

JUSTICE 1 COMMITTEE

Wednesday 15 March 2006

Session 2

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CONTENTS

Wednesday 15 March 2006

Col.

SUBORDINATE LEGISLATION	2723
Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 (draft)	2723
Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2006 (draft)	2724
Advice and Assistance (Scotland) Amendment Regulations 2006 (SSI 2006/60)	2724
Civil Legal Aid (Scotland) Amendment Regulations 2006 (SSI 2006/61)	2724
FAMILY SUPPORT SERVICES INQUIRY	2726
SCOTTISH CRIMINAL RECORD OFFICE	2734

JUSTICE 1 COMMITTEE

8th 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

THE FOLLOWING ALSO ATTENDED:

Hugh Henry (Deputy Minister for Justice)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERK

Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 2

Scottish Parliament

Justice 1 Committee

Wednesday 15 March 2006

[THE CONVENER *opened the meeting at 09:52*]

Subordinate Legislation

Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 (draft)

The Convener (Pauline McNeill): Welcome to the eighth meeting of the Justice 1 Committee in 2006. I do not know about other members, but I feel as if we have had more than eight meetings. However, the records show that this is the eighth meeting. All members are in attendance, so there are no apologies.

Item 1 is subordinate legislation. I welcome Hugh Henry, the Deputy Minister for Justice, along again. He will take part in proceedings on the two affirmative instruments.

I ask Hugh Henry to make opening remarks—on all four instruments if he wishes.

The Deputy Minister for Justice (Hugh Henry): The four sets of regulations will enable the annual uprating of financial limits for eligibility for legal aid. The overall package consists of two regulations that are subject to the negative procedure and two regulations that are subject to the affirmative procedure.

The draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 will uprate the financial eligibility limits for advice and assistance. The limits will be increased annually in line with contributory benefits. The United Kingdom Minister of State for Pensions Reform announced on 6 December that the benefits would rise by the retail prices index, which this year stood at 2.7 per cent. We therefore propose to increase accordingly the income limits and contributory bands for advice and assistance. We also propose to increase the capital limits for advice and assistance on the same basis.

The draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2006 deal with uprating of the limits for civil legal aid, which is linked to increases in the level of income-related benefits. As announced by the United Kingdom Secretary of State for Work and Pensions, those benefits have been uprated by the Rossi index, which is based on the retail prices index less housing costs. The Rossi index this year stood at 2.2 per cent; we propose to increase the income limits for civil legal

aid accordingly. We also propose to increase the lower and upper disposable capital limits for civil legal aid.

The changes that we are proposing will ensure that the eligibility criteria are kept up to date and that no one falls through the legal aid net because of the effects of inflation.

I move,

That the Justice 1 Committee recommends that the draft Advice and Assistance (Financial Conditions) (Scotland) Regulations 2006 be approved.

The Convener: Does any member wish to speak?

Members: No.

The Convener: In that case, the question is, that motion S2M-4071 be agreed to.

Motion agreed to.

Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2006 (draft)

The Convener: On consideration of the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2006, I refer members to the note that the clerks have prepared.

Motion moved,

That the Justice 1 Committee recommends that the draft Civil Legal Aid (Financial Conditions) (Scotland) Regulations 2006 be approved.—[*Hugh Henry.*]

The Convener: Does any member wish to speak?

Members: No.

The Convener: In that case, the question is, that motion S2M-4070 be agreed to.

Motion agreed to.

The Convener: There is nothing much for us to report, other than that we are fully satisfied that there are no questions to be asked on the regulations, so there is no need for members to see a draft report.

Advice and Assistance (Scotland) Amendment Regulations 2006 (SSI 2006/60)

Civil Legal Aid (Scotland) Amendment Regulations 2006 (SSI 2006/61)

The Convener: Next is consideration of the remaining two items of subordinate legislation—the Advice and Assistance (Scotland) Amendment Regulations 2006 (SSI 2006/60) and the Civil Legal Aid (Scotland) Amendment Regulations 2006 (SSI 2006/61). I refer members to the note

that the clerks have prepared. The minister does not usually comment on regulations that are subject to the negative procedure, but he sometimes hangs around in case we have any outstanding questions.

Hugh Henry: I am perfectly happy to do so.

The Convener: I welcome Gillian Mawdsley from the Justice Department, who is also available to answer questions. Do members have any comments on the regulations?

Members *indicated disagreement.*

The Convener: The regulations are quite straightforward, so I thank the minister and Gillian Mawdsley for appearing before the committee.

Family Support Services Inquiry

09:57

The Convener: Next is our proposed family support services inquiry. I refer members to the clerk's note, which sets out a suggested remit and timescale for the inquiry that Mary Mulligan has proposed. As members will recall, she is the committee reporter on family support services. I invite her to say a few words about her proposals.

Mrs Mary Mulligan (Linlithgow) (Lab): I do not want to add too much to the information that members already have. I will simply highlight two issues from the committee paper, the first of which is dealt with in paragraph 8, which mentions service types—a reference to the different ways in which family support services are provided. During our deliberations on the Family Law (Scotland) Bill, a number of questions were asked about what is meant by “family support services”. We have tried to list the various meanings, but I am acutely aware that when one makes such a list, one tends to miss something out. If there is anything that members want to pick up on, I will be happy to hear from them. In our previous discussion on the subject, reference was made—by Marlyn Glen, I think—not just to the type of services that are provided, but to the type of organisations that provide them. That issue will be dealt with in the same context.

Paragraph 12 of the paper deals with issues that are likely to be considered. I want to highlight two points, the first of which is on joint working. It is clear that although joint working is operating effectively in some areas, in other areas people are trying to do too much on their own but are not succeeding in doing anything. That issue needs to be examined in more detail. The second point is on funding. When we considered the Family Law (Scotland) Bill, we avoided getting into discussions about funding arrangements for support organisations because that did not fall within the scope of the bill. However, we must be realistic and accept that funding is crucial to ensuring that some of the bodies in question continue to exist and can provide the services that they currently offer. I intend to examine the funding situation, which has been difficult at times.

My aim is for the report to be as thorough as possible, but I also want it to be concise. The timetable proposes that the committee be reported back to in early autumn. I think that that is doable, but I do not want to go much beyond then, for obvious reasons—people's minds will start to focus on other issues next year. I think that the committee had a sincere commitment to ensuring that something happens around the issues, so I would like the committee to do that work in time for

us to influence what is being provided in our communities.

I am happy to answer any questions.

10:00

Stewart Stevenson (Banff and Buchan) (SNP): I welcome the excellent brief that has been prepared for us. I want to make one relatively minor but important point. Paragraph 12 refers to

“joint working between local authorities and local groups”,

but it is equally important that we consider joint working between local groups themselves, because the Executive’s policy is to try to draw such groups together. In my constituency and other constituencies in the north-east, there are already good examples of local groups working together and, as a joint group, working with local authorities and national Government. I am sure that what is written in the note is not meant to exclude that, but I just thought that it was important to record my view that it should be included.

Mr Bruce McFee (West of Scotland) (SNP): The note is helpful, as was the contribution from Mary Mulligan. I ask her to encourage the group that will consider the issue to examine local authorities contracting of services from voluntary organisations, to see how that works, what costs are involved and what funding is made available to various programmes and organisations at local level, so that we can see the differences between local authorities. If there is any way of comparing the centrally funded organisations and the locally funded ones, I would urge the group to do that, so that we can see whether we are getting value for money.

Marlyn Glen (North East Scotland) (Lab): I also found the note helpful, and I agree with the comments that have already been made. I realise how wide the issue is and I do not want to make it any more difficult, but the letter from Hugh Henry reminded me of some other loose ends that remain from our discussions. The focus is on families who are facing difficult times and the letter refers to a helpline for advice, but perhaps we could write to Hugh Henry to ask whether there is any room to consider a proactive approach. I know that counselling for couples is proactive and that people do not want to wait until a split-up is imminent.

The same is true of parenting. I know that there was a positive parenting leaflet; I asked at a previous meeting what had been done to follow up that good initiative, but it seems that nothing has been done. Can we find a space to consider that proactively? We could thereby push positive parenting, which can also help families and

couples, rather than their just waiting for a break-up to happen. Such consideration would not necessarily involve looking at the parenting agreement and the grandchildren’s charter, but we could at least write to Hugh Henry to ask about progress.

Mrs Mulligan: I shall respond to those points in reverse. Marlyn Glen’s comments clearly show that she wants to examine the pre-dispute situation, which will be important if we are to see a complete view of family circumstances. Some good work has already been done in pilot projects, but we could write to Hugh Henry and then decide whether to progress the issue in any other way. I know from discussions that I have had with Executive officials that a number of things are going on that we will need to pick up on. I shall be reporting back on those issues anyway, but Marlyn Glen’s suggestions are useful.

Bruce McFee’s point was about local authority funding of the voluntary sector—there is clearly an issue there. There is no member who has not received letters from various organisations in their constituency that feel that they have suffered because of that.

It was interesting to discover in the discussions that we have had with Executive officials that they are emphasising the need for the voluntary sector to improve its standards of provision and that local authorities sometimes see that as an excuse for not funding organisations because they do not think that they are professional enough, which seems to me to be at least a bit obtuse. We need to ask what discussions have taken place with such organisations about what was meant by being professional. Sometimes, such organisations have provided the only service so there was nothing once that was withdrawn.

Our finding out what services are being provided and deciding how we will develop them are significant issues. As Stewart Stevenson said, there are good examples of organisations working with local authorities and with one another. I want to consider those; Stewart Stevenson can take it as read that I will visit the examples of partnership working in Grampian that he has often cited.

Members’ comments were helpful and I will take them on board.

Margaret Mitchell (Central Scotland) (Con): I congratulate Mary Mulligan on her comprehensive report. The inquiry will consider what provision exists at present, how it is delivered and how it could be improved. For the avoidance of doubt, it will include voluntary organisations, so I hope that the inquiry will consider direct funding of voluntary organisations, not just their being funded through local authorities.

Will Mary Mulligan give us an idea of where she plans to go on her fact-finding visits and which organisations she will meet? I see that she is considering meetings with national bodies and with the Convention of Scottish Local Authorities; I hope that she will include some voluntary organisations.

Perhaps we should focus on the minister's letter. It is helpful that an awareness-raising campaign will follow up the Family Law (Scotland) Act 2006; that is vital. I particularly welcome the pilot scheme to introduce contact compliance officers to facilitate the resolution of contact-related disputes. Contact was a contentious aspect of the 2006 act and it is excellent that the pilot, along with the grandchildren's charter and other work on contact, is taking place. It is also excellent that there will be more campaigning to highlight and to try to resolve the thorny and vexing disputes about contact with children.

I welcome the minister's letter and Mary Mulligan's report.

The Convener: We need to respond to Hugh Henry's letter, because there are other matters in it on which we should keep a watching brief. I have a special interest in the contact compliance officer pilot project because its introduction is an important concession—which the Executive made at stage 3 of the Family Law (Scotland) Bill—to the committee's work on contact. We might want to think about how we will pursue the matters in the minister's letter. Members who are interested in those matters could pursue them individually or we could think about how to follow up the letter as a committee.

On Mary Mulligan's proposals, would it be fair to say that the remit that she proposes is about establishing and mapping what provision exists? I ask because, during the passage of the 2006 act, we discussed emphasis being placed on relationship support services and organisations that deal with mediation and break-up. I am particularly interested—as Mary Mulligan is—in relationship support, which is important in the context of the debate that we had about time limits for divorce. Where would that fit in? Would Mary Mulligan take a view on some of those issues when she reports back in October?

Mrs Mulligan: That would be part of the inquiry. Although the inquiry would also be a mapping exercise, at its conclusion I intend to recommend to the committee advice for the Executive and local authorities on how they can make progress.

In response to Margaret Mitchell, I say that the inquiry is an example of the committee following up on legislation. This afternoon, Parliament will discuss whether it has ensured that its legislation has been delivered in the spirit that was intended. Our work therefore fits into a bigger picture.

I know that the convener has a strong interest in contact compliance officers—she was instrumental in bringing their introduction about. In discussions with Executive officials, I have been encouraged by their progress. They have found people in courts who are enthusiastic about the idea, and that enthusiasm will ensure that the idea works properly. I feel that we will see results.

Margaret Mitchell asked whom I would visit. I have not yet drawn up a list, but I reassure her that I do not intend to visit only the national bodies. Let me explain part of the reason for that. Although there are national bodies and umbrella organisations, local bodies have a lot of autonomy. The Executive clearly does not want to continue direct funding to local authorities; at one time we thought that passing the funding to the national bodies for distribution would be a way round that. However, the national bodies do not have the control over local bodies that one might imagine, so even the national bodies would not be an adequate route for funding. We will have to consider the dynamics of the relationships, which are different within different organisations. It will be important to meet local groups as well as national groups. We will have to meet local authorities and voluntary sector organisations, and we will have to consider how they relate to the Executive and Parliament.

The Convener: I am quite happy with the proposed remit; I think that other committee members are, too. I am especially keen for you to pursue paragraph 14 of your remit, which is about making recommendations: that is vital. A total of £300,000 of additional money has been announced and it will be important for us to influence how it is spent. Mary Mulligan's report will paint a picture that will allow us to develop a view on priorities for the additional money.

Marlyn Glen spoke about positive parenting and about grandchildren and grandparents. Will you clarify how those issues will fit into our work?

Marlyn Glen: I wondered whether they would come into Mary Mulligan's inquiry, because they are part of the whole issue of family services.

In his letter, Hugh Henry talks about "Parenting Across Scotland", a "telephone helpline gateway" and so on. The response to the original leaflet was excellent—everybody talks highly of it—but it was a one-off and that really is not good enough. Hugh Henry does not actually mention the leaflet and the work that was done. As in any other field, a one-off is no good; there are new parents all the time. At one point, it seemed as though Hugh Henry was saying that the Executive would revisit the leaflet. I know that children's charities are hoping for something along the lines of a positive parenting campaign but I am not convinced that there is any such commitment in his letter.

Mrs Mulligan: I suggest that we ask Hugh Henry for further information. If necessary, I could then pick up on the issue later. I accept what Marlyn Glen said; I will be aware of the issue in any discussions that I have in the meantime. However, we should try to get a response from the minister first, to ensure that there is no unnecessary duplication.

10:15

The Convener: Given that we are about to agree the remit, I want us to be clear about where those issues might fit in. Part C of the inquiry's proposed remit is

"to consider any ways in which service provision can be improved."

Would the issues fit under that heading and be seen as to do with service improvement?

Marlyn Glen: I hope that when Mary Mulligan looks at the range of existing support services under part A of the proposed remit she will find some parenting advice or guidance. It would be shocking if she did not.

Mrs Mulligan: I am aware that Scottish Marriage Care is presently involved in a project in Easterhouse to do with providing parenting support before difficulties arise. There are probably other examples of such exercises throughout the country. That is the kind of thing that Marlyn Glen wants to pick up on—projects that are about supporting people before difficulties occur. If such projects exist, we should pick up on them at this stage, although we might find that they do not exist.

Marlyn Glen: I cite as an example a couple who have a child with special needs of any kind, whether it is autism, Down's syndrome or behavioural difficulties. That creates stresses and strains for a family so, quite often, the parents split up. However, if there were proper support for the children and the parents in the first place, the family would be more cohesive.

The Convener: I am reluctant to change the proposed wording of the remit, but Marlyn Glen made an important point when she said that we might want to record issues that demonstrate the kind of change that the committee wants to see in service delivery. Mary Mulligan can address that in her recommendations.

Perhaps we could list potential issues for Mary Mulligan to look at without changing the proposed remit. I suggest that we should include positive parenting. It strikes me that the use of the parental agreement will be a new aspect in the delivery of services. Marlyn Glen mentioned the grandchildren's charter. There might be a non-exhaustive list of the kinds of areas that relate

directly to the issues that we discussed. What do members think about that? Perhaps all we need to do is record the issues in the *Official Report*, or somewhere, and attach them to the proposed remit of the inquiry.

Mr McFee: The remit should probably remain unchanged. The minute we start listing matters that we should look at, the remit might begin to focus exclusively on that list. It should be taken as read that we expect those matters to be examined in the course of the inquiry. An informal list as an aide-mémoire might be useful, but it is not necessary to change the remit.

The Convener: I am trying to avoid amending the remit because I think that it is broad enough. However, it might be useful to attach to it a general checklist—nothing more—of the issues that members are interested in carrying on the debate. It would assist Mary Mulligan, too.

Mr McFee: That is not unreasonable.

The Convener: I suggest that we agree Mary Mulligan's proposed remit and that we keep a checklist of issues that might come up in the inquiry. We have covered the main aspects: the use of the parental agreement; positive parenting; supporting parents in particular circumstances; and the use of the grandchildren's charter. Those are Marlyn Glen's suggestions. If any others come up, I suggest that we e-mail them to Mary Mulligan, and she can use them as a guide.

The committee is grateful to Mary Mulligan for agreeing to be the reporter. As she says, it is vital that we continue our work on what is a hugely important piece of legislation.

Hugh Henry's letter of 26 January raises issues other than family services, so we might want to think about how to respond to them. On the contact compliance officer pilot project and the research into child contact issues, one thought that I had is that we should keep track of what is happening, although we should not go as far as to appoint another reporter, given that we are all so busy. During the visit to a sheriff court on Monday, I picked up that the pilot project might begin as early as the end of this year. We would certainly want an insight into how the project will be organised. Of course, members outwith the committee also have an interest in the issue. Is it worth our while to ask for a briefing from the relevant officials, which we could make available to other interested members?

Callum Thomson (Clerk): As Mary Mulligan said, she has had a meeting with the officials. Lewis McNaughton is drawing up minutes from that meeting which covered, among other issues, the two pilot projects that the Executive proposes. In the first instance, it might be useful for the minutes to be circulated to members because they will give a good flavour of what is going on.

The Convener: That would be helpful. The minutes will give members the complete picture and allow them to decide how to respond to Hugh Henry's letter of 26 January. Do members agree on that course of action?

Members *indicated agreement.*

Scottish Criminal Record Office

10:22

The Convener: Agenda item 5 is the Scottish Criminal Record Office. In response to our letter of 24 February, in which we raised questions on the Scottish Criminal Record Office and the Scottish fingerprint service, we have received two items of correspondence from the Minister for Justice, which are papers J1/S2/06/8/7 and J1/S2/06/8/8. Members saw the correspondence on Friday at the earliest; if they have read it, they know that it contains a lot of information.

Given the interest in the issue, I put this item on the agenda so that we would have a chance to consider the contents of the correspondence and to record members' views. I ask members to give their initial response to the correspondence, along with any specific proposals on the matter, to help us to draw up a paper for next week's meeting, on which we can base any decisions or proposals.

Stewart Stevenson: We certainly have a lot of material. It is worth going back to the terms of the letter that the convener wrote to the minister on our behalf. It is important that the committee exercises its power of oversight over any part of the criminal justice system—and the SCRO is an appropriate part. However, as we agreed previously, the exercise of that power would not be a substitute for a judicially led public inquiry, although I hasten to add that the committee has not expressed a view on that subject.

One of the things that I noted in particular was the response to our question 7. The minister refers to Deputy Chief Constable Mulhern's action plan for the Scottish fingerprint service, which will

"be validated by experts of international standing"

and makes it clear that there will be an opportunity for

"forensic practitioners, stakeholders and users of the service ... to contribute".

That is all in the context of the comments that are being made by foreign fingerprint experts and probably by some within the Scottish Criminal Record Office as well. Cathy Jamieson says:

"I welcome the Committee's continuing interest in the SFS and will be happy to provide further information".

I am keen that we should continue to engage with the subject, but we should consider our ability to do so in a substantial and meaningful way. I will listen to what colleagues say about that once DCC Mulhern's action plan has been prepared and reviewed.

Despite all the changes that have been made in response to the difficulties of the case, I and

others remain concerned about the conflict between practitioners in the SCRO and the fingerprint service over the claim that no mistake was made in the two cases—one of which resulted in compensation being paid, while the other resulted in the release of someone who was previously convicted—and about the process by which the evidence was discredited in legal terms. Expert as we are in probing situations and working our way through to what has gone on, and even with the best efforts of all on the committee, we—politicians who are seen to have vested interests—are unlikely to be able to lay the issue to rest.

However, I think that we have an important role to play. I do not think that it is appropriate for the committee to take a view, but it is likely that I and others will continue to assert outwith the committee that a public inquiry should be held once the information is available and can be brought into the light. That is necessary to rebuild the confidence that we all believe there has to be in the Scottish fingerprint service. If that confidence is not widely shared and the service is continually attacked, the criminal justice system will be the poorer.

In summary, the committee has a role. Subject to hearing what other members say, I am presently minded to suggest that the timing will be right when DCC Mulhern's action plan has been reviewed. The minister said that she is prepared to work with us and I think that we should do that.

Mike Pringle (Edinburgh South) (LD): I agree with most of what Stewart Stevenson said. Over the past few weeks we have heard reports from people in Australia, Denmark and other places that fingerprint evidence is being brought into some doubt in their countries. An eminent person somewhere—I forget who it was, but I think that it was in Australia—said that Scotland has to sort out this issue sooner rather than later.

I have no doubt that everyone on both sides has been willing to work with whomever. However, we cannot deny that there is conflict and I think that the sooner we move towards having a parliamentary inquiry the better. I do not think that we need to hold a full public inquiry at this stage, but the issue must be investigated very soon. With regard to waiting until DCC Mulhern's action plan has been prepared, my fear is that we do not know how long that will take. The Parliament must serve the general public well, so we should move towards holding a parliamentary inquiry as soon as possible.

The fourth paragraph of the convener's letter to the minister says:

"As such, the Justice Committees of the Parliament have a duty to scrutinise the work of the Justice Department."

It is perhaps unusual for a parliamentary democracy to have two committees that deal with one subject. I believe strongly that both committees have the expertise and both committees should consider the issue jointly. I suggest, therefore, that we should hold a joint meeting of the justice committees and decide that we should move to a parliamentary inquiry. I do not suggest that all members of both committees should be involved in that inquiry—as Stewart Stevenson said, none of us is an expert in the field—but the committees should take a joint approach and decide on the remit of the inquiry together.

We should not wait, because that will only delay the inquiry for no good reason. The public look to us to do something as soon as possible.

10:30

The Convener: Will you clarify that? You propose that we should move to a parliamentary inquiry as soon as possible, but do you have anything to say about its remit?

Mike Pringle: I am more than happy to talk about the remit. I have drafted something that we could consider, but I am not sure whether today is the right day to start talking about the remit for an inquiry. I suggest that we meet the Justice 2 Committee sooner rather than later and discuss the remit then, because that would give everyone an opportunity to think about what the remit should be. It is clear that the remit will include the implications of the McKie case, the operations of the SCRO and any evidence that has been brought forward by the police. There is a list of 87 proposals in appendix 1 to annex A to the Minister for Justice's letter, but I challenge members to say today that they understand the implications of every proposal. The Executive says that all the recommendations have been discharged, but the issue is huge and I think that we should proceed in the way that I have described.

Mr McFee: I was not at the meeting at which the committee discussed the matter, so excuse me if I take a little latitude and am completely blunt. On the one hand, the Lord Advocate and the Minister for Justice say that there was an honest mistake. On the other hand, the SCRO officers say that there was no mistake. Those two positions are fundamentally irreconcilable. That is what is causing the crisis in confidence in our fingerprint service. We should not kid ourselves that the crisis in confidence is due to the public paying great attention to the 87 points in the minister's letter. It has been caused by the fundamental difference in opinion between two sets of people.

The public know that £750,000 has been paid out in compensation, that a man has been

released from prison and that nobody has been convicted of the murder of Marion Ross. That is why there is a crisis of confidence in the fingerprint service. A limited parliamentary inquiry will do nothing to alleviate public concerns because, since the Parliament voted not to have a public inquiry, many people out there do not trust the Parliament to put the matter right. That is perhaps the worst element. There has been a loss of confidence in the system and in the Parliament because we are seen—rightly or wrongly—to want to cover something up. Until that problem is alleviated and there is a proper investigation, we will not move on one inch.

It is right for the committee to examine the fingerprint service and try to ensure that its work is done properly and efficiently, but we should not kid ourselves that that is a substitute for a full public inquiry that has the right to call witnesses and to compel them to give answers. We should not confuse the two approaches.

The Convener: Can I come in there, Bruce? You missed the committee's discussion on the matter. We have already had that discussion and I do not want to go over old ground.

Committee members have different views, but we have all been clear about the fact that our decision on whether to conduct a parliamentary inquiry is independent of any other decision. Even if a public inquiry were to take place, our undertaking such work would still be a matter for us. If no public inquiry were to take place, no member is suggesting that a parliamentary inquiry would be a substitute for that. We have already discussed that.

Mr McFee: That is absolutely clear. There is no question that a parliamentary inquiry would substitute for a public inquiry.

The Convener: No other committee member has suggested that it would. You must be clear about that.

Mr McFee: I take that as read. However, we should also be clear that today's meeting has been trailed on television as the next step in trying to get to the truth of the Shirley McKie affair. That is the problem—how our actions are portrayed outside the Parliament. All committee members seem to agree that a parliamentary inquiry would be no substitute for a public inquiry—

The Convener: We agree on that.

Mr McFee: However, that is how such an inquiry is being presented outwith this building.

The committee has a role in examining the fingerprint service, but with the proviso that, in my view—other people may disagree—the McKie case will not be put to bed until a full public inquiry has been held. Public confidence about whether a

mistake was made—whether it was deliberate or otherwise, and the situation feeds the fear about that—will not be restored until the fundamental questions have been asked.

Margaret Mitchell: I share some of Bruce McFee's concerns. I heard on "Good Morning Scotland" this morning that Opposition parties, with the Liberal Democrats' help, would set up an inquiry into the SCRO. The Liberal Democrat former Minister for Justice has said that a mistake was made, but the Liberal Democrats are preventing something that I see as fundamental—a full judicial inquiry—and I take exception to that. I disagree totally with Mike Pringle—there is no way that a parliamentary inquiry would put to bed the speculation that surrounds the Shirley McKie case.

However, I recognise that the remit that was proposed when we asked the questions was to consider what has been done in the SCRO and the Scottish fingerprint service. We could consider that and reach a conclusion, but I fear that the conclusion would be meaningless if we did not establish what went wrong in the first place. I have concerns about what we would achieve by following up the three reports of which the SCRO has been the subject; the Mulhern report, which is expected at the end of the month; and the 87 points that have been made. All that work would be worthy, but the real question is whether it would get to the heart of what happened in the Shirley McKie case. We should be clear that the answer to that is no.

Mrs Mulligan: We need to be clear about what a parliamentary committee can do. We can hold the Executive to account for how it operates the Scottish Criminal Record Office and hence the fingerprint service. A parliamentary inquiry would not replace a public inquiry and anybody who thinks that it would is mistaken. To have that discussion again in committee is not particularly helpful. The debate is going on elsewhere and I am sure that committee members have different views. However, in our previous discussion, we were united about the fact that we have strong concerns about how we re-establish public confidence in the SCRO and the fingerprint service and reassure the public that there is no chink in the Scottish justice system that would allow discrepancies, mistakes or whatever to occur in the future.

The information that is in front of us goes some way towards addressing that and is quite helpful. However, we have not reached the end of the line, which is why I agree that we should hold off and consider the action plan that DCC Mulhern will produce. Cathy Jamieson suggests in her letter that DCC Mulhern

"will draw on the best available international scientific advice, expertise in organisational development and human resource management".

Can the committee go further without knowing the detail of that? I think that it probably cannot.

Mike Pringle said that a justice committee of the Parliament should do the work. I agree, but it should be one or other of the justice committees, because we are separate entities. On a practical note, when we have tried in the past to introduce arrangements for any kind of joint relationship, even on the budget, a limited number of members have turned up to such meetings. If we are serious about holding an inquiry, one or other committee has to do it; it cannot be both. We have to be sensible about what we are suggesting.

It is important that the committee plays its part in re-establishing people's confidence in the service. We can do that to a certain extent, but others, too, will have to play a part. I suggest that we draw a breath, read in more detail all the information that has been provided, await the action plan from DCC Mulhern and then decide how we want to take the matter forward.

Marlyn Glen: I echo some of what Mary Mulligan said. It would not be helpful to do something as soon as possible. We should take our time, examine what we have in front of us and be as effective as possible. I agree that we should wait for the action plan that is due at the end of March. At that point, we could take up the minister's offer to answer questions on the action plan, although I do not know whether we would do that in a letter or whether we would invite the minister to the committee. In any case, that would be a more effective way of going about things.

The Convener: I shall recap where I think we are and allow members to comment before we conclude. Notwithstanding the political debate and people's views, my view from the beginning has been that the committee has a responsibility to record everything that has been said about the position of the Scottish fingerprint service. I still have questions about the reforms. The subject is new to us all—I do not know the first thing about fingerprinting; well, perhaps I now know something that I did not know previously, but the idea of moving from a numerical to a non-numerical standard, as has been suggested, means nothing to me. Would that be a better system? Is that what other countries are doing? It is our job to ask such questions, regardless of our views about whether there is public confidence in the service. Are other countries moving to a non-numerical standard? I have heard that some are not and that some are dissatisfied with non-numerical standards and are moving back.

It concerns me that we will lose the current SCRO director, because there are important

issues about management. What measures will be put in place? Will the director be replaced? Will there be a new structure? How distant is the SCRO from the police service? How distant should it be? Such structural issues are a matter for the Parliament and should be a matter for the committee, regardless of whether anyone else is examining the McKie case. I am keen to continue our line of inquiry at least until we think that we have done what we need to do or we think that we need to do more.

Mike Pringle proposed our meeting jointly with the Justice 2 Committee, but at the moment this is our work and we should be allowed to do it. However, I have always said that it is important to share with the Justice 2 Committee and I would always do that with that committee's convener.

The most appropriate point at which to discuss with the Justice 2 Committee whether it should join us or take on other work is when we have concluded our lines of inquiry. I support Stewart Stevenson's proposal that the short line of inquiry that we are pursuing should at the very least include an evidence-taking session on the action plan, so that we can hear what is being done. We could perhaps also hear from the minister, as Marlyn Glen suggested.

If the committee wants to do that as a minimum, that does not preclude us from deciding that there is further work to do or from discussing with the Justice 2 Committee whether it wants to take it from there. Those are preliminary remarks. I will allow members a full opportunity next week to firm up their proposals; I will also have a paper prepared on what they have said so far. We are not making final decisions today.

10:45

Mike Pringle: I was suggesting not that both justice committees should do the work—I am sorry if I misled anyone—but that we should have a joint meeting with the Justice 2 Committee to decide the way forward. It is fine for either the Justice 1 Committee or the Justice 2 Committee—or somebody else—to conduct the inquiry, but, given that there are two justice committees and that this is a big issue, I suggest that we get input from the Justice 2 Committee before we proceed.

I do not know where Marlyn Glen read that DCC Mulhern would complete his report by the end of March; I would be grateful if she would point that out to me. I do not know whether that is the case.

Mrs Mulligan: The second paragraph of the minister's letter states that she asked DCC Mulhern to

"bring forward by the end of March an action plan".

It does not say that he will complete the report by then.

Mike Pringle: My worry is that this will drag on. The report will not be completed for some time and if we wait for it we will find ourselves in exactly the same position.

The convener made an extremely good point about the different types of numerical and non-numerical fingerprinting and who is and is not using them. We could examine such things. I do not think that we need to wait for the report from the deputy chief constable; I would have thought that we would want to start work as soon as possible and to get on with it. That is what people expect of the Parliament. That is how I feel; we should proceed as soon as possible.

Stewart Stevenson: I have a practical proposal to make. Given that we are in doubt about when the validation of the DCC's action plan is likely to be completed, perhaps we could simply write and ask this week. That might help to inform our decision making.

It is probably important that we do not blur the lines of responsibility by getting unduly involved in discussing what other committees might or might not do. We have decided to involve ourselves in this matter and I do not think that we should seek to revisit that decision unduly.

The option is available for members of the Justice 2 Committee to attend and participate in our meetings. We are not in a position whereby we will put up our hands to specific proposals any time soon; I do not think that that is the issue. In my time in the Parliament, I have turned up to other committees and made contributions when I wished to do so. Perhaps we should write formally to the Justice 2 Committee to suggest that we would value its members' input if they were to attend our meetings, but I do not think that we should blur the lines of responsibility by taking any other approach. We have engaged with the issue and we should carry it forward.

Mr McFee: I am keen that another line should not be blurred either. Given that the purpose of our inquiry is to consider some of the issues that the convener set out in her letter to the Minister for Justice, I do not see the difference between our moving today to conduct that inquiry and our doing so at the end of March, which is what we are being asked to do if we wait for David Mulhern's report, which I assume will be with us by then.

The only reason that I can see for waiting—I accept Mike Pringle's reassurance that this is not his reason—is that if we were to say this week or next week that there was going to be an inquiry, we would give the impression that we were going to conduct a McKie inquiry, which our proposed inquiry would not be. That is my concern about the proposal. At some stage down the line, I think that an attempt will be made to blur the process to

make it look as if we are conducting a parliamentary inquiry that will get to the bottom of the McKie case—and it will not. I want it to be clear that I do not want the line to be blurred in that way when we make a decision.

The Convener: I realise why you said that, but I assure you that if some of us had argued that the proposed inquiry would in some way be a solution and would get to the bottom of people's questions about the McKie case, I would have proposed having a parliamentary inquiry several weeks ago. My view is that this is a big issue and a big responsibility to take on and I think that the committee has supported me on that so far, irrespective of where members are coming from on the issue. I think that we are doing the right thing at the moment by asking questions and using our position of influence to demand answers so that we can think about how we want to take it from there, if we want to do that at all.

The minute that we say we will undertake a parliamentary inquiry, we will have to agree its terms. As Bruce McFee knows from experience, that would take time; we would need to agree our remit and timetable and decide who to call as witnesses. If a parliamentary inquiry is a possibility, we have to let members see what our workload and commitments look like for the next few months.

As I said, this session is for preliminary remarks. After today, we will put the options on paper and the committee can make a decision. I support Stewart Stevenson's practical suggestion. We can clarify the timetable for the action plan by finding out when David Mulhern will start and when he proposes to finish. That clarification would help our discussion at next week's meeting.

Mrs Mulligan: I want to respond to Bruce McFee's point. The proposed inquiry is not a substitute for a McKie inquiry.

Mr McFee: Absolutely.

Mrs Mulligan: None of us is responsible for what the media might or might not say. We know what we said about this issue at a previous meeting. We recognise that the committee has a legitimate role in holding the Executive to account and in trying to re-establish confidence. We have done that previously. Members will remember the difficulties a number of years ago with the Scottish Qualifications Authority. The then Education, Culture and Sport Committee considered the problems that had arisen, how the SQA could go forward and how people could have confidence in its future operation. Similarly, this committee could be instrumental in re-establishing confidence in the justice system and considering the specifics that the convener helpfully raised in her earlier contribution. That is a legitimate role for the

committee and we should not be regarded as anybody's substitute in any shape or form.

Mr McFee: I agree with 99.9 per cent of what Mary Mulligan said. I think that I said in my opening remarks that what we are proposing to do would be no substitute. Clearly, the committee discussed that issue two or three weeks ago. However, I disagree with Mary Mulligan's comment that none of us is responsible for how the media interpret a story, because that often depends on how the media are fed a story. I think that the media have been fed a story about this meeting; I learned about what was likely to be moved at the meeting by listening to the television this morning. Clearly, the media had been fed a story along the lines of what was reported.

I am happy with the rest of Mary Mulligan's comments. I think that there is a role for us in considering particular aspects of the justice system. I am happy that that is a justifiable role for us and that committee members agree that that is no replacement for a public inquiry. On those grounds, I think that we can agree.

Margaret Mitchell: I welcome the convener's comments. Had we not been considering this issue against the background of the McKie case, we could agree matters now and look forward to the proposed investigation. However, we are sensitive about what we agree because we are working against the backdrop of the McKie case. I would like us to put options down on paper so that we can agree terms, remit, timetable and witnesses and ensure that we get as much as we can out of any parliamentary inquiry.

I do not know how many times we have to say it, but I think that it is worth repeating what Bruce McFee said. The proposed inquiry is being reported as an investigation that will try to restore confidence in aspects of the criminal justice system on the back of the McKie case. The inquiry will not do that; I want us to be 100 per cent clear about that.

The Convener: We have had a good discussion. We will return to the issue at next week's meeting and make some decisions. As I have said from the outset, I will keep the Justice 2 Committee informed of what we are doing because that committee, which is considering the Police, Public Order and Criminal Justice (Scotland) Bill, has an interest in the matter.

That brings us to the end of the meeting. I thank members. We will have an informal briefing after the meeting on the Criminal Proceedings etc (Reform) (Scotland) Bill.

Meeting closed at 10:55.

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