

JUSTICE 1 COMMITTEE

Wednesday 1 November 2006

Session 2

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JUSTICE 1 COMMITTEE

† 38th 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)
Bill Aitken (Glasgow) (Con)
Karen Gillon (Clydesdale) (Lab)
Mr Jim Wallace (Orkney) (LD)

*attended

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald
Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 5

† 37th meeting 2006, Session 2—joint meeting with Justice 2 Committee.

Scottish Parliament

Justice 1 Committee

Wednesday 1 November 2006

[THE CONVENER *opened the meeting at 09:34*]

Petitions

Victims of Crime (Financial Reparation) (PE914)

The Convener (Pauline McNeill): Good morning everyone, and welcome to the 38th meeting of the Justice 1 Committee in 2006. The meeting will be short; we will deal with two petitions that the Public Petitions Committee has referred to us as they are relevant to the committee's current work. I have received no apologies for absence. I ask members to do the usual and switch off their mobile phones. That would be helpful.

Petition PE914 is from Peter Fallon and calls on the Scottish Executive to amend criminal justice legislation so as to require criminals to make financial reparation to victims of their crimes. I refer members to the note from the clerks, which sets out some recommendations. Members should note that correspondence has been received from the Scottish Executive, setting out the proposals in the Criminal Proceedings etc (Reform) (Scotland) Bill to allow victims to receive compensation. We have already had some discussions on that issue. The bill seeks to expand the use of compensation by introducing compensation orders.

It is recommended that the committee notes the petition. Discussion on it is relevant at this particular time, so I invite members to comment.

Stewart Stevenson (Banff and Buchan) (SNP): Petition PE914 touches on a matter about which I have been concerned for a while. In most cases, petty or habitual criminals have few assets; victims are therefore unlikely to pursue compensation from them following conviction. However, as we know, criminals themselves may receive compensation in relation to their treatment in prison. I feel that such moneys paid to criminals should be held until they are released from prison. That would give a victim time to consider whether changes in the criminal's financial circumstances might allow a claim for compensation. That might lead to considerable legal difficulties, but I want to put the suggestion on the record because a number of criminals or former prisoners might soon receive compensation from the public purse because of prison conditions. I would prefer the

victims to end up with the money, rather than the criminals.

The Convener: Indeed. Do you intend to propose an amendment to the bill on that issue?

Stewart Stevenson: I have not been able to identify a way in which I could do so. I do not expect to be able to do so, but I will be taking advice.

Margaret Mitchell (Central Scotland) (Con): As the note from the clerks says, compensation can be sought in various ways. The note suggests, sensibly, that we should keep the petition open until stage 3 of the bill has been concluded.

I hope that the petitioner will follow the stage 2 debate. That will allow him an opportunity to suggest amendments for stage 3 that could close any loopholes that he feels have been left open after stage 2. I think that we are all sympathetic to the principle of what the petition seeks to achieve.

Mr Bruce McFee (West of Scotland) (SNP): I concur. We do not quite know what provisions will be in the bill, because we have not got through stage 3. However, basically, the bill will allow compensation to be ordered not just as an alternative to prosecution but as an additional measure.

One issue has been how we encourage the courts to make greater use of reparation when they determine sentences, as it is not terribly well used now. I understand that the bill intends to move us in that direction. However, I do not know how we can require a criminal to make financial reparation if they do not have money. Another issue is what can be done if the criminal has money but refuses to pay. That is a whole new area.

Most people are in favour of reparation as a general principle and would be sympathetic to the aims of the petition. I want to see what the Executive's responses are at stage 3, particularly on the assessment of personal injury, which is an issue that must be ironed out. I would like to see what the Executive says and does by way of amendment to the current proposals in the bill before we finally close the petition, so there may be merit in keeping it open until stage 3 has been completed.

The Convener: I think that we agree that it is appropriate to keep the petition open. It is relevant and, as members have said, there must be some detailed discussion about how the new provisions will be applied, which is obviously a judgment call for the fiscals. One of the aims of the bill is to ensure that we deal with fine enforcement better. That would also have to be a judgment call by the fiscals. When they are dealing with someone of limited means and want them to pay a fine, what

would be the impact of imposing a reparation order instead?

Stewart Stevenson referred to issues relating to victims, and I will do the same. I have been pursuing a criminal injuries compensation issue, which is not strictly a devolved matter, although the Justice 2 Committee had a look at the Criminal Injuries Compensation Authority, which is a cross-border authority. Members will know that discussions are taking place in England and Wales that would affect Scotland. I wondered whether there might be an opportunity for us to examine criminal injuries compensation, given that we are considering the position of victims. I do not want reparation to replace criminal injuries compensation—that is why I think that the issue is directly relevant. I hope that any reparation under the provisions that we put in the bill will be seen as additional to what victims will, I hope, continue to get under the criminal injuries compensation scheme.

Mr McFee: As you have expanded the discussion to cover criminal injuries compensation, I add that any consideration of the matter would have to include the recent changes to the scheme and the intent to move away from what we might deem lower-scale injuries.

The Convener: That is what I was referring to.

Mr McFee: Okay. I wanted to clarify that, because the matter has particular ramifications. The bill might be able to take up some of the slack.

The Convener: I agree. Do we agree to keep the petition open until the bill has been dealt with?

Members indicated agreement.

Criminal Law (Procedures) (PE935)

The Convener: PE935, from Ian Longworth, calls on the Scottish Parliament to urge the Scottish Executive to amend criminal procedures to ensure that when a procurator fiscal does not consider it in the public interest to pursue criminal proceedings a full written explanation is provided to the alleged victim of the crime.

I refer members to the note that has been prepared on the petition and to correspondence that has been received from Victim Support Scotland and the Crown Office and Procurator Fiscal Service, which indicated that they do not support the proposals.

Members will know that the Lord Advocate recently announced that, on request, an explanation will be provided to victims when a case is not proceeded with. Victim Support Scotland is content with that position.

I invite members to comment on the petition.

09:45

Stewart Stevenson: Like, I suspect, other members, people have come to my surgeries who have felt unable to understand the decision of the procurator fiscal in relation to a no-proceedings decision. However, other people who have come to my surgeries have felt that the explanations that have been offered have left them at a disadvantage and without any recourse, although I have to say that they have been fewer in number.

The petition uses the phrase “a full written explanation”, which is capable of a variety of interpretations. The difficulty in offering such an explanation is that, if it were to explain the full decision-making process, it would disadvantage other people. We need to achieve the right balance but, of course, in many cases, the written explanation will not satisfy the victim, as they will continue to feel that they have been let down by the system simply because there has been insufficient evidence to give any degree of certainty that a conviction would result from a prosecution. There is no point in prosecuting people if there is no suggestion that a conviction can be achieved. Furthermore, to do so would result in injustices to people whom we cannot show to be guilty of something.

It is extremely difficult to strike the right balance. Individuals would undoubtedly continue to feel that they have not got what they wanted, but justice is about achieving the right balance. The changes for victims that have been made in recent times, in which this committee and the Justice 2 Committee have been involved, have certainly moved matters in the right direction. I support the recommendation that we leave things at that.

Mr McFee: I will raise a couple of small issues before the petition is closed, if that is what is going to happen. The petition asks that “a full written explanation” be

“provided to the alleged victim of the crime”.

I think that, by “the alleged victim”, the petitioner probably means individuals but, in crimes such as vandalism, it could be said that the community, as opposed to any individual, is the victim of the crime. It would be wholly impractical even to consider providing a written explanation to the community.

I wonder whether the petition is not specific enough or whether our interpretation of it is not accurate enough. Let us assume that the petition refers to individuals only, rather than to communities. Is the petition asking that the victim be issued with a statement of why a prosecution has not been proceeded with regardless of whether they wish an explanation, or is it saying—albeit perhaps clumsily—that, if a request for an explanation has been made and denied, there

should be a requirement to provide one? That concerns me, as there is a case for reconsidering what should happen if a request for an explanation has been made and denied.

Notwithstanding any of that, the comments from Victim Support Scotland that victims should be made more aware of their right to request an explanation are fair. Victims are not made aware of it to the degree that we all would like.

Perhaps some clarification of the petition's meaning, if such clarification exists, would help me in my final determination.

Mrs Mary Mulligan (Linlithgow) (Lab): Like Stewart Stevenson, we all have examples from our constituency work of requests being made for information about why cases have not been proceeded with. The fact that procurators fiscal are much more receptive to discussing with victims whether they intend to proceed or why they have not proceeded with a case is part of the developing greater openness of the court system. That is something that we want to encourage, because victims have certain rights and we have certain debts to them that need to be seen to be paid.

However, I suspect that a lot of victims will feel a certain amount of frustration if a case is not proceeded with. Even providing the reasons why will not necessarily remove that frustration because the eventual outcome will be the same—the case is still not going to be proceeded with. To provide reasons in every circumstance would probably not be the best way forward. For those who clearly need a reason for their own peace of mind, it is important that we encourage the Procurator Fiscal Service to respond to that wish. However, some people will just want to get over the case and will not want to know all the ins and outs. That option should be available to them as well. Therefore, although the solution before us is not perfect by any means, it is probably the best way to go.

Mike Pringle (Edinburgh South) (LD): Bruce McFee said that it would be extremely difficult to give everybody in a community an explanation as a result of, for example, vandalism in an area. I entirely agree. However, in certain circumstances, there can be communication with a community through organisations such as community councils. Vandalism and other forms of antisocial behaviour often affect a considerable number of people in an area, and we end up with 50, 60 or even more people who are extremely angry and annoyed. A group of people who came to my constituency office were very upset that they had not been able to get any information about why something had not happened with a case. It is only right that, if any community organisation makes representations to the procurator fiscal, it should

be able to find out information in the same way that an individual can. The procurator fiscal need only pass the information to one member of the group—perhaps the secretary or the chair—who can let everyone else know.

Margaret Mitchell: The comments of Victim Support Scotland put the issue in perspective. It recognises that it would not be practical to give an automatic explanation to victims in every case and that, if such an explanation was given to every victim, it would say only that the prosecution was not in the public interest or that there was insufficient evidence. That would not really take people that much further on.

In February 2005, the Lord Advocate said that, wherever possible, victims would be given an explanation when they requested one. That is probably the right way forward, but I would seek an assurance that that information would be supplied in writing and that there would be an offer of a follow-up, face-to-face meeting, which would ensure that the victims got an explanation that was as full as possible and that their concerns were alleviated. The Lord Advocate said merely that an explanation would be given, which is a little vague.

The Convener: I am opposed to the petition. Like Mary Mulligan, I have to say that my dealings with the procurator fiscal have changed dramatically since I was elected in 1999. I have never been refused a meeting on behalf of a constituent and those meetings have been of considerable length. In some ways and in some cases, I think that it is quite right that that information should be sought via the victims' elected representatives. In part, that is our job.

However, I would be concerned if procurators fiscal were to be tied up in a system that gave them a duty to issue explanations. Like Stewart Stevenson, I think that that is only the beginning of what some people might demand. It might be extremely dangerous to go down that road.

We must recognise that the offer that the Lord Advocate made to offer an explanation to victims in a private face-to-face meeting signalled a massive change in Crown Office policy. That is the right way to deal with the matter. I can see problems for the service if we require a written explanation to be given. What happens to that written explanation? In some cases, it will give people a chance to take in the information but, in other cases, it will be seen as a way in which people can challenge the decision of the procurator fiscal. I would have to draw the line there.

I oppose the petition. We have to recognise that there has already been a dramatic shift. Further, I am not sure that the service could deliver what is asked for. I was quite surprised by the Lord

Advocate's announcement and welcomed it. However, I want to be sure that the Crown Office is able to deliver what it has said that it will do. It has said that the victim or—in murder cases—the family of the victim can ask for an explanation and that that explanation will be given privately. That means that people in the Procurator Fiscal Service will have to take time out of their day to do that. We have to monitor that to ensure that we are getting the balance right and are not overburdening the service.

What do members want to do with the petition?

Mr McFee: I accept entirely what you say, convener. I was concerned about those issues as well.

Looking at the petition again, it seems that it is asking for something that is quite wide. It wants explanations to be given in every circumstance, whether they are desired or not. That is reason enough for me to turn down the petition. Having said that, I should say that I accept that it is difficult for people to draw up petitions.

I agree with what you say about the written explanation, which I think is far better than a face-to-face discussion with the alleged victim of the crime. However, there is an issue about murder cases. We now have a system in which the family can request an explanation, which is probably far better. There might be a next of kin but, in some circumstances, the next of kin might be quite distant.

If the committee is of a mind to close the petition, I will not oppose that.

Stewart Stevenson: I support the closing of the petition but would make the rather obvious suggestion that we should send the Lord Advocate a copy of the *Official Report* of our comments on the petition, along with a covering letter, so that, on behalf of the Crown Office, she can consider and take note of what the committee has said.

The Convener: Is everybody happy with that?

Members *indicated agreement.*

The Convener: Okay. We will also write to the petitioner to outline some of the announcements that have been made by the Crown Office, which might, in part, satisfy him.

At a previous meeting of the Justice 1 Committee, we agreed to meet in private to consider the draft report of our inquiry into the Scottish Criminal Records Office. That is what we will do for the rest of the morning and, possibly, into the early afternoon.

09:58

Meeting continued in private until 13:09.

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