both on how to cope in relation to the services that the organisation provides and on what action the organisation will take. In essence, organisations will be required to plan, assess risk and consider how to give adequate advice.

10:45

**The Convener:** Will there be inspections to ascertain whether organisations have met the requirements? Would the Scottish Executive have responsibility for ensuring that they had done so?

**Hugh Henry:** Yes. There is an emergency planning forum in Scotland, which has regular meetings and receives regular reports. Organisations are required to co-operate with and to participate in that process and we will also lay regulations that will specify the standards that we

expect to be met and the audit requirements that you suggest would be needed to ensure that organisations carried out the required work.

**The Convener:** Does that mean that there will be an inspection whereby a body goes in to an organisation to check that it adheres to the specified standards?

**Hugh Henry:** The bill indicates that, where there is a need to enforce compliance with the requirements, proceedings could be brought in the Court of Session by the Scottish ministers or persons or bodies that are specified in parts 2 and 4 of schedule 1, which lists the Scottish responders.

**Margaret Mitchell (Central Scotland) (Con):** You mentioned that it was desirable to establish a common framework throughout the UK in the interests of continuity, but you also said that the detail of that would be the responsibility of the Scottish Parliament. Given that emergency planning is a devolved matter, why did you not introduce a Scottish bill to deal with the subject matter in part 1 of the bill?

**Hugh Henry:** We reflected on that and consulted the emergency planning community in Scotland. The feeling—and the conclusion that we reached—was that because a national emergency could well involve other reserved areas of responsibility, it would be best to introduce a consistent framework throughout the UK, so that there would be a consistent approach to, for example, matters that related to the armed forces, immigration, or customs and excise.

We have also ensured that if there is a UK approach, responsibility would be devolved to the Scottish ministers to carry out any functions that would be determined under the legislation. We believe that it is better to have interaction and access to those powers that are not specifically Scottish, where they are required. It is important that there is consistency not just in the expectations that people have of what should happen throughout the United Kingdom, but in the standards. If we had an outbreak of severe acute respiratory syndrome—SARS—a medical response would be required, but so might restrictions on individuals' movement. In that case, it would be ludicrous if one set of powers were available in Berwick and Newcastle and another set of powers were available and different standards applied in Dumfries and Edinburgh.

The emergency powers that we are talking about would be contemplated only where all other powers were regarded as inadequate or had been tried and had failed. In other words, we would also test the competences that are available to us to deal with a particular set of situations. We will consider using the powers in an emergency only in

situations in which there are insufficient powers available to us at present.

**Margaret Mitchell:** I see. So continuity and consistency are the overriding factors. Ministers will be able to comment on the detail if the powers are deemed necessary.

**Hugh Henry:** Yes. If emergency powers are brought in for a Scottish situation, the power for enforcement and delivery will be passed to the Scottish ministers, who will be accountable to Parliament, obviously.

**Margaret Mitchell:** That is helpful. Thank you.

**Mr Stewart Maxwell (West of Scotland) (SNP):** I want clarification on a point. Surely it would be entirely logical and reasonable that if a Scottish bill were introduced to deal with part 1 there would still be cross-border co-operation. Part 1 seems to set up category 1 and category 2 responders. Category 1 organisations, as listed in part 2 of schedule 1, include local authorities, the police, the fire service and the Scottish Ambulance Service—all Scottish organisations. I am not quite sure why the minister referred in his previous answer to organisations that are quite clearly UK organisations, such as the Army. Are you saying that if a Scottish bill were introduced it would not be possible to have cross-border co-operation where appropriate while also having powers that are appropriate to Scottish category 1 responders as listed?

**Hugh Henry:** We might well have cross-border co-operation, but we would not necessarily have cross-border authority in relation to some of the agencies. By definition, an emergency is something unusual and is out of the normal course of events, so we are talking about something extreme that is beyond our normal consideration and sphere of operation. In those circumstances, although we could have our own planning and delivery of legislation in relation to local authorities and the police, there might be issues to do with movement of livestock, individuals or materials that might not affect other parts of the UK initially but would have to be enforced on a UK basis. We would have to consider links with other agencies. We would also need to reflect on whether we were trying to enforce provisions within different legislative competences; the legislative competences might not be consistent. Although we might want to create a desired effect in relation to a specific problem, which we had taken the powers to deal with, if we did not have the power to influence the United Kingdom Government immediately, or if it did not have the powers available to it because it had developed a different legislative framework, we might create anomalies in dealing with emergencies. A separate Scottish bill would cause difficulties in ensuring consistency of regulations and response.

Sometimes when emergencies happen, we do not have the benefit of a long time to consider what we have to do—we have to respond quickly. A coherent framework throughout the United Kingdom will mean that we will, in the event of an emergency, be able to act quickly and ensure that there are no unforeseen loopholes caused by legislation's being different in the north of England and the south of Scotland.

**Bill Butler (Glasgow Anniesland) (Lab):** I note that paragraph 6 of the minister's memo states:

"emergency responder organisations largely welcomed statutory duties as opposed to permissive powers".

Will you explain that for me? Does that mean that some organisations did not welcome the bill, or does it mean that reservations were expressed by some of the organisations about such a shift?

**Hugh Henry:** I am advised that all organisations supported the approach that we are taking, but different organisations put different emphases on various smaller parts of the overall picture, which did not mean that they were opposed to dealing with the issue in the way that we are suggesting. For example, there might have been different shades of emphasis within the police and local authorities, but there was nothing that would have caused any of those organisations to believe that our approach is not the right approach.

**Bill Butler:** So there were different levels of welcome.

**Hugh Henry:** Yes.

**Bill Butler:** Thank you for that.

**Michael Matheson (Central Scotland) (SNP):** I refer to clause 21 in part 2 of the bill, which would allow—through emergency regulations—UK ministers to confer functions on bodies, including on the Scottish ministers. How will that type of regulation apply to the Scottish ministers and in what circumstances do you think such regulations would apply?

**Hugh Henry:** Apart from regulations, we will also develop a protocol on how we will plan and operate in emergency circumstances. There will be consultation with the Scottish ministers who will have the right to ask for specific emergency legislation if they believe that to be appropriate.

When a state of emergency is called in a specific incident, clause 21 will ensure that the Scottish ministers have the powers to carry out any task that is required to deal with that emergency. Clause 21(3) talks about conferring

"a function on a Minister of the Crown, on the Scottish Ministers, on the National Assembly for Wales, on a Northern Ireland department"

It would confer several powers that were not immediately available to the Scottish ministers.

**Michael Matheson:** I am trying to get a feel for the circumstances in which that might occur.

**Hugh Henry:** We are trying to anticipate the unforeseen and the unexpected. There could be issues in relation to bodies such as HM Coastguard or some of the maritime agencies. I would have thought that they might be involved in immigration issues. In an emergency situation, we would have to co-ordinate and be responsible for transportation of nuclear or chemical materials. The power to act and respond would be conferred on the Scottish ministers.

**Michael Matheson:** In your earlier answer, you mentioned a protocol. Is that protocol being drafted and will it be available to the public?

11:00

**Hugh Henry:** It will be dealt with in the same way as other issues of protocol. We are working on it, but we do not have the detail at the moment. It will be published before both Parliaments when it is agreed.

**Michael Matheson:** Clause 21(2) includes a list of 14 instances in which regulations could be made for the purpose of protecting and restoring certain functions. It says that regulations may be made for the purpose of

“protecting or restoring activities of Her Majesty’s Government”

and

“protecting or restoring activities of ... the Scottish Parliament”,

the Northern Ireland Assembly and so on. The Scottish Executive is not mentioned—is it to be protected and restored?

**Hugh Henry:** We would be a function of the Scottish Parliament. The main thing is to ensure that there is continuity of government in a state of emergency and that people are able to take decisions in the face of an unexpected, extreme threat. You can take it from that that we are talking about ensuring that government activities, whether they are at UK level or at Scottish level, are properly protected. We believe that that gives sufficient protection to both areas.

**Michael Matheson:** I understand what you are saying, but the wording is quite specific. The bill says:

“protecting or restoring activities of Her Majesty’s Government”—

that is, the Westminster Government. The only reference to the Scottish Parliament is in the next paragraph, which also deals with the Welsh Assembly and the Northern Ireland Assembly. If the Scottish Executive’s functions and the Scottish Parliament’s functions were stopped for any

reason, the bill says that the first thing is to protect and restore Her Majesty’s Government, which would take over throughout the UK on all matters. It would be for the UK Government to decide whether to restore the Scottish Parliament’s functions.

**Hugh Henry:** In theory, it would be possible for the UK Government to take powers, in relation to the Scotland Act 1998, in the event of an emergency, but it has indicated that that is not its intention. If it intended to do so, that would be specified in the bill.

The Scotland Act 1998, which is the responsibility of Her Majesty’s Government, specifies the responsibilities of the Scottish Executive and creates the ability to deliver a Scottish Parliament. In protecting Her Majesty’s Government, we also protect the Scottish Parliament’s ability to continue, because we are created as a function of a decision taken by Her Majesty’s Government and by the UK Parliament.

**Michael Matheson:** But why does the bill not specify the Scottish Executive?

**Hugh Henry:** I do not think that the bill needs to specify the Scottish Executive, because our powers come to us from the Scotland Act 1998, and protecting Her Majesty’s Government and its ability to protect the 1998 act and its functions give us that protection. The bill also protects the ability of the Scottish Parliament to continue with its functions if we need to take powers to do that.

**The Convener:** I think that Michael Matheson has had a fair go on that point. If it is a particular concern, I remind members that it is up to the committee what it wants to put in the report.

**Margaret Smith (Edinburgh West) (LD):** Clause 28 says:

“Emergency regulations which relate wholly or partly to Scotland may not be made unless a senior Minister of the Crown has consulted the Scottish Ministers.”

However, it also says that a senior minister of the Crown does not have to consult

“if he thinks it necessary by reason of urgency”.

In practice, what form will consultation with the Scottish ministers take? What situations might lead to a senior minister of the Crown deciding to go ahead without consultation?

**Hugh Henry:** The protocol will cover the way in which the consultation would take place, the way in which powers would be conferred on the Scottish ministers and the way in which we would operate those powers. It is hard to anticipate situations in which consultation would not take place, but if there was a situation that neither you nor I could imagine, we believe that it would be better for that power to exist as a means of



protecting life and limb and the well-being of the people whom we represent. In practice, we do not believe that such situations would normally happen.

In respect of clause 28, I would think that the urgency to act would have to be so extreme and the requirement to act would have to be so practical that immediate action would have to be taken. It is hard to imagine in what situations that might happen and it might be idle to speculate on such matters, but I would prefer there to be an ability to protect life and limb and well-being rather than that we overlook something that none of us could imagine and find that there is no power to act.

**Mr Maxwell:** You said in your opening statement that the effects of the bill will be resource neutral.

**Hugh Henry:** Yes.

**Mr Maxwell:** You also said that bodies would be risk assessing and planning. Surely, if bodies are risk assessing and then planning, it follows that action may have to be, or will have to be, taken. I will give an example. If the fire brigade risk assesses and plans to deal with an incident—whether it is some sort of chemical attack or another incident that you have mentioned—it would probably have to purchase specialist vehicles, decontamination equipment and all the resources and training that would be required as a result and that would surely not be resource neutral. If risk assessment and planning take place, it almost automatically follows that there will be resource implications for such organisations.

**Hugh Henry:** Even if the bill had not been introduced, I hope that such organisations would have been planning for emergencies. The bill will not impose a new requirement to plan for emergencies—such emergency planning already takes place and all the cost implications are built into the relevant organisations' budgets. The bill will simply change the legislative framework in which organisations operate to try to ensure that they can operate effectively.

I would be appalled if the key organisations that exist to protect us in the event of an emergency were not already planning. It is not as if we have suddenly wakened up and thought that it would be a good idea to have protection in case something goes wrong or to plan instead of trying something out for the first time in an emergency. Organisations are already planning, so there should be no significant cost implications for them.

**Mr Maxwell:** I am not suggesting that those organisations have not been planning, risk assessing and—I hope—using resources to deal with such situations. I am suggesting that, in the past few years, there has been a refocusing in the

area in question and that it has been given increased priority. We are considering anticipated emergency situations that we did not think about previously. Will the more formal processes that the bill will introduce automatically lead to a refocus on emergency situations and tend to increase resource allocation in the area?

**Hugh Henry:** The bill would not introduce such burdens. New situations and scenarios and perhaps the identification of new threats would certainly result in added burdens, but that would happen with existing legislation. We already respond to such things.

We already provide additional funding to look at new capabilities that would be required. For example, we provided additional funding for mass decontamination equipment because we had identified a specific problem that had not previously been either identified or properly resourced and addressed. With regard to any other details, the consultation on the regulations will consider any funding impact. We do not believe that that impact would be significant, but we will consider the matter and consult partners. If we identify any specific problems, we will obviously examine them carefully.

It is important to say that this bill will not make us respond to and fund additional risks when they appear. That already happens. The bill is about ensuring that our ability to react once an emergency has been identified is sufficiently robust, consistent and coherent.

**Mr Maxwell:** I think that you have answered my final question, but I shall ask it anyway. It seems that statutory obligations and new regulations are being introduced via the bill, but if it is UK legislation and funding and resource implications have been identified—although you say that they may be minimal—will the funding come from the UK Government or will it be provided on a Scottish basis?

**Hugh Henry:** Anything that we are required to react to and respond to within our competence would be funded by us. If there are UK organisations that need to react as a result of the legislation, the funding may well be made available from UK departments. However, we would fund anything that is within our competence and to which we think we need to respond.

**The Convener:** There are no further questions, so I thank the minister and his team for giving us that important information.

I draw members' attention to the short timescale for this process. We will not meet formally next week, because we are doing training on stage 2, so we will not have an opportunity to consider a draft before the report is published. Members can have a look at the draft report only if it is sent out

electronically, and they would have to submit any comments to the clerks by this Friday so that the report can be published on Wednesday 3 March.

Does the committee wish to compile a short report on the Civil Contingencies Bill? There are certainly a few points that would be worthy of inclusion, so there would be added value in producing such a report. There is no way round the timescale, unless we want to meet next week to agree the report. I think that the report is going to be short, so unless there is much disagreement among us about what should be included in it, I think that we can manage to do it without meeting.

What issues would members like to be included in the report?

**Margaret Smith:** Stewart Maxwell's point about the bill's resource implications is important. I heard the minister's response to that question, but I would be surprised—in fact, I would be quite disturbed—if the situation was completely resource neutral. The organisations that are involved could use the opportunity not only to look again at their administrative systems for such situations, but to conduct an audit of what is already available. I would like to highlight the resourcing issue.

11:15

**The Convener:** I wonder whether the organisations that are listed as responders are required to compile emergency planning protocols. I am not absolutely clear whose responsibility it is to check that that is being done.

What happens if there is an emergency or a disaster but the organisations have not compiled any such protocols? It would be too late then. The word "audit" was used in that regard, so there will obviously be some kind of inspection, but I think that the provisions in this area need to be a wee bit stronger, with some checking up on organisations to ensure that they have complied. It may be appropriate to assess the need for any additional resources in that context.

**Michael Matheson:** One of the bill's key provisions is the ability to make regulations under particular circumstances. I take note of what the minister said, but I was not persuaded by it at all. It is not clear how the Scottish Executive, the Northern Ireland Executive or the Welsh Assembly Government would be protected and restored if there were a national emergency. I understand the minister's argument that the protection or restoration of Her Majesty's Government in some way enables the Scotland Act 1998 to take effect again, but I do not think that that is what the proposed legislation is about. If there is a national emergency, it must not just be a matter of the UK Government taking over; the Scottish Executive

should also be protected and restored, and the same should apply for Northern Ireland and Wales.

**The Convener:** That is a reasonable point, and it would be good to get some clarity on whether that will be the case. You were referring to the UK Government, and not to the Westminster Parliament. I note that clause 21 refers to the Scottish Parliament, but not to the Scottish Executive.

**Michael Matheson:** The wording is:

"protecting or restoring activities of Her Majesty's Government ... protecting or restoring activities of Parliament, of the Scottish Parliament, of the Northern Ireland Assembly or of the National Assembly for Wales".

**The Convener:** It depends what that means.

**Bill Butler:** We should seek clarification and reassurance on that. Perhaps, in the context of a national emergency, what Michael Matheson has read out about Her Majesty's Government relates specifically to the Cabinet. Clause 21(2) covers

"restoring activities of Parliament, of the Scottish Parliament"

and so on. That might show the intention of the clause, but I think that we need some reassurance on that.

**Michael Matheson:** My reading of those provisions is that, if Her Majesty's Government in Westminster was stopped, for whatever reason, the likelihood is that whatever national event caused that would have stopped the Scottish Executive as well. If Government in Westminster was restored, it would not simply be a case of restoring the Scottish Parliament; the Scottish Executive would have to be restored, too. My reading of the bill is that a restored Her Majesty's Government would take over what was happening in the UK, and that, at some point, it might reactivate Parliament, the Scottish Parliament and the two Assemblies.

**The Convener:** That needs clarification. What would be the point of restoring the Scottish Parliament, but not the Executive? I presume that the UK Government is specified because it would not necessarily have to convene the Westminster Parliament to manage an emergency—it is a Government that is required in that situation. If the functions of the Parliament were to be restored, the functions of the Scottish Executive would also need to be restored for that to have any meaning. We like to think that clause 21(2) means that that will be the case, but we wish the point to be strengthened or clarified.

**Mr Maxwell:** I did not accept what the minister said about a restoration of Her Majesty's Government in effect protecting the provisions of the Scotland Act 1998, and about there being no

need to mention the Scottish Executive. If that is the case, then the Scottish Parliament would not have to be mentioned either, as the 1998 act—obviously—created the Scottish Parliament. If the bill protects the Scottish Executive, then there is no need to bother mentioning the Parliaments and Assemblies; if it does not do so, then the various Executives, Parliaments and Assemblies should all be mentioned. The clause should not be worded in a half-way manner—I do not think that the Assemblies should be mentioned without the Executives. It should be a fairly simple matter to make the necessary insertion, which I do not think would cause any problems.

**Bill Butler:** There are some interesting questions there, but the main thing is for us to ask for more focus.

**The Convener:** As no one dissents from that, we will move on.

**Margaret Mitchell:** I wonder whether our report should say that a Sewel motion is being used rather than a separate bill, given that a little controversy has arisen about the number of Sewel motions that are being used. We could explain that the Sewel motion is appropriate because of what the minister said about consistency and having a UK framework. It might be useful to put that in the report.

**The Convener:** Is that agreed?

**Mr Maxwell:** No. I hear what Margaret Mitchell says, but I do not agree that the report should say that we accept that the Sewel motion was the correct choice and that we accept a UK framework. There is a straightforward case for a Scottish bill. The minister did not clarify why a Scottish bill could not be introduced, so I do not want the report to say what Margaret Mitchell suggested.

**Margaret Mitchell:** If what the minister said were to be included in the report, that would be useful for people who are examining the issue and considering the question of Sewel motions versus bills.

**The Convener:** If we say that, we will have to report that some members were concerned that a Scottish bill was not introduced and quote the minister's reply from the *Official Report*. If members want to mention the issue, we must record the views of the two committee members who disagree with the rest of the committee.

**Michael Matheson:** A health warning must be attached to the report, given the limited time that we have had to scrutinise the bill and to question the minister. The report will be short, but it should say clearly that we have had limited time.

**The Convener:** We will put that in the introduction.

I am not clear about the previous point. Do members want to mention the minister's reply and say that some members disagreed with the principle of using a Sewel motion, or do members want to say nothing about that?

**Michael Matheson:** We have disagreed about Sewel motions in the past and we disagreed fairly recently about the Sewel motion on the Gender Recognition Bill. For consistency, I am not in favour of the Sewel motion.

**Margaret Mitchell:** The use of Sewel motions is worth mentioning, because the issue is being raised in the Parliament more. It is right to say in our report whether, on balance, we approve of the use of the Sewel motion. I take Michael Matheson's point that we have not had much time to consider the bill, which is a general concern about Sewel motions, but on balance, what I heard from the minister made sense.

**The Convener:** The proposal is that the report should say that we considered whether a Scottish bill should be introduced and that the majority of committee members were satisfied with the minister's response, but that some committee members would have preferred not to proceed with a Sewel motion. Can we move on?

**Margaret Smith:** I am sorry—I want to pick up on the point that Michael Matheson and Margaret Mitchell made about timing. Is that a dimension of the Sewel process? I am with Margaret Mitchell on being relaxed about having a UK bill, but I remain concerned that we have to deal with Sewel motions in a short time.

**The Convener:** I propose to separate the two points. The introduction will reflect the consensus that we did not have enough time to consider an important bill. The question whether using a Sewel motion is the right way to proceed is separate. The view on that aspect is split and we will record that in the report.

We have covered resources. Members might want to note the answer to Margaret Smith's question about the form that consultation would take. There will be a protocol, which members might want to see at some point. That is quite important, because without the protocol there would be no guidance on how UK ministers would consult the Scottish ministers.

Do members have further points to make?

**Members indicated disagreement.**

**The Convener:** Our report will be short, but I am sure that it will be useful, as members have raised important points. I remind members that they should feed in any further comments after reading the initial draft by Friday, so that the report can be published on Wednesday 3 March.

## Petitions

### Miscarriages of Justice (Aftercare) (PE477)

11:26

**The Convener:** Item 2 is on petition PE477, which was submitted by the Miscarriages of Justice Organisation—MOJO. I refer members to the paper that the clerk produced, which summarises the correspondence that has been received and the background to the petition. The correspondence gives members some idea of the exchanges that have taken place between MOJO and the Public Petitions Committee.

First, I invite comments on the petition. I will then invite the committee to consider the action—if any—that it wants to take.

**Bill Butler:** The petition makes a number of valid points. It asks for assistance in

“setting up an aftercare programme in the form of a half way home to help people who have been wrongfully incarcerated”.

Such a programme should be available, but there is a gap in provision and the Executive’s response up to now has not been satisfactory in any way.

At the meeting of the Public Petitions Committee on 12 November 2003, Mike Watson said that he was

“disappointed with the Executive’s response.”

I echo that. At that meeting, Mike Watson quoted Dr Adrian Grounds, who wrote:

“the wrongly convicted suffer the kind of trauma experienced by victims of war crimes.”

Mike Watson went on to say:

“We should not forget that such people are victims. The Executive’s response fails to comprehend that we are dealing with different situations.”—[*Official Report, Public Petitions Committee*, 12 November 2003; c 312-313.]

Unfortunately, we are still faced with the situation that Mike Watson’s comments reflect. As a society, we do not provide the necessary help and support in cases such as those of Robert Brown and Patrick Hill—members have seen the psychiatric report that is in the papers, which, I think, is the source of the Dr Grounds quotation. There is a gap in provision and the Executive’s response has been wholly unsatisfactory. We should do something about the petition—I know that we will discuss that a little later, convener.

**The Convener:** I agree with everything that Bill Butler said and want to add one comment. When I was convener of the Justice 2 Committee in the first session of the Parliament, I was approached by a number of individuals who believed that they had suffered a miscarriage of justice. I considered

two specific cases and it was clear that there is no real statutory support for people whose convictions are quashed on appeal. In some cases, people would almost have been better treated if they had completed their sentences without the conviction being quashed. We are getting better at supporting ex-offenders, but there seems to be no separate category for those whose convictions are quashed. For example, a chap told me that he had been handcuffed and taken straight back to prison immediately after his conviction had been formally quashed on appeal. I questioned on human rights grounds whether that should have happened and raised my concerns with the previous Minister for Justice.

There are more support issues to consider than just the provision of halfway houses. If we decide to take the matter further, we need to look at the broader picture.

11:30

**Margaret Smith:** I echo everything that the convener and Bill Butler said. We have a serious responsibility towards individuals who have been wrongfully imprisoned. It is clear from the Executive’s response that it does not take that responsibility seriously and has not taken it on board. The situation should be considered in a number of ways. On the issue of aftercare, the briefing paper points out that there is a serious lack of pre-release counselling; people who have said, effectively, that they are not guilty have found serious problems in accessing counselling, yet they are the very people who have a great need for counselling of one kind or another. There certainly appears to be a real gap in the system at present and I would very much welcome the chance to do some work on the matter.

**Michael Matheson:** I agree with everything that has been said. A basic principle is involved. One of the toughest sanctions that society can apply to anyone is to deprive them of their liberty. If we get that wrong, we have a responsibility to the wronged individual to right that wrong. That should be done not only through routine compensation but by helping an individual to rebuild their life. If we believe that there are sufficient grounds for establishing a body such as the Scottish Criminal Cases Review Commission, we should also recognise that there are individuals who require support and assistance when they have been the victim of a miscarriage of justice. Clearly, there is a serious gap in service provision for wrongfully imprisoned people, which must be addressed.

**The Convener:** It is clear that the committee wishes to take the matter further. I will summarise some of the issues that are contained in the briefing paper. There is the issue to which Michael Matheson referred, on how the compensation

scheme operates. Compensation is not automatic and individuals must apply for it. The scheme has two different elements and how a person's compensation is gauged is a matter for the Scottish ministers. My understanding is that there is no support for directing people on how to complete the application forms in the first place. Bill Butler referred to the psychiatric report on Paddy Hill, which gives us an insight into mental welfare issues that we may need to address. The issue of housing is also specifically mentioned in the petition. I ask members to consider the action that they would like to take.

**Mr Maxwell:** I want to reaffirm the comments that members have made. I certainly believe that the issue of wrongfully imprisoned people should be dealt with and I am rather disappointed by the Executive's response to the petition so far. However, in proceeding with the issue, it would be reasonable for us to include it in our general discussion on the rehabilitation of prisoners. There is scope to include the issue within that inquiry. I would be reluctant to have a separate inquiry because I believe that it would be difficult to do that given the time available to the committee and that it would be perfectly possible to include the issue in our rehabilitation inquiry. We can make recommendations on the petition on that basis. I would not necessarily want to adopt immediately the petition's suggestions about having halfway houses and so on. We should explore such matters further before taking a position, and the way to do so is through our inquiry.

**The Convener:** We must be careful about how we include the issue of wrongfully imprisoned people in an inquiry that is about whether we can rehabilitate prisoners. The petitioners' position might be that individuals who were wrongfully imprisoned should be treated differently. In fact, some such individuals refuse to go on rehabilitation programmes. One of the cases that I dealt with was in relation to a sexual offence. The prisoner involved refused to go on the STOP programme and that refusal was part of his campaign to demonstrate his innocence.

Therefore, in some cases individuals would not necessarily have been through rehabilitation programmes. We should not infer a direct correlation with other prisoners, although I take Stewart Maxwell's point that we have a heavy work load and need to find a clever way to incorporate work on the petition. We could begin by making our position clear to the Executive in the strongest terms, which would give us further time to think about how we can incorporate the work.

**Michael Matheson:** I am more in favour of the second option under paragraph 13a of the paper, which is to pursue the matter with the Minister for

Justice in correspondence and to seek the views of an organisation such as Safeguarding Communities-Reducing Offending, which works with ex-prisoners. We should also seek the views of Helping Offenders Prisoners Families—HOPE—which works with prisoners and their families, because there are consequences for the family if someone is wrongly incarcerated. I would have concerns about including the issue in our inquiry into rehabilitation programmes, because there is a danger that it will become an add-on and that we might not give it the consideration that it deserves.

**Bill Butler:** I agree. I know where Stewart Maxwell is coming from and I accept that his suggestion is one way of dealing with the issue, but it is not the most appropriate way. This issue has been going on for some considerable time. We need to go directly to the Minister for Justice. The suggestions in the petition are appropriate and sensible. I would hope that if we approached her, the Minister for Justice would reconsider the response so far. I agree that we should write to SACRO and HOPE. Option ii under paragraph 13a is to the point, and is a quick and effective way of proceeding. We should press the Executive in the strongest possible terms to close what is an unacceptable gap.

**Margaret Smith:** I take the same view. I recommend that we communicate with the Executive in the strongest possible terms. The only thing that stands in the way of my saying that we should hold an inquiry on the issue in its own right is our timetable. It is not that such an inquiry would not be valuable or would not be the right way to go; such an approach probably is the right thing to do given the number of issues involved and their complexity. We would benefit greatly from hearing evidence from a range of sources. We touched on housing, but all sorts of issues are involved, including people's mental health and well-being. The petition would benefit from a small and focused piece of work by the committee, and our timetable is the only thing that is standing in the way of that.

The Executive should be told in no uncertain terms about the feelings of the committee. It should also be told that we are the final resort, and that we are looking to the Executive to take responsibility where it has not been taken in the past. However, we should not rule out the possibility of our coming back to the issue to examine it properly in an inquiry.

**Margaret Mitchell:** I agree that, ideally, we would hold a separate inquiry, but that is just not feasible given our work load. I have a lot of sympathy with Stewart Maxwell's suggestion for dealing with the petition. I would like to pin down the logistics. If we press the Minister for Justice

and go for the second option under paragraph 13a, how quickly will we get somewhere? How far might the issue be kicked into the long grass? If we feel that it is being kicked into the long grass, will there be an opportunity—notwithstanding the sensitivities of referring to prisoners when we are talking about people who have been the victims of miscarriages of justice—to look into the subject separately? We might take the views of the petitioners to see whether they would be happy with that as a way forward, given the fact that we cannot hold a separate inquiry. If we do not get anywhere with the minister, we might then have the opportunity to add the matter to our inquiry into rehabilitation programmes, with the strict proviso that it is understood that these people have been prisoners only because they have been the victims of miscarriages of justice.

**The Convener:** That was helpful. I will try to summarise what I think that the committee is saying. First, we should write to the minister in strong terms, saying that we support the basis of the petition and that we are dissatisfied with the response because lots of issues need to be addressed and there should be a proper support mechanism for those whose convictions are quashed.

Stewart Maxwell suggested that we include the issue in our inquiry. I propose that, until we receive a reply from the minister, we keep that option open and try to find a way to continue the work. That will give the committee time to consider the remit of the inquiry—we will do that later in the meeting, anyway. It is not impossible for us to chase an issue and raise its profile, as we have in the past, without having to hold an inquiry. For example, we did not hold an inquiry into the petition on asbestos victims, but pursued the matter directly with the Lord President and the petitioners and were able to make progress on it. We also have the facility to appoint reporters if we want to find a way round the problem. I propose that we leave that question open. It would still be possible for the committee to include the issue in its inquiry, if it wanted. However, if it did not feel that that was appropriate, we could find another way of continuing the work.

**Mr Maxwell:** I agree with what you say about leaving the matter open. My suggestion to incorporate the issue into our inquiry was based on timetabling considerations.

I ask for clarification on what we are writing to the Executive about. The first line of option ii under paragraph 13a in the clerk's paper says that the committee may

"consider whether it supports the petitioner's suggestions".

Are we writing to the Executive in support of the specific suggestion to

"provide assistance in setting up an aftercare programme in the form of a half way home",

or are we writing in broad terms to support the suggestion that people should have some form of aftercare programme, although not necessarily that specific one? I am not saying that that specific suggestion is good or bad; I am saying that I am not in a position to determine whether an aftercare home would be a good thing to provide.

**The Convener:** I propose to incorporate in the letter, as issues to be considered, all the comments that are made by the committee. I do not think that, at this stage, we should pin ourselves down to one specific solution, unless Bill Butler has a different view.

**Bill Butler:** We could say that we support the general thrust of the suggestions in the petition. That would leave room for flexibility.

**The Convener:** Okay. I confirm that the committee will write to SACRO and HOPE, as Michael Matheson suggested, to get their views on the petition. I will then let the committee see the correspondence.

### **Dangerous Driving and the Law (PE29, PE55, PE299 and PE331)**

**The Convener:** The next petitions are on dangerous driving and the law. They are petitions PE29, from Alex and Margaret Dekker, and PE55, PE299 and PE331, from Ms Tricia Donegan. Members have a summary of the petitions in their papers. This is the second time that we are being invited to deal with these issues. I invite the committee to comment on the substance of the petitions.

11:45

**Michael Matheson:** All the petitions are long standing and were considered by the Justice 1 Committee in the previous parliamentary session. Dangerous driving is an issue that was given serious consideration by the previous Justice 1 Committee, which even went as far as questioning ministers directly on the matter. Although progress appears to have been made in some areas, a number of the issues that the committee raised with the Lord Advocate and the Scottish Executive are still outstanding. In my view, we should continue to pursue the matter until we get the result that we hope for, which is a full response to all the points that have been made to the committee.

Of the options that are given in the clerk's paper, I support option a, which has five clauses that list the information that is outstanding. I see no reason why we cannot also adopt option b.

**Bill Butler:** I agree with Michael Matheson. We should not hesitate to pursue both options, given that both of them are appropriate, sensible and absolutely necessary.

**Margaret Smith:** I agree with all that, but I have a question for the convener about the issue that is raised in paragraph 9 of the clerk's paper. Obviously, you have met Mrs Dekker, who has raised with you other issues, including the way in which families are treated when they ask for a fatal accident inquiry. I am concerned that the perception, if not the reality, is that families' requests for fatal accident inquiries are essentially brushed aside. Given that you intend to write separately to Mrs Dekker on those matters, what is your thinking on that?

**The Convener:** At her request, I agreed to meet Margaret Dekker so that she could talk further about those issues, not all of which are addressed in her petition. Although some of the issues that she has raised fall slightly outside the petition, they are still quite valuable, as some of them relate to the victim support statements that the committee considered by way of statutory regulation.

What we should do with the information is a matter for the committee, but I think that it is important that the information is fed in. Scotland's Campaign Against Irresponsible Drivers wants to comment on the information, and there would be no harm in allowing it to do so.

It was useful to hear Margaret Dekker's comments on the lack of Scottish statistics in the report by the former Department for Transport, Local Government and the Regions. That was one of the most concerning issues. The Scottish statistics should certainly be in the report, albeit that they might look slightly different.

There are quite a number of recommendations and it is for the committee to decide how to respond to them. I think that we should provide an opportunity for Margaret Dekker to explain all her concerns, which have been copied to members. As there are a number of recommendations, we might want to focus on the areas where we think that we could be of most use.

**Margaret Smith:** It is certainly valuable that the convener gave Mrs Dekker that opportunity to bring those other issues to our attention. We should probably bring some of the points about the working practices around fatal accident inquiries and victim statements to the attention of the Executive and the Lord Advocate and ask them for comments. Whether we can take a committee view at this stage is another question, but we could certainly put the issues before the Executive and Lord Advocate. It would be worthwhile to get their response at this point.

**The Convener:** We need to be clear as a committee about which matters relate directly to the petition that has come through the Public Petitions Committee and which are part of SCID's recommendations. There is nothing to stop us pulling out any specific points, but for purposes of clarity we need to be clear about which elements relate to the petition and which elements relate to the campaign, because there are things in the campaign's recommendations that are not in the petition.

**Michael Matheson:** Some changes have been introduced in relation to cases being referred to the High Court. It may be worthwhile for us to ask SCID whether it could advise us about its experience of the changes that have been introduced. I have the feeling that SCID may not be happy about how some of the matters that appear to have been addressed are working out in practice. That would be relevant to the petition.

**The Convener:** I do not have a problem with that—there is no dissent.

I will go back to the action that the committee wants to take on the petitions. There has been a suggestion that we should take option a, which is

"to write back to the Lord Advocate and the Executive asking that"

the committee

"be forwarded all outstanding information as soon as possible".

The information that we await is an

"announcement on progress of the steering group on the DTLR report",

because there is a possibility of a further consultation paper, which is expected this year. We also await

"information on the feasibility of a new approach to collection of statistical information on road accident injuries".

That is a specific request of the campaign.

We also await the

"DTLR report on survey of convicted careless and dangerous drivers (and their families), expected in early 2004",

and an update

"on the recommendations outlined in the Review of the Investigation of Road Deaths in Scotland, expected in Spring 2004."

The final piece of information that we await is on

"offences under section 3A of the Road Traffic Act (The Lord Advocate offered to provide this 'as soon as possible'.)"

It may be worth adding that we have had confirmation that the vast majority of cases in which there is a fatality now go to the High Court.

Since the committee is dealing with—or has dealt with—the reform of the High Court and the fact that some of the cases will move down to the sheriff court, we may want to ask for clarification as to whether the terms of those new arrangements will affect such cases, as I think that the campaign is a lot happier with the existing situation. It might be worth getting clarification of that. Is that the way in which the committee wishes to proceed?

**Margaret Smith:** Did you include option b, which refers to asking about the lack of involvement of Scottish agencies?

**The Convener:** I did not, but I think that we should do so.

**Margaret Smith:** How do you feel about my suggestion that the papers on the other issues should be forwarded to the Executive and the Lord Advocate for their comments?

**The Convener:** I do not see why we should not do that.

**Margaret Smith:** Presentationally, they would have to be separated out from the petition, but there would be value in forwarding them.

**The Convener:** I do not think that there is any objection to our doing that. The committee has had the chance to see all the correspondence and the recommendations. Would it be possible to pluck out the recommendations and put them in one document so that we could see those that are in the petition and those that are not?

**Alison Walker (Clerk):** Yes.

**The Convener:** I did not pick up on Michael Matheson's suggestion about writing to the petitioners formally to ask how they think that the new arrangements were working. We should do that formally, if that is agreeable.

**Members indicated agreement.**

### Road Accidents (Police 999 Calls) (PE111)

**The Convener:** The next petition is PE111, on which members have received papers from the clerks. The petition relates to the Road Traffic Act 1988, which deals with reserved issues. The petition, from Frank Harvey, calls on the Parliament to order a public inquiry into road accidents that involve vehicles that are responding to 999 calls. At a previous meeting, the committee asked me to write to a number of agencies to clarify the procedures that were in place. Members have copies of the replies.

One thing that struck me was that the fire brigade has a comprehensive training programme for full-time employees but not for part-time employees. That should be looked into.

**Michael Matheson:** I agree. The Fire Brigades Union has raised the issue of the uniformity of driver training across Scotland. Skid-pan training is an issue for all members of staff, and I think that we should raise that with the Chief and Assistant Chief Fire Officers Association.

A fire services bill is planned, so I suggest that we also raise the issue with the Scottish Executive to find out its views on driver training. We should find out whether the Executive plans to take any action to improve the uniformity of training for drivers.

**Mr Maxwell:** I agree. There is no consistency of approach across the brigades in Scotland. Each brigade is left to its own devices in its driver training, as we can see from the papers that we have. There is a particular concern over retained and volunteer drivers, as we have already mentioned.

The FBU paper talks about senior officers. Until recently, senior officers had no training at all in driving under blue-light conditions, although now, in some if not all brigades, those officers receive such training. However, that training is limited, in most cases, to those who receive permanent promotions. Those on temporary promotions do not receive the training. That seems anomalous, especially as some temporary promotions to senior officer level last for a considerable time—months or sometimes years. The lack of driver training for senior officers is a clear problem. They quite often come up from station officer level having never driven a vehicle under blue-light conditions. They then become temporary assistant divisional officers and are given a car, a set of keys and a set of blue lights. The FBU expresses very well the clear concerns over that.

**The Convener:** I think that Mr Harvey may be referring to a particular incident that he had read about. The committee decided to consider the broader issues that arose and to find out about the legal position of vehicles that are in pursuit or are dealing with an emergency. It is clear that if someone is in a vehicle being chased, it is an offence for them not to stop. However, what are other members' experiences of vehicles getting out of the road of the blue light? In my experience, most people do not know what to do. That is not because they have not seen the blue light; it is because nobody knows who should pull in first. It occurred to me that there should perhaps be some public information. It is all very well having advanced drivers for police or fire vehicles, but if members of the public do not know how to get out of the road without killing somebody, there may be a need for public information.

We have to allow flexibility in law to allow some kind of pursuit and to enable emergencies to be dealt with, so we would not necessarily want



speed limits to apply. However, neither should those vehicles be beyond the law. I do not think that we will be able to solve the issue that the petitioner raises by suggesting anything in that regard, other than tidying up issues relating to training and emphasising that those vehicles are not beyond the law. As a consequence of thinking about this petition, however, I think that it might be useful if there were public information to make it easier for police or fire vehicles to use their training and their blue light to ensure that they have the clearest path possible.

12:00

**Mr Maxwell:** It would be entirely reasonable to write to CACFOA to seek clarification on the issue of police and fire fighter training, although I understand that it is working on the issue at the moment. I am fairly confident that full-time fire fighters who volunteer for driver training receive quite extensive training, but the issue of uniformity across Scotland has to be addressed, as does the issue of retaining the volunteer and senior officer training.

However, that does not preclude our seeking further information about the last time the maximum penalty in the 1988 act was reviewed. That is a valid question to ask.

**Michael Matheson:** I agree with that but, as I suggested earlier, I think that we should write to the Executive to raise the issue of uniformity of training. I assume that the Executive is in dialogue with CACFOA to address the issues, but I would like to ensure that that is happening.

**The Convener:** We need to come to a conclusion about the petition while taking action. In that letter to the Executive, perhaps we should broaden out the issues that we think need to be dealt with. Stewart, are you suggesting that we write separately to the Executive on the issue that you raised in relation to the fire service?

**Mr Maxwell:** We need to know what the up-to-date position is, as the situation has been evolving in recent years and training for all the groups that we are talking about has come on by leaps and bounds. Further, I think that we should be recommending that minimum and uniform standards be set for such training across Scotland.

**The Convener:** In the letter to the Executive, we can deal with the broader issues relating to all the services and with minimum standards in relation to driving and training and also ask specifically about the current situation with regard to the fire service. If anything comes out of that inquiry, we can pursue it further, but are we agreed that our writing to the Executive on this matter closes our consideration of the petition?

**Members** *indicated agreement.*

## Rehabilitation Programmes in Prisons

12:04

**The Convener:** Item 5 relates to the effectiveness of rehabilitation programmes in prisons. I welcome our adviser, Dr Laura Piacentini, and refer members to the paper that contains a proposal about our approach to an inquiry into this subject and a suggested remit.

**Dr Laura Piacentini (Adviser):** When I was approached to suggest a remit for the inquiry, I was struck by the fact that rehabilitation is a broad, generic and universal term and it seemed that, from the outset, any inquiry would have to have a clear structure for exploring, evaluating and examining the question of rehabilitation. Hence I have structured the remit around the three central themes of examining penal policy, opportunities that enable rehabilitation to take place and conditions that can either lead to rehabilitation or exacerbate imprisonment. Within those three themes a range of questions and issues emerge to do with whether rehabilitation is an effective penal stance in prisons in Scotland. I think that it is, because as I understand it, there is a cultural sensibility within the Scottish Prison Service that is welfare oriented and which is promoted in the values of prison staff and in the prison estate generally. Unlike England and Wales, Scotland has hit the ground running in that regard, because there has been a strong rehabilitation principle underpinning imprisonment for a good number of years. That is basically how I have couched the remit, as you can see from my paper.

**The Convener:** I thought that the paper was comprehensive. It sets out the issues that I want to consider in the inquiry.

**Margaret Mitchell:** Do you have a view on the rehabilitation—if I can use that term—of people who have experienced a miscarriage of justice, which we discussed earlier? If it is not too sensitive an issue, perhaps we could deal with it in the inquiry, if we cannot get redress any other way. Do you have a view on that?

**Dr Piacentini:** Do you mean the post-custody rehabilitation in the community of people who have been victims of a miscarriage of justice?

**Margaret Mitchell:** Yes.

**Dr Piacentini:** That is an under-explored area of rehabilitation and further research is needed on opportunities for people who have been victims of miscarriages of justice. They have still been exposed to the whole prison experience and face an additional punishment, because their custody has been illegal or wrong for various reasons.

They face the additional burden of coping with that miscarriage of justice. A mechanism could be put in place that facilitates rehabilitation for those groups. The remit can cover all people who have been in prison. You might be able to consider the issue in section (ii) of the remit, which is on opportunity, which could be nuanced to cover those who have suffered miscarriages of justice. Agencies and bodies, which are set out in paragraph 8 of the paper, on evidence, could be brought in to deal specifically with those groups. I do not have information on the number of those people or who they are. I suspect and hope that we are talking about a minority of people being victims of miscarriages of justice.

**Margaret Mitchell:** Ideally, we would have liked to have held a separate inquiry, because we felt that the issue merited it, but that would not be feasible in the time available. The main concern about including the issue in the inquiry was about whether we were making enough of a separation and treating the issue sensitively enough—the people involved were in prison through no fault of their own.

**Dr Piacentini:** The issue would warrant a separate inquiry, given that it is so specific. As I have said, the remit of the inquiry is so broad that I would be concerned that the issue would be lost in it.

**The Convener:** Paragraph 7 of annex A is the most important paragraph, given the suggestion that we consider the integration and comprehensiveness of rehabilitation programmes within the constraints that you set out, which include pressures on staff, overcrowding and lack of time to undertake assessments. That context is absolutely right, because those factors perhaps explain why rehabilitation has suffered; considering rehabilitation on its own will not give us a realistic picture. I welcome the suggestion that we carry out the inquiry in that context.

The only other area that we might want to spend some time on is deciding what witnesses we want to call. We should try to think of witnesses other than the people whom we already deal with.

**Mr Maxwell:** The paper is comprehensive and lays out very well the basis for an inquiry, and I am more than happy with the suggestions in it. There might be some discussion and debate about whom we should invite to give evidence. Paragraph 7 of the annex already gives us quite an extensive list of suggestions. It is a good paper and it sets out the way in which we should proceed.

**The Convener:** There will be an opportunity to add witnesses to the list if there are any you want to add. I thank Laura Piacentini for her work.

Before we move on, there are a couple of areas on which I have to canvass members' opinions. Paragraph 9 of the paper states:

"The Committee has already secured funding for consultation of prisoners in a number of prisons."

Are members happy about the visits to Edinburgh throughcare centre, the Possil drugs project and the 218 time out centre in Glasgow?

**Members indicated agreement.**

**The Convener:** There is a suggestion that we should visit some prisons to discuss the inquiry with prison officers and agency workers. Are members happy to do that?

**Members indicated agreement.**

**The Convener:** There is also a possibility of holding a meeting on the inquiry outside of Edinburgh. Glasgow has been suggested, but it does not have to be Glasgow. Are members okay with that?

**Bill Butler:** That is a very good suggestion.

**The Convener:** That suggestion meets with approval.

## Regulation of the Legal Profession

12:13

**The Convener:** Item 6 is the committee's inquiry into regulation of the legal profession. I refer members to the paper that has been prepared by the clerk and adviser, which sets out the background to the former Justice 1 Committee's inquiry into regulation of the legal profession, and options for following on from the former committee's inquiry.

I also refer members to correspondence from Stewart Mackenzie, Stewart Usher and Duncan Shields. The correspondence was received yesterday but members will not have seen it until this morning. There is also a helpful summary of the list of recommendations from the former Justice 1 Committee's inquiry.

The list of recommendations in the report is excellent—there are several very good suggestions. We could do quite a bit of important work in progressing some of those recommendations. It is not for this committee to open up the inquiry of a former committee but, because we agreed to take on the subject, the committee could do some useful work through exchanges with the Executive and other agencies in pursuing some of the good recommendations. The recommendations in relation to strengthening the role of the Scottish legal services ombudsman are very important.

As convener, I have also been dealing with some issues that people have written to me about. As members are aware, the committee does not deal with specific cases, but we try to identify any broad issues. The issue of solicitors' fees has arisen and I have already written to the Scottish legal services ombudsman to seek her view on whether the table of fees is transparent enough for members of the general public, which is one of the issues that members of the public complain about. When they challenge legal bills, they find it difficult to find out from the table of fees whether the bill is correct. I will circulate the correspondence so that members can read what the ombudsman has said. We can, as a committee, do some useful work without its impacting too much on our timetable.

12:15

**Michael Matheson:** I am rather disappointed that progress on the recommendations in our predecessor committee's report has been so limited. I support the convener's suggestion that we continue to pursue those recommendations.

If I recall correctly, the Executive was broadly supportive of the committee's recommendations, but indicated that primary legislation would be necessary to implement some of them. There was a view that the fact that the report was published fairly near the end of the previous parliamentary session meant that the Executive just did not have an opportunity to say whether it would progress the work at that point. Given that the situation has moved on, we should revisit the issue with the Executive to find out whether it intends to act on the recommendations that would require primary legislation. If it intends to do so, we should ask it what timescales it envisages and, if it does not, we should ask it why not.

I do not support the idea that we should reopen the inquiry. The inquiry that was carried out was very detailed and made a number of what I consider to be extremely valuable recommendations. It is a matter of our pursuing those recommendations, rather than revisiting the inquiry.

**Mr Maxwell:** I agree with Michael Matheson. I note that we have had updates from the Law Society of Scotland and the legal services ombudsman, but not from the Faculty of Advocates, so I think that, in addition to our writing to the Executive, we should write to that body for an update. That would give us a complete picture of the various bodies' opinions on the recommendations, which would help us to pursue the recommendations. I agree that some excellent recommendations were made and that there is no reason why we should not pursue them, rather than reopen the whole business. The work has been done, so let us try to get some of the recommendations implemented.

**Margaret Mitchell:** I am new to the matter but, as has been said, we do not have time to undertake any other inquiries; we are fully committed. I say that as someone who has consistently expressed reservations about the Law Society's ability to police and promote itself.

That said, I am encouraged by what has been recommended, which I regard as a worthwhile step forward. I agree that the suggestions in question should be considered and pursued in an effort to make more progress, but reopening the inquiry is simply a non-starter.

**Margaret Smith:** I feel exactly the same way—there is nothing to be gained from reopening the inquiry because the existing recommendations are correct and substantive. We should pursue them vigorously.

**The Convener:** I probably agree with all the recommendations; I do not think that there are any with which I disagree. However, there are many of them, so at some stage I may have to ask

members to suggest particular recommendations to which they want to attach priority, if there are areas in which they think that we should try to make progress sooner rather than later.

It strikes me that one of the areas that is quite important is the relationship between the Law Society and the ombudsman. My experience of making a complaint is that the process is not easy. I have many comments to make on the trouble-shooting scheme, one of which is about the availability of the scheme; some of my constituents were not made aware of the existence of the scheme.

The committee needs to agree whether it wishes to progress the recommendations of the former Justice 1 Committee's report. Also, I ask members to say which recommendations they wish to pursue first. Progress would be lost if we tried to deal with everything at once. Members can tell me that at some future date, unless they have views now about the areas that are of most importance.

**Michael Matheson:** It is extremely important that we increase the powers of the ombudsman. Although a number of key recommendations were made by the former Justice 1 Committee, I believe that our priority should be to increase the powers of the ombudsman. That would be one of the best ways for us to go about improving the present system.

**The Convener:** That is helpful.

**Mr Maxwell:** I do not disagree with what Michael Matheson said; in fact I agree whole-heartedly with him. We need to form a fully rounded picture. We would be helped in doing that if we were to get responses from the Executive and the Faculty of Advocates before we decide whether to pursue particular recommendations. I hope that we get the responses back fairly quickly so that the process does not drag on. Perhaps we could revisit the subject at a meeting in the near future at which we can make a decision on priorities.

**The Convener:** The Executive did not agree with some of the recommendations and agreed with others. What we are not clear about, however, is how it will progress matters.

Does the committee agree that we should write to the Faculty of Advocates asking for a response, and to the Executive asking about progress on the recommendations with which it agreed? We should also consider Michael Matheson's suggestion about strengthening the powers of the ombudsman. Those are areas on which I think it is important that we make progress. Are we agreed?

**Members indicated agreement.**

**The Convener:** I have a final question to put to the committee. In our follow-up work on the former Justice 1 Committee's inquiry, do members wish

to review any of the evidence that that committee received?

**Michael Matheson:** What do you mean by that, convener?

**The Convener:** The reason why I put the question to the committee is that a number of the people who submitted evidence have written to us asking that their evidence be reviewed. I feel that I should ask the committee to make a decision on whether to do that, because it is the committee and not the clerks who should determine the matter.

**Mr Maxwell:** I do not want to cause confusion, convener, but in what sense are we to review the evidence? Given that the evidence was submitted to the former Justice 1 Committee's inquiry, and that we have agreed not to reopen the inquiry, would not reopening the evidence mean that we were, in effect, reopening the inquiry?

**The Convener:** You may remember that I advised you at some point that some of the submissions had been edited because of legal issues. Some were wrongly edited and the evidence has had to be re-submitted. That is the basis on which I ask members to review the evidence.

**Michael Matheson:** I think that I am the only member of the current committee who was a member of the former Justice 1 Committee when it carried out its inquiry. I felt that I had all the necessary information before me when that committee was arriving at decisions for its report. Given that we are not reopening the inquiry, and have no grounds to do so, I do not think that there is a need for us to review the evidence.

**The Convener:** Is that agreed?

**Members indicated agreement.** [*Interruption.*]

**The Convener:** Under standing order 7.4.1, I suspend the meeting until further notice.

12:26

*Meeting suspended.*

12:28

*On resuming—*

**The Convener:** I reconvene the meeting simply to advise members that the amendments for stage 2 of the Criminal Procedure (Amendment) (Scotland) Bill should be lodged as early as possible in advance of 2 pm on Monday 8 March, which is the closing date for day 1 of stage 2.

**Margaret Smith:** I would like clarification on the last issue that we were discussing, which I do not think we had finalised before you suspended the

meeting for obvious reasons, convener—and quite rightly so.

People are suggesting that the editing of written submissions was in some way done incorrectly. My understanding is that the editing that took place did not prevent any members of the previous committee from seeing the submissions—committee members saw the submissions, which were taken into account during the inquiry. Therefore, there would be nothing to be gained by advancing or reopening the inquiry in relation to those pieces of written evidence. The editing was done before the submissions were posted on the Parliament website because of matters being sub judice and because of other issues. I wish to check that my understanding of the situation is correct.

**The Convener:** That is quite correct. All members of the former Justice 1 Committee saw all the papers. The editing applied only to the papers as they were put on the website for the public to view. There is, of course, a different approach in such cases: if information that was contained in such submissions was defamatory, the Scottish Parliament would be open to legal action. It has been helpful to clarify that point.

Apart from reminding members that we are starting stage 2 consideration of the Criminal Procedure (Amendment) (Scotland) Bill on 10 March, there is no further business. I thank members for their attendance.

*Meeting closed at 12:30.*



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