JUSTICE 1 COMMITTEE

Wednesday 1 March 2006

Session 2

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JUSTICE 1 COMMITTEE
7th Meeting 2006, Session 2

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Stewart Stevenson (Banff and Buchan) (SNP)

COMMITTEE MEMBERS

*Marlyn Glen (North East Scotland) (Lab)
*Mr Bruce McFee (West of Scotland) (SNP)
*Margaret Mitchell (Central Scotland) (Con)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Mike Pringle (Edinburgh South) (LD)

COMMITTEE SUBSTITUTES

Brian Adam (Aberdeen North) (SNP)
Karen Gillon (Clydesdale) (Lab)
Miss Annabel Goldie (West of Scotland) (Con)
Mr Jim Wallace (Orkney) (LD)

*attended

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

Scottish Parliament

Justice 1 Committee

Wednesday 1 March 2006

[THE CONVENER *opened the meeting at 10:03*]

Justice and Home Affairs in Europe

The Convener (Pauline McNeill): I welcome everyone to the seventh meeting in 2006 of the Justice 1 Committee. All members are present, so we have no apologies this morning. It would be helpful if members could do the usual and switch off their mobile phones.

Members should refer to the clerk's lengthy note and the additional documents on our on-going work on justice and home affairs in Europe. I also refer members to the draft motion that has been prepared for the committee debate that is scheduled to take place on 23 March, as agreed by the Parliamentary Bureau.

Members will recall that in recent months we completed an inquiry, following which we strongly recommended that the Executive should not take any further part in discussions on changes to European law on jurisdiction in divorce matters, succession and wills. The note before members contains a couple of suggestions.

First, we should note the current position in relation to the green paper on applicable law and jurisdiction in divorce matters and the publication of legislative proposals by the European Commission; we should keep that area under consideration. We should also note the current position regarding the green paper on succession and wills and the publication of legislative proposals. We are to ask for continuing updates from the Executive following meetings of the Council of the European Union working group that is considering the proposed directive on mediation, on which we have also done some work. We are also to ask the Scottish Executive to provide regular updates on the progress of the working group in relation to the draft directive on maintenance obligations.

There is quite a lot there already, and there are two further issues. Subject to our work programme, we could invite the Minister for Justice to give oral evidence on the outcomes of the Scottish Executive's input into the United Kingdom's presidency of the European Union. We could do that jointly with the Justice 2 Committee, as it obviously has an interest and has done some work of its own. We also have to agree the terms of the draft motion that members have before them.

I appreciate that quite a lot of work is involved in this area. We are talking about several very complex documents, but in our previous discussions, we have agreed that, because the Commission is active on issues that will have an impact on Scots law, we have to scrutinise what it is doing. Do members have any comments?

Margaret Mitchell (Central Scotland) (Con): We are combining the approaches that the committee has taken since we visited Brussels. We have realised how important it is to be in on any legislation as soon as possible after the agenda is set. Having considered the issues and taken part in the process, it is only fitting that we have a debate and make strong recommendations thereafter. I welcome the approach that has been taken.

The Convener: Paragraph 25 of the clerk's note refers to the CVs that were received from people who are interested in being on the expert group on succession, wills and the conflict of laws in the area of matrimonial property regimes. It might be useful to find out who is on that expert group; I do not think that we have a note of whether it has any Scottish representation, but the EC promised that there would be geographical balance in the group's membership. There will be five meetings during 2006, so it might be quite important to know who on the expert group will represent our interests. Is that agreed?

Members *indicated agreement*.

The Convener: Are there any other comments on the proposed action, including the proposal to invite the Minister for Justice to give evidence to us and the Justice 2 Committee?

Marlyn Glen (North East Scotland) (Lab): It is quite difficult to comment on the proposals properly at the moment because we do not know how our next bill is going to go. I emphasise the comment in the clerk's note that we could invite the minister to give evidence

"Subject to other work programme commitments".

I think that we should follow up on our work, but we would have to decide how much time to give that so that it is done properly.

Mike Pringle (Edinburgh South) (LD): Are we suggesting that we do the work with the Justice 2 Committee before the committee debate?

The Convener: No, not necessarily. I do not think that that would be possible. If anything, that work would be a useful follow-up to the debate, although sometimes it is hard to interest people in European matters. We have to try and get people to take an interest because changes could be

made to our law. We should make a plea in the debate for other members to take note of that. That might give us a platform for saying that we should question the Minister for Justice along with the Justice 2 Committee. That is very important.

It is the nature of our work in this area that things lie dormant for months and then, all of a sudden, we find that the Commission has come out with another proposal. We do not always know when that is going to happen, which is an important point.

Margaret Mitchell: I back that up. The consequences for Scots law of some of the proposals on succession and divorce law would have been material and, had the committee not taken a strong stance on those, the outcome might have been quite different. The proposals might have become EU law almost by default. The issue is important and the committee is right to flag up in the strongest terms the fact that, as indicated in the draft motion, we would be absolutely opposed to those proposals.

The Convener: We are agreed on our action. I ask committee members to turn their attention to the draft motion and Stewart Stevenson's amendment to it. Are members content with the wording?

Mike Pringle: I have not seen the amendment.

Stewart Stevenson (Banff and Buchan) (SNP): It is a simple suggestion to tidy up the wording. I propose that, where the motion says:

"not in the best interests of Scotland",

it should say "not in the best interests of the people of Scotland". That does not change the substance; it merely changes the emphasis.

The Convener: Are members content with that change?

Members *indicated agreement*.

The Convener: The motion will be lodged. That will be the motion to which we will speak on 23 March.

Petition

Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (PE841)

10:11

The Convener: Item 2 is consideration of petition PE841. I refer members to the note that the clerk has prepared and to the recent correspondence from the petitioners to the convener of the Public Petitions Committee explaining that a fatal accident inquiry into the circumstances surrounding the death of the petitioners' daughter has been instructed by Crown counsel. That brings members up to date on that point.

Members will see in the clerk's note that there has been an exchange between ministers and the Public Petitions Committee. It is helpful to see that exchange, and I am sure that we are all grateful to the Public Petitions Committee for taking the trouble to prepare that correspondence. The petition has been referred to the Justice 1 Committee for further consideration, and I invite members to comment on it.

Stewart Stevenson: Obviously, when we consider such a petition, our thoughts go out to the family, who have suffered loss. No committee member will wish to do other than respect the concerns that the family expresses and seek to support them in their loss. As far as I understand the facts of the case, there appear to be broader issues to do with establishing the facts of, for example, the speed of the vehicle involved, which might touch on the way in which the police and other investigators conduct their business. Therefore, it is entirely proper and welcome that there is to be an FAI.

However, that does not lead me to conclude that there should automatically be an FAI in every such case. Indeed, I have had a constituency case in which a family was distressed that an FAI was to be held—for privacy reasons, I do not want to refer to the details. There will be variation in whether families will wish there to be an FAI. Families who feel that one is appropriate will almost always make their view clearly known and seek the support of politicians who might help them to articulate their case. Nonetheless, there will equally be families that do not want an FAI.

My other concern is that, if we were to go down the road of having something similar to a coroner's inquest in England, the resources that are available to investigate the most important cases would be diluted and we would get less out of FAIs than we currently do. The case that the Curran family has been pursuing seems, as far as we can

establish, to provide the opportunity for improving the way in which things will be dealt with in future providing the FAI into their daughter's death establishes the facts. I am not fully convinced that FAIs should be mandatory, but I will listen to colleagues' views.

It is worth saying that we previously considered a petition that touched on the Road Traffic Act 1988, which this Parliament, unfortunately, cannot amend, because it is a reserved matter. I know that the committee wrote to Westminster with some recommendations, and I also made a personal contribution to the consultation process. That is the sort of thing that I would do in future, but I am not yet persuaded by the arguments in relation to this petition.

10:15

Margaret Mitchell: I share Stewart Stevenson's reservations about making FAIs mandatory. However, I have met Mr and Mrs Curran and have written on their behalf to the Lord Advocate, and certain questions to do with their case are still outstanding, not least the question why it was not possible to determine the speed of the vehicle involved, from which I think that lessons can be learned. This tragic accident happened during the December-January holiday period, and there may well be relevant wider public policy issues. I am pleased that a decision has been made to hold a fatal accident inquiry in this case, because there is no doubt about there being unresolved questions to which Mr and Mrs Curran have sought answers, and despite various MSPs, including myself, writing to the Lord Advocate about the case, the answers have still not been forthcoming. However, I would stop short of saying that an FAI should be mandatory in every case; that is for the Lord Advocate to decide on the basis of the facts before him.

Mr Bruce McFee (West of Scotland) (SNP): One thing that we have to remember, having listened to evidence from Scotland's Campaign against Irresponsible Drivers, is the sheer frustration felt by many families who lose a loved one at the hands of a what is termed a "careless driver". The simple term "careless driving" seems to devalue the life of the person who has been killed. Penalties on conviction for careless driving do not seem to bear any relation to the consequences of such driving, and that is a deficiency in our system. Unfortunately, it is a deficiency that this Parliament cannot rectify, but I hope that it will be rectified by the United Kingdom Road Safety Bill in the near future. I would be pleased to receive an update on that, because it is absolutely clear that the law is deficient in this area. If somebody causes the death of an individual by careless driving, the slap on the wrist that is often given is an inappropriate penalty. As one of the letters that we have received says, the person responsible often manages to drive away from court. That is a slap in the face for families who have lost loved ones.

There are clearly deficiencies in the law, but I believe that making a fatal accident inquiry mandatory would not address those deficiencies. I would rather that the law was strengthened so that the proper penalties and charges were available to the courts to punish more severely behaviour that results in the death of an individual.

There are also great deficiencies in our system, in that the Procurator Fiscal Service and others in the system are unable to communicate properly with the families of victims. That is a problem right across our criminal justice system. Families of victims, and victims themselves in some circumstances, are kept in the dark. Cases come to court and they may not even know about it—I know from my mailbag that that happens regularly. Despite the reassurances that everything in the garden is rosy, I know that it is anything but. When a family has lost somebody, their sense of grievance must be made even more acute by the failure of the system to communicate with them.

Turning to the specifics of the Curran family's case, we have to ask why it took more than two years to obtain a fatal accident inquiry. I really wonder why that should have taken such an inordinate length of time, and although the demand for an FAI has been satisfied in this one case, we should remember that there are many other cases in which families want an FAI to establish the circumstances surrounding the death of their loved one and to give them information that would otherwise not be available to them.

I do not have the magic answer, but perhaps we should consider having a system whereby, if the family concerned wants a fatal accident inquiry to be held, that view could more readily be taken into account. We should not have a mandatory system because I understand that there will be circumstances in which some families will not necessarily wish such an inquiry to be held.

Frankly, a delay of more than two years is unacceptable. I want to know the justification for overturning two and a quarter years later the original decision not to hold a fatal accident inquiry. It seems strange that the family's request that an FAI be held should finally be granted at this stage, when we are considering the petition again, but could not be granted over the preceding two years.

Marlyn Glen: I agree with other members that making the holding of FAIs mandatory does not seem to be the way to go. I share their hope that the UK Road Safety Bill—which, unfortunately, will

not be retrospective—will go some way towards addressing the concerns that the petition outlines, and I echo Bruce McFee's suggestion that it would be helpful for the committee to be updated on the bill's progress.

Mike Pringle: Many relevant points have already been made. Many families who find themselves in such circumstances do not want a fatal accident inquiry to be held, so to make the holding of an FAI mandatory is not the way to proceed. I totally agree with Bruce McFee's view that it is bizarre that it has taken two and half years to get a fatal accident inquiry in the Curran case. Not just politicians, but lawyers, including the Lord Advocate, must show more consideration for people's feelings.

As a politician, I am often asked why it is that someone who, while driving a blunt instrument with four wheels, hit a pedestrian and killed them is considered to have committed a lesser offence than someone who got out of their car, hit a passer-by with a large blunt instrument and killed them. The second person would be done for manslaughter or murder and would probably have to serve a much longer prison sentence than the first person.

I welcome the UK Government's Road Safety Bill, which is being considered at Westminster. I have some reservations about whether the maximum penalties for careless driving are severe enough, but I do not think that it would be right to make the holding of FAIs mandatory. We must show much more consideration for people's wishes. We are meant to be a listening society, so we should listen to what people want far more, rather than just impose our views on them. I hope that in future the Lord Advocate and others might take into consideration what the committee has said this morning.

Mrs Mary Mulligan (Linlithgow) (Lab): Like Stewart Stevenson, I offer my sympathies to the Curran family. As other members have said, it is unfortunate that matters have dragged on for so long, which has only added to the pain that the Currans suffered when they lost a member of their family.

However, I must agree with my colleagues in not supporting the introduction of a mandatory response to such situations; I have not yet heard anyone argue otherwise. There are concerns about how circumstances in which careless driving leads to a death and leaves a grieving family are responded to and I hope that the bill that is being considered at Westminster will deal with some of those concerns.

We are asked to consider the holding of mandatory fatal accident inquiries. Although it is appropriate to hold FAIs in some circumstances, it would be unfortunate if we made them compulsory in every case. For the record, I agree with my colleagues who have already spoken.

The Convener: There seems to be consensus that the committee does not support the main aspect of the petition, which is that, in such circumstances, the holding of FAIs should be made mandatory. However, it is clear that members are concerned about how the system treats families and others.

There seems to be an acceptance on the part of the Executive that, in the case before us, the family felt that there were

"concerns regarding information provided to them".

That quotation is from a letter of 14 July from the Lord Advocate's office to Michael McMahon.

Bruce McFee has pointed out that many of the concerns arise from families' experiences of the system and their frustration at the lack of information about the circumstances of the death of their relative. I suppose that, to an extent, an FAI holds out the prospect of giving families more information.

I wonder whether the committee, in rejecting the call for mandatory fatal accident inquiries, might want to take the matter a wee bit further. On the basis of the letter from the Lord Advocate, we could ask about the lessons that can be learned and, if mandatory FAIs are not the way forward, what the alternative forums are for families to get the maximum amount of information when a death has been caused by careless driving.

Given that members are concerned about our workload, I am sure that there is no desire to keep the petition open. I propose to close the petition on the basis of members' comments, but for the sake of completing our investigation of the issue I suggest that we write to the Lord Advocate and ask what lessons can be learned from the case that is before us. We can say that we have rejected the call for mandatory FAIs, but ask him to set out the alternative ways in which families can get information.

Margaret Mitchell: That is particularly important, given that it has taken the Currans two and a quarter years to achieve this result—I know that the matter has taken up a huge part of their lives. We are saying that FAIs should not be mandatory, but the Currans have had to work for two and a quarter years to achieve an FAI. The Lord Advocate must make the guidelines clearer so that an FAI would be granted automatically if, heaven forbid, anyone ever finds themselves in the same circumstances.

Mr McFee: The problem is that people will regularly be in the same circumstances.

I would like to go a bit further than the convener suggests. I understand what she says about wanting to learn from the situation, but I think that our letter to the Lord Advocate should be about how the system can be made more sympathetic to requests of the relatives of the victim in such circumstances.

The Convener: Do you mean requests for information?

Mr McFee: I do not mean just requests for information. It goes without saying that the system should be far more responsive in keeping people up to date and engaging them in some way if they wish to be engaged, but I am talking about the system being more sympathetic to requests for an FAI when the relatives want one. That goes further than learning from the mistakes that have been made.

The Convener: I am not sure about that suggestion. I am with you up to that point, because I think that the central issue is that families want more information and answers to questions. The system is beginning to respond to that desire, particularly in cases that are marked "no proceedings". It is a dramatic departure for the Crown to offer in all cases—not only cases of careless driving—information that allows victims' families to know why no proceedings have been brought. The system is beginning to respond.

It is right that the Lord Advocate should set out the alternative ways in which families can get information, but I do not know that it is right to go further and say that therefore the system should be sympathetic to requests for FAIs. There are rules and, as Margaret Mitchell suggested, we can ask for them to be made clearer. We can also ask questions about why there is an FAI in one case and not in another. If the rules exist, how can they be made more sympathetic?

10:30

Mr McFee: I will mention a way in which they can be more made sympathetic. I do not support mandatory FAIs because I believe that in some circumstances families will not want one; they will not want to have to go through the experience twice. That is my only reason for not going along with mandatory FAIs. As a society, we require there to be an FAI when someone is killed at work or dies in custody, so FAIs are mandatory in certain circumstances.

I am simply saying that the system should be more sympathetic if the relatives of the deceased want a fatal accident inquiry to be carried out. If it so desires, the Parliament can compel fatal accident inquiries to be carried out in such circumstances, although it is not necessarily desirable that that should happen in every case. However, we should be able to give a lead on how we expect people to be treated and how we expect the system to fulfil people's desire to get to the truth. It is clear that that is not happening.

I am greatly concerned that, after two years and three months, this family have only now been granted a fatal accident inquiry. If the rules are the same all the way down the line, why should that have happened? Let us be frank: rules can be interpreted in different ways and we should make it clear that, in such circumstances, we want the rules to be interpreted in such a way that the families involved can have a fatal accident inquiry if they want one. It is as simple as that.

Marlyn Glen: I understand Bruce McFee's concerns and again express my sympathies to the families that are involved in such cases, but his proposal will complicate matters unnecessarily for other fatal accident inquiries—not those into road traffic accidents but those into accidents that have happened to people who are at work or in custody. In particular, it will complicate matters for families who do not want such an inquiry. There must be rules.

Margaret Mitchell: We must ask the Lord Advocate to set out his reasons for granting a fatal accident inquiry into this case. Because certain questions remain unanswered, it is right to have a fatal accident inquiry. However, that might not always be the case in accidents involving careless driving; although the relatives might not accept the evidence, there might be nothing more to find out. I do not know. In the Curran case, because speed at the time of the accident was not determined, the verdict was careless driving rather than dangerous driving, and everything followed from that. I hope that the fatal accident inquiry will finally resolve that issue. As I have said, to ensure that the rules are crystal clear for families in the future, the Lord Advocate should make it clear why he has deviated from his previous decision.

The Convener: I think that we have reached some consensus, although there is a difference of opinion about what we should emphasise in our letter. Personally, I do not want to get into the details of why the Lord Advocate changed his mind. Margaret Mitchell and other MSPs who have been involved the case should pursue that matter—and rightly so. However, I do not think that the committee should do so, although we should refer to the case and the letter from the Lord Advocate as an example of why we think that the Crown should set out the alternative procedures that are available if there is no FAI. That would address the pertinent issues in relation to families seeking information and understanding about a family member's death.

As I have said, it is up to Margaret Mitchell and the other MSPs involved to take things further and

ask the Lord Advocate why he has changed his mind. If the committee did that work, we would have to keep the petition open, because we would have to wait for the response to that specific question. It would be more beneficial if the committee dealt with the more general issues that affect all families and with the lessons that we can learn from this case.

Margaret Mitchell: Above all, we need clarity, and that is the best way of establishing it.

The Convener: I am happy to support the suggestion that in our letter we emphasise that we need clarity in relation to the guidelines. That leaves Bruce McFee's suggestion that we go even further and make it clear that we expect the Crown Office to be more sympathetic with regard to the FAI rules.

Mr McFee: No matter how much we seek it, clarity is the one thing that we will not get in these cases. Indeed, I do not know whether we will be able to get any more clarity than we have already received—I do not know how many pages of it we require. That is why I want to be clear about what I am saying: our response should be that our system should be more sympathetic to requests for fatal accident inquiries from the relatives of the victim. If the relatives of the victim have an overwhelming desire for an FAI, they should be granted one. That is not unreasonable. No matter what happens with the UK bill, there will still be a time lag and we do not know what will come out at the other end. As I have said before, my only concern about making FAIs mandatory is that there will be circumstances in which families do not wish to relive the whole episode.

The Convener: What you are saying is that when families request an FAI, it should be mandatory.

Mr McFee: Yes. It should be granted.

Stewart Stevenson: It would be appropriate for us to ask the Lord Advocate whether he is minded to take account of the family's views, in addition to other factors, in deciding whether it is appropriate to have an FAI. I am reluctant to go as far as to suggest to the Lord Advocate that there should always be an FAI if the family asks for it, but it could be appropriate to ask him if he is minded to include among his considerations the views of the family. At the end of the day, by and large it is his decision, and unless we want to bind his hands to a greater extent than we currently do—which I am not minded to support—those are the terms in which we might express this discussion.

Mr McFee: I hear what is being said, which is that we do not want to bind the hands of Mr Boyd or whoever comes in his place, but we already do that in cases of deaths in custody and accidents at work. The primary reason why FAIs are mandatory in those situations is that the individual is in somebody else's care, whether that is the care of the employer or the care of the state—at least, I understand that an FAI is mandatory in those circumstances. However, our hands are tied on how we deal with the hole in the legislation in that respect. I concede that an FAI is not the best tool to close that hole—proper legislation on the matter would be, but that is outwith our hands. We should make it clear to the Lord Advocate that when a family requests an FAI because it is unhappy with the explanation that it has been given, the situation can be ameliorated by the family being given proper information. We should be clear that if the family is not provided with that information, the FAI route will have to be taken. Perhaps that will produce the correct pressures in the system.

The Convener: You do not really have the support of the committee for your suggestion that an FAI should be mandatory when the family requests one, but members are minded to accept Stewart Stevenson's suggestion that in our letter to the Lord Advocate we ask him whether he would be minded to take account of a family's view in determining whether an FAI should take place.

Mike Pringle: I am happy to accept that. My only comment is that I sincerely hope that the Lord Advocate already takes into account all the circumstances. Perhaps we are saying that in future he should take a more sympathetic view. Our letter could ask him whether he takes into account families' views. I agree that we should not be calling for an FAI to be mandatory if someone requests one.

The Convener: You say that you hope that the Lord Advocate is already taking families' views into account. Would you be happy for us to put that point in a letter to him?

Mike Pringle: Yes.

Margaret Mitchell: We do not have the Lord Advocate's response. Given that he has moved considerably from his original position of two and a quarter years ago, I suggest that we keep the petition open and consider it again once we have his response.

The Convener: It is open to the committee to do that. I do not see why we cannot take both the courses of action that have been suggested. I am concerned that sometimes, when we have petitions before us and we want to be helpful to the petitioner, our consideration of the petition ends up going on and on. As I said, I think that we can do both things. The committee has made a clear decision that it is opposed to the terms of the petition—that is, on making fatal accident inquiries mandatory. Bruce McFee has a slightly different position, which must be acknowledged, but there does not seem to be support for it.

In an attempt to show sympathy towards the petitioners—which I think all members have—I say that I think we are doing the right thing. We should further clarify what the alternative is for families. I think that we can do that without keeping the petition open. I suppose that it is a technical issue if the committee wants to keep it open.

Mr McFee: You are right about the technicalities. Mike Pringle asks whether the Lord Advocate takes the feelings of the family into account at the moment. We do not have an answer on that. What if the Lord Advocate replies and says that he does not take them into account, and that they are not a criterion? That is a distinct possibility, given the correspondence that we have had. The committee will have made a decision to write in certain terms—

The Convener: That does not change the committee's attitude towards the petition. I am confident that, if we got such a reply, the committee would want to do something about it.

Mike Pringle: We certainly would. There is no question.

The Convener: I do not have any doubt about what the response of the committee would be in that situation. That applies to all of us, I am sure.

Mike Pringle: Bearing that in mind, perhaps the answer is to accept Margaret Mitchell's suggestion. Let us write to the Lord Advocate in the terms that we have discussed. I hope that Bruce McFee will agree with that. We can keep the petition open and wait for the Lord Advocate's response, then we can make a decision on the matter. Perhaps that is the way to go. If we get a letter back from the Lord Advocate and Bruce McFee is still unhappy, he can pursue the matter.

The Convener: I am against keeping the petition open but, in the interests of progress, if members want to do that we can do so until we receive a reply. We appear to have decided that we are not in favour of the terms of the petition.

Mike Pringle: That is true.

Mrs Mulligan: I thought that you said that we can both ask the questions and close the petition but, if we get a response that engenders the sort of feeling that the committee has just indicated, we could look to do something about the situation. I am not sure why Mike Pringle said that—

Mike Pringle: No, I was just—

The Convener: I would like to come to a decision. We were scheduled to finish at 10.30, as we have to receive a briefing on a bill. In the interests of moving on, I am prepared to—

Marlyn Glen: We have sympathy with the petitioner, and closing the petition does not lessen that sympathy. If we write to the Lord Advocate in the way that has been outlined but we are not pleased with the response, we will write again and pursue the matter in another way. We should close the petition.

Margaret Mitchell: I want to progress the matter, too, but I want to do so in an informed manner. Questions have arisen today. Given that the committee is minded to write to the Lord Advocate and to await his answers, and also to close the petition, the majority opinion of the committee is that we are not in favour of mandatory fatal accident inquiries per se.

We can write to the Lord Advocate. I hope that he will read our discussion, that he will understand the problems that we have experienced in making our decision, and that he will be aware that we want more clarification on why he granted an FAI in the Curran case. On that basis, we can close the petition, but I hope that we receive a strong and clear answer—together with guidelines—on why he acted in the way that he did in this case, and on what that means for the future.

10:45

The Convener: Thanks. That is helpful.

Mike Pringle: Agreed.

Mr McFee: No, it is not. We must regard this matter as going wider than just one family.

The Convener: Yes. That is agreed.

Mr McFee: Everybody clearly accepts that. The fact that an FAI has been granted in this instance does not, I suggest, satisfy the requirements of other families in other situations. That is one reason why we should not be too hasty in making a decision; another reason is that we might receive a reply from the Lord Advocate that says, "We do not take into account the family's wishes." It is odds on that the reply will say that, because if the Lord Advocate were sympathetic to every family who requested an FAI in such circumstances he would have adopted the position that I have adopted. Given that he has not done so, the letter that we are considering writing will aim somewhat shy of the mark. I am not sure that it would be satisfactory simply to close the petition and write to the Lord Advocate. Why close the petition before we have an answer from him?

The Convener: We cannot keep petitions open for ever. The record shows that the committee works hard on petitions. Even when we do not agree with a petitioner's request, we always find a point of interest in the petition.

If we leave the petition open, we will leave open the debate about the need for mandatory FAIs and anyone will be entitled to write to the committee and ask it to change its position. I ask members to

bear in mind the consequences of leaving the petition open. If we close it, we are saying that, although we do not agree with the petition's central point, it has drawn an important matter to our attention and we will work on it. We might undertake further work if we are not satisfied with the response from the Lord Advocate. Bruce McFee can pursue his line of questioning as far as he wishes in the light of that response, without the petition remaining open. I assure the committee that as long as members want to pursue the issue through correspondence, by taking evidence or in any other way, the matter will remain on our agenda. However, I do not want to prolong the discussion on a minor point. If members want to keep the petition open and write to the Lord Advocate, I will concede the point in the interests of moving on.

Mr McFee: I will be brief. The convener highlights the difference between our positions. If, as we suspect, the Lord Advocate's reply says, "No, not really," I will want to push for an element of compulsion—

The Convener: The closure of the petition would not prevent you from doing that.

Mr McFee: Fine. I reserve the right to make a proposal at a subsequent meeting, after we have heard from the Lord Advocate.

The Convener: Okay. In summary, we will close the petition, but we want the Executive to make progress in relation to the UK Road Safety Bill, as Marlyn Glen said. Secondly, we will write to the Lord Advocate. We will refer to the Lord Advocate's letter of 14 July to the convener of the Public Petitions Committee, Michael McMahon, in which it was conceded that there were concerns about the information that had been provided to the Curran family. We will make the point that although we do not support the petition's call for mandatory FAIs, we think that there should be an alternative forum whereby families have access to the maximum information about their cases. Margaret Mitchell was anxious to ask the Lord Advocate about the Curran case. Do you still want to do so?

Margaret Mitchell: Yes. We are not just talking about giving people information. I want to know why the Currans were not given information about the speed of the vehicle that caused the accident, which was a crucial and germane point. Nobody has established why the family was not given that information. A fatal accident inquiry would provide such details, so there remains a case for having an FAI—

The Convener: An FAI has been granted—

Margaret Mitchell: Yes, in the Curran case, but I am thinking about future cases—

The Convener: Bruce McFee made the important point earlier that the committee could use the case as an example and use the petition as a starting point to address the question of how families are treated in the system. I would be against going down the line of questioning where there is an FAI.

Margaret Mitchell: My difficulty is that there were many meetings with the fiscal's office and the Currans, but that information was still not forthcoming. That is why we are having the fatal accident inquiry. I would hate any other family to be stonewalled by a missing piece of information that meant the jigsaw could not be completed.

The Convener: Is there some way of addressing that but in a more general way? I do not want to get into the business of dealing with general issues by asking specific questions on specific cases.

Margaret Mitchell: I suppose the point is that if information that is germane to the type of prosecution or the charge levied is not available, a fatal accident inquiry should be looked at.

The Convener: Will that help us on this point?

Mr McFee: No, not when it is slightly different. I suspect the answer is that pressure was put on.

The Convener: I need to know what we are going to do on this point.

Mike Pringle: Would it cover Margaret Mitchell's point if the general point was made that the committee would like to know the circumstances that the Lord Advocate takes into account in such cases? More specifically, the committee could ask if he takes into account requests from families or individuals' views as to whether they want a public inquiry. Would that cover it?

The Convener: We have already agreed that we will include that. I do not know if it will cover Margaret Mitchell's point. Margaret, you want to go into some detail about the case.

Mike Pringle: I do not think we can go into specifics.

Margaret Mitchell: It is not a matter of the details; it is a matter of the principle—a question was never answered, no matter how many meetings were held and no matter how helpful the fiscal's office was. That issue was not resolved. I hope that a fatal accident inquiry will resolve it.

The Convener: Could we comment that we are referring to the case because we are pleased about the FAI? Margaret, the problem is that you have much more information about the case than we have.

Mrs Mulligan: The specifics of this unfortunate case will be picked up in the FAI and, therefore,

we do not want to second-guess what it will consider. Margaret Mitchell seems to have more information on the case than other members. I understand her frustration in wanting to ask those questions, but it is not necessarily the committee that should ask them. We are trying to look at the broader picture. The specifics will be picked up elsewhere.

Stewart Stevenson: It is important for us to distinguish between the general and the specific. We have a limited understanding of the case. We could ask the Lord Advocate whether he would expect a proper outcome of an FAI to be the identification of shortcomings in the investigative methods, tools and resources that were available to all concerned. That would, for example, enable the speed in road traffic accidents to be determined in a greater number of cases. That is the general point.

I suspect that it is not known why the speed of the vehicle concerned could not be determined in the Curran case. The FAI will meet the needs of the family concerned and other families who will inevitably follow. It could also serve a broader purpose by improving our ability to determine facts that are not known. It is perfectly proper for the committee to ask the Lord Advocate—in a general way, but still related to the case—whether he sees that as precisely the sort of thing that an FAI provides the opportunity to explore. For example, the FAI might conclude that a type of measuring equipment that would help has not been developed. I do not know whether that is the case—I am speculating—but science and engineering move ahead all the time, and the equipment that is available to the criminal justice system might not be up to the mark. We can generalise from the specific by asking a general question that touches on the particular issues.

The Convener: Does that help you, Margaret?

Margaret Mitchell: Yes.

Mike Pringle: Agreed.

Mr McFee: Convener, the committee was asked to support mandatory fatal accident inquiries for all road deaths caused by careless drivers. We rejected that, but my position is that FAIs should be mandatory in such cases if the family requests one. I do not want to rule out FAIs in those circumstances. Could we add a few words to acknowledge that we reject mandatory FAIs, but not in all circumstances?

Members *indicated agreement*.

The Convener: Thank you, Bruce. We have agreement. We will draft something and send it to members. If it does not reflect the discussion and the points that we agreed, members should let us know. No new points should be made.

That brings our meeting to an end. After the meeting we will have a private briefing on the Criminal Proceedings etc (Reform) (Scotland) Bill.

Meeting closed at 10:57.

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