

EQUAL OPPORTUNITIES COMMITTEE

Monday 26 June 2000
(*Afternoon*)

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EQUAL OPPORTUNITIES COMMITTEE

16th Meeting 2000, Session 1

CONVENER

Kate MacLean (Dundee West) (Lab)

DEPUTY CONVENER

*Shona Robison (North-East Scotland) (SNP)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

Johann Lamont (Glasgow Pollok) (Lab)

*Marilyn Livingstone (Kirkcaldy) (Lab)

*Mr Jamie McGrigor (Highlands and Islands) (Con)

Irene McGugan (North-East Scotland) (SNP)

*Mr Michael McMahon (Hamilton North and Bellshill) (Lab)

*Tricia Marwick (Mid Scotland and Fife) (SNP)

*Mr John Munro (Ross, Skye and Inverness West) (LD)

*Nora Radcliffe (Gordon) (LD)

Tommy Sheridan (Glasgow) (SSP)

*Elaine Smith (Coatbridge and Chryston) (Lab)

*attended

WITNESSES

Mr Jim Wallace (Deputy First Minister and Minister for Justice)

CLERK TEAM LEADER

Martin Verity

ASSISTANT CLERK

Alison Campbell

LOCATION

Committee Room 1

Scottish Parliament

Equal Opportunities Committee

Monday 26 June 2000

(Afternoon)

[THE DEPUTY CONVENER *opened the meeting at 13:35*]

The Deputy Convener (Shona Robison): Let us make a start. We have received a number of apologies, but I know that some members are on their way to the committee. There are two items that we would like to discuss in private—the questions that we will put to Jim Wallace and the forward work plan. Is that agreed?

Members indicated agreement.

The Deputy Convener: Jim Wallace will be with us from 2 o'clock to 3 o'clock. I propose that we should split that hour in two, spending the first half on the report on the Stephen Lawrence inquiry, and the second half on "Towards a Just Conclusion". We do not have much time to discuss both those reports. I intend to catch Jim Wallace before we start and ask that his initial comments be brief so that we have the maximum time possible for our questions. I will also ask whether he can stay on a little beyond 3 o'clock.

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Will you ask him at the beginning? Time is pretty tight.

The Deputy Convener: I will ask him before he starts. While the public are coming in, I hope to have five minutes to check whether he has to go at 3 o'clock or whether he can stay for an extra 10 or 15 minutes. At the moment, all we know is that the minister will be here for an hour, so we will really have to keep it tight. I want to split the hour in two because I know that members have questions on both reports.

13:37

Meeting continued in private.

14:00

Meeting resumed in public.

Executive Reports

The Deputy Convener: I welcome everybody back to today's meeting of the Equal Opportunities Committee. We have with us Jim Wallace, the Deputy First Minister and Minister for Justice, who will answer questions on two reports: "The Stephen Lawrence Inquiry: an Action Plan for Scotland" and the progress made so far, and "Towards a Just Conclusion". I propose to take the first half hour to deal with the Stephen Lawrence inquiry and the second to deal with "Towards a Just Conclusion". I understand that you have some brief opening remarks to make, minister.

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): Thank you, convener. The officials who are with me are Barbara Brown, Ian Snedden, Gerald Byrne and Peter Beaton.

I shall set down some of the issues that the steering group has been considering over the past five months. The Lawrence steering group has had four meetings since its first one in February this year. The most recent meeting, earlier this month, was held at the Scottish Police College at Tulliallan, where members of the group had the opportunity to meet those who provide anti-racism training to the police, as well as to talk to some probationer constables.

The group has discussed a wide range of issues raised by the Lawrence inquiry report, including investigation and prosecution of racist crime, anti-racism training and issues relating to stop-and-search. We have spent time discussing the way that the group goes about its task, to ensure that the independent members in particular feel that they have ownership of the work of the group and access to work that is already under way by the police and others in response to the Lawrence inquiry. That is essential to ensure that ethnic minority communities in Scotland can have confidence in the work of the group.

We have made it clear that we want the best possible information and the fullest access to documents to inform our work. A large number of background papers have been circulated to members and the group has had access to drafts of documents that are being prepared by the police and others; for example, the group commented on the Association of Chief Police Officers in Scotland's guidance manual for racial diversity, which will form a major part of the ACPOS response to the Lawrence inquiry. The group expects to have access to guidance that is being prepared on anti-racism training,

investigation of racist incidents and other issues.

After some discussion, the group agreed that it would be helpful to have a deputy chair. Dr Raj Jandoo has been chosen by the steering group to ensure that the group is independent and perceived to be so. Dr Jandoo works with the secretariat on the agenda for meetings and the priorities for the group. He chairs the group in my absence and also chairs a sub-group that has been set up to revise the Scottish Executive's action plan in light of the responses that were received when we put that plan out to consultation. He and members of the sub-group plan to meet some of those who responded to the consultation. The sub-group will meet shortly to discuss its work plan.

Another issue that the group will discuss is complaints against the police. I recall that when I last appeared before the committee on the subject, a number of members took an interest in that matter. As many of you will know, HM Inspectorate of Constabulary has published a report on the subject, entitled "A Fair Cop?" The Executive has announced its intention to publish a consultation paper later this year.

The group has seen the consultation paper that was published recently by the Home Office on complaints in England and Wales and is aware of reports by Liberty and by KPMG plc for the Home Office.

I believe that the steering group has made a good start and has the potential to deliver a lot. It is well placed to begin to put into practice some of the strategic changes flowing from the action plan. I am aware that a considerable burden has been placed on members of the steering group. I wish to put on record my gratitude to those members, so many of whom give so generously of their time and their thoughts.

The Deputy Convener: You do not have anyone with you from the Crown Office.

Mr Wallace: No.

The Deputy Convener: That is a little disappointing, because some of the questions that members will ask relate to the Crown Office. I hope that you will be able to answer them.

Mr Wallace: I will answer them as far as I can. I am sure that one of the law officers or a senior official of the Crown Office will be only too pleased to attend a future meeting of the committee.

The Deputy Convener: I will kick off by referring to the evidence that you gave to the committee in September. You said that the steering group would have responsibility for setting time scales and timetables for the proposals. What time scales have been set for implementation of the proposals? You also said:

"We want to ensure that we are as open and accountable as possible in developing racial equality performance indicators for the police."—[*Official Report, Equal Opportunities Committee*, 28 September 1999; c 58.]

Have performance indicators been introduced yet for the police and the rest of the criminal justice system? My understanding is that they have not. Will the steering group produce a public report, with a timetable and targets by which it can be judged by the public?

Mr Wallace: No specific timetable has been attached to the Macpherson committee's recommendations as they were translated into the action plan. Perhaps today's meeting gives me the opportunity to explain that the general approach has been to look strategically at some of the issues. For example, we have considered the ACPOS material on racial diversity and the guidance that was produced on that, and at our last meeting we examined the issues relating to family liaison. We have taken that approach rather than going through the recommendations and putting a tick or a cross or a time against each one. I think that that will flow more naturally when we have had the opportunity to consider some of the issues generally. Members should not get the impression that our consideration has been vague, as there has been much detailed, focused discussion.

I will say more about the sub-group. The view emerged at our second or third meeting that it would be helpful to have a sub-group. We were conscious of the fact that the Executive had published an action plan. We invited consultation and a good number of people took the time to provide some weighty responses; we took the view that we owed it to those who had responded to engage them more in the process. That is why the sub-group, under Dr Jandoo's chairmanship, will have a work plan to meet many of the groups and individuals who have submitted evidence.

The action plan that we published last July is not set in stone, and it will certainly be open to the sub-group to suggest changes to the working group. It will be much easier then to put times against the specific recommendations. I assure members that the fact that that has not happened yet does not mean that it has been lost sight of. A lot of good foundation work has been done and people who have relevant things to say on the matter have been engaged; that will make it easier when we move to the specific recommendations. It is important that the response to the consultation is not the sole property or responsibility of the Executive. We want to ensure that the whole group can reflect on it and respond to it.

The steering group has not yet discussed the idea of a public document, but that might be helpful, particularly if there were to be significant

changes to proposals in the action plan. I will willingly take that view back to the steering group, if members of the committee think that that would be useful.

On the development of performance indicators, HM Inspectorate of Constabulary has developed a protocol for thematic inspection on race and the police that contains a number of performance indicators. The inspection will consider those indicators and they can be developed to provide the kind of performance indicators that the Macpherson report recommended. The inspection will involve extensive consultation with an advisory group, which includes a member who emerged from the steering group, as well as with the ethnic communities. The development of performance indicators has been an important part of the thematic inspection that will take place on race and the police. The preparatory work is well under way and the thematic inspection will take place this autumn.

The Deputy Convener: The last time you came before the committee was nine months ago. Since then, not much seems to have been done to firm up the timetables for the implementation of the action plan. In some respects, the action plan is being revisited; that would not be a bad thing if the initial action plan was flawed because it had not taken on board the numerous responses to the consultation process—I think there were about 40.

The committee feels that, although a lot of time has elapsed since we last spoke, very few concrete proposals appear to have been brought forward, particularly compared with the progress that has been made in England and Wales.

Mr Wallace: There was frustration about the fact that, for a number of reasons, we did not get the working group up and running early enough. However, since we first met in February, we have had four meetings. That shows a degree of commitment on the part of the members to driving the process forward.

As you said, we received a number of responses—somewhere between 32 and 40—some of which were detailed; we want to ensure that we do them justice. We would have been in line for criticism if the Executive had treated the responses lightly, but the fact that the working group is meeting the people who submitted responses to elicit more detail shows that that is not happening. It is important to do that, not only to improve the action plan—we have never claimed a monopoly of wisdom in relation to the action plan—but also to ensure that what we come up with commands the confidence of Scotland's ethnic minority communities. It is important that people feel that their voice has been heard in the process. We are more likely to achieve that by proceeding as we are doing than by putting our

heads down and charging ahead.

I want to make clear that that does not mean that nothing has been happening. For example, the ACPOS guidance manual on racial diversity will be an important part of the police response, and work on that has been going on since the publication of the Macpherson report, let alone the action plan.

14:15

Mr Michael McMahon (Hamilton North and Bellshill) (Lab): I want to pick up on the previous point about ethnic minority communities' confidence in the action plan. The matter comes down to one's interpretation of what is actually happening. Strathclyde police recently issued figures that it claimed were an indication that it had been tackling racist incidents in a particularly constructive and supportive way. However, the ethnic minority communities' response was at variance with the police's interpretation of those figures. In the post-Macpherson period, it was not encouraging for those from black and ethnic minority agencies to find that the police interpretation of statistics was complacent. What is your response to those concerns, and how could the steering group tackle that problem?

Mr Wallace: Your question raises a number of points. I would be concerned if such a gap and gulf in confidence and trust between the ethnic communities and the police continued over a period of time.

One of our major objectives is to bridge that gap, and that has been an interesting part of the process within the working group. The group contains representatives from the three police staff organisations—ACPOS, the Association of Scottish Police Superintendents and the Scottish Police Federation—and it is interesting how, over time, people become freer and franker in their exchanges without anyone taking offence or feeling insulted. Although such a relationship is helpful at that level, it underlines the work that has to be done.

We want people from ethnic groups to feel confident that it is worth their while to report racial incidents. That might well mean a rise in the number of reported incidents, but might not necessarily mean that there are more incidents, and indeed might indicate greater confidence.

That said, the steering group will want to consider other ways of reporting racial incidents—not necessarily directly to the police, but through third parties such as the race equality councils. I understand that Strathclyde police is already trying to go down that line. Indeed, the working group will be able to examine other ways for people to channel complaints about racial incidents.

Mr McMahon: Might the police be able to work with black and ethnic minority agencies before statistics are announced so that we do not have such divergent interpretations of statistics? On the one hand, the police say, "We're doing well—look at the figures that we can produce" but on the other, the black and ethnic minority organisations say, "That's not what we are experiencing on the ground, and our interpretation of the results is at variance with the police's."

Mr Wallace: I hope that the police can do that. We must work to that end and not just wait for some statistically validating exercise at some future date. It is important that work continues to achieve both a better level of understanding and more common ground rules about interpreting the figures. Judging from the response we get in the working group, I do not expect any barrier or hostility to our efforts to ensure better understanding and co-operation.

Malcolm Chisholm: There are many different questions and problems to address, one of which centres on the fact that there appear to be no systematic figures on race crime or monitoring of aspects such as how many cases go to court, how many are dropped, what the sentences are and so on. In particular, there seems to be no information about the recent offence of racial aggravation. Are there any proposals to deal with that problem, so that we can know what happens when racial crimes are reported?

Mr Wallace: We want to find a more comprehensive way of recording crimes that have been reported and tracking them through the system. The Crown Office also has a direct interest in that matter. It is important that we get commonly understood definitions.

Malcolm Chisholm: I will ask three questions now, and if I get another opportunity to speak I will ask some more then. Will the steering group apply a template to all the institutions of justice—the courts, the judiciary, the prison service and the legal profession? Does it propose to examine critically their policies and practices, to assess whether the outcome of their actions creates or sustains discrimination?

Mr Wallace: The primary focus of the Lawrence inquiry report and the Macpherson recommendations is the police and the prosecution service. However, the steering group has highlighted other aspects of the criminal justice system, such as the courts, the judiciary, prisons, criminal justice social work services and, in particular, training. The sub-group is likely to examine whether anti-racism training has relevance and what application it may have beyond the police and prosecution services. That issue is not strictly within the ambit of the Macpherson report, but it has been flagged up by

the working group.

Malcolm Chisholm: Two of the controversial areas where there is possible divergence between Scotland and England are the independent police complaints system and stop-and-search powers. The Home Office has issued a consultation paper that acknowledges the need for an independent police complaints system—meaning an independent investigation, rather than just supervision. What is the Scottish position on that?

You have said that there will be a survey on stop and search. Can you say who will conduct the survey, as most people would expect that to have some bearing on the final result?

Mr Wallace: I have already announced the Executive's intention to publish a consultation on the police complaints system later in the year. That will examine the options for bringing an independent element into the police complaints procedure. That is a new development since the previous occasion on which I appeared before the committee. The consultation will be informed by the work that HM Inspectorate of Constabulary has done on police complaints, the work that has been undertaken by the Home Office, as far as that is relevant and applicable to Scotland, and the Liberty and KMPG reports.

The question of stop and search came up at the steering group's first meeting. The Executive is considering further research into stop and search among the ethnic communities in Scotland. ACPOS has agreed in principle to the research, and it is hoped that later this week there will be meetings between officials and the police to get further details, with a view to research being carried out later in the year—either in late summer or in autumn. The matter is being considered by the Scottish Executive's research unit and will be let out to contract.

Mr Chisholm and the convener referred to our counterparts south of the border. Members of the working group expressed the view that it would be useful to meet them, and we are endeavouring to facilitate that as soon as possible.

Tricia Marwick (Mid Scotland and Fife) (SNP): I want to follow up on Malcolm Chisholm's point about the need for an independent police complaints system. You said that you would be proposing an independent element to the system.

Are you talking about an independent investigation or independent supervision? There is quite a difference between independence and an element of independence.

Mr Wallace: You have put your finger on why we need to consult. There are a number of options for bringing independence into the police complaints system. In Scotland—unlike south of

the border—the Crown Office, the Lord Advocate and the procurators fiscal already provide an element of independence, but what we are proposing goes beyond that. It is probably unrealistic to think that every police complaint will be investigated independently. The nature of complaints is such that there would not be the necessary manpower—or womanpower—to do that. Nevertheless, it is important that there is a significant degree of independence—whether in terms of oversight or direct involvement—and that is what we will consult on. We look forward to receiving responses; we are committed to ensuring that there is an independent element.

Tricia Marwick: I disagree. If there is to be an independent system, it must be independent for all cases, not only those that you choose—

Mr Wallace: It would not be independent only for those that I chose.

Tricia Marwick: —or those that are chosen. If there is independence, there should be an independent procedure—but that might be an argument for another day.

Have any racial equality targets been set for any departments in the criminal justice system?

Mr Wallace: Not as far as I am aware. No targets have been set but, continuing the work of the previous Lord Advocate, there has been a pretty determined effort to promote the Crown Office and procurator fiscal service and to recruit people from ethnic minority backgrounds.

The Deputy Convener: Will targets be set?

Mr Wallace: I am not aware that any targets have been set.

The Deputy Convener: Is it intended that any will be set?

Mr Wallace: I am advised that that is being considered. It is clear that a deliberate effort has been made to promote the procurator fiscal service—

The Deputy Convener: It can be hard to measure any improvements in any organisation if one does not set targets and performance indicators.

Mr Wallace: That is a fair point.

Mr Jamie McGrigor (Highlands and Islands) (Con): What has happened to the national policy on training? Is the minister aware that minimum effective training levels for all ranks are set in England and Wales? What are the proposals for Scotland?

I am not surprised that the ethnic communities feel that they are in a hopeless situation. In 1997-98, of 1,164 allegations that were passed to the

procurator fiscal, only 23 led to further proceedings and there were only two convictions. Is that situation improving? Will the steering group consult or confer with the victims of past racist attacks or prejudice?

Mr Wallace: The first question was about training—an issue to which the steering group has given considerable attention. Training policies and programmes are being implemented by the Scottish Police College and the group had the opportunity, at its last meeting at Tulliallan, to meet the trainers and some of the trainees. The Executive also wants to ensure that training is developed. We shall follow up the point that training should not be simply a one-off occurrence at probationer level.

Concern has been expressed about the need to ensure that training is renewed. Those in the force who are more senior and who have served longer may never have had training—or only a diluted form of it—in the first place. We shall seek to ensure that training is developed and reviewed at the Scottish Police College and at force level. It is inevitable that members of the group will want to revisit the issue and return to the college to see what progress is being made in training. As I said, there will be input from members of the group into training. It has been agreed that the training programmes should be made available to the group so that comment can be made.

I do not fully understand the second question about numbers. Do you mean numbers of racial incidents?

14:30

Mr McGrigor: Yes—I mean racial incidents that were reported. Only 23 reports led to further proceedings and there were only two convictions in 1997-98. Have the figures improved since then?

Mr Wallace: I do not have the figures to hand and there is no point in my trying to produce them. That is a matter for the Crown Office. If more up-to-date figures exist, I shall ensure that they are made available not only to our steering group, but to the committee.

The Deputy Convener: That would be appreciated. When you gave evidence previously, we established that not one substantiated complaint had been upheld.

Mr Wallace: Are you talking about police complaints, or more generally about reports of crimes that have a racial element?

The Deputy Convener: I was referring to police complaints. I think that Jamie McGrigor is referring to the procurator fiscal service.

Mr Wallace: I was not sure whether that was

what Jamie McGrigor meant.

Mr McGrigor: Will the group consult victims of past racist attacks or prejudice? Will you take evidence from such people?

Mr Wallace: That idea has not been considered, but the sub-group will talk to those who have submitted evidence in response to the consultation. I am sure that, during those discussions, the group will talk to people who have been the victims of racially motivated crime and whose experiences will be worth taking into account.

Mr McGrigor: Finally, what are you doing actively to root out the alleged discrimination that prevents black people from joining the Crown Office and procurator fiscal service? As you said, ethnic minorities are hopelessly under-represented on those bodies.

Mr Wallace: I am not aware of any recent allegations of discrimination. When I gave evidence to the committee previously, the discussion focused on institutionalised racism and the way in which that can manifest itself in all aspects of public life. Under Lord Hardie's stewardship as Lord Advocate and under the current leadership of Colin Boyd, there has been a determined effort in the Crown Office to encourage people from ethnic community backgrounds to join the fiscal service. That has included going to schools that have a preponderance of pupils from ethnic backgrounds to inform them that the service is an option that they might find worthwhile. That is a proactive measure, which will continue and should be encouraged.

The Deputy Convener: Members of the committee are concerned about the Executive's vagueness in respect of targets and performance indicators. Many of the points in the action plan were about improving services in the criminal justice system and how the police deal with allegations, but what we have heard today has been very vague. Unless targets and performance indicators are set, it will be difficult for the minister to return in nine months' time to tell us what progress has been made.

Perhaps the minister can clarify the future role of the steering group. Will it have teeth and sanctions? Will it be able to refer matters to departments in the criminal justice system or the police forces if targets and performance indicators are not met, or if progress is not made? What will be the role of the steering group? Will it be able to name and shame? Will there be sanctions? What will happen?

Mr Wallace: I hope that I can clarify any misunderstanding over the future of the steering group. Part of the role of the steering group, in responding to the recommendations, is to decide

whether targets should be set and, if so, what they should be.

One of the important functions of the thematic inspection of the police force on race will be the development of performance indicators. I appreciate that there is frustration that such indicators are not yet in place. They have not been lost sight of, but they have yet to be determined by the group and by HM inspectorate of constabulary.

As I have made clear in the past, the purpose of the steering group is to work on performance indicators. I have never thought of the steering group as having a role beyond setting the timetable for the action plan and setting the targets—not only the numerical ones—that we want to set, following the recommendations. The work of the steering group will not continue into the dim and distant future.

The Deputy Convener: Do you see no role for the steering group in monitoring and evaluating progress?

Mr Wallace: No. The group might get up such momentum that it will be difficult to stop, but it was always envisaged that it should have a limited life, during which it would take forward the recommendations and set targets and dates. Once those are in place—whether they affect public or not-so-public bodies—I will have no qualms or hesitation about saying that there might be a role for the Procedures Committee in holding ministers and public bodies to account for how well they have lived up to the targets that were set.

It was asked whether the steering group would have teeth. It cannot have teeth, because it is not an Executive body, but Parliament has an important role to play in holding us to account.

The Deputy Convener: We move now to discussion of the report "Towards a Just Conclusion". Because of the lack of time, minister, I hope that you will not mind if we move straight to questions.

Malcolm Chisholm: Everybody is interested in the issue of the cross-examination of rape victims. It has had quite an airing and I welcome the commitment that has been made by the Executive, so I would like to move on to other questions. I am slightly intrigued by the Executive's comments on the European convention on human rights. Does the minister think that there is still an issue to be resolved, or is he confident, as I am, that the issue is a red herring?

Mr Wallace: There are issues to be considered. Examples include the way in which Parliament is structured in statute and the way in which the Executive is circumscribed by the Scotland Act 1998, which brings the ECHR right to the coalface, as it were. Any piece of legislation and any

proposals that ministers introduce must be compliant with the ECHR. When proposals are brought forward, I must be satisfied that they will be sufficiently robust. The last thing any of us wants is for any legislation to be found to be ultra vires.

Malcolm Chisholm: Obviously the committee agrees and the matter can be explored during the debate on Wednesday.

I welcome the commitment to strengthen the current restrictions on questioning about sexual history. Page 3 of the document says that

“there is a perception . . . that these provisions are not working as intended.”

The word “perception” is unfortunate, given the research that has been done by Lynn Jamieson and others. How will the current restrictions be strengthened?

Mr Wallace: There is a—I was going to say perception—feeling that sections 274 and 275 of the Criminal Procedure (Scotland) Act 1995 and the general exception in the interests of justice are perhaps too broad and vague and that they allow an opening that people might exploit skilfully to bring in issues of sexual history.

We have identified options that will form part of our work. Those options include making the relevancy test much stricter so that the defence, when it applies to the court to cross-examine, will have to show more clearly how the line of questioning that it wishes to follow is directly relevant to the events that are alleged to have taken place. The defence must show that it does not intend simply to undermine the credibility of a witness or to cast aspersions on the witness's character.

Another issue is whether the exemption in the interests of justice is too wide and whether it ought to go. We could consider restricting the issues that could be examined. For example, the issue of consent could be considered as a question of fact rather than a question whether the accused believed that the victim consented. That opens up a serious and important issue that ought to be considered.

It is also worth examining what the consequences might be for the accused if a line of questioning on sexual history was used against a witness or the victim. If questioning was on a victim's sexual history, that might open up an opportunity to lead on to question on the accused's previous charges or convictions for sexual offences. Those are some of the options on which we are working.

Malcolm Chisholm: The other major area of discussion and controversy will be the extension of the definition of “vulnerable witness” and the

extension of the special measures provision.

I am the last person to point to what is happening in England—we set up the Parliament so that we could do things differently, but my frustration about the matters that we are discussing is partly because I remember sitting in the House of Commons in July last year during the final stage of the bill to abolish cross-examination of victims by the accused. That bill also contained a presumption in favour of screens for rape victims in the courtroom and so on.

Although we are now making progress on cross-examination, we seem still to be at the stage of research and consultation on special measures. I find that rather frustrating. There are problems with special measures: it appears that some children do not benefit from them if a procurator fiscal says that they cannot be implemented. I am even concerned about the operation of the present powers.

It is not entirely clear to me whether the minister is saying that special measures will be implemented, or that we will just have more discussion about it—nobody in Scotland agrees. Screens are cited routinely as an example, but there are other special measures for vulnerable and intimidated witnesses.

Mr Wallace: The measures include closed-circuit television.

Malcolm Chisholm: Can the minister say confidently that a far larger group of vulnerable and intimidated witnesses will benefit from the special measures? Will they get those measures as a right, rather than merely because the procurator fiscal thinks that it might be appropriate?

Mr Wallace: That is firmly and squarely on the agenda. “Towards a Just Conclusion: Action Plan” says, in paragraph 3.8.23:

“The Executive will produce legislative proposals for extending the current coverage of special measures, including clearing the courtroom.”

I think that that is quite a long way down the track in terms of the measures that we want to take, but the commitment is there.

Mr Chisholm made the important point that, at the moment, the definition of “vulnerable witness” is limited. As I recollect, the definition covers children and people who are considered vulnerable on mental health grounds—people who come under certain certifiable categories and people with learning disabilities. It is widely recognised that the definition does not go far enough. The inclusion of other categories based on the nature of the person, rather than their circumstances, would be desirable. Somebody who would not normally be a vulnerable witness

might be vulnerable if a case in which they were involved was the result of domestic abuse in that person's home, or if it involved intimations of intimidation.

It is, therefore, important to try to ensure that there is a much broader definition of vulnerable and intimidated witnesses. It is possible that more work and consultation needs to be done, but I do not want to give the committee the impression that the issue is on the back burner—we recognise the importance of the need to give greater protection to witnesses who need it.

14:45

Mr McMahon: The bulk of the interest in the report has related to the giving of evidence in court, but an element of the interest relates to what happens before people arrive in court. I am aware through anecdotal evidence—I have never been in court and I do not know from practical experience whether this is the case—that prosecution and defence witnesses share rooms or are in close proximity to each other before they enter the court. There is a reference in recommendation 3.4.13 of "Towards a Just Conclusion: Action Plan" to police officers being present in waiting rooms. Has an opportunity been missed to address witnesses' general concerns about segregation and the protection of witnesses before court cases?

Mr Wallace: I accept the underlying premise of the question. It is a matter of making progress on the segregation of witnesses, but I would fall foul if I said that that should be done tomorrow. I suspect that in many sheriff courts around the country that would not be physically possible, but Michael McMahon's point is fair.

Marilyn Livingstone (Kirkcaldy) (Lab): I will follow on from that and discuss what is said in the action plan about support for witnesses and victims. Can the minister tell us more about the feasibility study that was done on the introduction of a Crown Office victim and witness service?

Mr Wallace: It is fair to say that there are several initiatives, including the Lord Advocate's plans to provide better services for victims and witnesses in all cases that are reported to the procurator fiscal. The feasibility study is intended to identify the widest possible set of needs—some of which are self-evident. It is important to ensure that the matter is not seen only through the eyes of the prosecution or of ministers. We will identify the wider needs by engaging consultants who can talk to victims.

It is important to ensure that there is proper co-ordination of the range of planned initiatives, including, for example, rolling out a witness support scheme to all sheriff courts. I assure the

committee that there is a national strategy for victims, which I asked to be progressed. I was aware that there were a number of initiatives that were not necessarily linked to one another, although they were all connected in some way. I asked officials to work up an overarching national strategy for victims. Work has been done on that, which has been discussed and developed recently by the victim steering group. I hope that we can make good progress on that.

Marilyn Livingstone: What is the time scale for that? I am aware of a case in which a victim was unaware that an accused person had been released on bail and was consequently caused a lot of stress. I am sure that there are similar cases elsewhere, so we need movement on the matter quickly.

Mr Wallace: The report on the feasibility study into improved services is due in the summer. Last week, when I moved that the Parliament approve in principle the Bail, Judicial Appointments etc (Scotland) Bill, I specifically addressed the issue that Marilyn Livingstone raised. I cannot remember the details, but a clear commitment was given that, while work was being done to create links between the police, the procurator fiscal service and the courts, a lot more ought to be done to ensure that best practice was adopted in providing information to potential witnesses and victims when issues of bail were dealt with.

Nora Radcliffe (Gordon) (LD): We all want a better system of witness protection. It might look nice on paper, but I am concerned about the fact that we have proposals on paper at the moment that are not being acted on. What work is being done to tighten up current mechanisms? For example, vulnerable witnesses who would have been entitled to give evidence from behind a screen are sometimes told that they should have asked for the screen some time before and that they cannot have the screen as it is in the next county. Is any work being done to ensure that such practical problems do not arise?

Mr Wallace: I understand that a Crown Office circular has been issued to procurators fiscal on the important subject of identifying vulnerable witnesses. The police have a role to play in that as well. It is accepted that there is scope for improvement, hence the work that has been done. You might want to follow up the specific point that you raise with the Crown Office.

Nora Radcliffe: I can send them 3s 8d to buy more screens.

Page 2 of the "Towards a Just Conclusion Action Plan" document says:

"Also proposed in the responses was a third, more radical approach involving a change in the current assumptions about best evidence, looking for most

evidence to be agreed, given on commission or through CCTV, with full pre-trial disclosure."

Obviously, that is a wide area, which can be picked up on in the long term. Are those suggestions being taken on board? Is best practice in bodies such as employment tribunals being considered? Such bodies tend to be more inquisitorial than adversarial, in the current jargon. Are we examining the basis of our criminal justice system to see whether a more inquisitorial, less adversarial approach would be better?

Mr Wallace: No. It would be wrong to give the impression that we are undertaking a wholesale review of the basis of criminal justice. I am sure that this committee would identify as being of more pressing importance subjects such as the cross-examination of victims by the accused or the airing in court of the victims' sexual histories. It is important that we make progress where we can. As you say, a fundamental review would take a long time and would have implications across the board.

Nora Radcliffe: Absolutely, but I wanted to know whether such a review would be considered.

Mr Wallace: We have not closed the door to it for all time, but it would be wrong to give the impression that it is under active consideration.

Tricia Marwick: When you and the Lord Advocate talked to the Justice and Home Affairs Committee last year, the possibility of a victims charter was discussed. You have since said that a victims strategy will be published some time in the summer. Is that time scale correct?

Mr Wallace: I think that I was talking about the feasibility study that we are working on with the Crown Office.

I have heard representations on the subject. I prefer the idea of a victims strategy, but—without putting words into the mouths of people who came to speak from south of the border—speakers at a Victim Support conference said that practice took a long time to catch up with the aims in the victims charter that had been promulgated in England and Wales.

I hope that the involvement of the victims steering group and a national strategy for victims will mean that we can pull things together. Furthermore, the feasibility study will identify what should be happening. We will address the issue in that context. We hope to do so within the time scale that has been set; we aim to have the strategy in place by autumn.

Tricia Marwick: Under the victims strategy, would victims have a right to information about how trials are progressing? Will explanations be given to the families of victims? Under the charter in England and Wales, victims and their families

receive such information. I know from the mailbags that members have been receiving that people are frustrated because nothing seems to happen. Sometimes cases are dropped and victims' families are not told why that has happened; they are rebuffed at every turn. Will the information that is given to victims and their families in Scotland be at least equal to the information that is available to victims and their families in England and Wales?

Mr Wallace: Provision of information to victims and witnesses is one of the important matters that are being investigated by the feasibility study into victim and witness services. I take the point about the absence of information. That is something that I have had to deal with on a constituency basis—cases where things have happened in court and people were not informed. There is an understanding and acceptance that that area must be improved. Indeed, we have made a commitment to try to improve it and to make use of new communications technology to ensure better liaison between the police and the fiscal service and to facilitate the flow of information.

On the Crown Office giving reasons why particular cases do not proceed, I should say that that is a matter for the Crown Office itself, on which the Lord Advocate must answer. On Thursday, in the follow-up to the statement on fingerprints, the Lord Advocate made some comments on the matter in reply to a question from John McAllion.

Malcolm Chisholm: As I said in Thursday's debate, I am glad that there is a commitment on providing information for victims. However, I was slightly worried by your reference to information technology, because we need a personal approach to such explanations. I am pleased that you have outlined the plan to develop an overarching strategy. Are you saying that the report and the feasibility that is soon to be completed will feed into the steering group, which will carry the work forward?

Mr Wallace: Yes. The victims steering group has considered a range of issues. Everyone agrees that it is important to make progress. I suspect that some of those matters will not come under the overarching strategy. The whole point is to draw the many threads together. I was very aware that different initiatives were under way—we were rolling out a witness support programme across the sheriff courts, work was under way on the technology linking the police and the fiscal service, and the feasibility study was in progress. We need to draw all that together to ensure that we have a coherent victims strategy into which victim support interests have some input.

Malcolm Chisholm: Last year, the former Lord Advocate explained that

"the provision of interpretation services within the criminal justice system is ultimately for the Minister for Justice".

Reading both the Macpherson report and "Towards a Just Conclusion", I am intrigued by the relationship between the Minister for Justice and the Lord Advocate. The former Lord Advocate seemed to be saying that the responsibility was yours, minister. Can the majority of the strategies be divided between the responsibility of the Minister for Justice and that of the Lord Advocate? What happens if you disagree about something?

Mr Wallace: The substantial issues that relate to victims are primarily the responsibility of the justice department.

When the justice department was established a year ago, it is fair to say that, to his great credit, Lord Hardie, the previous Lord Advocate, had a personal interest in improving services for victims. He wanted to pursue and develop that work and we agreed that it was appropriate that we should do so in tandem.

Obviously, there are issues that relate clearly to the fiscal service, as the prosecution service has the greatest contact with victims and witnesses—it meets and precognoses them. The Crown Office and procurators fiscal have considerable experience and expertise to contribute. That is why we have proceeded with this work on a joint basis.

Issues such as the provision of information on why cases do not proceed are the responsibility of the Crown Office, in which, because of its independence, ministers have no locus. However, overall responsibility for victims and witnesses lies fairly and squarely on my plate.

15:00

It is obvious that issues involving interpretation services go much wider than the criminal justice system. At the last meeting of the group, we instructed an update on the initiatives that are taking place. We will work with the race equality advisory forum to review the current provision of language services in Scotland, as that does not involve only the courts, although the services are provided in the courts. Communication with victims and victims' families is also an important area.

The Deputy Convener: Has there been no improvement in the interpretation services over the past year?

Mr Wallace: I would not concede that. Equally, I cannot sit here and tell you what service was available 12 months ago in comparison with what is available today. The provision of interpretation services is not entirely the responsibility of central Government, as some of that responsibility rests with local authorities. I do not want to hazard a

view as to the actual level of service provided. I know that a considerable amount of effort and energy has gone into providing interpretation services in a range of languages in the case in Zeist in the Netherlands, although that is a specialist, one-off case. However, we are conscious of the issue and of the gaps that must be plugged.

The Deputy Convener: One more member has indicated that they wish to ask a question. Have you a couple of minutes?

Mr Wallace: I will take a final question.

The Deputy Convener: I will abuse the position of chair for a second to ask a final question.

When you last attended this committee, back in September, you mentioned the Home Office grant and the percentage that was supposed to come to Scotland for victim support. At that time, you were not sure how much that was going to be, but you said that you would furnish the committee with that information. Do you have any idea how much money was involved and whether we received it?

Mr Wallace: Pass. I know that, generally, the amount awarded in Scotland for victim support is £30 a head of victim supported, in comparison with £10 a head in England and Wales. I will go back and check the context of my remarks in September and, if possible, I will get that information to the committee.

The Deputy Convener: That would be useful.

On behalf of the committee, I thank the minister and his officials for giving evidence to us this afternoon. I hope that we will see him again at the committee in the near future, as we did not have time for all the questions that members wanted to ask. We will arrange another session as soon as possible. Thank you, minister.

Mr Wallace: Thank you.

The Deputy Convener: Before we move on to the next item, can we pause for thought in order to consider the evidence that we heard and whether members wish to follow it up? A thought that occurs to me is that a lot of issues were raised about the remit and future of the steering group. Do members agree to ask the deputy chair of the steering group, Dr Raj Jandoo, to give evidence to the committee, perhaps with other individuals from the steering group as he sees fit? It would be interesting to get a different perspective on how, and if, Dr Jandoo envisages the evolution of the steering group. If the committee agrees, I will request that Dr Jandoo gives evidence at the first available opportunity. Do members agree?

Members indicated agreement.

Nora Radcliffe: It might also be interesting to follow up ACPOS and its guidance. ACPOS is

doing a lot of work and, having produced a strategy, is about to produce a manual. It might be instructive or useful to get that body's input at some stage.

The Deputy Convener: Okay. That is a good point. Are there other comments? Everyone probably shares my view that the lack of time was frustrating.

Malcolm Chisholm: Can we reflect on the evidence and, if we have written questions, can we present them at our meeting next Tuesday? I am not sure that those questions need to go before the committee but, in principle, we could collect questions that were not answered.

The Deputy Convener: That is a good point. Certainly, we did not have the opportunity to explore a number of my questions. Would it be in order for questions to be submitted to Martin Verity? Following that, we will write to the minister and seek answers, rather than wait for him to come back to the committee after the recess.

Members indicated agreement.

Subordinate Legislation

The Deputy Convener: Members have in front of them the Census (Scotland) Amendment Regulations 2000. There is no requirement for the committee to comment to the Justice and Home Affairs Committee on the regulations.

The last time that we discussed these regulations, we noted that the voluntary nature of the question on religion should be highlighted on the front of the census form and that the telephone number for the helpline for people to contact should they require assistance should also be highlighted. It appears that our comments were taken on board, as those issues appear where we asked them to appear.

Unless members wish to raise issues that have come up since that meeting, I assume that we have no further comments to make. Is that agreed?

Members indicated agreement.

Reporters

The Deputy Convener: The first report should be from Irene McGugan, but she is not here—she sent her apologies, as did Johann Lamont, who is also not here. However, Michael McMahon is here.

Mr McMahon: Further to the report that I gave at our previous meeting, the race reporter's group will meet tomorrow morning to consider a draft response to the Scottish Homes document. I hope that the draft that I am proposing for our discussion tomorrow will be available on e-mail later—I hope to do that this afternoon—as it will form the basis for our discussion. It will generate further discussion at next week's full committee meeting.

The Deputy Convener: It might be useful if, in collaboration with the clerks, your group could consider and suggest lines of questioning arising from our session with Positive Action in Housing on Scottish Homes and from your discussions tomorrow. Perhaps you could pull that together.

Mr McMahon: If the reporter's group so decides tomorrow, it should be possible to send a document to Martin Verity, so that members have it before the next committee meeting.

The Deputy Convener: Thank you, Michael.

Nora Radcliffe: I want to remind members that the next meeting of the sexual orientation reporter's group will take place at lunch time on Thursday. It will be held across the road at the Edinburgh central library in a meeting room—I do not know whether that room is described as the boardroom. We are hoping to attract as many MSPs as possible, to widen the input from the Scottish Parliament side, by bribing you with lunch.

The Deputy Convener: Thank you, Nora.

We now move into private session for item 6 of the agenda on the forward work plan.

15:09

Meeting continued in private until 15:18.

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