



OFFICIAL REPORT
AITHISG OIFIGEIL

Criminal Justice Committee

Wednesday 26 January 2022

Session 6



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CRIMINAL JUSTICE COMMITTEE

3rd Meeting 2022, Session 6

CONVENER

*Audrey Nicoll (Aberdeen South and North Kincardine) (SNP)

DEPUTY CONVENER

*Russell Findlay (West Scotland) (Con)

COMMITTEE MEMBERS

*Katy Clark (West Scotland) (Lab)

*Jamie Greene (West Scotland) (Con)

*Fulton MacGregor (Coatbridge and Chryston) (SNP)

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

*Pauline McNeill (Glasgow) (Lab)

*Collette Stevenson (East Kilbride) (SNP)

*attended

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

Virtual Meeting

Scottish Parliament

Criminal Justice Committee

Wednesday 26 January 2022

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Audrey Nicoll): Good morning, everybody, and welcome to the third meeting in 2022 of the Criminal Justice Committee. There are no apologies. I ask that members ensure that their mobile phones are switched to silent and that they wait for the sound engineer to switch on their microphone before speaking.

Agenda item 1 is a decision on taking business in private. Do members agree to take item 4 in private?

Members indicated agreement.

Petitions

Justice for Megrahi (PE1370)

10:01

The Convener: Agenda item 2 is consideration of two petitions that were referred to the Justice Committee in the previous parliamentary session and which were carried over into this session. I refer members to paper 1. I should say that this is the first time that we have looked at the petitions since the Criminal Justice Committee was established. I will shortly invite members to give their thoughts.

I will start with PE1370, which was lodged by Dr Jim Swire on behalf of the Justice for Megrahi campaign group. This important petition calls on the Scottish Parliament to urge the Scottish Government to open an independent inquiry into the conviction of the late Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.

The previous committee kept the petition open and, in effect, placed it on hold pending the conclusion of the different inquiries and various legal cases that were being pursued in the courts. The committee members felt that they could not make a decision on the merits of the petition until those processes had been concluded.

As the clerk's paper notes, some but not all of the legal processes have been completed. Members will note the letter that was received yesterday from Iain McKie on behalf of the Justice for Megrahi committee, which confirms that the family of Mr al-Megrahi continue to seek a Supreme Court opinion. We are grateful to Mr McKie for the helpful update.

My suggestion for the committee is likely to be that we continue to keep the petition open until we are clearer about what steps, if any, the family of Mr al-Megrahi plan to take in relation to any appeal to the Supreme Court.

I invite views and comments from members.

Jamie Greene (West Scotland) (Con): Good morning, colleagues.

For the record, I note that this is the third session of the Scottish Parliament in which the petition has been considered and the third iteration of a justice committee to consider it. As with the next petition that we will consider today, it is my view that this petition should not remain open indefinitely. Indeed, it has been open for more than a decade now, and it is in the best interests of the committee and its work, and of the campaigners—on which I have no specific view—that some other recourse be sought. If the work

carried out in three parliamentary sessions has not been able to address the campaign's wishes and needs, I cannot see our committee having the time and ability to do so either.

Of course, there are still some important considerations to take place. The family's legal representation is well within its rights to pursue the legal recourse that is available, and it can make direct representation to the Government and its ministers. I would also note that we have a new justice secretary, one of many with whom those involved with the petition have dealt over the years. That would be the best line for them to pursue, but not for this committee. Given that this is a very specific and direct case, I suggest that, if we do not close the petition today, we at the very least agree a future date for coming to a decision on what we recommend next, to give the committee closure in this parliamentary session.

Rona Mackay (Strathkelvin and Bearsden) (SNP): I disagree with my colleague Jamie Greene—I am in favour of keeping the petition open. As the convener has said, this is a long-running petition not just from the previous session but, indeed, before that. Due to its unique nature, it would be wrong of us to close it when there are still conclusions to be reached. I see no harm in keeping it open. The issues have clearly not been resolved and we owe it to the campaign group and the families involved to keep it open. I do not want it to be closed at this stage.

The Convener: That is helpful. I am grateful for those points. Just to clarify, I note that one of the main reasons for keeping the petition open previously was that a number of judicial processes had not been concluded when the committee was considering the petition. My understanding is that that was the basis on which the petition remained open. I note Jamie Greene's comments, but I am not altogether sure what alternative legal processes are open to the family, in particular, or to others. It is appropriate that we, as a new committee, keep the petition open on the basis of the points that we have made. If members are agreed, that is what we will do.

Before we conclude our consideration, I will bring in Fulton MacGregor and Russell Findlay.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I back what Rona Mackay has said and what you have said, convener. We should keep the petition open at this time. As a member of the Justice Committee in the previous parliamentary session, I know that the petition came up regularly and that we had similar discussions to the one that we are having today.

I wonder whether it would be worth the committee writing to the Scottish Government to ask for an update on its current view of the

situation, given what has been requested. As for the decision to be taken today, I am minded to keep the petition open.

Russell Findlay (West Scotland) (Con): I am fairly ambivalent about the subject. On one hand, this is the biggest mass murder terrorist atrocity in Scottish legal history and, clearly, there are serious unanswered questions. On the other hand—the flipside—I worry about the rise in the number of judicial public inquiries in Scotland. It seems to be one of our few growth industries.

That might be a slightly flippant observation but, on balance, there is probably no harm in our keeping the petition open until the legal process has been exhausted, which is what the Justice for Megrahi group is asking for. I tend to agree with the convener on that.

The Convener: That is helpful.

Pauline McNeill (Glasgow) (Lab): I am happy to support what the convener and Russell Findlay have said, but we need to review whether we should keep any petition open for such a long time. I am content for the time being, but I wanted to point that out.

I do not think that it is necessary to write to the Scottish Government. There is a judicial process and we are being asked to wait and see whether the family decide to lodge an appeal, which they are legally entitled to do. We should leave it at that.

Katy Clark (West Scotland) (Lab): I, too, agree with the convener's proposal to keep the petition open.

I am new to this petition; as I was elected last May, I was not on any of the justice committees in previous parliamentary sessions. However, I am aware of the matter from previous work. If there were a proposal to do something different, I would feel that I would need to know more, and it would therefore be useful if there were a way of getting more information at a future stage. I should say that I have not been lobbied on the issue—the only lobbying has been the letter that the campaign group sent in yesterday.

Given that I have not been involved in the previous discussions, I am at this stage very comfortable with what has been proposed. However, if it were suggested that we do something different, it would be useful to consider what information we would need to make such a decision.

The Convener: I am grateful for members' comments and views. On the basis of those points, we agree to keep the petition open until we are clearer on what progress has been made, and we can make further decisions when the petition

next returns to the committee. I thank members for their assistance.

Judiciary (Register of Interests) (PE1458)

The Convener: Our second petition is PE1458, which was lodged by Peter Cherbi. It calls on the Scottish Parliament to urge the Scottish Government to create a register of pecuniary interests of judges bill or to amend existing legislation to require all members of the judiciary in Scotland to submit their interests and hospitality received to a publicly available register of interests.

The previous committee saw merit in the case that was made for such a register, and a call for such was part of the recent programme for government.

My suggestion for the committee is likely to be that we continue to keep the petition open and that we ask the Cabinet Secretary for Justice and Veterans for clear information on when he plans to take forward the commitment to the register and what form it will take. I invite members to raise any comments or points that they would like to make.

Russell Findlay: I suppose that I need to declare a bit of an interest, in that I wrote the first press story about the petition when it was lodged in 2012. As a journalist, I came into regular contact with the petitioner, Peter Cherbi, and continued to report on the petition for many years. Remarkably, despite the best efforts of the judiciary, the petition is now almost 10 years old, which must be a record and perhaps says something about parliamentary committees, although I am not sure what.

I agree entirely that we need to see exactly what the Scottish National Party Government is proposing. I was surprised to see the commitment in the SNP manifesto—I found that interesting, because Nicola Sturgeon and successive justice secretaries have long been opposed to the idea in principle.

Although plenty has been said about the subject, and plenty more will be said about it, we should not lose sight of the fundamental issue of transparency and accountability—it is absolutely not about political meddling in judicial independence. I think that the reason why the petition has almost reached its 10th birthday is that many MSPs, across the parties—some of whom are no longer in the Parliament—understood the principle. That is perhaps why the petition is still live, as frustrating as it is that something that seems to be generally agreed has not meaningfully progressed. Let us just see what will be brought forward.

Rona Mackay: Notwithstanding what Russell Findlay has said, there has been progress—it was in the SNP Government's manifesto to do this. On that basis, we should not keep the petition open. We should follow up with a letter to find out timescales and when the register is likely to be brought in. That is my view. It has been a long-running issue, but it has reached a conclusion. We just need to find out when it is going to happen.

10:15

Jamie Greene: The difference between this petition and the previous one, albeit that they have been open for comparable lengths of time and have both straddled multiple sessions of Parliament, is that there is a commitment from the Government to introduce the outcome that the petitioner seeks.

However, words on paper are different from deeds and actions. A manifesto relates to a parliamentary session, whereas a programme for government is an annual statement. The proposal was in the 2021-22 programme for government and there are only a few months of that period left. Therefore, I suggest that, until we have sight of either the required legislation or a more detailed proposal from the Government—even something as simple as a policy for the Parliament to consider—it would be in our interest to write to the cabinet secretary to ask him to outline timescales for the actions that the Government has promised to take. At that point, if we are satisfied that the actions will deliver what the petitioner seeks, we can consider closing the petition, but it should remain open for now.

The Convener: I do not think that anyone else wants to come in. On the basis of the points that have been made, I think that we are agreed. I know that Rona Mackay is minded to close the petition, but my suggestion is that we keep it open. As members have commented, we seek further clarity on the plan to take the matter forward and we will write to the cabinet secretary for details on progress and a further update on timescales. My proposal is that we keep the petition open and write to the cabinet secretary. Are we agreed?

Members indicated agreement.

Public Service Pensions and Judicial Offices Bill

10:17

The Convener: Our next item of business is consideration of a legislative consent memorandum on the Public Service Pensions and Judicial Offices Bill. I refer members to paper 2.

The bill deals mostly with reserved matters, but it proposes a couple of changes to devolved competences. For example, the amendment to the Public Service Pensions Act 2013 that is explained in the LCM relates to judicial pension schemes and the ability to add additional devolved offices to the new judicial pension scheme. If the bill is passed, the Scottish Government will propose that the mandatory retirement age for judges and sheriffs be increased from 70 to 75. The bill will also enable devolved judicial offices to be added to a judicial pension scheme, which will be done through legislation that is considered in the United Kingdom Parliament.

I note that the Scottish Parliament's Delegated Powers and Law Reform Committee wrote to the cabinet secretary to seek an explanation as to why the changes are not being made by Scottish statutory instrument. As members will be aware, we have received a copy of the reply from the cabinet secretary to the Delegated Powers and Law Reform Committee clarifying that point.

I invite members to come in with any views or comments on the LCM.

There are no comments. Does the committee agree to recommend to the Scottish Parliament that the relevant provisions of the Public Service Pensions and Judicial Offices Bill should be considered by the UK Parliament?

Members *indicated agreement.*

The Convener: I will arrange for a short, factual report to be published on our deliberations.

That concludes the public part of the meeting. We move into private session and on to MS Teams.

10:20

Meeting continued in private until 10:42.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

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