The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 22 September 2015

Session 4

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JUSTICE COMMITTEE
26th Meeting 2015, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
*Margaret McDougall (West Scotland) (Lab)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Emma Dore (Shelter Scotland)
Tom Halpin (Sacro)
Louise Johnson (Scottish Women's Aid)
Professor Nancy Loucks (Families Outside)
Michael Matheson (Cabinet Secretary for Justice)
Nicola Merrin (Victim Support Scotland)
Laura Mulcahy (Criminal Justice Voluntary Sector Forum)
Michael Russell (Argyll and Bute) (SNP) (Committee Substitute)
Christine Scullion (Robertson Trust)
Alan Staff (Apex Scotland)
Pete White (Positive Prison? Positive Futures)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Robert Burns Room (CR1)

Scottish Parliament

Justice Committee

Tuesday 22 September 2015

[The Convener opened the meeting at 10:01]

Interests

The Convener (Christine Grahame): Good morning and welcome to the Justice Committee's 26th meeting in 2015. I ask everyone to switch off their mobile phones and other electronic devices because they interfere with the broadcasting system even when they are switched to silent. Apologies have been received from Gil Paterson; I welcome Michael Russell, who is attending the committee as his substitute—he has promised to behave.

Under item 1, I invite Michael Russell to declare any interests that are relevant to the committee.

Michael Russell (Argyll and Bute) (SNP): I have no relevant interests, but I note that the petition about Megrahi involves Iain McKie, with whom I have written a book. I thought that I should put that on the record.

As far as my promises are concerned, Christine, you know that I never keep them.

The Convener: You should call me "convener".

Michael Russell: I have never seen you before, convener.

Roderick Campbell (North East Fife) (SNP): In relation to item 3, I refer to my entry in the register of members' interests as a member of the Faculty of Advocates.

Community Justice (Scotland) Bill: Stage 1

10:02

The Convener: Item 2 is our third evidence session on the Community Justice (Scotland) Bill. Today, we will have one round-table evidence session. I welcome our witnesses, each of whom should have a copy of the table plan in front of them. The purpose of the session is to allow members and witnesses to have a more informal discussion. I invite everyone to introduce themselves.

I am the convener of the Justice Committee and the member of the Scottish Parliament for Midlothian South, Tweeddale and Lauderdale.

Elaine Murray (Dumfriesshire) (Lab): I am the MSP for Dumfriesshire and the deputy convener of the committee.

Alan Staff (Apex Scotland): I am the chief executive of Apex Scotland. I am also a member of the criminal justice voluntary sector forum.

Margaret Mitchell (Central Scotland) (Con): I am an MSP for Central Scotland and a member of the Justice Committee.

Laura Mulcahy (Criminal Justice Voluntary Sector Forum): I represent the criminal justice voluntary sector forum.

Roderick Campbell: I am the MSP for North East Fife.

Professor Nancy Loucks (Families Outside): I am the chief executive of Families Outside and a visiting professor at the centre for law, crime and justice at the University of Strathclyde.

Michael Russell: I am the MSP for Argyll and Bute. I am a substitute member of the committee, and this is the first time that I have been here in that role.

Pete White (Positive Prison? Positive Futures): I am the national co-ordinator of Positive Prison? Positive Futures.

Tom Halpin (Sacro): I am the chief executive of Sacro.

Christian Allard (North East Scotland) (SNP): Good morning. I am an MSP for North East Scotland.

Louise Johnson (Scottish Women's Aid): Good morning. I am the national worker for legal issues at Scottish Women's Aid.

John Finnie (Highlands and Islands) (Ind): Good morning. I am an MSP for the Highlands and Islands.

Emma Dore (Shelter Scotland): I am the senior policy officer at Shelter Scotland.

Alison McInnes (North East Scotland) (LD): I am an MSP for North East Scotland.

Christine Scullion (Robertson Trust): I am the head of development at the Robertson Trust.

Margaret McDougall (West Scotland) (Lab): I am an MSP for West Scotland.

Nicola Merrin (Victim Support Scotland): I represent Victim Support Scotland.

The Convener: Thank you. Some of you have been here before, and some of you have attended a round-table session before. I advise those who have not that, if you indicate to me that you want to speak, I will take a note of your name and call you. I will give you advance notice of that, if I can. I will keep a list of people who want to speak, and committee members are often parked for a considerable time so that our witnesses can give their evidence first.

I will throw open the discussion with an initial question: what is right or wrong with the bill? Discuss.

Tom Halpin: I welcome the bill, which offers a great opportunity for leadership and accountability in the delivery of community justice services in Scotland. If we get the performance framework right, it will make the system transparent and will allow us to move towards assuring outcomes for the vulnerable people we work with. On the opposite side, there are a number of areas where, as we have already indicated, Sacro feels that the bill could be improved, and we welcome the opportunity to work with you on that. The idea that the third sector's role in engagement is diminished by the bill is one that causes us great concern. I know that the intention is to involve the third sector, but we have moved from being at the table during the design and planning of the system to a position where we are seen as a consultee and a useful provider.

Louise Johnson: Scottish Women's Aid's concern is about the bill's lack of consideration of victims of crime, and of families and communities. I note that that concern has been raised in other evidence sessions and by Elish Angiolini herself, who referred to the lack of focus on victims. There is no mention of risk management, victim safety or public protection in the definition of community justice. That is an important concern given the Scottish Government's justice strategy, the equally safe strategy on domestic abuse and the Scottish Government's direction of travel on short-term sentences, with community protection orders and the extended use of electronic monitoring.

With that omission in mind, we have concerns across the bill about how the national performance framework and the strategy will be devised. We will have 32 community planning partnerships and sets of community justice partners, so the national strategy and performance framework must embed the need for consistent responses and content across Scotland, but we are not confident that the bill allows for that. We think that there should be much more of a duty to engage with—not just consult—victims, victims organisations and communities, and not just through the criminal justice voluntary sector forum, which does not cover organisations such as ours.

The Convener: As you say, that point was raised by previous witnesses.

Emma Dore: Shelter Scotland welcomes the bill and the joint focus on having a national body as well as local accountability. On housing and homelessness, which are our main focus, it is important that offenders who have been placed in prison have an equal opportunity to return to their home and a safe place to live, regardless of where the prison is. We hope that a national body will provide the opportunity to join up services that are not joined up under the current system.

When it comes to what is wrong with the bill, we have significant concerns over where housing and homelessness might be represented. At the moment, there is an implicit reliance on local authorities to do that within the community justice partnerships, and there is no denying that local authorities are important, as they provide housing for many people leaving prison. However, housing associations also do a lot to work with prison leavers, and the voluntary sector provides a lot of the more innovative and creative ways of working with them.

The bill states that it is

"introducing requirements in relation to the achievement of particular nationally and locally determined outcomes",

yet there is nothing to do with outcomes, or the areas that those outcomes might address, in the bill.

Although we appreciate that community justice partnerships must decide what is appropriate locally, we feel that core fundamental issues such as housing, mental health, substance misuse and victim support should be outlined at a statutory level and included in the national strategy as they must be included in the outcomes that we are looking for.

Nicola Merrin: The bill is a good opportunity for us to ensure that the needs of those who are affected by community justice in Scotland are at the centre of the design of any new arrangements. Our primary focus is to ensure that victims' voices are heard in any structural arrangements for delivering justice in the community, and that

victims are respected, informed, supported and protected throughout the process.

As Louise Johnson mentioned, Dame Elish Angiolini referred to victims at one of the committee's previous evidence sessions. She stated:

"this is not just about changing behaviours but about how we keep people safe; it is not just about the individual offender but about the victim and restoring equilibrium to the community."—[*Official Report*, *Justice Committee*, 1 September 2015; c 23.]

That covers what the bill should be about, and it leads us on to our issue with the bill's definition of community justice.

As has been said, the definition is quite narrow, in that it does not cover public protection issues or the early intervention and prevention aspect of desistance from crime and offending. It should cover public confidence and the need to support everyone who is affected by community justice. As Elish Angiolini said, the bill is about not just individual offenders but families and victims, who are also affected.

Our main concern is the bill's lack of reference to victims; the much stronger provisions that were outlined in previous consultations seem to have slipped away. In addition, we do not feel that the bill is aligned with the justice strategy for Scotland. If it is meant to provide an overarching and consistent framework for all those within justice and community safety, we cannot see that.

I will give a couple of examples. Priority 5 in the justice strategy is

"Increasing public confidence and reducing fear of crime",

and ensuring that people feel safe. The most important priority for us—unsurprisingly—is priority 12, which is "Supporting victims and witnesses". Under priority 12, the strategy states:

"Victims should not be seen as passive spectators of proceedings ... but people who have legitimate interests and needs. They need to feel supported, safe, informed and involved."

We do not believe that the bill addresses those priorities, given its lack of reference to victims, public protection and risk management, and we would like that to be considered.

Alan Staff: Although I echo what has been said so far, we are quite concerned about the notion that the third sector consists of a range of small organisations competing at the local level. That makes it almost impossible to engage with those organisations, other than at a personal level when making arrangements locally.

For some time, the criminal justice voluntary sector forum has shown that it can speak well for the sector—although it does not cover it completely—and engage in areas that are general and specific to the sector. We are concerned that the bill avoids naming the third sector as a formal partner, and that it offers no reassurance that the sector is supposed to engage in anything other than making local arrangements. We believe that the discourse that says that it is possible to work with the third sector only at the individual organisation level is wrong and should not form the basis of the thinking about the strategy.

We believe that the sector is well capable of addressing issues and contributing strongly. Our issue is not with consultation but about general engagement.

Professor Loucks: I endorse what the previous speakers have said, and I stress that the bill's definition of community justice would benefit from being broader. There is an opportunity to focus more on prevention, for example, and look at areas such as housing, substance misuse and mental health as well as engagement with families and the broader community. That aspect is not mentioned—the bill implies that it could be considered, but there is an opportunity to do more.

10:15

We also need greater clarity on the national body's powers to oversee some of the issues that will be raised within a community justice context. For example, women's imprisonment will be a greater issue for some local authorities than others, but there is still a need for support for women in the justice system not to be a postcode lottery. The national oversight should have some power to ensure that all community planning partnerships are engaged and that people in the justice system will be supported equally across the country.

There is also a wider issue in terms of national bodies, whether they are third sector bodies or statutory national bodies, engaging with 32 community planning partnerships. That takes a tremendous amount of resource unless things can be co-ordinated nationally. There is a concern, particularly among smaller third sector organisations such as ours, about the logistics of engaging with 32 local authorities, because that is exceptionally difficult.

Pete White: I welcome the bill. The direction of travel that it offers is a huge opportunity for not only community planning partnerships and local authorities but the third sector and other agencies to get together and work things out. The bill tries to strike a balance between being helpful and constructive, and allowing things to happen locally. The potential of localism is tremendous. I know that that seems quite daunting at this stage, but it is something that we can all work towards.

I am fortunate enough to sit on some of the committees that deal with the goings-on behind the scenes of the bill, and I am very impressed by the intent and the level of detail that is being discussed outwith the bill. The bill will make a lot of things possible. The level of trust between communities and people who have committed offences, and between all the partners involved, has to be developed and built on very carefully to get away from anything to do with competition for the hearts, minds and bodies of the people for whom all this is intended. The bill is a tremendous opportunity, and we have to step into new territory in how we deal with it. The bill is good in as much as it does not tell us how to do that.

Christine Scullion: In case you do not know, I make it clear that we do not deliver services. The Robertson Trust funds third sector organisations that work in the criminal justice sector. We have been working really hard over the past few years to move towards an outcome-focused approach. For us, that approach is a massive positive in the bill and we urge everyone to continue to move towards achieving positive outcomes rather than measure reoffending rates, which traditionally has been the way in which we measure whether services have been successful. It is very difficult for a service to point to somebody and say whether it has helped that person not to reoffend. We must move towards achieving the shorter-term outcomes of getting somebody a house or a job, or getting them connected back to their family, because those things are much more positive ways of measuring progress. We welcome that approach and we have been collaborating with justice analysts on a piece of work on it.

On what is maybe not such a positive side of the bill, I agree with the view about the restricted definition of community justice. In our written submission we quoted an alternative definition that was used in the 2014 consultation paper, which refers to

"the collection of agencies and services in Scotland that individually and in partnership work to manage offenders, prevent offending and reduce re-offending and the harm it causes, to promote social inclusion, citizenship and desistance."

From our point of view, that definition has positives, rather than the negatives that are in the current definition.

On the localism agenda, we certainly welcome leadership at a national level. I echo Nancy Loucks's view that it will be hugely resource intensive for small national organisations to work across 32 local authorities. Although we welcome localism, we need to avoid a repeat of the postcode lottery that we have all seen. We have done a lot of work supporting young offenders leaving Polmont. Those living in one local authority area can sometimes get a service that is not available to those living in another local authority area. We need to get some national consistency in that regard.

Laura Mulcahy: The feedback that we have had from the forum is that members absolutely welcome the bill's ambition of a more collaborative model. The fact that it puts in place a national strategy and performance framework is welcome.

However, our members have concerns around the role of the third sector in the bill, so we would welcome clarity on that issue. There has also been confusion about the relationship between community planning partnerships and community justice partnerships. It would be helpful if we could tighten that up in the bill.

The Convener: I get muddled by them. It would be helpful if you could tell us the difference between them, so that it goes on the record.

Laura Mulcahy: Our understanding is that the bill lists the statutory community justice partners and that many, but not all, of them would be members of community planning partnerships. However, we are not entirely clear about the relationship between community planning partnerships and community justice partners. The relationship might be decided at the local level, but we are not sure.

The Convener: Mr Halpin, you are next. Do you want to clarify that?

Tom Halpin: On that specific point, the feeling is that the bill is focused on the services that the statutory partners deliver. The register of interventions that we worked on recently shows that the reality is that about 30 per cent of community justice services are delivered by the third sector.

I want to make a point about community justice Scotland. A lot of our discussions are focused on community planning partnerships, but, in terms of having national coverage, resilience of leadership, thought leadership and so on, it is unclear to me how the third sector can engage at the appropriate level with community justice Scotland. The third sector, working with partners, manages a significant level of risk. We have heard about the risk of a so-called postcode lottery; that is already the reality for some people.

There is an opportunity for more accountability in community justice Scotland, in the way that Dame Elish Angiolini's commission suggested. That approach seems to be watered down in the bill.

The Convener: I will start taking members if they want to come in. I already have Alison McInnes and Elaine Murray.

Alan Staff: Another concern that has not been mentioned is about how services are commissioned. Clarification is needed of who commissions them. Over the years, the sector has had to manage with a service commissioning arrangement that is very fragile, particularly given short-term funding and the changes that have happened at local authority level. We have been very concerned that that arrangement leads to a postcode lottery, to inefficiency and to Scotland not getting the best out of the third sector. We spend a great deal of time fighting for contracts and attempting to extract money and not as much time as we should delivering services.

The Convener: I have already done my dinger about that. It has been like that for 16 years, and we hope for improvement.

Ms Merrin, please.

Nicola Merrin: There are two points about engagement for us.

One is engagement with our organisation and other third sector organisations, in particular victims agencies. Currently we are a statutory active partner with each of the eight community justice authorities and have been since they were established. We want to continue to engage with all the community justice partners, both nationally and locally, but doing so will be a significant challenge for us. The jump from eight CJAs to 32 community planning partnerships will make it impossible in terms of not only resources but staffing and time. The current structure is well aligned to our own management structure, and we have regional operational managers who attend the eight CJAs. If the structure were to go down to a very local level, we would struggle.

The second point is on engagement with victims. We want victims and the community to be able to input to community justice arrangements on issues such as what unpaid work will happen in their area. Risk assessment is a big issue. We believe that, working closely with ourselves and other agencies such as Scottish Women's Aid, a risk assessment framework should be developed to ensure the safety of victims and that protection requirements are met. The sharing of information is also important. Before a sentence is passed, bail conditions may be in place to protect a victim, but we have noticed that once a community sentence is passed, the information does not seem to go across, so unpaid work could end up happening where the victim works or lives. We seek to have an input and to help the victim to engage properly in risk assessments. Without information from victims, it is not a full risk assessment. We have contributed to the review of multi-agency public protection arrangements, so we look forward to seeing what comes out of that and whether it will tie in later on.

The Convener: I thought that the Victims and Witnesses (Scotland) Act 2014 ensured that victims are kept informed by the Crown when somebody is being released or about what stage the case is at throughout, given that the main witness will generally be the victim. Is that not happening?

Nicola Merrin: The provisions in the 2014 act relate to criminal proceedings and information on the progress of a case. That is happening.

The Convener: Yes. That is happening.

Nicola Merrin: However, when an offender is given a community sentence, there is no mechanism for victims to say that they are scared about the situation or for two-way communication about what the person will do and where they will go to ensure that the safety requirements of the victim are met. The provisions of the 2014 act apply only when the offender is given a custodial sentence and then released. In fact, currently they are restricted to sentences of 18 months and above. There is a big gap.

The Convener: So there is a gap. Thank you.

Alison McInnes: I will pick up on what some of the witnesses have said about community justice partnerships. The bill is not very clear at all on the relationship between those and community planning partnerships. Do the witnesses have views on whether it would be better to put the responsibility on the community planning partnerships?

The Convener: We will have Ms Johnson followed by Mr Halpin. We are doing a dual thing—the clerk notes the names of witnesses who want to speak and I note members. We have got to get together on this more efficiently.

Louise Johnson: The question is a very good one. Our submission raised concerns about the operation of community planning partnerships and how we would engage with them. Specifically, we have concerns about how local authorities' work plans account for violence against women. We have carried out an analysis of single outcome agreements, which we referred to in our consultation response and in our response to the call for evidence on the bill. Not all local authorities have a consistent approach to violence against women—some have no approach at all.

We are not entirely confident about how community planning partnerships, through local authorities, will ensure a consistent response. We also do not know how the community planning partnerships will liaise with the community justice partners. The arrangements seem to be a bit disjointed. Might there be two sets of plans? There are community justice outcome plans and local

outcome plans—there is a plethora of plans. I am worried that there will be gaps.

It comes back to the national performance framework and the strategy. There is no real indication of what the baseline will be, what will be used as guidance, how the guidance will be prepared and how the outcomes will be measured and listed. From the top down, and from community planning partnerships back up the way, how will we evaluate what people are doing?

The Convener: Mr Halpin and then Ms Scullion will comment on this issue and, so far, Elaine Murray, Roderick Campbell and Margaret Mitchell are on the list of members who want to come in.

Tom Halpin: The key issue that needs to be addressed in the bill is how we involve the third sector at the community planning partnership level in such a way that it is not just a consultee after the event but is at the table and is involved in the planning.

10:30

Third sector interfaces that operate within community planning partnerships were never set up—and are not equipped—to carry out that role. They would acknowledge themselves that they are not experts in community justice. The risk is that the actual work happens not in the main community planning partnership but in a sub-committee where we are not present. That would mean that designs would emerge and be brought to third sector organisations after the event. Assets including thinking and creativity—which we in the third sector all understand we bring to the table—will come in after the event.

Other bills that are currently going through Parliament specify more explicitly the involvement of the third sector. We understand the answer, "You cannot put a statutory responsibility on a third sector organisation", but that is not the only solution. There are various solutions in other legislation—the Community Empowerment (Scotland) Act 2015, for example—in respect of how to refer to the third sector. If we do not address that issue and ensure that the third sector is at the table, the whole strategy and approach to community justice will be disadvantaged.

Christine Scullion: I was going to make the same point about third sector interfaces, so I will not repeat it.

I seem to remember at a recent meeting—which Tom Halpin also attended—the Convention of Scottish Local Authorities saying that 17 local authorities were putting criminal justice in with health and social care integration. The question of how that fits in with community planning and those mystery community justice partners is another conundrum. In some areas, criminal justice will be part of health and social care, but in others it will not, so there will already be differences.

To echo what Alan Staff said, one of the problems with community justice authorities was that they did not have the powers to commission services. My concern is that CPPs may be in exactly the same position, and that services will tend to be delivered in-house by the constituent members—especially the local authority—and there will be no opportunity to commission third sector services.

Alan Staff: I would make exactly the same point. In our experience, the default position tends to be that all the work gets passed to criminal justice. The bill provides for the possibility that we can start to think about community justice, but the arrangements that have just been mentioned will kill it, because everything will go into criminal justice and we will continue to get what we have always had. There is an opportunity to do something new, which means that we have to move to a broader forum rather than just passing the work to criminal justice.

Elaine Murray: The bill mentions only public sector partners; there is no mention of third sector partners. Should the third sector partnerships, rather than being mentioned in the strategy or in guidance, be mentioned as community justice partners in the section on community justice outcomes improvement planning, or in the duty to co-operate under section 30? Should the bill contain a specific duty to consult the third sector?

My second question relates to a point that has been made regarding the lack of sanction. If a community justice partnership does not work in an area and people do not bother to engage with the third sector, should community justice Scotland have a power of sanction or intervention in such cases?

Tom Halpin: The tone of the conversations that we are already experiencing with statutory partners about the statutory community justice partners suggests that the third sector is simply a useful provider that is nice to have. It is very important that we address that issue—

Elaine Murray: Must the third sector element be in the text of the bill?

Tom Halpin: Yes. That should be not in guidance, but in the text of the bill.

With regard to Elaine Murray's point about accountability, it is a key issue. To have community justice Scotland just sit there and oversee, and to produce reports that have no bite would be a lost opportunity.

The Convener: I do not see anyone else indicating that they want to speak, so I will bring in Ms Mulcahy.

Laura Mulcahy: I want to pick up on the point that Elaine Murray raised. We would be absolutely in favour of the third sector being explicitly mentioned in the bill. I have only one caveat and it is about what Elaine Murray said at the end of her question, when she asked whether there should be an explicit requirement to consult the third sector.

Elaine Murray: That requirement could come under various sections of the bill. Third sector bodies could either be statutory partners or they could be involved under the duty of co-operation in section 30, although it looks as if the statutory partners have a duty to co-operate only with one another but not with anybody else.

Laura Mulcahy: Okay. To clarify, I say that we would be looking for stronger engagement than merely consultation.

Roderick Campbell: Dame Elish Angiolini, in evidence to the committee, referred to her report and to the fact that, at that stage, the effectiveness of community justice was not being measured and that it was difficult to convince judges that it would make a difference. Are the witnesses happy that the provisions in the bill go some way towards measuring the effectiveness of community justice?

Louise Johnson: As I said previously in relation to the performance framework and the strategy, I do not think that we can measure outcomes effectively if we are not entirely sure on what they will be based. Also, if victims' voices, communities and organisations are not explicitly included in the bill, we will not know whether community payback orders have been properly exercised in order to achieve the intended outcomes in community safety and victim safety.

Alan Staff: The criminal justice voluntary sector forum has been actively involved in helping to work through some of the issues. It is an enormously difficult job, and nobody underestimates how tricky it is, but we have been encouraged by the willingness to move away from the idea of rather simplistic hard outcomes and towards a range of probabilities. Basically, we are moving to a position where certain things being proven to have a positive effect is considered to be an outcome, as opposed to our just asking whether or not a person is reoffending.

Tom Halpin: I believe that the point that Dame Elish Angiolini was making was about the whole system at the macro level, in terms of improving performance and outcomes. There is loads of evidence up and down the country, particularly in local courts, of local sentencers seeing the benefits of the interventions that are happening in community justice. You need only to listen to some of the disquiet when those services wither on the vine because of lack of funding and are no longer available to realise how effective they were. I do not believe that the point is to ask, "Does this work in terms of community justice?" The question must be whether the system has an overall performance framework that measures outcomes in a way that gives people confidence about the investment that has been made at the level of the whole system.

Christine Scullion: Tom Halpin has taken my line again.

The Convener: You need to get in first.

Christine Scullion: I know. I need time to get my brain working.

We have had a number of conversations, along with the criminal justice voluntary sector forum, with members of the Judicial Institute for Scotland. The feedback that we had echoes what Tom Halpin said. It is about awareness of the services that are out there—the big barrier is to getting information to the judiciary—and about the longevity of third sector services. As an independent funder that funds services for three or five years, the Robertson Trust funds at the longer end of the timescale. However, judges who six months ago referred somebody to a service cannot be confident that the service will still be there in another six months. That is the issue, rather than confidence in the quality of the service.

Pete White: We have the opportunity to remove the words "criminal" and "community" from in front of "justice", and we want to achieve a level playing field where we do not go from one to the other. When looking at the progress that individuals can make in moving away from their offending backgrounds towards being confident members of their communities, we have to focus on all the people who are involved—not just the people who have committed the offences, but everybody else, too. We have to see the people, rather than the systems and the services.

We have to start with the people at the middle of it all. Maybe a person will stay out of jail for six months instead of six weeks. That is progress and it is an outcome. We need to focus on things like that because we are dealing with people's lives, on both sides of an offence. We need to turn things round and to look at them from that point of view, rather than just looking at the services that are going to be provided, and see what the individuals themselves have achieved.

Nicola Merrin: Again, following on from Pete White's point about justice as an overall concept and how people are affected by community justice, it is not just about the individual offender. There can be a danger in looking at outcomes just in terms of reconviction rates and so on. We should

also look at how people who have been affected were supported and we should look at getting better outcomes for them from their experience of the system in general.

To follow on from Louise Johnson's point, I say that in the strategy and all the way down to the outcomes we must have something on victims and others who are affected by community justice outcomes that is about whether they feel informed, supported and, most important, protected. We have spoken about public confidence, which I think is mentioned in the bill—I might be wrong about that. Public confidence is linked to how individuals are treated. I remember when I worked in Irvine there being something on the radio regarding the south-west Scotland CJA awareness-raising campaign about the benefits of community justice. I felt that that was okay but wondered whether it would just wash over people because they were not involved in it and would not understand it—it was almost just a lecture about what community justice is.

If victims in a community are involved in community justice and feel supported, informed and protected, that will have a ripple effect for their friends and family and the rest of the community. That is how to achieve public confidence.

Emma Dore: I want to pick up on Professor Loucks's point about outcomes being an opportunity to broaden our understanding of community justice or justice more broadly, and to move towards prevention and early intervention. When we look at outcomes in terms of the judiciary and so on, we could look at responsive outcomes. I urge the committee to consider how the bill could be used to provide more early intervention and prevention measures—for example, stable and suitable housing for people who interact with the justice system, mental health support for those who are at risk, and so on.

The Convener: I have Margaret Mitchell next, to be followed by John Finnie, who will be followed by Margaret McDougall.

Margaret Mitchell: The failure of the definition of community justice to recognise prevention is linked to the failure to recognise the third sector's importance. If that is recognised, we automatically go to the third sector, as it has the people with the experience and flexibility in the community to effectively prevent reoffending.

When we originally looked at the community justice system and Elish Angiolini produced a report, the two main criticisms were about the crowded landscape and the lack of leadership. Is the landscape any less crowded? On a lack of leadership, are we in danger of having a pecking order now that there will be a national body, with the CPPs somewhere in the middle and community justice partners at the bottom? Do you have a fear about resources for the third sector, given that community justice partnerships will be given funding and local authorities are under such pressure to deal with problems in-house rather than pass them to the body that can deal with them most effectively?

The Convener: That was three questions—on the crowded landscape, a lack of leadership, and funding. Panel members can take their pick. Who is coming in on what?

Tom Halpin: It is a fact of life that the landscape is crowded, because people in the justice system have complex multiple needs. Organisations such as ours focus on rehabilitation as our mission, and other organisations focus on healthcare, for example, which has an equal need to engage with the people in the justice system. It is important to be clear about what needs are being identified in assessments and who is best placed to address them, whether that is the third sector or the public sector, because services should be person centred.

On leadership, I draw the committee's attention to the reducing reoffending change fund. It brought together a number of partners, including the Robertson Trust, which is represented at this meeting. Equally, the third sector collaborated, came together as leaders, co-designed the services and had them up and running throughout Scotland within very short timescales. The services are now delivering outcomes that were identified in the logic models at the start of the process.

I do not worry about whether we have leaders. The issue is whether they have the right conditions to be able to lead.

10:45

Pete White: The landscape is not crowded only for people who are caught up in the justice system; it is crowded for everyone. It is important not to draw a line round the justice system and separate that landscape from everywhere else. The sooner we can get people who are caught up in and affected by the justice system to recognise that they are part of the wider community and not a particular bubble on the landscape, the better because, through that, people will be less likely to be disadvantaged, marginalised and put into a particular box for the purposes of simple language.

Alan Staff: The crowded landscape is a manifestation of the funding arrangements. It is a creation not of the sector but of the fact that making available a chunk of money for which everyone has to compete creates a market solution with lots of organisations that all compete. The more diverse the commissioning and

procurement arrangements are, the more likely it is that there will be lots of different solutions. I do not advocate super-charities or anything like that. However, we would like to see strategic commissioning over the piece.

Christine Scullion: The committee will not be surprised that I feel it is appropriate to comment on funding. We have already expressed concern that the funds that are available for third sector organisations might be reduced.

I read with interest the responses in the other evidence sessions that the committee has held. I have a concern about the role of the national body—community justice Scotland. Under the bill, it will have the power to commission services at national and regional levels. Others have a concern about that power, but I urge that it be kept in the bill so that there is the opportunity to commission at a national level rather than always having to go through the 32 local authorities.

On the lack of leadership, we come back to community justice Scotland needing the teeth that Tom Halpin talked about so that it can provide a leadership role.

Emma Dore: There is something useful about the national body, community justice Scotland, having the function to commission nationally, in as much as the current lack of national funding is sometimes problematic. For example, there are locally knowledgeable housing advisers in prisons. In Barlinnie, there are housing advisers who know about the surrounding area, but there might be a prisoner who comes from Inverness and the advisers in Barlinnie might not have a clue about what is available there.

Through having our supporting prisoners advice network in three of the prisons on the east coast, we have found that, if a prisoner is moved around the prison estate, the networking of knowledge up and down the east coast and with other Shelter Scotland services in, for example, Glasgow has been really useful in preventing that person's homelessness on leaving prison. Therefore, we look for, if not national commissioning, at least a national mapping and understanding of how best to join up housing knowledge throughout the country.

The Convener: The committee is well aware of how important housing is when a prisoner is released.

Professor Loucks: I will tie the question of funding to the previous question about outcomes. I am simplifying things slightly but, as third sector organisations, we are funded almost entirely on the basis of our outcomes, whereas statutory sector providers are funded because they are in the statutory sector, rather than because of their outcomes.

I am concerned that the bill needs to be tighter in ensuring that the CPPs, for example, are providing the outcomes that they are funded to provide—

The Convener: You just tossed a grenade in there.

Professor Loucks: I am also making the point that prisons, for example, are not measured on their outcomes. I will leave it there.

The Convener: That is an even bigger grenade.

If Margaret Mitchell is content with those responses, we will move to questions from John Finnie.

John Finnie: I was hoping to lob in that grenade, convener, so I am grateful that Professor Loucks mentioned it.

I align myself with many of the comments from Alan Staff. Market forces come into play here, and I am interested in the tensions that apply within local authority areas and between national suppliers.

We heard last week from a gentleman from the outer Hebrides criminal justice service. He said that it does not matter what is agreed nationally, because there is not the aggregate number to deliver some courses locally anyway.

Is it not the case that we need the statutory people? At the end of the day—given that a lot of you good folk from national charities, despite your great work, do not go to north-west Sutherland, rural Argyll or the outer Hebrides—the statutory authorities are it, and they are the ones who have to do the work.

Tom Halpin: That is another grenade. I do not think that that is accurate. Predominantly, it is local authorities that deliver in remote rural communities—there is no doubt about that, and I would not want to create a false picture.

John Finnie: For the avoidance of doubt, I was not suggesting that that is not the case. I was saying that a lot of the national third sector organisations do not deliver in those areas, because of the aggregate numbers.

Tom Halpin: I was very much involved in the design of the public-social partnerships, and specific work went into how we support remote rural communities by building relationships with very local organisations—and even individuals in some cases—and working with local authorities to provide support.

There has never been any reluctance among the national providers to go to those communities. We have delivered services on the islands, and we have tended to find that those communities are so self-reliant—understandably—that the

opportunities to go there are at times not as obvious as they are in urban communities.

Professor Loucks: I want to clarify something, which goes back slightly on my previous comment. I am certainly not saying that there is no need for the statutory sector, any more than there would be no need for the third sector—all the sectors are essential and must work together as partners. My request is for parity in the bill between the requirement for outcomes and the ability to demonstrate effectiveness.

The Convener: If no one else wants to comment, I will bring in Margaret McDougall.

Margaret McDougall: I have a question on transitional funding. Is £1.6 million per annum for the 32 local authorities over three years enough? There is £50,000 per annum for the criminal justice voluntary sector forum to build on capacity, in comparison with £2 million to set up community justice Scotland. What are your views on the funding arrangements?

Nicola Merrin: You mentioned engagement with the criminal justice voluntary sector forum. We have some issues about whether we, as a victims agency—along with other victims agencies—could be represented meaningfully in that forum. I am not sure whether a single third sector representative can represent the variety of organisations that provide different services. When a representative appears at the forum, they will always have their own organisation's hat on. As I mentioned earlier, there is a gap between us and the 32 CPPs, so we would be looking for some regional engagement fora.

Louise Johnson: I echo Nicola Merrin's comments. The criminal justice voluntary sector forum does not include victims organisations so, as we mentioned in our response to the bill, there is a huge gap in how engagement with victims and victims organisations is being facilitated.

On representation locally and nationally, we are a national office, so we have national representation. However, women's aid groups sometimes have to go across local authority areas. If there are 32 community planning partnerships and there are community justice partners, we are looking at an even more cluttered landscape of organisations with which we will have to engage. How will we ensure that there is not just consultation but proper engagement, so that victims' voices and the organisations that support victims' communities are heard throughout and represented adequately?

The Convener: I got a little lost there—I thought that we were discussing whether the balance of funding is correct.

Louise Johnson: Exactly. The funding is just for the criminal justice voluntary sector forum. We will have all these partnerships, including community planning partnerships and community justice partnerships, to deal with, but there is nothing to say how victims organisations will be funded to do that at national or local level. That is the issue.

The Convener: I understand.

Margaret McDougall: Can I continue with another question?

The Convener: I know that you have another question, but Ms Mulcahy wants to come in first.

Laura Mulcahy: I clarify that the transition funding that the forum has received is not to allow it to build capacity to represent the third sector in 32 areas; rather, the funding is for a specific project that we are working on in a couple of areas with the statutory partners and a broad range of third sector providers to look at the most appropriate engagement mechanisms. I hope that that information helps to alleviate some of Louise Johnson's concerns.

Louise Johnson: The problem is that the forum does not include the constituency of individuals who we support—victims. I suggest that the forum looks predominantly at the offender management side of things. How we engage as organisations is obviously going to be an issue. There are resource concerns about the time taken and the money involved in allowing workers to attend to do that.

Margaret McDougall: I will continue with the theme of membership. The CJAs are made up entirely of elected members, but it does not seem that there will be any elected members on community justice Scotland. What are the panel's views on that? Should elected members be on the board?

The Convener: I think that you are being targeted for a response, Mr Staff. Do you have a view on that?

Alan Staff: Often, the problem that we have had with the CJAs has been that they have spent a great deal of time fighting local issues, and—without wanting to lob any grenades into the room—that has largely been down to the large number of elected members with an interest in their own particular area and fighting their own corner, if you like. That posed a problem. I sat as a member on a number of CJAs across the country, and that interference was a quite common factor. I am not saying that that should not happen; you are asking for our impression, and I am saying that our experience is that that has been a problem for CJAs. Should elected members be on community justice Scotland? On balance, I would say possibly not.

The Convener: You argued yourself into a position and, at last, you got there. I thought that you were going in that direction.

Tom Halpin: I am not in the exact same position. Community justice Scotland needs to deliver the accountability and leadership that the Angiolini commission envisaged. This is about fairness for and participation by all those who have a stake in the system.

Elected members should be on community justice Scotland's board, but so should the third sector and other key stakeholders, and while they are on it they should have responsibility—there are loads of models of sound governance—for delivering the organisation's purpose and aims. We cannot deliver community justice without involving communities, so local elected representatives must be there.

11:00

The Convener: Will you clarify that for me? Are you saying that councillors should be on community justice Scotland's board?

Tom Halpin: Yes.

The Convener: That is not Alan Staff's position.

Alan Staff: I understand what Tom Halpin is saying and why he says it. My worry is how we can get someone who would be representative of all.

The Convener: You think that they would be parochial.

Alan Staff: I do.

The Convener: Are there any other views on that? I suspect that you are keeping your heads below the parapet. Right—we will leave that and move on to a question from Christian Allard.

Christian Allard: I want to go back to local third sector organisations and ask how they can engage with 32 local authorities. Local organisations will not want to engage with all 32; they will want to engage with only one. Will the bill make things easier for them? Will they be denied the chance to participate and maybe a share of the funding? Is it a bit too complicated at present? Will the bill make it easier or not?

The Convener: You appear to be worn out.

Christian Allard: Sorry. I have come in at the end.

The Convener: Not you—I meant that you have thrown out a question but I have no volunteers to comment.

Tom Halpin: You always have a volunteer.

The Convener: Oh, Mr Halpin—what would we do without you?

Tom Halpin: I know. My mother said that.

The Convener: Go for it.

Tom Halpin: At the local level, the involvement of smaller organisations that are very local is key—as key as that of the larger organisations. This is not about scale, size or power; it is about delivering outcomes for people, and if a small local organisation is seen locally as being key to achieving that, it will be involved. At present, it will be involved through the local authority as the key commissioner of services.

My worry about the bill is that this is not about giving Sacro permission to be in 32 local authorities. It is about the broader third sector. If, in the local scenario, a very small organisation is key to a bit of the agenda, it has to be involved. However we word the inclusion of the third sector in the bill, it is not about giving an advantage to large national organisations. It is about the whole third sector.

Christine Scullion: I am not going to agree with Tom Halpin on this one. We fund a large number of small charities that work in single places—I am looking at Nancy Loucks and thinking of a number of small organisations that run support services for offenders' families—and they really struggle to engage at the local level. Some of them have disappeared in the past 12 months and others stumble from year to year, looking for independent funding because they do not get any funding from statutory sources.

The bill could make things easier. It is difficult for such charities to engage with their CJA because, if they are in only one local authority area, they are not considered to be an important voice. If there was a strong local community justice partnership, they could be in a better position. I guess that time will tell. However, the small ones have always been fragile and they will continue to be so.

Pete White: That is a fair point. Once again, we need to get the focus down to communities and smaller places and to recognise the value of what goes on there. We should not take a broad-brush approach and look only at statutory services and the bigger third sector organisations. We have to get down to the individual scale, rather than seeing things as blocks or groups. Without that focus, we will overlook the people to whom all the services are intended to deliver better lives.

The Convener: If you will forgive me, I think that we are coming round to that point again. We have heard that message about the smaller charities. Do people want to make any different comments? Ms Dore?

Emma Dore: Yes, if that is okay.

The Convener: Of course it is.

Emma Dore: I want to highlight the really great work that has gone on under the CJAs on joint working with local authorities and working across local authority borders, where that makes sense geographically or helps the smaller organisations to maximise their impact.

With 32 separate authorities, I would not want to lose the opportunity to maximise impact in that way.

The Convener: I think that we have exhausted the questions for the third sector.

In conclusion, I ask each of you round the table to say one thing that you want to put into the bill or take out of it—one amendment that you would say would improve the bill. Who would like to start? Which direction will I travel in first? Are you ready, Miss Merrin, with your one thing?

Nicola Merrin: It is quite an easy one. I suggest engagement with victims organisations and with individual victims.

Christine Scullion: I understood that we could have one answer in two parts.

The Convener: Ah, you were listening last week. I will not let it grow arms and legs and become one answer in three parts.

Christine Scullion: No—two is fine.

The Convener: You can have two parts. What is the first part?

Christine Scullion: The first part is about including early intervention and prevention. The second part is about measuring movement towards positive outcomes—

The Convener: —rather than measuring people not reoffending.

Emma Dore: We would like the bill to name the areas that the national strategy and national outcomes framework should address. Without being prescriptive, we would like housing, mental health, substance misuse and families and victims to be named as areas that the strategy must always address.

Louise Johnson: Like Nicola Merrin, we want the bill to include victims and victims organisations and more of an obligation to engage, not simply consult.

Tom Halpin: We want greater clarity over the purpose of and methods for accessing the innovation fund. What we do not need are gatekeepers who stop the creativity of the third sector coming forward.

Pete White: I would like the term "offenders" to be removed from the bill. At the moment, offenders are defined as

"persons who have at any time been convicted of an offence."

We need to take that out and put in a better word.

The Convener: Do you have such a word to hand?

Pete White: I suggest "people with convictions".

Professor Loucks: We agree with some of the other panel members who want a broader definition of community justice, so that it is genuinely about communities, including families, victims and the wider justice system.

Laura Mulcahy: We want a clearer line on how the third sector will be engaged in the new model and what its role will be.

Alan Staff: We want an awareness of the skills that the third sector can bring to be integrated into community justice Scotland so that it does not have just a civil service-type approach. Knowledge and understanding of what the sector can bring should be embedded in the organisation.

The Convener: Thank you very much.

I thank all the witnesses for their evidence. As usual, the session has been very interesting.

The committee's next evidence session on the bill will be on 6 October, when we will take evidence from the Minister for Community Safety and Legal Affairs.

I suspend the meeting for five minutes to allow the witnesses to leave and members to adjust their positions at the table.

11:08

Meeting suspended.

11:14

On resuming—

Criminal Justice (Scotland) Bill: Stage 2

The Convener: We move on to day 2 of stage 2 of the bill. I welcome Michael Matheson, the Cabinet Secretary for Justice. I also welcome the officials who are here to support the minister, although they are not permitted to participate in the proceedings.

Members should have copies of the bill, the marshalled list and groupings of amendments for consideration. We will not go beyond part 6 and schedule 3 today.

Before section 63

The Convener: Amendment 69, in the name of the cabinet secretary, is in a group on its own.

The Cabinet Secretary for Justice (Michael Matheson): Amendment 69 will insert a new section into the bill that will place an obligation on the Lord Advocate to publish what is sometimes known as the prosecutorial test.

When Lord Bonomy published his review, I undertook to consider whether any of the recommendations could be implemented during the current parliamentary session. After consulting the Lord Advocate, I am of the view that this is one such recommendation.

Amendment 69 would require the Lord Advocate to publish the prosecutorial test—the matters that prosecutors must take into account when deciding whether to commence and thereafter continue with criminal proceedings. The Crown Office already voluntarily publishes its "Prosecution Code", which includes its current prosecutorial test. The amendment would place the voluntary arrangement on a statutory basis. Lord Bonomy was of the view that that would assist in ensuring transparency and consistency of decision making in criminal proceedings, and I agree.

The independence of the Lord Advocate is also, however, of vital importance, and I therefore want to stress that the wording of the test will remain entirely a matter for him.

I move amendment 69.

Elaine Murray: I have a question; I am not opposed to the amendment in any way. When we discussed the publication of the prosecutorial test, it was in connection with the abolition of the requirement for corroboration and whether some reassurance would be necessary under those circumstances. Given that that part of the bill has been dropped, why is publication still required?

Alison McInnes: I also have a question. I support the amendment as far as it goes. The public has a real appetite for more transparency in how the Crown Office and Procurator Fiscal Service reaches its decisions, but the cabinet secretary has chosen not to adopt Lord Bonomy's recommendation in full. The draft legislation set out in the post-corroboration safeguards review also included provisions on regularly reviewing the test and consulting publicly on that. Will the minister say why he has not picked up on those two points?

Roderick Campbell: I support amendment 69. The key thing is to emphasise the distinction between putting the prosecutorial test in the statute and there being a requirement to publish it. I favour the latter. If the test was in the statute, it would be prescriptive. We are moving in the right direction.

Margaret Mitchell: I seek some clarification. As well as looking at initiating and continuing criminal proceedings, will there be an explanation of why a prosecution would not proceed?

Michael Matheson: On why we are placing the publication of the test in statute, the arrangement is voluntary at the moment but Lord Bonomy recommended that it should be put on a statutory footing. The reason behind lodging the amendment is that it will put a legal obligation on the Lord Advocate to publish the prosecutorial test.

We have not chosen to implement the recommendation about consultation for the test because we believe that the test itself should be left to the Lord Advocate to determine. There are important constitutional issues in the role and independence of the Lord Advocate when determining these matters. To provide for a consultation process would be to fetter or to seek to influence the Lord Advocate's role to a degree. That is why we have not pursued the issue of consultation.

On Roderick Campbell's point, the amendment will help to improve transparency and accountability in the process that is being put in place for decisions made by the Crown Office to be more open.

Margaret Mitchell will be aware that, earlier this year, new provisions in the Victims and Witnesses (Scotland) Act 2014 came into force that place a requirement on the Crown Office and Procurator Fiscal Service that, when a victim of a crime wishes to understand a decision not to pursue a case for a particular reason, they have the right to be provided with that information by the Crown and the prosecution.

Amendment 69 agreed to.

Section 83—General aggravation of offence

The Convener: Amendment 70, in the name of Michael Matheson, is grouped with amendments 71 and 72.

Michael Matheson: Amendments 70 to 72 seek to remove sections 83 to 85 in their entirety from the Criminal Justice (Scotland) Bill. Members will recall that part 6 of the bill as introduced included provisions in relation to people trafficking. Given that those provisions have now been included in the Human Trafficking and Exploitation (Scotland) Bill, I am seeking to remove the people trafficking provisions from this bill, as they are obviously no longer needed.

I move amendment 70.

Amendment 70 agreed to.

Section 84—Aggravation involving public official

Amendment 71 moved—[Michael Matheson]—and agreed to.

Section 85—Expressions in sections 83 and 84

Amendment 72 moved—[Michael Matheson]—and agreed to.

Section 86—Use of live television link

The Convener: Amendment 73, in the name of Michael Matheson, is grouped with amendments 74 to 82 and 101.

Michael Matheson: Section 86 of the bill as introduced makes provision in respect of the use of television links for the accused in criminal court cases. An important feature of the provisions is that, even when a case is of a nature that can be dealt with in this way, the court is required to consider whether it is in the interests of justice to do so. That ensures that the rights of the accused are fully protected in each individual case.

The group of amendments is largely technical. It arises as a result of consideration of the way in which the provisions were originally drafted and of further discussion with stakeholders.

Amendment 73 takes account of concerns expressed by stakeholders about the practical implications of convening ad hoc hearings—as distinct from the substantive hearing of a case—for the purpose of allowing the court to determine whether the substantive hearing of a case is to be dealt with using a TV link. The amendment makes it clear that the court can take the decision about the use of TV links before or during the substantive hearing of a case without the need to convene a separate ad hoc hearing.

Amendment 74 is consequential to amendment 73 and it reaffirms that the accused person can be required to participate, by TV link, in the part of the process that determines whether the substantive hearing is to take place by TV link, whether that part of the process occurs before or during a substantive hearing.

Amendments 75 to 78 follow on from amendments 73 and 74, remove the term “ad hoc hearing” from the bill, and make it clear that the provisions of the bill in respect of TV links apply during a substantive hearing of a case “or other proceedings”, which would include the part at which a decision on the use of TV links is taken.

Amendment 79 amends a provision in the bill as introduced that provides that the leading of evidence “as to a charge” is prohibited when the accused is participating by TV link. The effect of the amendment will be to specify that the prohibition applies only when the charge is on any indictment or complaint.

As a result of the amendment, there would be no absolute prohibition against the leading of evidence in other kinds of hearing—for example, one dealing with a breach of a community payback order—at which the person concerned is appearing by TV link. However, as in every other case, the court would still have to be satisfied, on a case-by-case basis, whether it is contrary to the interests of justice for evidence to be led while the accused is appearing by TV link.

Amendments 80 to 82 and 101 deal with the possible consequences of situations in which the court decides not to proceed to deal with the case before it using a TV link. It is anticipated that applications to have the accused appear by TV link will mostly be dealt with immediately before the calling of the substantive case. However, the court could refuse the application, and it will retain a power to revoke an application that it has previously granted. That might happen if, for instance, a technical issue arises with the TV link, or when further information comes to light during the substantive hearing that, in the view of the court, makes it no longer appropriate to proceed with a TV link.

It can be seen that practical difficulties might arise when the court decides not to proceed with the appearance of the accused by TV link. The accused may well need to be brought to court, which might not be readily achievable on the same day, so the postponement of the hearing could be necessary. When the accused is appearing from custody, any difficulty has to be balanced against the accused’s right to be brought promptly before the court. Amendment 80 therefore makes a

general provision that, when a court has refused an application to deal with a case by TV link, it may postpone the substantive hearing to a later day, rather than necessarily the next day. The bill as introduced could have been read as providing that the court could postpone a hearing only until the next court day when an application was refused or revoked.

Amendment 81 will remove a now redundant provision from the bill.

Amendment 82 deals with the effect of postponement. When the accused is not in police custody and the postponement is until the next day, that day and any days on which the court is not sitting will not count towards any time limits in the case. However, the provision will not apply when the accused is in police custody and awaiting a court appearance.

The effect of that approach is that, when a postponement is necessary for an accused in custody, the accused still has a right to argue that the requirements—under section 18 of the bill and the European convention on human rights—to be brought promptly to court have not been complied with. For example, if an accused has to spend an extra night in custody solely because an unsuccessful attempt was made to present him for appearance by TV link and there was no back-up plan to bring him to court, it remains open to the accused to argue that it would in fact have been practicable to have brought him before the court in time. It would then be up to the court to decide whether the circumstances provide sufficient justification for the delay.

Amendment 101 amends section 18, which gives effect to the convention right to be brought promptly before a court on arrest for suspicion of having committed an offence. The section provides that an accused who is being held in custody must, wherever practicable, be "brought before"—to use the term in the bill—a court by the end of the court's first sitting day after the arrest. The effect of amendment 101 will be to ensure that someone who appears from custody by TV link is to be regarded as having been "brought before" the court only when the court has made a determination that the substantive hearing is to be dealt with in that way. Therefore, if the court decides that it would not be appropriate to deal with a custody case by TV link, the obligation to bring the accused promptly before the court remains in place, which will generally mean that the accused will be physically brought to court. Together with amendment 82, that ensures that the rights of the accused in custody to a prompt hearing are protected.

I move amendment 73.

Amendment 73 agreed to.

Amendments 74 to 82 moved—[Michael Matheson]—and agreed to.

Section 86, as amended, agreed to.

The Convener: I know that members are feeling the cold in here. Some vindictive person, instead of putting on the heating, has switched it to fridge conditions. I apologise for that, cabinet secretary, but at least you will stay awake before you freeze.

After section 86

The Convener: Amendment 83, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Amendment 83 inserts a new section into the bill, which in turn inserts new subsections into section 305 of the Criminal Procedure (Scotland) Act 1995. That section allows the High Court to regulate practice and procedure in relation to criminal procedure through acts of adjournal.

The amendment will ensure that the High Court has power to make provision for the greater use of electronic documentation and electronic signature in the criminal justice system. It will mean that the High Court—which, through the Criminal Courts Rules Council, is well placed to work with the criminal justice organisations that operate the system day to day—can regulate the pace of change as it thinks appropriate and necessary for the more efficient functioning of the criminal justice system, while making the best use of developing technology.

The associated repeals are merely to remove material from the Criminal Procedure (Scotland) Act 1995 that deals with certain things that are now to be done by the High Court by act of adjournal. That is to make sure that the use of the new power is not fettered by express provision that is already found in that act.

I move amendment 83.

Amendment 83 agreed to.

The Convener: I suspend the meeting briefly for a change of officials.

11:31

Meeting suspended.

11:31

On resuming—

The Convener: Amendment 84, in the name of the cabinet secretary, is in a group on its own.

Michael Matheson: Part 3 of the Police Act 1997 permits the Police Investigations and Review Commissioner to authorise property interference

for the purpose of prevention or detection of serious crime. That includes entering or interfering with property or wireless telegraphy. Authorisations may be granted on the application of a staff officer of the commissioner, and the commissioner may also designate a staff officer to grant property interference authorisations in her absence in cases of urgency.

The 1997 act does not, however, contain a definition of a staff officer, and there is therefore a degree of uncertainty as to who may apply for those authorisations or grant them in the commissioner's absence in urgent cases. The Scottish Government's intention is that any member of the commissioner's investigations staff should be capable of applying for property interference or surveillance authorisations and of being designated, if the commissioner considers it appropriate, to grant those authorisations, if they are urgent, in her absence.

The necessary provision was made in respect of surveillance authorisations under the Regulation of Investigatory Powers (Scotland) Act 2000, but unfortunately no such provision was made in respect of property interference authorisations.

Accordingly, amendment 84 is a clarifying amendment that inserts a definition of "staff officer" in part 3 of the Police Act 1997 for the purposes of property interference authorisations. That will ensure that members of staff who are directly employed by the commissioner and those who are seconded from police forces may apply for property interference authorisations or be designated by the commissioner to grant those authorisations in urgent cases where the commissioner is absent.

I move amendment 84.

John Finnie: As a tidying-up exercise, the change is welcome, as I believe the public want reassurance that the Police Investigations and Review Commissioner has the full range of powers and can act impartially and thoroughly.

Amendment 84 agreed to.

The Convener: I suspend the meeting again briefly for another change of officials.

11:34

Meeting suspended.

11:34

On resuming—

The Convener: Amendment 105, in the name of Margaret Mitchell, is in a group on its own.

Margaret Mitchell: I originally lodged amendments to the Victims and Witnesses (Scotland) Bill that would have had an effect similar to that of amendment 105. It is encouraging that the policy intention of those previous amendments gained support from other committee members during stage 2 of that bill.

Amendment 105 would require that independent legal advice be provided to victims of sexual offences at the point of a request for medical information and/or other personal details. Such legal advice would provide victims with information on their rights and would explicitly make them aware that they are able to refuse such requests. I know from the expressions of support for the amendment that have come from victims that the proposal is welcomed.

In some instances, legal aid would be required to be extended to cover such legal representation, although it could also be provided on a pro bono basis. Access to independent legal advice is a routine entitlement across European jurisdictions including France, Belgium, Austria, Finland, Greece, Spain and Sweden. In Ireland, which has an adversarial legal system, sexual offence complainers have a right to independent legal representation if the defence makes an application to the judge to introduce sexual-history evidence.

It is worth noting that, earlier this year, the reference group of the Bonomy review was supportive of provision through legal aid of independent legal representation for victims of crime in relation to issues affecting their rights, including their privacy. It is stipulated that ILR would relate to legal aid funding for legal advice and representation for victims who are not usually legally represented in criminal proceedings, and about whom documentary evidence may be sought by the defence either pre-trial or during the trial process. Representation would be confined to procedural issues and would not involve representation at the trial.

The proposed changes are, therefore, a practical way in which to help rape victims to avoid unnecessary distress during the court process. Currently, they have little opportunity to challenge the legality of use of private personal information in court. Furthermore, I understand that ministers may recently have made a determination that legal aid should not be made available to sexual offence complainers in circumstances in which their private records are being sought. If that is the case, that seems to me to be a great injustice. I would be grateful if the cabinet secretary could address that point.

It is important to stress that the experience of victim support groups is that the Crown is not robust enough in challenging applications under sections 274 and 275 of the 1995 act—a reason that was advanced previously for not supporting such an amendment. However, the real and most

vexing issue is that that type of evidence, including medical records and sensitive information, is routinely being used to discredit witnesses and to play to the prejudices and myths that are known to prevail around sexual offences. It is hoped that my amendment 105 would help, in no small measure, to address that issue and consequently to improve the chances of a successful conviction. The amendment is supported by the Law Society of Scotland.

I move amendment 105.

Roderick Campbell: I oppose amendment 105 for a number of reasons. First, we did not deal with the matter in any detail at stage 1, although it is an important issue. I think that we would need to have dealt with it in some detail if we were to agree to the amendment today. Secondly, the amendment would have wide ramifications beyond sexual history. In some jurisdictions—Denmark, for example—the provision was initially restricted to sexual offences but is now applied much more widely, so there is a floodgates issue.

I have some sympathy with the general principle of amendment 105. I recognise all too keenly that many complainers are mystified by the judicial system and do not quite understand that the Crown represents the public interest and not the complainer's personal interest. I also recognise that there are occasions on which complainers may need legal advice. However, we have moved on a bit since Margaret Mitchell lodged her amendments to the Victims and Witnesses (Scotland) Bill, and funding is now being made available—I think that the figure is £215,000—from the Scottish Legal Aid Board to the Scottish women's rights centre, for provision of legal advice on gender-based violence.

There are wider ramifications. Margaret Mitchell referred to the Bonomy report. It is fair to say that the report said that, as a general principle, it favoured independent legal representation, but it also favoured more work being done on the matter. Evidence on the effectiveness of sections 274 and 275 of the 1995 act has not been looked at since about 2007. If we are concerned about the principle, it seems to me that the effectiveness of those sections needs to be reviewed before we can go down the path of supporting Margaret Mitchell's amendment 105.

Elaine Murray: We resisted a similar amendment to the Victims and Witnesses (Scotland) Bill and I am not yet convinced by the proposal, although Margaret Mitchell has clarified some aspects. There had been a feeling that there might be three different lots of legal representation in court, but Margaret Mitchell has clarified the intention.

Despite also having heard from the Law Society of Scotland on the issue, I am still not convinced that legal advice is what is most important for victims of sexual offences. For example, I heard last week about additional resources being made available to Rape Crisis Scotland and Scottish Women's Aid to help them to support witnesses throughout the legal process. My feeling is that, when it comes to expenditure from the public purse, more holistic support might be more helpful to victims than additional legal advice at a particular point in the process. I am not yet convinced that the proposal in amendment 105 is the best way of supporting victims.

Alison McInnes: I commend Margaret Mitchell for the work that she has done on amendment 105 and for how she has developed the proposal. There is currently a significant imbalance in the system in relation to rape victims. The release of medical evidence, in particular, can have huge ramifications for the future health of the witness. It should not fall only on the voluntary sector to deal with the problem. There is a real issue that needs to be addressed, and I hope that the Government can do so by either supporting Margaret Mitchell's amendment 105 or by bringing forward its own proposals. I will support Margaret Mitchell's amendment.

Michael Matheson: The committee will recall that similar amendments were lodged during its consideration of the Victims and Witnesses (Scotland) Bill. Our concerns—then and now—about such amendments have never been about lack of sympathy with the intention behind them; I have every sympathy with the attempt to support alleged victims and to protect them from unnecessary distress.

The reasons for being unable to support the proposed reform remain the same as they were two years ago. Amendment 105 would represent a major innovation in our criminal law by introducing the complainer into the process as a third party separate from the Crown. In addition, giving complainers such rights in cases of one category of offence but not in others would be inconsistent. The committee has rightly, when it has scrutinised other proposed reforms, been very careful to consider practical implications and potential unintended consequences. Although I am sure that many members are as sympathetic as I am to the intentions behind the reform, I also consider that such a substantial change to Scots law and practice requires a great deal of further thought and consideration.

I have a suggested way forward on this important issue for the committee to consider, but before I elaborate on that, it may be helpful to explain the background to the current legal position.

It remains the case—as it was two years ago—that the protection that section 274 of the Criminal Procedure (Scotland) Act 1995 gives to a complainer in a sexual offence case is comprehensive. The provisions in section 275 of the 1995 act, which allow exemptions to that protection, require the court to consider the appropriate protection of the complainer's dignity and privacy. Furthermore, the court must have regard to rights under the European convention on human rights that are relevant to the application. They include the complainer's right under article 8 of ECHR; a court will balance appropriately the rights of the accused with the complainer's rights to respect for private life. To my knowledge, no evidence has been provided that that is not done properly and that, instead, complainers should submit to further procedure, questioning and delays.

11:45

What has changed in the past two years—I place great emphasis on this—is the level of support that the Government has given to victims of sexual offences and complainers in such trials. The committee will recall that, as a result of debate during the passage of the Victims and Witnesses (Scotland) Bill and subsequently, grant funding was made available through the Scottish Legal Aid Board to support the establishment of the Scottish women's rights centre to provide legal assistance to women who are affected by gender-based violence. That centre was established earlier this year. It provides a legal helpline that is staffed by volunteers from the University of Strathclyde law centre, and which gives information and signposts people to support services and other sources of advice. It has a full-time solicitor who supervises and undertakes the casework and representation of clients. It is also developing advice surgeries, which will eventually be held around Scotland and staffed by the project solicitor or local solicitors.

In a further clear demonstration of the Government's commitment to making improvements for victims and to providing direct and sensitive support for access to justice for them, on 10 September I announced record funding for Rape Crisis Scotland. That was part of the unprecedented additional £20 million support package that was announced in March to tackle domestic abuse and sexual violence and to provide better support for victims. Some £1.85 million of additional resource is now being provided over three years to support victims of sex crimes across Scotland. The funding will open the first ever rape crisis services in Orkney and Shetland, in partnership with Scottish Women's Aid.

The Government will also provide 80 per cent extra funding to each rape crisis centre until 2018. That will ensure consistency of provision across the country for victims. It will support those who have made the decision to report the crime to police as well as those who may be considering reporting. The additional funding will provide vital support for victims at the time when they most need it, and recognises that that support might be needed well beyond their experience of court.

That unprecedented package was announced after Margaret Mitchell had lodged amendment 105. The difficulties with independent legal representation have been debated before. The new package and the provision that is already in place for access to legal advice and other support give in a concrete fashion the kind of support that amendment 105 seeks to provide.

I have mentioned that there is a lack of evidence for such a major reform. However, I want to ensure that existing arrangements are operating as effectively as possible. I therefore propose a review of whether there is any cause for concern about the way that the courts deal with recovery and disclosure of confidential information relating to complainers. It would be timely to undertake that work alongside consideration of the effects in practice of the package of reforms that I mentioned earlier.

During a previous stage 2 meeting I referred to our plans to develop a holistic and balanced package of future reforms. That would cover consideration of Lord Bonomy's recommendations, the requirement for corroboration reform and any other relevant issues. I consider the proposed review of disclosure of confidential information to be one of the relevant issues that should be included.

In the interests of clarity, it is important to recognise that Lord Bonomy's review group did not make a recommendation on independent legal representation in this particular area.

I also reassure members that we intend to work closely with stakeholders when we undertake the work, in order to achieve consensus on future reforms. As I have mentioned, that work will begin later this year. I will, of course, keep this committee informed about its progress.

In the new circumstances that I have described, and with the possibility of gathering real evidence, I hope that I have been able to provide reassurance that amendment 105 is neither necessary nor appropriate at this time. I therefore ask Margaret Mitchell not to press it.

Margaret Mitchell: I will address a few of the points that have been made. The cabinet secretary, along with other members, referred to the £1.85 million for support for sexual offence

victims which, he pointed out, will be used partly to fund dedicated advocacy workers. However, Rape Crisis Scotland has confirmed that advocacy workers will not be lawyers and will not provide legal assistance. That is a totally separate issue, which amendment 105 would address.

On whether Lord Bonomy has addressed the specific issue that amendment 105 concerns, he has spoken about legal representation in relation to issues that affect a complainer's privacy, which covers the point that I have raised.

In response to the concern about setting a rule or giving complainants in this area rights that would not be available to others, I note that that is surely how the law develops. We look at case law, and at where it is falling down and not working as fairly as it should do for victims of rape and sexual assault, who still routinely experience information being used to discredit them and to play to the prejudices of a jury. It is clear—as victim support groups will tell the committee clearly—that the Crown is not robust enough in challenging the so-called protections that are currently in place under sections 274 and 275 of the 1995 act.

Rather than defer the issue again, we could do something now to help those victims. If the Government is sincere in asserting that it wants to improve the conviction rates for rape and sexual assault, there can be no excuse for its not supporting amendment 105 today.

I will press amendment 105.

The Convener: The question is, that amendment 105 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Finnie, John (Highlands and Islands) (Ind)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
McDougall, Margaret (Central Scotland) (Lab)
Murray, Elaine (Dumfriesshire) (Lab)
Russell, Michael (Argyll and Bute) (SNP)

The Convener: The result of the division is: For 2, Against 7, Abstentions 0.

Amendment 105 disagreed to.

Section 87—Establishment and functions

The Convener: Amendment 85, in the name of the cabinet secretary, is grouped with amendments 86 to 89, 91 to 100 and 90.

Michael Matheson: The amendments in this group relate to the establishment of a police negotiating board for Scotland. The body will negotiate pay and conditions of service for police officers in the Police Service of Scotland.

Unlike the Westminster Government, which abolished the Police Negotiating Board covering the United Kingdom in favour of a pay review body, I believe that police officers in Scotland should have the opportunity to negotiate their terms and conditions directly with those who manage and fund the service. The aim in establishing the PNBS is to create a modern negotiating body in which consensus on matters under its remit is the norm. Arbitration should be used only where all other options are exhausted and when both sides agree to it.

Following consultation with stakeholders, I propose Government amendments to the bill that relate to the functions and procedures of the PNBS in order to ensure that it can operate effectively. Amendments 87, 89, 96, 97 and 99 represent the most significant changes. They will deliver a commitment that was made by my predecessor to make arbitration on police pay legally binding on ministers. Together, those amendments provide a framework to ensure that, when the PNBS makes representations to ministers based on an arbitration award, ministers will be bound to take all reasonable steps to give effect to those representations.

However, I propose that binding arbitration should apply to pay and all pay-related matters under the remit of the PNBS. The detail of that will be set out in regulations subject to affirmative procedure. Essentially, there will be a maximum of two referrals to binding arbitration within a reporting year, one of which must automatically include the main annual pay award. My officials have discussed and agreed that approach with the official and staff sides of the PNBS.

Amendments 91 to 93, 95 and 100 remove the post of deputy chair, but amendment 94 allows for a temporary chair to be appointed if that is ever necessary.

Amendment 88 allows the constitution to define the PNBS's reporting year in a way that suits its purposes, and amendment 98 ensures that regulations are required to bring the constitution into effect. I am sure that the committee will welcome the parliamentary scrutiny that amendment 98 provides for.

Amendment 85 will allow greater flexibility when ministers have required the PNBS to make representations, and amendment 86 removes police clothing and accoutrements from the remit of the PNBS in line with stakeholders' wishes.

Finally, amendment 90 sets out the consequential and transitional provisions for the PNBS. The PNBS will come under the provisions of the Freedom of Information (Scotland) Act 2002, and its chairperson will be regulated under the Public Appointments and Public Bodies etc (Scotland) Act 2003. To allow the seamless transition from a UK body to a Scotland-only body, we are making provision for the recently appointed independent chair of the PNB to be chair of the PNBS and to ensure that all previous agreements made by the PNB UK are regarded as agreements within or involving the PNBS.

I move amendment 85.

The Convener: John Finnie, Margaret Mitchell and Roderick Campbell wish to comment on the amendment.

John Finnie: I will be brief, convener. Members will not be surprised to hear that I strongly welcome this development.

Roderick Campbell: I, too, strongly welcome it, and I think that it strikes an appropriate balance. I should, however, emphasise that arbitration should be the last resort, and that it is hoped that negotiation and conciliation will prevent any need for it from arising.

Margaret Mitchell: I seek some information from the cabinet secretary, who referred to the abolition of the Police Negotiating Board in England and Wales. That was a result of the Winsor report, and it happened because it was found that, when police pay moved from being index linked to another system, there was a failure to reach agreement. Is police pay at the moment index linked or is there another method of remuneration in place?

Secondly—picking up on what Rod Campbell said—I believe that arbitration was supposed to be the last resort, but the failure to reach agreement led to its becoming the norm. The Police Negotiating Board was therefore viewed as time consuming, costly and not in the best interests of either the police or the public. Can the cabinet secretary reassure me that he has looked at the issue and that he is quite confident that the same thing will not happen here in Scotland?

The Convener: I think that the issue went further than just the negotiating board, but do you wish to respond, cabinet secretary?

Michael Matheson: On the latter question, it would be fair to say that, from our discussions with the police, it is clear that they are very keen on having this type of provision facilitated in Scotland, and I detect no concern from them about the system being unduly bureaucratic or not being an effective way of dealing with these issues. I cannot speak for police officers in England and Wales, but I recall that significant concerns were expressed when the UK Government indicated that it wanted to move to a pay review system.

As for your first question, police pay is not index linked but negotiated with officials.

Amendment 85 agreed to.

Amendments 86 to 89 moved—[Michael Matheson]—and agreed to.

Section 87, as amended, agreed to.

Schedule 3—Police Negotiating Board for Scotland

Amendments 91 to 100 moved—[Michael Matheson]—and agreed to.

Schedule 3, as amended, agreed to.

After section 87

Amendment 90 moved—[Michael Matheson]—and agreed to.

The Convener: Members will be delighted to hear that that ends consideration of amendments for today. I thank the cabinet secretary and his officials for their attendance and I suspend the meeting for a couple of minutes to allow them to clear the room.

11:59

Meeting suspended.

12:00

On resuming—

Petitions

Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501)

Fatalities (Investigations) (PE1567)

Solicitors (Complaints) (PE1479)

Emergency and Non-emergency Services Call Centres (PE1510)

Inverness Fire Service Control Room (PE1511)

The Convener: Agenda item 4 is public petitions. Do members agree to continue PE1501, PE1567, PE1479, PE1510 and PE1511 and to consider them at next week's meeting, to allow petitioners to attend, if they wish to do so?

Members *indicated agreement.*

Fatal Accident Inquiries (PE1280)

The Convener: The committee will recall that we agreed to consider PE1280, on fatal accident inquiries, as part of our stage 1 scrutiny of the Inquiries into Fatal Accidents and Sudden Deaths etc (Scotland) Bill. We took evidence from the petitioner as part of that scrutiny and, as the clerk's paper notes, she appeared to be broadly content with the relevant provision in the bill. However, the petitioner wishes the petition to be kept open while the bill passes through Parliament, to see how it develops. Do members agree to keep the petition open?

Members *indicated agreement.*

Justice for Megrahi (PE1370)

The Convener: We move on to petition PE1370, regarding the conviction of Megrahi. I declare an interest, in that I am a member of the Justice for Megrahi group.

Members will note the recent High Court ruling that relatives of some of the victims of the bombing are not able to pursue an appeal on Megrahi's behalf. Members of the Justice for Megrahi campaign are in the public gallery. We have received a late paper, but it will not be referred to, as it came in too late for the committee to consider. We will be able to consider it at another date.

What are members' views on the petition?

Roderick Campbell: We should continue the petition for the time being. Obviously, operation Sandwood has some way to go. In relation to whether the family of Megrahi would ever want to appeal against the conviction, given the state of the world and of Libya at the moment, we should allow a substantial period before we close the petition.

I am a wee bit concerned by some of the comments that have been made about the Lord Advocate. On the issue of the independence of the Crown counsel who is appointed, perhaps we should seek clarity from the Lord Advocate on just how that will play out.

John Finnie: I concur with Rod Campbell. There are a number of positives, not least of which is operation Sandwood and the grip that Police Scotland has taken of the issue. Credit is due to Deputy Chief Constable Iain Livingstone and his team for gaining trust through the diligent way in which they have gone about their business.

A number of aspects of the case make it unique, so we should maintain an on-going interest in it. I quote from a letter of 26 May from the Justice for Megrahi committee, just to put it on the record. It states:

"We strongly believe that in order to acquire a fair, unprejudiced and truly independent reading of the final police report a special prosecutor must be appointed by a process independent of the Lord Advocate and the Crown Office, and must be seen to exercise his/her decision-making and prosecutorial functions without reference to the Lord Advocate and the Crown Office."

The dilemma that we have is that, when we use the term "Lord Advocate", we associate that with an individual. We need to depersonalise the issue and treat it as a process, rather than being about personalities. There is a way to go yet with that process.

The letter goes on to say:

"Since the Lord Advocate's position and independence as head of the prosecution system in Scotland is enshrined in the Scotland Act, such a mechanism must be put in place by the Lord Advocate himself, failing which, the Scottish Government should seek from the UK Government a section 30 Order in Council to enable the Scottish Government to do so."

There are challenges but, given that the inquiry is on-going and that it might be some time before it reports, we have time on our side. I certainly concur with Justice for Megrahi that the response that we have had from the Rt Hon Frank Mulholland QC does not meet the terms of what people would understand to be independence. We need more thought to be put into that.

The Convener: A separate leg of the issue is the Scottish Criminal Cases Review Commission's position. As Roderick Campbell rightly says, it appears that the only method by which an appeal

against Megrahi's conviction can be instigated is through the deceased's relatives or the executors of the estate. The idea that, in the current situation, someone could quite happily get in touch with the executors of the estate, get them to sign documents and then get those out of Libya is just miles from fact. There are several on-going issues.

It is important that we refer to the Lord Advocate as a position rather than an individual. The quandary that we are in is whether the Lord Advocate's office can make an inquiry into the Lord Advocate's office. There does not appear to be a mechanism for that, but perhaps there has to be.

Margaret Mitchell: Convener, you referred to the Lord Advocate having submitted additional information—

The Convener: There is a late paper, which I am not tabling because we just got it today. As with other late papers, we cannot use it because nobody has had the opportunity to consider it. I am happy to bring it to your attention.

Margaret Mitchell: Does it relate to the petition, though?

The Convener: Yes, but I cannot go any further than that, because we are not in a position to discuss it. That is another reason to keep the petition open.

John Finnie: Convener, can you confirm that the letter will be put in the public domain?

The Convener: We have to confirm whether we can do that. Justice for Megrahi wrote to the Lord Advocate privately and confidentially to start with, and we have a sort of response to that. We have to confirm with the Lord Advocate that we can now release that information. That is only appropriate. I do not think that there will be difficulties, but he has not been physically available to allow us to do that.

John Finnie: If it alludes to a letter that was sent in confidence by Justice for Megrahi, would it be appropriate to contact that group to ask whether it is content with the information being made public?

The Convener: It is content; the issue is the Lord Advocate. It would not be appropriate for the committee to publish something without asking the Lord Advocate. I do not think that there will be a problem, but I would like to have that consent.

Is that approach agreed?

Members *indicated agreement.*

The Convener: Thank you—we will continue that petition. [*Interruption*.] I am being told something, so I suspend the meeting for a moment.

12:07

Meeting suspended.

12:07

On resuming—

The Convener: I think that the Lord Advocate is well aware of the proposal for an independent counsel to be appointed. Do members wish us to write about that? What was your point, Mr Campbell?

Roderick Campbell: In the Lord Advocate's letter to you, convener, of 8 May 2015, he simply said:

> "Arrangements were therefore put in place for independent Crown Counsel who has not been involved in the Lockerbie case to deal with this matter if and when the need arises."

It would be good to have greater clarity on that appointment process and who that would be.

John Finnie: The need will arise, because a report will come from Police Scotland to the Lord Advocate's office. It is a question of seniority that we need to bear in mind.

The Convener: When we raise with the Lord Advocate the issue about publishing the information that we have, shall we also point him to the *Official Report* of what we have said today and ask whether he wishes to comment? Would that be appropriate?

Roderick Campbell: Yes.

John Finnie: That would be helpful.

The Convener: That concludes our consideration of the petitions.

At our meeting on 29 September we will consider amendments to parts 1 and 7 of the Criminal Justice (Scotland) Bill at stage 2.

Meeting closed at 12:09.

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