

JUSTICE 1 COMMITTEE

Tuesday 25 June 2002
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE

27th Meeting 2002, Session 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Maureen Macmillan (Highlands and Islands) (Lab)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)

*Lord James Douglas-Hamilton (Lothians) (Con)

*Donald Gorrie (Central Scotland) (LD)

*Paul Martin (Glasgow Springburn) (Lab)

*Michael Matheson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)

Mrs Margaret Smith (Edinburgh West) (LD)

Kay Ullrich (West of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED :

Professor Neil Hutton (Adviser)

ACTING CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Tuesday 25 June 2002

(Afternoon)

[THE CONVENER opened the meeting at 13:19]

The Convener (Christine Grahame): I convene the 27th meeting in 2002 of the Justice 1 Committee. I remind members to turn off mobile phones and pagers. I should introduce the stranger at my side. He is Professor Neil Hutton, who is our adviser on the alternatives to custody inquiry.

As this is the final meeting before the summer recess, I will update members on the committee's outstanding work. The consultation on the "Regulation of the Legal Profession inquiry options paper" closes tomorrow. The responses will be collated and presented to members for consideration after the recess.

I have received a response from the Minister for Justice about our consideration of a number of petitions on dangerous driving that results in fatalities. We will pursue that matter, but I have just received the response and have not had a chance to digest or to circulate it.

There is outstanding information about our report on the inquiry into legal aid. A note will be ready for members on their return from what I hope will be a good holiday. Some members look pretty tired.

As we are the committee that never sleeps, I will whet members' appetite for the coming term. The main items of business will be the inquiry into alternatives to custody and the Title Conditions (Scotland) Bill. We will meet jointly with the Justice 2 Committee for a stock-taking meeting with the Minister for Justice and we will take evidence from HM chief inspector of prisons for Scotland on his annual report. I assume that that will be the present HM chief inspector of prisons. The justice committees will also meet jointly to consider stage 2 of the budget process 2003-04. A detailed note on the committee's work programme will be available for consideration in the autumn.

Alternatives to Custody Inquiry

The Convener: We come to item 1 on the agenda. I have already introduced Professor Hutton. I refer members to paper J1/02/27/1, which is a draft remit for the inquiry into alternatives to custody in Scotland. I invite comments from members.

Lord James Douglas-Hamilton (Lothians) (Con): I thank Professor Hutton for his excellent paper. I have one point, which is that we should consider the possibilities for restitution to the community through a range of environmental projects, such as removing graffiti, laying out children's playgrounds, planting trees, landscaping and improving playing fields. Those projects are desirable and legal. However, for safety reasons, it is highly undesirable for young offenders to clear up refuse beside a motorway.

The Convener: Has that happened?

Lord James Douglas-Hamilton: No, but it has been considered. From the point of view of communities, there might be merit in considering a range of such possibilities.

Donald Gorrie (Central Scotland) (LD): The second last paragraph on the first page of the document states:

"With prisoner numbers set to rise over the next ten years".

I challenge that. That issue is partly what item 5 on the agenda is about. Perhaps we should change the sentence so that it reads "With the Executive's claims that prisoner numbers are set to rise". That is not a big issue, but I do not want to concede the point, which I do not accept.

The Convener: That is a fair point.

Donald Gorrie: Yesterday I visited the Airborne Initiative, which is similar to the Freagarrach project and which deals with the 18 to 25 age group. I think that the committee should visit that initiative. Does the part of the remit on community penalties cover such projects? The Airborne Initiative takes groups of 24 young men who have been to prison several times. For nine weeks, the group carries out a mixture of activities such as confronting their offences, cognitive education, climbing up hills and other teamwork activities. The initiative and other such projects have a good record of turning people round. Are those specific and compressed ways of dealing with offenders included in the remit? If not, I would like them to be included.

Professor Neil Hutton (Adviser): I think, but am not absolutely certain, that people are referred to Airborne Initiative under a probation order or

some other order of the court. However, that initiative could be covered under part 1 of the draft remit, under which we will try to get a picture of what alternatives to custody are available just now. The Airborne Initiative could be considered by the committee.

Donald Gorrie: If the remit covers that, it will cover the main questions, so I am happy with it.

The Convener: Could restorative justice be considered under part 1 of the draft remit? In restorative justice, instead of undergoing custody, the person must make some form of reparation to victims. Will that fit into that part?

Professor Hutton: The existing schemes that have been set up in the adult courts system with a restorative justice approach could come under that heading. I know that restorative justice is used quite a lot with young people who are referred from the children's hearings system, but I am not sure of the extent to which the courts refer people to restorative justice programmes at the moment.

Part of the problem is that it is difficult to get comprehensive information about the programmes that are being operated in Scotland. As there is no single source of information, one must go to local authorities and ask them about the provision in their area. Perhaps the committee could look at that.

Michael Matheson (Central Scotland) (SNP): The paper is helpful and I am satisfied with the draft remit. As we must keep things fairly tight because of our limited time scale, we should probably concentrate our efforts on examining how effective the current programmes are rather than on looking at what other things could be brought on board at a later date.

On the fact-finding visits, I wonder whether the options given, such as Reliance Monitoring Services and the Freagarrach project, in which I indicated an interest, are reflective of the range of community disposals that are available. Perhaps any visits that we undertake should be more reflective of that range. I am conscious of the fact that a few of the ideas that have been thrown in are simply the projects that we know about. We need a balance. I would like the visits that we undertake to give us a feeling for the general provision of community disposals that are available. Perhaps we need to review that.

Paul Martin (Glasgow Springburn) (Lab): Like Michael Matheson, I think that the visits are important. However, no matter what issue we are dealing with, whenever we go on a fact-finding visit, the organisations that we visit tend to orchestrate the visit carefully so that they come out as the greatest organisation ever. What they say is, "We have baked you a cake and here are the many participants in this programme who have

been so successful." We never meet those who have not been successful. There will be merit in undertaking fact-finding visits, but we also need an independent form of evaluation of the projects. Perhaps our inquiry will find that material is available from independent evaluations.

On another point, will the remit of our inquiry into alternatives to custody also cover alternatives for young offenders, or does the remit only cover offenders who are aged 16 plus?

The Convener: There is no specification. Our inquiry is simply headed "alternatives to custody".

Paul Martin: As part of that remit, can we look at alternatives to custody that are available in the children's hearings system?

Professor Hutton: Technically, the children's hearings systems cannot remit people to custody.

Paul Martin: However, it can send people to some form of secure accommodation.

Professor Hutton: Yes. Secure accommodation is an option for children's panels.

The Convener: The point that is being made is that we should not drift into considering alternatives to custody for young people, which is another area. Our time scale for considering custodial matters is very short.

Paul Martin: I appreciate that, but the point is that we have not specified that our inquiry into alternatives to custody will not include the children's hearings system. I also appreciate Professor Hutton's argument that the term custody technically points only to the adult system. Nothing prohibits us from at least considering as part of our remit the possibility of examining the alternatives to custody that are in place in respect of the children's panel system.

13:30

The Convener: I would agree if we had more time, but we will have only four oral evidence sessions. The Title Conditions (Scotland) Bill will take up a lot of time. That is my only problem with the suggestion; I would love to cover those matters. It may be that if we have time we can do that. It is about trying to keep it in here so that we can deal with alternatives to custody within the framework.

If we were able to look at alternative disposals for younger people from children's panels, that would be another matter. I do not think that we could do that and keep to the time scale. I am aware of the other matters that will come before the committee. That work load is not of our own making; it is caused by the Executive. In addition to the bill, there will be petitions and statutory instruments. You name it, we will be getting it. I

want to deal with this matter and finish off our other reports on the regulation of the legal profession and the legal aid inquiry.

Paul Martin: I think that it is a missed opportunity, given that we will be discussing alternatives to custody for adult offenders. That discussion would be affected by our discussions about youth offenders at the same time. One of the reasons why they end up being adult offenders is that we do not deal with alternatives to custody and the reparation issues at the pre-adult stage. We must find a way to refer to alternatives to custody for youth offenders.

The Convener: We are examining what provision is out there now. What I hope, and talked about in earlier discussions with Professor Hutton, is that, when we come back after the election, the next Justice 1 Committee can examine other directions and other matters to do with alternatives to custody, including the disposal of young people. This inquiry is an examination of where we are now and how the system is operating. We will not say that we have other ideas that we want to put in. We do not have time to do that. The next stage, having established what exists and whether it is being utilised, will be for the committee to move on to producing ideas and investigating them. We do not have time to do that at the moment.

Professor Hutton: Paul Martin has raised a fair point, but in the time that is available it might be difficult to include consideration of alternatives to custody for young offenders. It is quite likely that, in oral evidence, some of the providers of alternatives to custody for adult offenders will also be providers of alternatives to custody, if you want to call it that, for young offenders. It may be that helpful points come out in the oral or written evidence to the committee.

Lord James Douglas-Hamilton: Convener, can I, through you, ask the committee which should have higher priority: alternatives to custody for young offenders or alternatives to custody for adults? It seems that youth justice is now being given higher priority than adult offenders.

Michael Matheson: There are a couple of aspects to the matter. Consideration of alternatives to custody for adults follows on fairly well from work that we have been doing on the prisons estates review and from the research that the Justice and Home Affairs Committee commissioned on attitudes to sentencing. The other aspect is the need to examine other alternatives to custody that could be used in Scotland and how they could fit into the system. That would include periodic detention centres and other alternatives that are used in other countries. A lot of detailed work would be required.

I understand where Paul Martin is coming from.

The issue of youth justice is probably an inquiry that could stand on its own. I am firmly of the view that there is a need to review the children's panel system. We have been too precious over the years about that system. There is a need to consider systematically how it works. Lord James Douglas-Hamilton is right that youth justice is on the political agenda. That will be a detailed inquiry on its own. It will be necessary to consider not only the children's panel system, but programmes that work with vulnerable young people in schools to try to prevent them from falling into a life of crime.

The Convener: Before you respond to that, Lord James, the difficulty with the children's hearings system is that, as we know, to some extent it falls within the education brief and it may be a matter that the Education, Culture and Sport Committee would also be involved in. The Minister for Education and Young People speaks up on issues about the children's hearings system.

There is a real crossover between this committee and the Education, Culture and Sport Committee. It might be interesting to deal with that in the new session in a way that cuts across the two committees. While it is a justice issue, it is also a children's issue. Instead of being isolated in our committees, we should perhaps deal with the matter jointly with the Education, Culture and Sport Committee.

Paul Martin: I suggest that we hear from and question witnesses. While I appreciate the focus that is being given—in fact I do not agree with it; I do not think that it represents the consensus in the committee—I think that we should be given the opportunity to discuss issues relating to alternatives to custody and the reparation opportunities available within the youth justice system.

Lord James Douglas-Hamilton: Paul Martin is right in the premise that the report that we produce would be very much better if both sides of the issue were considered. I understand the time limitations, given the election next year. Does the work have to be completed before the election?

The Convener: The other matters in our work programme will take up the time. I went through the programme at the beginning of the meeting. We still have the regulation of the legal profession to deal with, which is a fairly serious matter and which involves going through the complaints procedure and coming to a view on it. We still have to do work on dangerous driving. The matter of our inquiry into legal aid is still to be resolved. We have to start—and finish—consideration of the Title Conditions (Scotland) Bill. We have to do all that before the election. The issue of alternatives to custody comes in the middle.

I, too, wanted to pursue this opportunity to go

into a lot of matters, but we have to start by finding out how things operate, what provision is available, how it is being used and what data we have. That is the foundation from which the committee could move on to other options for adult offenders. I raised the specific difficulties in relation to young people because of the involvement of the Education, Culture and Sport Committee. We would have to resolve the question of that committee's role.

Paul Martin: Custodial issues are not educational issues.

The Convener: But the children's hearings system currently falls within the education portfolio. That matter needs to be resolved.

Maureen Macmillan (Highlands and Islands) (Lab): You are right about that, convener: I think that the children's hearings system lies within the remit of the Minister for Education and Young People rather than that of the Minister for Justice. A joint approach should be adopted on the matter. We would have to speak to the Education, Culture and Sport Committee and find out whether it wants to take forward the matter jointly. Does the committee's work all fall at the time of the elections next year? Am I right in thinking that our work will not necessarily be carried forward to the new committee that will be formed after the elections?

Alison Taylor (Clerk): Yes.

The Convener: I am glad that somebody knew that: it is a matter for the new justice committee to decide. We cannot be in the middle of things when the election is called. We will have to sign everything off by the time the Parliament rises.

Maureen Macmillan: So, as is the case for the whole Parliament, committees cannot carry forward matters until after the election.

The Convener: It would be a matter for the new committee and for whoever forms the new Executive.

Maureen Macmillan: But bills will fall and so on.

The Convener: There might be a whole new Government, Maureen. Who knows?

Maureen Macmillan: Absolutely. But do not get your hopes up, convener.

The Convener: I will let that comment pass. It is terribly tempting for us to get involved in other issues, but I think that it is too late in the day. It could be a matter of establishing where we are. I will ask Neil Hutton to summarise, but first invite Donald Gorrie to contribute.

Donald Gorrie: To pursue the issue of trying to do something useful before the election, I presume that if we produce a report, even if it just sets out

our understanding of the present state of play with regard to alternatives to custody, the next committee, comprising whoever is lucky enough to be elected to the Parliament and to the committee, can choose to pursue the matter. It is not quite like a bill falling, with the whole thing dying completely. If properly reported, the information that we produce can be used by the next lot.

On a point that you made about restorative justice, convener, would our inquiry cover a confrontational situation involving the offender and the victim meeting? I mean people who have been together ever since—I cannot remember the right name for that.

Professor Hutton: I think that you are referring to conferencing.

Donald Gorrie: I forget—

Professor Hutton: Family group conferencing is one name for that. Conferencing is a more general term. That falls under the framework of restorative justice.

Donald Gorrie: Does restorative justice cover it?

Professor Hutton: That is usually described as restorative justice.

Donald Gorrie: Is that covered? We do not need to add more words.

Professor Hutton: I do not think so.

The Convener: I appreciate that some unhappiness has been expressed, but does the committee agree to the remit now, for the reasons that we have aired?

Members indicated agreement.

The Convener: I thank Professor Hutton for attending. He is discharged.

Annual Report

The Convener: Members have our draft annual report and I hope that they have had an opportunity to look through it. Do members have comments to make? We can sign off the report now, or if members want to make amendments, we can e-mail changes to members and, if possible, make them by agreement. There should not be much difficulty with the report.

Michael Matheson: Can we change paragraph 12, which is on meetings? The paragraph says:

"The Committee met 38 times from 12 May 2001 to 11 May 2002. Of these meetings, 25 were entirely or partly in private."

That sounds like the majority of our meetings are in private. The position becomes obvious from the rest of the paragraph, but I wonder whether we can—

The Convener: Rejig it.

Michael Matheson: We could rejig the words so that they do not suggest that the vast majority of meetings are in private. I am sure that the press that are present would vouch that that is not the case.

The Convener: That is a fair point.

Donald Gorrie: It could be stressed that only small parts of meetings were held in private. Often, we are discussing lines of questioning or similar matters.

The Convener: The committee is not being over-sensitive. We want to portray fairly the manner in which we hold our meetings.

Michael Matheson: The paragraph could be misinterpreted.

The Convener: Are we happy with those minor amendments?

Maureen Macmillan: I do not want to amend the report, but the last paragraph says:

"All the meetings were held in Edinburgh."

Perhaps we should show that the committee went out and about, although it did not hold formal committee meetings outside Edinburgh.

The Convener: That is a good point too.

Maureen Macmillan: I know that visits outside Edinburgh are mentioned elsewhere, but I suggest that we reinforce the point. It would be nice if the committee occasionally met formally outside Edinburgh.

The Convener: We tried to arrange a meeting in Aberdeen, but it would have been too logistically complicated to hold a meeting there. However, that was discussed.

Lord James Douglas-Hamilton: I wonder whether it is worth adding a sentence to the end of paragraph 5 to the effect that a conclusion will be reached in the relatively near future. We do not want to give the impression of unreasonable delay.

The Convener: Heaven forbid that the committee should create unreasonable delay.

Is there anything else? Comments are popping up everywhere now.

Donald Gorrie: I will pursue Maureen Macmillan's comment. The report could say that committee members used the opportunity of the Parliament meeting in Aberdeen to spend a day with Grampian police.

The Convener: I have been told that that is outwith the period of the report, which stops at 11 May 2002.

Michael Matheson: We took evidence, informally, at the prisons that we visited.

The Convener: That is referred to in paragraph 6, which says that

"the Committee visited a number of prisons".

Michael Matheson wants the prisons to be listed. Would members have any difficulties with that? That is a fair suggestion. We have visited many prisons.

Michael Matheson: We have taken evidence at prisons from prisoners, staff and trade unions.

The Convener: That shows that the committee is not glamorous but dedicated. Is everybody happy? The amendments to the report will be sent to members and highlighted, so that they can be signed off.

Donald Gorrie: Could I make a pedantic suggestion? The report says that

"the Committee visited a number of prisons, talking to the management team, staff and prisoners."

Could that say "listening" as well as "talking"? That is the most important thing.

The Convener: Yes. I am not unhappy about that suggestion.

Petition

HMP Peterhead (PE514)

The Convener: Agenda item 3 is on petition PE514 from Ann Wemyss. The petition urges the Parliament to call on the Scottish Executive to review its decision to close Peterhead prison; to opt for a refurbishment or the construction of a new building on the site; and to recognise the work and efforts of the staff at Peterhead prison to reduce offending. The petition has more than 17,000 signatures. Do members wish to consider the petition as part of our scrutiny of the prison estates review or simply to note the petition and to take no further action?

Lord James Douglas-Hamilton: Normally I would say that we should note the petition and take no further action, but the issues have already been considered in our inquiry on the prison estates review. There is no reason why we should not say that the issues in the petition have been taken into account in our inquiry.

The Convener: It is remarkable that 17,000 people have signed a petition to keep a sex offenders prison in their locality. That says something about the community.

Michael Matheson: We should refer to the petition in our report.

The Convener: We will do that when we come to finalising the report.

Donald Gorrie: Can we send a copy of our report to Ann Wemyss to demonstrate that we have covered the points in the petition?

The Convener: When the report is issued on 2 July, we will send a copy to the petitioner with a covering letter that acknowledges the hard work that she has done.

We have agreed to take agenda items 4 and 5 in private.

13:46

Meeting continued in private until 16:24.

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