

JUSTICE 1 COMMITTEE

Wednesday 22 March 2006

Session 2

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JUSTICE 1 COMMITTEE

9th 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 3

Scottish Parliament

Justice 1 Committee

Wednesday 22 March 2006

[THE CONVENER *opened the meeting at 09:53*]

Items in Private

The Convener (Pauline McNeill): Welcome to the ninth meeting in 2006 of the Justice 1 Committee. I ask members to do the usual and switch off their mobile phones.

We have apologies from Stewart Stevenson. I welcome Brian Adam, who is standing in as Stewart Stevenson's substitute today.

I invite the committee to agree to consider in private at future meetings its approach to scrutiny of the Criminal Proceedings etc (Reform) (Scotland) Bill. That will give us the necessary authority to meet in private to consider lines of inquiry and to prepare our report. Is that agreed?

Members *indicated agreement.*

Subordinate Legislation

Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2006 (SSI 2006/86)

09:53

The Convener: Agenda item 2 is consideration of subordinate legislation. I refer members to the note prepared by the clerk on the Act of Sederunt (Fees of Shorthand Writers in the Sheriff Court) (Amendment) 2006. As members have no comments to make on the instrument, do we agree to note it?

Members *indicated agreement.*

Scottish Criminal Record Office

09:54

The Convener: I refer members to paper J1/S2/06/9/3, which is a note prepared by the clerk that sets out possible options for committee scrutiny of the Scottish Criminal Record Office and the Scottish fingerprint service. Members have in papers J1/S2/06/9/4 and J1/S2/06/9/5 correspondence that we have received from the Minister for Justice. In addition to the proposed approach that is set out in J1/S2/06/9/3, there are alternative proposals from Mike Pringle and Margaret Mitchell in J1/S2/06/9/6. There is also a separate amendment to Mike Pringle's proposal from Bruce McFee.

I will remind members where we are on the matter. We have had previous discussions about our approach to the issues surrounding the SCRO. Our brief discussion last week led to the options paper that is before us, which I want to say something about. We have received an invitation from John McLean, the director of the SCRO, to visit that organisation, which is a possible option. Members are aware that the action plan that David Mulhern is preparing is likely to be available by the end of March. That gives an indication of the timescale. I think that inviting David Mulhern to the committee so that we can hear about and ask questions about that action plan would be extremely helpful. I called him yesterday to get an idea of whom he might bring along if the committee wanted to invite him for questioning. We will get clarification on that in due course. I hope that he would bring along fingerprint service managers and possibly international experts with whom he will be working, but that needs to be clarified.

Members will have read in the options paper that if they want to have an inquiry, a slot for one full session of oral evidence taking is available on 26 April. Thereafter, we would have to discuss how we would fit another evidence session into our work programme. I suggest that we would have to find time for at least one other session for further scrutiny. No time is available for that until September. However, we are waiting to hear what the stage 2 timetable for the Scottish Commissioner for Human Rights Bill will be, which I do not think we will be in a position to deal with until September because we now have a timetable for the Criminal Proceedings etc (Reform) (Scotland) Bill. We might have to be flexible in considering a date for a second evidence session, but I am sure that we can find time for such a session when we are clearer about the impact of bills on our work programme.

I invite Mike Pringle to speak to his proposal.

Mike Pringle (Edinburgh South) (LD): Paper J1/S2/06/9/3 contains two options. I presume that we want to have a wider parliamentary inquiry and that we will therefore agree to option 2. Is that right?

The Convener: That is what we are discussing. I have said that we are scrutinising at the moment; members may want to formalise that scrutiny and have an inquiry, which I would be in favour of doing. We must decide whether we want to do that, the remit for an inquiry, a list of witnesses—which Mike Pringle has helpfully suggested—and where we would get the time to have an inquiry.

Mike Pringle: Members have copies of the remit for an inquiry that I have suggested. The remit must be wide enough for all the implications of the case to be considered. The committee has to go back to where things started in the SCRO and consider the process and where we are now, which means that the remit would have to be quite wide.

It would not be right to examine court cases or decisions by the Lord Advocate. We must be aware that we cannot do so, as that would interfere with the separation of the Parliament's and the judiciary's powers. However, the remit that I have suggested gives us an opportunity to carry out a fairly wide examination.

I have suggested a list of people whom we might call, which I do not regard as complete. Some of those I have suggested might not want to give evidence. However, we must decide the inquiry's remit first; once we have done so, we can decide from whom we would like to take evidence.

I acknowledge the point about timescales and the suggestion that we have a meeting on 26 April. However, it is incumbent on the Parliament to give the case the fullest possible attention; indeed, that is what is expected of us. I understand that it is difficult to find time to fit things in, but if it becomes clear that one day will not be enough to deal with the matter, I do not think that we can wait until September before we have another meeting. We need to clear things up as quickly as possible and, if that means that the committee has to sit out with its usual Wednesday morning slot, so be it. However, that will become clear only when we decide which organisations or individuals to take evidence from. We will have to consider the option of having more meetings if we find that many people want to give evidence.

People will have the opportunity to submit written evidence and—as in the past—we might well want to take oral evidence from them and examine their points more closely. As a result, we should leave all that fairly open.

I suggest that, at this stage, the committee accepts my proposed remit, which is wide enough

to allow us to examine all the options. I stress again that this inquiry is very important.

10:00

The Convener: I call Bruce McFee to speak, because he wants to amend Mike Pringle's proposal.

Mr Bruce McFee (West of Scotland) (SNP): This morning, BBC television yet again reported that MSPs were likely to approve an inquiry into the Shirley McKie case. I wonder how far we have travelled on this matter.

I do not think anyone around the table would disagree that this parliamentary inquiry should proceed. However, it is worth reiterating that such an inquiry—and indeed the substance of the amendment that I am speaking to—in no way represents a substitute for a full public inquiry into what has become known as the Shirley McKie case. Moreover, it will not be an inquiry into the murder of Marion Ross in 1997 or the conviction of David Asbury who, after five years in prison, was acquitted in 2002 of Marion Ross's murder when the fingerprint evidence on which his conviction had been based was demonstrated to be unreliable. I point out also that a parliamentary inquiry is not the appropriate place to scrutinise the actions or otherwise of past and present ministers or the Lord Advocate's actions and decisions. This committee cannot possibly begin to address or even to establish the many lines of inquiry that are necessary to unravel the sequence of events since 1997.

However, although the inquiry cannot be—and is not intended to be—a full investigation of the Shirley McKie case, the committee cannot escape the undeniable fact that in order to understand fully the background to the loss of public and international confidence in the Scottish fingerprint service, if not in the Scottish justice system itself, we must have full, proper and detailed reasons for the misidentification of fingerprints in the McKie case. After all, we must not forget that two sets of fingerprints—those of Shirley McKie and David Asbury—were misidentified.

It will not be possible for the committee to have confidence that problems in the fingerprint service have been resolved if we are denied access to the true circumstances that led to several officers misidentifying two fingerprints in one case. Similarly, the committee will not be able to conclude that lessons have been learned and that such misidentifications will never happen again if it does not investigate the reasons why some SCRO officers who were involved in the identification of fingerprints have maintained that no mistakes—honest or otherwise—were made. That is why I believe that my amendment to Mike Pringle's

proposed remit is crucial. Like him, I am open to any further suggestions about whom we should take evidence from.

On Margaret Mitchell's proposed remit, I think it unwise to conclude that the inquiry can be progressed only if Parliament does not agree the general principles of the Scottish Commissioner for Human Rights Bill. The inquiry should not be predicated on the Parliament's decision on another piece of legislation.

If the committee needs more time to conduct an inquiry—which I believe it will conduct, no matter what form the inquiry takes—it should be prepared to meet on a Monday or Tuesday as well as on Wednesday as normal.

The Convener: For the record, I inform members that Ken Macintosh submitted a letter to me by hand in which he says that, in his view, there should be a parliamentary inquiry. I have asked him to submit the letter electronically so that it can be sent to members to read. I should also say for the record that it is important for the public to know that we are already meeting outwith our scheduled times to consider the Criminal Proceedings etc (Reform) (Scotland) Bill.

Brian Adam (Aberdeen North) (SNP): Convener, can you clarify what Ken Macintosh wrote?

The Convener: I will not read out the letter. To paraphrase Ken's view, he has said publicly that he has always been of the view that there should be a parliamentary inquiry. He says in the letter that we should call the fingerprint experts as witnesses to give their side of the story. I will get the letter circulated to members today. I thought that I should mention it because it is relevant that another member has taken that view.

Margaret Mitchell (Central Scotland) (Con): I concur with Bruce McFee's view that none of the proposed options would be a substitute for a full judicial inquiry, which I still believe should be held at some point. However, there is value in having a parliamentary inquiry to look into the efficient running of the SCRO and the Scottish fingerprint service.

Mike Pringle's proposal starts by being prescriptive, which I think is the last thing that we want to be. If we are going to have an inquiry, it should be flexible enough to look into the efficient running of the fingerprint service in the past, which is crucial for learning for the future. That is the remit that I would favour the committee considering.

The next obstacle is how wide the inquiry is going to be. For me, option 1 on the briefing paper would be totally inadequate. Merely inviting Deputy Chief Constable Mulhern to appear before

the committee to explain his strategy report and calling the Minister for Justice to appear would not be sufficient for what I think the committee must get to grips with in undertaking an inquiry. I would leave the remit as wide and flexible as possible in order to include anyone whom the committee deems necessary to complete an inquiry properly.

Clearly the committee is well committed up to June, but I have a few questions about our timetable. By now, we should have had the stage 1 debate on the Scottish Commissioner for Human Rights Bill, but that has been postponed. I presume that had it not been, there would have been a timetable for dealing with stages 2 and 3. Instead of dealing with that bill, we seem to have had the acceleration of the Criminal Proceedings etc (Reform) (Scotland) Bill. I would like the committee to consider whether we can be flexible enough to move back that bill a little bit. We could move it into September and leave at least three meetings in addition to the one that you have already identified, convener, at which to undertake this important inquiry.

The Convener: So that would be four meetings in total.

Margaret Mitchell: It would be four meetings. That would be one possibility for fitting in the inquiry.

Mrs Mary Mulligan (Linlithgow) (Lab): I am grateful to members for their suggestions for how to take forward the inquiry. I suspect that option 2 on the briefing paper is probably what we are moving towards. However, I have questions that I hope will clarify where members intend to go with the inquiry proposal.

With all due respect to Mike Pringle, I believe that he is clinging to the idea that the committee should pick up on a pseudo-McKie inquiry. We have to move on from that. As both Margaret Mitchell and Bruce McFee said, we cannot reproduce a public inquiry. If that is what Mike wanted, perhaps he should have voted for that at the time.

Mike Pringle: I did.

Mrs Mulligan: I have to say that Mike Pringle's suggested remit is quite helpful. I appreciate Margaret Mitchell's concern that we should leave the inquiry's terms of reference as flexible as possible, but the committee needs some direction on how to proceed.

Mike Pringle's suggestions on the witnesses that we should call are fine. Bruce McFee's suggestion that we should add international and United Kingdom fingerprint experts is helpful, but I do not think that his other amendments to the proposed remit are helpful. We always hear from the Law Society of Scotland so I am sure that it will stay in

the list but I wonder why Mike Pringle has included the criminal bar association and the Scottish Legal Aid Board. Perhaps he will clarify his reasons.

The timescale is obviously a big issue for us. We are under pressure because we are trying to fit the inquiry in. I am pleased that we have managed to identify at least one date, but the Justice 1 Committee is not the only committee that I am on and my colleague Marlyn Glen is on even more than I am. Other committees are also having meetings outside their normal pattern at the moment. I have not had a Monday in my constituency for the past month because I have been at committee meetings. Such meetings are useful not only for committee members but probably—in the wider context—for our constituents as well, but there is a limit to the time that I can continue to give up for committee meetings. I am concerned at members' suggestion that it is easy to add yet another meeting. We all work very hard and we must recognise that we have a limited amount of time.

I am surprised that Mike Pringle is not more concerned about Margaret Mitchell's suggestion that the Scottish Commissioner for Human Rights Bill should drop off our agenda. I would be interested to hear his discussion with Robert Brown if he were to tell him that we cannot consider the bill because we are to spend our time on the inquiry. Robert Brown might have some concerns about that, and I would share them. I am not suggesting that the timing problem will be easy to resolve, but we must think about it sensibly and consider our colleagues who have to fulfil other commitments.

Bruce McFee said that the BBC is still running with the idea that the Justice 1 Committee is to hold an inquiry into the Shirley McKie case, but that was probably prompted by his amendment to the suggested remit which concerns the

"reasons for the misidentification of finger prints in, and"

implications of the McKie case. If that is not—

Mr McFee: On a point of order, convener.

The Convener: Just let her finish. I will let you in.

Mrs Mulligan: If that is not suggesting that we should consider the McKie case, I do not know what is. I accept that Bruce McFee voted for a public inquiry, but he is trying to use a back-door route to get us back into that situation. If the committee goes ahead and holds an inquiry, it will undoubtedly take place under the shadow of what has happened—we cannot get away from that. I can honestly say that we probably would not be considering the SCRO if those things had not happened. However, they did happen and they have been dealt with elsewhere. The Parliament voted against a public inquiry.

The committee needs to consider its role, which is to examine what the fingerprint service is doing at the moment and how confidence in it can be restored. There are issues about the change to the system—the numerical order or whatever it is. I do not understand why the service thought that it needed to make that change. Other jurisdictions are now suggesting that it is not the right way forward and are going backwards, as has been suggested in a number of places. We need to examine the matter and ensure that the right changes have been made, that we are confident that they will instil confidence in the service and that our constituents can have every confidence in Scotland's fingerprint service and the SCRO. We need to ensure that we have a first-class justice system.

That is what this committee needs to do. Yes, we will be doing it following the circumstances of the McKie case, but we cannot and should not think that we can redress what happened.

10:15

Mr McFee: I am sure that Mary Mulligan cast her eye over my changes to Mike Pringle's suggestion, which are highlighted in red. The references to the McKie case are in his original suggestion.

The Convener: This week and next week were the two slots agreed in our timetable for dealing with stage 2 of the Scottish Commissioner for Human Rights Bill. Obviously, we have taken some of that time to have this discussion.

Margaret Mitchell: I want to clarify Mary Mulligan's point about the bill dropping off the agenda and disappearing. The committee decided that it had huge reservations about the general principles of the bill and that there was only a small gap in the promotion of human rights, which the Scottish public services ombudsman could fill. If the Scottish Executive accepts that, a new bill would be required. That would free up the time that would otherwise have been allocated to considering the bill at stages 2 and 3.

We are talking about priorities. I am in absolutely no doubt that a huge cloud is hanging over the SCRO, the SFS and, by implication, the criminal justice system. In those circumstances, the committee's priority should be to consider holding the inquiry as soon as possible. That is why the time that was allocated to the Scottish Commissioner for Human Rights Bill should be used to consider an inquiry.

The Convener: That time is this week and next week. Given the delay, we have put in a bid to take stage 2 in September.

Margaret Mitchell: Perhaps there could be some flexibility about that. We have made a bit of

progress with the Criminal Proceedings etc (Reform) (Scotland) Bill. We have already changed the timetable for one piece of legislation. Perhaps we could have one more slot on the bill, but keep the three slots plus the one that we have already identified—

The Convener: Those slots are now in September. We are freeing up two slots, which is what we thought we would need for stage 2 of the Scottish Commissioner for Human Rights Bill. We have put in a bid to have those slots in September.

Margaret Mitchell: The slots should not be left until September. By moving things in the timetable, such as the Criminal Proceedings etc (Reform) (Scotland) Bill, we can retain three slots for the inquiry—no matter when they would have been—and move to hold it quickly, which is important.

The Convener: I want to be clear about your position before I call other members to speak. You want three additional slots before September and you would prefer us to move the CPR bill down the timetable.

Margaret Mitchell: It would have been moved anyway, had the—

The Convener: The Parliamentary Bureau has agreed the timetable that you have before you. We would have to go back to the bureau and say that we now wish to move the CPR bill back by three weeks.

Margaret Mitchell: That would be the sensible thing to do, because the bill is hugely complex and the bill team is going to come back with answers to questions that were raised in our briefings. I certainly do not want to rush the bill.

Brian Adam: I should start by declaring an interest. The proposal from Mike Pringle is that we should

“scrutinise the Action Plan ... in improvements in fingerprint and forensics services in Scotland.”

I spent 26 years providing forensic services as an expert witness—I hasten to add, not in fingerprinting.

I note the comments that a number of members have made in the chamber and elsewhere about fingerprinting being an art, not a science. That is probably true of most of the sciences.

One of the great things about Scots law is that corroboration is required. That not only means that two or more witnesses need to witness an event or that more than one person needs to carry out a test, but often it means that two or more tests require to be done. One test may indicate that something is so, but an independent test—a different test—can corroborate the original test result. That is true in any kind of science.

The science is not exact. It is not a case of saying, “It is so” or, “it is not so,” but, “it is very, very likely to be so and this is the confidence level that you can have in that result.” If that makes me sound just like the anorak I am substituting for, so be it. The confidence level in some tests is extremely high; other tests are accurate only to within plus or minus 10 per cent, although that might be adequate in the circumstances.

My experience leads me to have considerable concerns about the direction of travel in which the fingerprint and forensic service is being taken. If we have one centralised service—whether that is the physical service itself or only control of the service—the potential to have independent, corroborative witnesses will be undermined. In this case, because we had not only the Scottish Criminal Record Office fingerprint service—which primarily was serving the Strathclyde area—but services that were serving other parts of Scotland, we could get truly independent professional advice in Scotland. If we had already gone down the route of having an umbrella forensic and fingerprint service for Scotland, we would have had to ask international experts for that advice.

One of the great things about forensics in Scotland is the extremely high standards that apply to the service in general. Of course, this case has called that into considerable question.

I am aware of the on-going debate about DNA testing, including DNA testing to rule out a whole bunch of people. Currently—and, indeed, under the proposals from the Executive—records of such testing are destroyed. Some people want them to be retained but, if we are to have public confidence in that approach, we will need to be pretty certain that there will be no mistakes.

It is impossible for us only to look forward. While it is important that we look forward—indeed, many of the things that happened around this case are positive—we cannot do so without examining what happened in the Marion Ross murder case. It seems—almost uniquely—that we have a dispute about the evidence, not only in relation to Shirley McKie’s fingerprints, but David Asbury’s prints too. The courts have already decided that the evidence was unreliable.

Kenneth Macintosh and Des McNulty have offered a vigorous defence of their constituents, but there has been no opportunity as yet for the SCRO officers or their representatives to have their say. It would be wholly inappropriate for a parliamentary inquiry not to look at the detail of why we are here at this point in the history of the case. If all we will do is look at action plans and hear what managers have to say, we will not get at the nub of the issue, which is the confidence that the public and the professionals who are involved in these matters need to have in the service. If we

do not address why there was a mistake—if one was made—an inquiry will be almost valueless. By all means, let committee members visit the SCRO and get an update on how we are moving forward, but unless we take a good look at why we reached this point an inquiry will be of limited value.

In recent weeks at First Minister's question time, both the First Minister and the Deputy First Minister have bemoaned the politicisation of the issue, but their doing so has politicised it. It might have been party political before then, but it is now politicised. That is one reason why a parliamentary inquiry is not necessarily the best road to go down. Although this is a powerful committee of the Parliament, it is not as powerful as a public inquiry. We are unable to decide today to hold a public inquiry, but we can hold a parliamentary inquiry. I am happy to support either of the proposals before us.

If we are looking forward, I am concerned that the disciplinary procedure arrangements in the SCRO should be examined. One of the experts who spoke out is now subject to disciplinary procedures. The inquiry could examine how the Scottish fingerprint service deals with such activities in future. It is highly appropriate that the SCRO experts whose work has been called into question should be given the opportunity to speak. It is also appropriate that the independent expert from Aberdeen should be given a chance to speak to the committee.

I would like to make a point about the timescale for the inquiry. The committees of the Parliament are important. The convener is right to say that the Parliamentary Bureau, which represents the Parliament, has agreed our forward work programme, but committees should not be creatures of the Executive. I do not mean that in a party-political sense. Although the work of the Executive to drive forward the law of Scotland is important, public confidence in the SCRO's procedures is even more important. For that reason, this issue is a higher priority than delivering the Executive's bill programme. If there is a fundamental question mark against any of our forensic science services, there is a big question mark against the law in Scotland. However important the Scottish Commissioner for Human Rights Bill and other bills are—I do not doubt that they are—this is a more important matter that deserves the committee's attention.

The Convener: As the member who first raised the issue and brought it to the committee, I put on the record again that neither I nor any other committee member has ever taken the position that anything that we are about to do is a substitute for a public inquiry. From their respective positions, members agree that the two issues are separate. I have argued that,

regardless of whether a public judicial inquiry is held, it is the Parliament's job to hold ministers to account about the fingerprint service. Obviously, there is a difference of opinion about how we achieve that. I wanted to make the point clearly, because Brian Adam was not party to previous discussions.

Brian Adam: I accept and respect your position, convener.

Marlyn Glen (North East Scotland) (Lab): Before Brian Adam spoke, I intended to start by saying that there seems to be a lot of agreement about the way forward. Last week there was some agreement about the realistic limits of what the committee can do. The convener has outlined those limits. We should start with those and ensure that, while what we do has value, it does not pretend to be what it is not. If we do not think what we are doing has value and we think that something else needs to be done, there might be another way of going about it, but we should concentrate on what we can do as a committee.

There is quite a lot of agreement on the way forward. I have underlined part of Margaret Mitchell's suggestion—

“An Inquiry into Efficient Running of SCRO/SFS”—

because it is broad and does not go into the details of any particular cases. That is what we have to do: look into the efficient running of the SCRO. It is also about public confidence.

10:30

On the timing and the number of meetings, it would be good to be flexible so that we can respond to the evidence. Two meetings—one in April and one in September—would fit my diary a bit better. My other committees currently meet on Mondays and Tuesdays. It would be difficult to fit in anything else apart from our weekly meetings and our visits, which are important. It is important that we have at the back of our minds our need to timetable the Scottish Commissioner for Human Rights Bill. The bill is not merely about an Executive plan; it is important in itself. I look forward to seeing the timetable for the bill, which has to go to the chamber as well as to the committee. Changing that timetable would be quite complicated.

The witness list could be agreed quite easily. Are we talking about the inquiry involving just the Justice 1 Committee? I thought that we agreed last week that members of the Justice 2 Committee and other MSPs could listen in and take part as they see fit. Will you clarify that?

The Convener: You will see in your note that the Justice 2 Committee already has a locus, in so far as it is dealing with the Police, Public Order

and Criminal Justice (Scotland) Bill. The reason for timetabling the Justice 1 Committee and the Justice 2 Committee on Tuesdays and Wednesdays has historically been in case each has an interest in the other's work—inevitably it crosses over—and to enable members with an interest to take part in the proceedings. It has always been the case that we timetable the two committees so that they are not at the same time. Mike Pringle suggested last week that we should consider a joint inquiry, but he has not spoken to that yet. He may want to come back on that.

Mrs Mulligan: On a point of clarification, convener. I am sorry to interrupt you. Bruce McFee seemed to suggest that I had misread his amendment. Has he dropped from Mike Pringle's proposed remit the sentence about considering the implications of the McKie case? I think that that is what he suggested to me.

Mr McFee: If I may say so respectfully, Mary Mulligan is being deliberately obtuse. The amendment is clear and its effect is clear. It is underlined for clarity. It is straightforward. It does not drop the sentence—if it dropped it, it would not be there.

Mrs Mulligan: Convener, I asked because Bruce McFee was suggesting that I had read Mike Pringle's proposal, rather than Bruce McFee's amendment. I was unclear whether the sentence had been dropped. I thank Bruce McFee for his clarification. My comments on his proposal stand, unfortunately.

Mr McFee: However inaccurate they are.

The Convener: I have a few remarks on the proposals. It would be valuable for the committee to embark on an inquiry of sorts, albeit a brief one. If we were to complete it in the next three or four weeks, that would cut down the options for people who want to submit written evidence. Members might want to think about that. If we were to conclude our inquiry by the start of the summer recess in July—even if we freed up all the time from consideration of the Criminal Proceedings etc (Reform) (Scotland) Bill—that would not give us a lot of time to put out a call for written evidence, and we would have to prepare a report at some point.

There would be some value in making available a longer period for scrutiny. Taking our time would give us the flexibility that Margaret Mitchell asks for and would allow us to ensure that we call the right witnesses. Marlyn Glen is right—if we are to free up extra time on top of our workload, we need to be sure that what we do is of value. My opinion is that whichever way we proceed, our report can only ever be an interim report. *[Interruption.]* Is it possible that members could listen to what I am saying? I am being distracted.

Mr McFee: I apologise, convener.

The Convener: The issue is of such magnitude that even if we spent the next six weeks completing our work, a future Justice 1 Committee or a future Justice 2 Committee would have to keep a watching brief on matters and take what was going on seriously. I have never believed that we alone can resolve the public confidence issues—real or imaginary—but we can contribute in some way and, in the past, I have argued that it is our job to do so.

We can examine the structures. As part of that, we might want to consider the distance between the forensic service and the criminal justice system. Brian Adam has raised that issue, and I know that it is topical within the forensics profession. During the evidence that we take, witnesses might be able to tell us whether the forensic service has become more remote. Questions of independence, standards and management are legitimate matters for politicians to discuss. There is value in examining where we have come from and where we might end up.

I have concerns about shifting our timetable on the Criminal Proceedings etc (Reform) (Scotland) Bill. It would not be the most valuable way to proceed, because we would have to close things down after June—unless members are suggesting that we open up our consideration as and when appropriate, which would not be practical.

I am in favour of Margaret Mitchell's suggestion, as described in paragraph 5 of the paper, to hold

"An Inquiry into Efficient Running of SCRO/SFS".

However, I could not support her suggestion on the Scottish Commissioner for Human Rights Bill that is contained in paragraph 6, for the reasons that Bruce McFee has mentioned. The suggestion in paragraph 5 can stand alone, notwithstanding Margaret Mitchell's view about how to proceed with it.

I have no difficulty with Mike Pringle's proposals to examine the operation of the SCRO, most of which match my position, but I am unhappy about his desire to consider the implications of the McKie case, because that would make our inquiry extremely wide. Apart from that, his proposed remit represents a sensible way forward.

It would be valuable to hear from David Mulhern and to press him on the witnesses he could make available to the committee. As I said last week, I am also interested in the generalities of the debate about the numerical standard that we have now and the proposed move to the non-numerical standard. Perhaps Brian Adam knows more about that than I do. I want the managers of the fingerprint service to be able to tell the committee that they are confident that that change would lead

to an improvement in the fingerprint service and that other countries that have such a service are adopting the non-numerical standard.

In summary, my view is that Margaret Mitchell's proposal as outlined in paragraph 5 and most of Mike Pringle's proposal constitute a sensible remit for an inquiry. I propose that we free up at least two meetings for our inquiry, but I remain of the view that we will be able to produce only an interim report. A watching brief should be kept on the fingerprint service for the duration of the present session of Parliament and into the next session—that is what I will recommend in any work that we do.

I have no objections to Mike Pringle's suggested witnesses, with the proviso that we have not yet checked whether they are willing to give evidence. I have a problem with the suggestion in Ken Macintosh's letter that we invite the fingerprint officers to give evidence. I acknowledge that there has been no forum in which they have been able to express their views, but if we invite them to give evidence we might have to call, for example, the McKie family. We would then have to consider the evidence and make a judgment that has already been made by the court. It has always been my view that we are not equipped to go down that road. We do not have the skills to examine forensically the evidence that would be put before us, and if we attempted to do that we would be regarded as trying to make the committee the forum for a public inquiry.

The remit of our inquiry should be short and defined, and we must be satisfied that our inquiry would be valuable. I would have no difficulty in finding time for the inquiry, as other members would have to do. This committee already meets for longer than any other committee—in terms not just of the number of meetings but of hours. We are already doubling up on the Criminal Proceedings etc (Reform) (Scotland) Bill and I am not confident that the timetable that we agreed will give us enough time for our work. However, we have always reserved judgment on such matters, and if we have thought that there was a strong case for our having more time we have asked the Parliamentary Bureau for it.

Mike Pringle: Margaret Mitchell asked whether the Scottish Commissioner for Human Rights Bill will disappear; it will not. The timetable for completion of the bill has been pushed back and the Parliament will decide in September whether to agree to the bill. I am keen that the bill be agreed to and enacted.

I agree with much of what Brian Adam said about the scrutiny role of parliamentary committees, the importance of such committees' scrutiny of the Executive and this committee's responsibility to carry out an extremely important

function in relation to the matter that we are discussing.

I suggest a way forward. We should not be prescriptive about the number of meetings that an inquiry will require—whether it is two, three, four or five. We do not have to decide that today. It was suggested that if we agree to an inquiry our first meeting on the matter would be on 26 April. I am in no doubt that everyone who is interested in the issue will quickly be aware of what is said during this meeting. Most of the information is already available and can be provided relatively quickly, so we should call for written evidence. Perhaps today once we have agreed the inquiry's remit, which is the important decision at this stage, we could decide who we want to invite to give written evidence to our inquiry. Once we have the evidence, we can fix the date of the first meeting, which might be 26 April. I agree with the convener that we should invite DCC Mulhern, who might bring someone with him. We might also want to hear from several other people, which would fill up one meeting. We could then discuss the written evidence that we had received—whoever had submitted it—and perhaps in advance of that we could decide who else it would be important for the committee to invite to give evidence. At that stage we would be in a position to know whether we needed two, three or four more meetings.

If necessary, as the convener said, we might have meetings outwith our regular Wednesday slot. I am well aware that the committee meets every week and rarely finishes before 1 pm. We have a full timetable. However, we all earn reasonably substantial salaries and we are reasonable people, so, to be honest, something would be sadly missing if we could not find the time to devote to a very important subject. We will need to consider a huge number of issues. For example, somebody told me that many of the international fingerprint experts never examined the fingerprints, but only looked at them over the internet. We should perhaps consider whether that is good enough.

In view of the convener's comments, I would be happy to alter my proposed inquiry remit to take into account Margaret Mitchell's suggestion so that the text would read, "To consider an inquiry into the efficient running of SCRO/SFS and the implications of the McKie case". That would cover everything that Bruce McFee wants. I appreciate that such a remit would be quite wide, but I think that the public expect us to have a wide inquiry.

10:45

Margaret Mitchell: I thought that my suggestion, which is in paragraph 5 of the paper, was explicit about the fact that the reason for the inquiry is the controversy over the identification of

the fingerprints. I thought that that was self-evident. If we stated that the implications of that specific aspect of the McKie case—rather than the whole case—will be at the heart of the inquiry, I would be happy to accept an amendment in those terms.

I am surprised—I should not be, as he is a Liberal Democrat—that Mike Pringle seems to be all over the place with this. Last week, Mike told us that he wanted a parliamentary inquiry as soon as possible. I have outlined a way to achieve that. We could seek written evidence during the Easter recess and start calling witnesses next week. We could then use the three or four sessions between now and 26 April.

In doing so, we could use the time that would have been given to the Scottish Commissioner for Human Rights Bill, which is clearly not a priority, given that it would fill a small gap in legislation by adding to the plethora of commissioners. As the European convention on human rights has already been incorporated directly into Scots law, there is no pressing need for another commissioner. That is why the committee has more or less rejected the principles of the bill. Let us get real about priorities.

I accept that the Criminal Proceedings etc (Reform) (Scotland) Bill is important and I do not want it to be rushed. Our timetable for that bill has already been brought forward. Given the circumstances, the bill should be put back a little bit and given its proper place so that we have time to decide on it. That would free up time between now and 26 April in which we could conduct a proper inquiry. That is my proposal.

The Convener: Let me clarify our timetable. The slots for the Scottish Commissioner for Human Rights Bill were last week and this week, so those slots have now gone. For the CPR bill, the only change to the timetable is that I have anticipated—as I need to do as convener—that members might want to free up time for our meeting on 26 April. Therefore, instead of hearing from our adviser and considering written evidence on the bill on 26 April, I have proposed that we rejig the meetings so that we deal with those matters on 19 April and allow ourselves a full meeting for taking evidence on 26 April.

Margaret Mitchell: Had we gone ahead with the timetable for the Scottish Commissioner for Human Rights Bill, would we now have been considering that bill at stage 2?

The Convener: We would have finished stage 2 of that bill next week.

Margaret Mitchell: Has the Criminal Proceedings etc (Reform) (Scotland) Bill gone into those slots?

The Convener: No. The two meetings for stage 2 of the Scottish Commissioner for Human Rights Bill would have taken place this week and next. Because the Executive has chosen to delay that bill, we have had to find other business. However, that has suited us because it has allowed us time for this discussion. Had the Executive not pulled stage 2 of the SCHR bill, our timetable for the CPR bill would still have started after the recess. In pulling stage 2 of the SCHR bill, the Executive has given us a problem, because we would otherwise have finished it by now. There has been no change to our timetable for the CPR bill.

Margaret Mitchell: However, next week's meeting would have been on the Scottish Commissioner for Human Rights Bill.

The Convener: Yes.

Margaret Mitchell: So we could devote that slot to the inquiry. We could call witnesses before us next week who would be fully versed in the issue.

The Convener: That would have been an option, but there is not an awful lot of time. We would obviously have to call witnesses and agree who the panel would be, and we could not do that for next week. I am genuinely trying to be helpful by at least freeing up our timetable around what the bureau has agreed. It is not for me to shift that timetable at the moment. If it is the committee's view that we should do what has been suggested, we will have to get the bureau's permission to shift the Criminal Proceedings etc (Reform) (Scotland) Bill further down our schedule, which will inevitably mean that it will bump into the next bill.

Mike Pringle: I would like to comment on something that Margaret Mitchell said.

Mrs Mulligan: I thought that we went through the convener.

Mike Pringle: My comment was that we should act as soon as possible, but the implication of what Margaret Mitchell said was that I wanted to delay the matter. I do not want to delay at all. My suggestion was that the first date would be 26 April, and that we would have other dates after that, whether on a Wednesday or on a Monday or Tuesday. However, I think that you are right, convener, in what you say about next week. We have to give people at least a little time to prepare to come to the committee.

Mrs Mulligan: I thought that we always went through the convener when we wanted to speak, but obviously that is not the case.

We have decided that it is important to hold the inquiry and we are concerned about restoring confidence in the service, so the committee is desperately trying to find spots in our busy agenda in which we can do that work. What the convener suggests is quite helpful, and I resent any

suggestion from Mike Pringle that we are not giving the matter the priority that it deserves. Rather, it is his inability to prioritise that is causing us problems. It is not a case of how much we are paid or how many days are in the week; some of us are unable to be in two places at once. If you are at another committee or in your constituency, it is difficult to be here. I thought that Mike Pringle might have appreciated that that was what I was saying.

I recognise that we need to give the matter some priority and I think that the convener is trying to be helpful. I would be happy to support her initial proposal. We can look for alternative times to meet once we have held evidence sessions for the Criminal Proceedings etc (Reform) (Scotland) Bill and dealt with the Scottish Commissioner for Human Rights Bill. Although, as Margaret Mitchell says, only a small gap is needed for that bill, I am concerned nevertheless, because I feel that we have an obligation to fill that gap and to deal with the work in hand. It is not as if we have work to look for; it is there on the table already. We just have to decide our priorities.

The Convener: We need to address the timetabling question. Is everyone clear about where the timetable now stands?

Mr McFee: Can I comment on that?

The Convener: I will call you to speak, Bruce, but before we move on I want to be sure that everyone understands the issues that we have to get around. That is all.

There is a possibility that, as 7 June has been reserved for non-legislative business such as petitions, we might be able to squeeze in a bit of time on 7 June. If the committee decides that it wants to conduct the inquiry before the summer recess, written evidence will have to be sought. As far as Bruce McFee's suggestion is concerned, I think that it would be impossible to conduct a wider inquiry without going beyond that timescale. The call for written evidence would have to be issued now and evidence would have to be received by 7 June.

Mr McFee: Although I recognise the time constraints imposed by the parliamentary straitjacket, I regard public confidence in the Scottish fingerprint service as a far higher priority than any timetabling problems that this committee may have. I do not believe that time constraints should determine the terms of reference of the inquiry, and I want to make that absolutely clear. That may result in inconvenience, but if it means creating space by timetabling extra days for the committee to sit, so be it, and if it takes us beyond the beginning of the summer recess, so be it.

We should not put any time constraints on the inquiry and we should not try to straitjacket it into

two or three meetings, because that will not do. Once we have issued the call for written evidence, started to appraise it and decided who to invite to give oral evidence, we will be in a better position to know how long the inquiry will take. We are putting the cart before the horse in trying to decide the timetable before the evidence that we will take. That will not work. If we follow that route, we could argue about our approach all day and never come to a conclusion.

Mike Pringle accepted Margaret Mitchell's proposed addition to his suggested remit, which was to add the words:

"An Inquiry into Efficient Running of SCRO/SFS".

We should know what we are voting for. I ask Mike Pringle—through the convener—if it is his belief, which would become the committee's belief if members voted for his proposal, that if we agree his remit as amended by Margaret Mitchell, it would give us a pretty wide inquiry that would allow us to look at the reasons for the misidentification of fingerprints in the Shirley McKie case and would include looking at the continuing differences of opinion about whether mistakes were made. That is fundamental to whether we can even try to begin to restore public confidence.

Mike Pringle: Sorry; perhaps I did not make that clear earlier on. The simple answer to Bruce McFee's question is yes.

Brian Adam: We seem to agree that we will hold a parliamentary inquiry. The next step is not to deal with the timetable, but the remit, and to consider who should be witnesses. There is consolidation of the three proposals for a remit that are before us and I am happy to go along with that. We should also agree the general direction that we want to take as regards the witnesses. Thereafter there is genuine concern about the timetable, but that should be dealt with only after we have agreed the remit and the direction that we will take on witnesses.

Mike Pringle said helpfully that, as far as he is concerned, his proposed remit should include Margaret Mitchell's proposed words and also the substantive part of Bruce McFee's proposed amendment of the remit. As the nub of the case is about misidentification, we must have witnesses who can address that. With the greatest of respect to DCC Mulhern, he was not directly involved in the case. I agree with what Ken Macintosh said in the letter that the convener referred to earlier—those folk who were directly involved in the case should come along and give evidence. We do not propose to reopen what happened in court; we want to address why there is a crisis of confidence in our legal procedures. Unless we address that, the value that will come from any parliamentary inquiry will be fairly limited.

The Convener: I beg to differ. It has been my position from the outset that if we were to embark on an inquiry with a remit that included the phrase “reasons for the misidentification” of Shirley McKie’s and David Asbury’s fingerprints, we would be seen to be trying to run a public inquiry in the guise of a parliamentary inquiry. The minute that we take a view on the reason for the misidentification or that there was no misidentification, we take a view on whether the court decision was right or wrong. That decision is a given. The court decided to accept the evidence that the fingerprint did not belong to Shirley McKie.

11:00

If we try to establish reasons for the misidentification, a whole squad of people will want to come before us. Even if I thought that it was desirable, I do not know how the committee could sort the issue out. If we go down that road the committee would have to decide whether we thought that there was a misidentification, but we are not equipped to do that. I, for one, will put my hand up and say that although I regard myself as a competent politician, the forensic examination that would be required to go through the evidence and make a determination on it would be a step too far.

My main reason for opposing the proposal is that we would be seen to be trying to conduct a public inquiry in the guise of a parliamentary inquiry. I am opposed to that and have been from the beginning. The idea that we can sort out the issue for the general public is nonsense. However, we can contribute—only contribute—to holding everyone to account in respect of the structures of the organisation. That is what a committee should do. It would be a serious mistake to embark on anything else. We have all said what we think about a public inquiry and to include the reasons for the misidentification of fingerprints in the remit would overturn what we have been saying.

Mrs Mulligan: I seek some information, perhaps from the clerks. I have some sympathy with the suggestion that we should get the written evidence first, then decide who we should seek oral evidence from, and then draw up a timetable. However, I have concerns about whether following the usual practice in seeking written evidence would jeopardise the possible slot for an evidence session on 26 April, given that we might not have received written responses by then.

The Convener: I ask the clerk to respond to that point.

Brian Adam: Can I—

The Convener: I will call you in a moment, Brian.

Douglas Wands (Clerk): It is for the committee to decide how long to give possible witnesses to submit written evidence, but the standard that is recommended by the Procedures Committee is eight weeks. Six weeks has sometimes been used for narrower inquiries, but the matter is entirely at the committee’s discretion.

Brian Adam: Convener, given that your view is that the committee is not equipped to answer the question that I suggest it should answer, do you think that the question needs to be answered in the public interest? If so, how do you suggest that it be answered, if not through the committee’s inquiry?

The Convener: I have made my position clear as the member who brought the matter to the committee. I believe that it is the function of this committee of the Parliament to hold the Executive to account—for whatever—in relation to the matter. I accept and have put on the record that there is at least a perception that damage has been done to the Scottish fingerprint service and that there is a lack of public confidence in it. To that extent, the committee agrees that this is a serious issue. I have never held the view that we can resolve all the issues, allegations and so on, but—

Brian Adam: But do you believe that they need to be resolved?

The Convener: I have said from the beginning that it is the function of the committees of the Parliament to hold the Executive to account for standards of service. Issues past and present need to be examined, but I have said from the beginning that I do not think that we can achieve anything better than that.

If the committee cannot agree a remit or if we decide that, as Marlyn Glen said, we cannot add value to the process, we must decide to take the matter no further.

Mr McFee: No. Definitely not.

Mike Pringle: I apologise if I interrupted earlier, as Mary Mulligan implied. I thought that I had indicated that I wanted to speak and as you did not stop me, convener, I thought that it was okay for me to go ahead.

I agree with Mary Mulligan. We are all extremely busy people and try to spend as much time as possible on Mondays and Fridays in our constituencies. However, in this case we must balance the busy life that we have with something that—let us be honest—we wish had never happened. I am sure that everyone agrees that we could all do without spending days and days on the matter. However, that is not possible. We are now faced with the problem and must respond to it and whatever comes at us as a result.

I accept that we normally give people eight weeks' notice but, as I have said before, I am sure that everyone is more than well aware of all the implications of and evidence in this case. I do not believe that 26 April is too early a date for all the professional organisations that we want to appear before the committee to submit written evidence. If it is, we will have to delay hearing from them. Whether we like it or not, we may have to find some time for the inquiry outwith our normal meeting time on Wednesdays. The convener has indicated that a second day is available for evidence taking on 7 June. Hopefully, that will give us a second bite of the cherry. However, if we need to meet at a time other than a Wednesday morning, we must do so.

The Convener: First, we should make a decision about the remit of the inquiry and then talk about what we need to do today to timetable it.

Margaret Mitchell: I agree. Committee members have said that they would like to conduct a parliamentary inquiry. In my view, the inquiry must examine both the past and the present. If it is to be more than a cosmetic exercise, it will involve hearing from the four fingerprint experts in the Shirley McKie case, to establish what went wrong, so that we can see whether all the proposals and various reports that have been produced have addressed the problem. How can we assess the efficient running of the SCRO or SFS without that information? I am happy to accept Mike Pringle's amendment to my proposal in paragraph 5 of the paper. I would also like paragraph 8 to be included in the inquiry's remit. That paragraph states:

"Oral evidence to be taken from any person or body the Committee deemed relevant to complete the remit."

I am happy to take 26 April as the date by which written evidence should be submitted. I suggest that soon after that we ask the Parliamentary Bureau for a timetable of dates for successive oral evidence-taking sessions. We should not take bits of time—an hour here or there—from committee meetings that are devoted to other issues. If we are to undertake an inquiry, proper time should be allocated to it. There should be dedicated slots for the inquiry and no other business. The bureau's continuing obsession with getting through more and more legislation should not be allowed to prevent time from being put aside for discussion of this hugely important issue, on which confidence in the criminal justice system in Scotland hangs.

Mr McFee: There are times when committees are called on to make decisions. We should not be seen to duck decisions. I agree with many of Margaret Mitchell's comments and I am happy to accept Mike Pringle's assurances about what the amended remit would look like: we would be able to examine the reasons for the misidentification of the fingerprints in the Shirley McKie case and the

differences of opinion that continue to exist. Although the court in the perjury trial may have decided that the fingerprints in question were clearly not those of Shirley McKie, SCRO officers have not. As an MSP, I do not have confidence in the system at the moment, because it has not been explained to me why the mistakes were made and continue to be denied by sections of the service. That issue is fundamental to any inquiry that we hold.

I recognise that we have different views on the timetable, but I believe that that is surmountable and that we should get on and call for written evidence. I also believe that the committee should be able to call for oral evidence from anybody. That is the sensible way to move forward.

Reasons for not proceeding in the proposed direction have been given. I say, with all due respect, that if members oppose the suggested remit they should be good enough to say so and not wrap their disagreement up in excuses about the committee not having time at any stage down the line. Let us be clear about the remit and make time for the inquiry.

Mrs Mulligan: I am happy to agree to Margaret Mitchell's proposal in paragraph 5, and to Mike Pringle's elaboration of it, but I still have concerns about considering the implications of the McKie case, because that would drag us back into the past rather than allow us to consider the present and how to move on. As I have said previously, but for the concerns that the McKie case raised, we would probably not have held an inquiry. I am, however, concerned about bringing Mike Pringle's suggestion into the inquiry's remit because it would open up aspects that are not suitable for consideration by this committee. I accept the rest of Mike Pringle's suggestion.

We should issue a request for written evidence. The sooner that can be done, the better. However, I appreciate the clerks' advice. I was concerned that, in issuing a request, we might lose the opportunity of the 26 April meeting. We should go ahead with the convener's suggestion about that and consider taking further evidence in June, on the back of the written evidence.

I think that every committee member agrees that we should hold an inquiry, although Brian Adam's comments did not convince me that he agrees. If he tells me that he does, I will accept that. I understand that we will find it difficult to fit an inquiry into our busy agenda, but we have agreed that it is necessary, so we will do it.

However, I do not want people to think that the Criminal Proceedings etc (Reform) (Scotland) Bill and the Scottish Commissioner for Human Rights Bill are not important—they are. Anybody who has considered the justice system and its bail arrangements, which have been much in the

media, appreciates that the sooner we get on with the Criminal Proceedings etc (Reform) (Scotland) Bill the better, because a number of aspects of it are important.

Nevertheless, I think the committee agrees with the convener's suggestion about how we should proceed with an inquiry.

The Convener: I was going to suggest that we break for five minutes. I think that there is consensus that we should have a parliamentary inquiry, but there seem to be big differences about what the remit should be. I invite members to comment on whether they think there is common ground. We might have to vote on this, so I want to ensure that we do so in an order that we can all follow.

Mr McFee: For me, what is proposed is clear. Members can correct me if I am wrong, but it is proposed that we accept paragraphs 5 and 8 of Margaret Mitchell's suggestion together with Mike Pringle's suggestion. However, I am not sure that we have approved the list of people to be called to give evidence. I think that we are saying that we should issue a call for written evidence, then determine who should give oral evidence. To make the process easier, if it is clear that we accept what I have described, I will withdraw my amendment.

11:15

The Convener: That might take us a wee bit further forward.

Margaret Mitchell's suggestion to call the inquiry "An Inquiry into Efficient Running of SCRO"

is very sensible. The fourth paragraph of her proposal is also helpful, as it would allow the committee to take such evidence as it wished, in line with whatever the remit turns out to be.

Margaret Mitchell: The bit in brackets in the first paragraph of my proposal should also be included because—crucially—it would leave the terms of reference flexible enough to allow us to consider past and present matters. That is why I am accepting Mike Pringle's amendment to the first paragraph of my proposal.

The Convener: I do not think that we can agree terms of reference and leave things open in that way. For the sake of completeness, let me say that I support not only the first paragraph of Margaret Mitchell's proposal but the fourth paragraph, because we need to leave the issue of evidence open.

I support Mike Pringle's proposal, apart from the reference to considering

"the implications of the McKie case".

I cannot support Bruce McFee's amendment, but Bruce has said that he will not press it if Mike's

remit as clarified would allow the committee to consider the misidentification of the fingerprint.

Mike Pringle: If we agree to take

"Oral evidence ... from any person or body the Committee deemed relevant"

that will not have to form part of the remit.

The Convener: Yes, but it flows from the remit. If your proposal is adopted, the inquiry will have a wider remit, which means that under the terms of the fourth paragraph of Margaret Mitchell's proposal we could include officers from the fingerprint service and the McKies—although I have heard the McKies say on record that they have no trust in the parliamentary committee and do not support an inquiry.

Mr McFee: That is a matter for them.

Mike Pringle: Indeed.

The Convener: If a narrower version of Mike Pringle's proposal is accepted, that would impact on the terms of Margaret Mitchell's fourth paragraph.

Mike Pringle: I think that we are going to take

"Oral evidence ... from any person or body that the Committee deemed relevant"

in any case. After all, that is what we have decided to do. However, I am happy to accept

"An Inquiry into Efficient Running of SCRO/SFS".

As for the reference to

"the implications of the McKie case",

I said at the very beginning that any inquiry has to look at the past. As a result, I am also happy to accept the bit in brackets in the first paragraph of Margaret Mitchell's proposal.

Mrs Mulligan: It might be helpful if we take a break and let the clerks put together a draft remit. I have just heard three different versions of it.

The Convener: I propose that we have a break to allow us to work on the options and to give everyone a chance to be clear about what they are voting on. Mike Pringle is happy to adopt the first paragraph of Margaret Mitchell's proposal, including the bit in brackets, which says:

"(this would leave terms of reference flexible enough to look at past/present practice)."

Mr McFee: Given that I am withdrawing my amendment to Mike Pringle's proposal, it might be helpful if I try to make things clearer. The members who have made these proposals should tell me whether I am wrong, but my understanding is that we start with the first paragraph of Margaret Mitchell's proposal, after which we have the paragraph from Mike Pringle's proposal that ends "forensics services in Scotland". The remit then

ends with the final paragraph of Margaret Mitchell's proposal, which leaves it open to the committee to decide the evidence that it wants to take, along with a call for written evidence.

The Convener: Is the substantive position that we amend Mike Pringle's proposal to include the full first paragraph and fourth paragraph of Margaret Mitchell's proposal?

Members: Yes.

The Convener: So, if that is agreed, Bruce McFee will drop his amendment to Mike Pringle's proposal.

However, I and other members would want to amend the amended proposal. I can accept everything in that remit, apart from any reference to examining the misidentification of the fingerprint.

Brian Adam: Why do we not proceed with the vote on that matter?

Mr McFee: If that is the substantive difference.

The Convener: So the substantive difference is that some of us support the whole of the suggested remit except the words:

"To consider the implications of the McKie case".

We agree that if Mike Pringle's substantive proposal with the amendments is agreed to, there will be a slightly wider remit and that we can therefore call slightly different witnesses. If his proposal is amended, paragraph 8 in paper J1/S2/06/9/6 will reflect the new remit. We would not agree to amend Mike Pringle's proposed remit and then call the witnesses who would have been called if his proposed remit had been agreed to. There are two positions.

Do members agree to a five-minute break?

Brian Adam: Why do we not simply vote?

Mr McFee: I suspect that it would not take long to vote.

Mrs Mulligan: I would like some clarification. I have said on the record that I am unhappy with

"To consider the implications of the McKie case"

because I do not think that we are in a position to reopen that case and investigate it in the way that people would probably foresee a public inquiry investigating it. Mike Pringle has also said that he is not looking for a pseudo-public inquiry. What did he mean by that?

Mike Pringle: I am not in favour of a public inquiry—I am in favour of a parliamentary inquiry. We can agree today that we are going to move forward with a parliamentary inquiry. The difference between the convener and me is that I want the inquiry's remit to be slightly wider than

she wants it to be. However, we are not talking about a public inquiry.

Mrs Mulligan: But what do you mean when you say that we should

"consider the implications of the McKie case"?

Do you envisage that we should take evidence from witnesses to do so?

Mr McFee: How the heck could we have an inquiry if we did not do so?

The Convener: Hold on. I know members are becoming frustrated, but you have said that there is a serious issue and a difference of opinion, which I would like to try to resolve. I do not want members to have questions after we move to a vote. Let us get the issue out the road. Mary Mulligan simply wants clarification on the broad implications for witnesses if Mike Pringle's substantive proposal is agreed to.

Mike Pringle: The implication is that once the remit has been agreed to, the committee can decide whom it wants to call. We should call for written evidence from anybody who wants to give it. I suspect that there will be a lot of written evidence. We can then decide whether we want to hear from anybody who has submitted written evidence. Only then can we decide whether we need one, two, three, four or more days for oral evidence.

The Convener: That is helpful. You are saying that if the committee agrees to include the words

"To consider the implications of the McKie case"

in the remit, we will, at the next meeting or a future meeting, decide which witnesses to call to speak to the entire remit.

Mike Pringle: Yes.

Marlyn Glen: I would be much happier with the convener's proposal. We would then consider general principles and the efficient running of the service, which is what we should do, and find out whether the changes that have been introduced have made a difference.

I return to what Brian Adam said. I do not see how broadening the remit would add value. The committee is a parliamentary committee—I do not see how it can go into what a court has decided. We would be getting into matters over which we do not have competence. I want the committee to promote confidence in the justice system and add value rather than do the opposite. I do not want its work to be counterproductive.

Mr McFee: I will be brief. The differences on the McKie question are now clear. Let us be blunt: if there had been no McKie case, we would not be sitting here discussing what we are discussing. We simply disagree about how to proceed.

I believe that the inquiry will have little value if we do not consider the lessons to be learned from the past. I entirely refute Marlyn Glen's suggestion that we are second-guessing court decisions. That is not what we are doing. We are not holding a public inquiry. We are holding a parliamentary inquiry—and we have two distinct proposals on how to proceed.

The Convener: Mike, you have clarified that we can have a debate on which witnesses we should call. The remit that you propose includes

"the operation of SCRO and ... the standards of fingerprint evidence in Scotland".

I presume that I will therefore be able to address my concern about non-numerical standards. The remit includes the recommendations from HM inspectorate of constabulary, of which we have a copy. It also includes scrutiny of the action plan and

"improvements in fingerprint and forensics services in Scotland."

Mike Pringle: Yes.

The Convener: We will have a future debate about members' views about how to support that remit.

Mr McFee: The all-embracing remit.

Mike Pringle: Yes.

The Convener: Is everyone clear about what we are voting on? Are members happy not to see the remit in black and white before we move to the vote?

Margaret Mitchell: Can I be clear that the inquiry will consider the efficient running of SCRO past and present and the rest of what we have just said, including paragraph 8? That is what we are voting on.

The Convener: I suggest that we take a five-minute break and write out the remit so that we are all clear about what we are voting on. However, if members are clear about that now, I am happy to move to the vote.

Mr McFee: It is crystal clear.

Brian Adam: Convener, you suggested a list of witnesses. I assume that you are not suggesting that they should be the only witnesses.

The Convener: No. I was illustrating the point so that we are clear about what we are voting on. If I am to support Mike Pringle's proposal, I want to be clear that, at a future meeting, we will consider who we want to call as witnesses. Mike agrees that that is the case, so I will be able to argue for or against particular witnesses.

Mike Pringle: Yes.

Mr McFee: Convener, we have established that the approach does not close off the possibility of

calling any witnesses we would like to hear from and the issues that you would like to look at and that it does not close off the ones that I suggested I would like to look at. We will decide on the witnesses when we get the written evidence.

The Convener: So members are happy not to see the wording in black and white? You are all clear about what we are voting on.

Mr McFee: I am absolutely clear. The *Official Report* of the meeting will eliminate any concerns that we have.

The Convener: We have aired the arguments well this morning. The question is, that we support the substantive position of Mike Pringle's proposed remit for a parliamentary inquiry as amended by Margaret Mitchell. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Adam, Brian (Aberdeen North) (SNP)
McFee, Mr Bruce (West of Scotland) (SNP)
Mitchell, Margaret (Central Scotland) (Con)
Pringle, Mike (Edinburgh South) (LD)

AGAINST

Glen, Marlyn (North East Scotland) (Lab)
McNeill, Pauline (Glasgow Kelvin) (Lab)
Mulligan, Mrs Mary (Linlithgow) (Lab)

The Convener: The result of the division is: For 4, Against 3, Abstentions 0.

The proposal is agreed to, so we are clear about the remit. As Mike Pringle stated, we will discuss the list of witnesses and the potential timetabling.

Do members agree that we should set aside 26 April as our first evidence-taking session?

Members indicated agreement.

The Convener: Do members agree that, subject to other business, we should try to find time for a further evidence session on Wednesday 7 June? It will not be a full session.

Members indicated agreement.

The Convener: Do members agree that we should have a fuller discussion about the list of witnesses at our meeting next week?

Mr McFee: How can we discuss who we want to call before we get the written evidence? I am having a wee problem—

The Convener: We often—

Mrs Mulligan: That is why I asked how long we were going to allow for the written evidence to come in.

Mr McFee: We cannot determine how long that will take. It could take one month or two months. We should not decide whom to call next week on the basis of written evidence that we have not yet received.

11:30

The Convener: The aim was just to make a head start. Often, although we have not received written evidence, we draw up a list of people whom we might want to call, to which we can add. To have a head start, members might want to discuss who should be on the panel on 26 April. I will bid to hear from David Mulhern on that day and from any experts whom he wishes to bring.

We must use the time that is available for further discussions and to agree a list of witnesses. I am happy to delay that discussion until after our 29 March meeting, but members can see what will happen if I do that.

Mr McFee: If you wish to call particular people, I understand how you arrived at that decision. However, decisions will have to be made after we receive the written evidence.

The Convener: A decision next week would not be definitive; we would have further discussion. The aim is to make a head start on the list of witnesses whom we want to call to our meeting on 26 April. That would be subject to further agreement on whom the committee wants to call.

Margaret Mitchell: I still have reservations about the timetable and I would like us to ask the Parliamentary Bureau what time it can free up for the committee. The inquiry is important, so I do not want it to be conducted in an hour that is snatched here and there from other business. The evidence-taking session in June sounds as if it might be like that. Can we ask the bureau to examine the timetable and free up dedicated time?

The Convener: I hope that we will discuss with the bureau flexibility for the Criminal Proceedings etc (Reform) (Scotland) Bill. That has always been, and still is, my position. If you are asking us to move the timetable, I would oppose that, but if you are asking me to request flexibility, I am not against that.

Mr McFee: I will try to be helpful again, convener. You will speak to the bureau about flexibility—you would do that anyway. I suggest that we consider at our next meeting potential dates for meetings, when the bureau might have indicated what flexibility is available.

Margaret Mitchell: I am happy with that.

The Convener: So am I. We will need flexibility, anyway. We will return to the discussion at next week's meeting, which is our last before the recess. I thank members for their attendance.

Meeting closed at 11:32.

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