JUSTICE 1 COMMITTEE

Wednesday 13 December 2006

Session 2

£5.00

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.

CONTENTS

Wednesday 13 December 2006

JUSTICE 1 COMMITTEE
† 50th 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

THE FOLLOWING GAVE EVIDENCE

Lorna Brownlee (Scottish Executive Justice Department)
Paul Cackette (Scottish Executive Justice Department)
Bob Cockburn (Scottish Court Service)
Peter Jamieson (Scottish Executive Justice Department)
Johann Lamont (Deputy Minister for Justice)
Gillian McDonald (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Callum Thomson

SENIOR ASSISTANT CLERKS

Euan Donald
Douglas Wands

ASSISTANT CLERK

Lewis McNaughton

LOCATION

Committee Room 4

† 49th Meeting 2006, Session 2—held in private.

Scottish Parliament

Justice 1 Committee

Wednesday 13 December 2006

[THE CONVENER *opened the meeting at 09:51*]

Decision on Taking Business in Private

The Convener (Pauline McNeill): Good morning and welcome to the 50th meeting of the Justice 1 Committee—50 meetings in one year might be a first. I am sure that it feels like 50 meetings to committee members.

We are all present, and if members did the usual and switched off anything that interferes with broadcasting, that would be helpful.

Our first agenda item is to invite members to consider whether to take in private agenda item 5, which is specifically to consider the draft stage 1 report on the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill. Is that agreed?

Members *indicated agreement*.

Subordinate Legislation

Police (Minimum Age for Appointment) (Scotland) Regulations 2006 (SSI 2006/552)

09:52

The Convener: Members will have details of the regulations, and I welcome Peter Jamieson and Gillian McDonald from the Scottish Executive Justice Department, who are here to answer any questions that members may have.

I do not think that there is anything particularly controversial about the regulations, other than that they were laid later than the required 21 days before they come into force. Peter, is there anything that you want to say about the regulations?

Peter Jamieson (Scottish Executive Justice Department): The regulations amend the Police (Scotland) Regulations 2004 (SSI 2004/257) and the Police Cadets (Scotland) Regulations 1968 (SI 1968/208). The amendments cover two interlinked parts of the regulations, and changes are being made in light of the Employment Equality (Age) Regulations 2006 (SI 2006/1031).

Broadly speaking, the Employment Equality (Age) Regulations 2006 make it unlawful to discriminate on grounds of age in employment. Our legal advice was that we had to introduce the new regulations as soon as possible, and we therefore broke the 21-day rule.

The effect of the regulations is to reduce the minimum age of application for regular police officers to 18 years from 18 and a half and, as a consequence, the attainment age of cadets.

Margaret Mitchell (Central Scotland) (Con): Where do the regulations emanate from?

Gillian McDonald (Scottish Executive Justice Department): The amendments to the regulations emanate from employment legislation, which itself emanates from European Union law.

Margaret Mitchell: So these are EU regulations that are being implemented.

Gillian McDonald: We have had to amend the police regulations as a result of EU legislation.

Margaret Mitchell: Right, I understand that.

In the Executive note, it says that one reason for ensuring that no one under the age of 18 became a police cadet was the nature of the job, which can often be stressful. There has always been a six-month gap after the 18th birthday before someone is accepted into the police, and it is a time in which there is room for developing more maturity for dealing with different things that one can do as an

18-year-old. Do you have any concerns or reservations about that the gap being removed and about taking new recruits on their 18th birthday?

Gillian McDonald: People can go to the cadets at ages younger than 18, but the maximum age of retention as a cadet has been changed because the age of application for regular police officers has been reduced. Our legal advice was that the grounds for making that age 18 are more defensible than the grounds for making it 18 and a half. There are lots of reasons for that. People can buy alcohol when they are 18, and there are public confidence issues. That is the advice that we received.

Stewart Stevenson (Banff and Buchan) (SNP): Was 18 chosen because that is the age of transition from child to adult? People can be in employment at a younger age.

Gillian McDonald: The age of 18 was not seen as the age of transition from child to adult as such. The decision was more to do with issues of public confidence in people's ability to police.

Stewart Stevenson: So a subjective judgment was made, rather than objective reference being made to some external legislation.

Gillian McDonald: Arguably, yes.

The Convener: Is the Executive worried that the decision might be challenged by those who think that the age should be lower?

Gillian McDonald: No. We were advised that the grounds for making the age 18 are more defensible than the grounds for any other age. In certain instances, it is defensible to discriminate on the grounds of age. That was the advice from our legal services.

The Convener: I understand the reasons for the regulations, but will the extra six months make any difference? I guess it must at some point, when we decided on this.

Gillian McDonald: To change it from 18 and a half to 18?

The Convener: There must have been a reason for deciding that the age should be 18 and a half. Will the change make any difference?

Gillian McDonald: I imagine that, originally, there would have been a reason for making the age 18 and a half. It was perhaps more to do with the application process. We have been advised that it is defensible to make the age 18 but that it would not be defensible to keep it at 18 and a half.

The Convener: I appreciate that. I just wonder whether the six months will make any difference.

Gillian McDonald: I do not know.

The Convener: It is purely a legal question.

Gillian McDonald: Yes.

Mr Bruce McFee (West of Scotland) (SNP): The regulations are useful. In future, when we all say that the policemen are looking younger, it will be true.

The Convener: Hopefully, it will not be the entire recruitment strategy to recruit people at 18. I am sure that there will be sensible application of the regulations.

There are no further serious questions. There might be a few not-so-serious ones. Thank you for your evidence. I think that the committee is content to note the instrument.

Members *indicated agreement*.

Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill: Stage 1

10:00

The Convener: I welcome Johann Lamont, the Deputy Minister for Justice, and her team. Paul Cackette is the head of the civil justice division; Lorna Brownlee is the bill team leader; Bob Cockburn is the deputy principal clerk of session of the Scottish Courts Service; and Alison Fraser is from the Scottish Executive. I welcome you all to this final evidence session before we produce our stage 1 report on the bill. We have some questions, as you might expect; however, I understand that the minister wants to make a statement before we begin.

The Deputy Minister for Justice (Johann Lamont): Thank you, convener. I am grateful for the opportunity to speak about the bill and to discuss the issues that have been flagged up in evidence so far. I have come to the bill late, having only recently assumed new responsibilities.

I was struck by the power of the evidence that was given last week on the issues, which go far beyond financial consideration and damages. I was especially struck by the evidence from Frank Maguire, who spoke about an individual who wants to have his case resolved so that he can have certainty in his life while he is dying. As well as finality, he wants justice. He wants someone to be brought to account for his condition. I thought that that was a powerful comment on the fact that this is about not just the financial needs and interests of the families, but about people wanting justice and recognition of what has caused their suffering. We recognise the importance of the bill for individuals and their families who are, as we speak, suffering the consequences of past decisions.

I would like to say something about retrospection. You will be aware that, as drafted, the bill will apply to cases in which a sufferer recovers damages or obtains a full settlement on or after the date on which the bill comes into force, which will be seven days after it receives royal assent. In cases in which the liability of the responsible person has been discharged prior to that date, that discharge will continue to bar any claim by the immediate family. I am aware that the committee has explored the issue with both pursuers and defenders and that no objections were made to limited retrospection to a date that would be announced by Scottish ministers. We have considered the issue carefully and agree that we should remedy the distressing dilemma that is currently faced by mesothelioma sufferers as soon as is reasonably practicable.

We have, therefore, decided that the bill's provisions should apply to any case in which the sufferer recovers damages or obtains a full settlement on or after 20 December 2006. We will lodge an amendment to the bill at stage 2 to that effect. That will mean that the dilemma that is faced by mesothelioma sufferers will be remedied from next Wednesday and that they will be able to proceed with their own claims in the knowledge that their families will not be disadvantaged. Sufferers will be able to settle their claims or seek accelerated proof dates, and some of them will be able to get and benefit from their own full damages payments before they die. Also, sufferers who have put off starting proceedings so as not to disadvantage their families will now be able to enter proceedings.

I am grateful to the committee for raising the issue and refining it in the evidence session last week. The consensus among the witnesses around the possibility of setting an earlier date has enabled us to respond swiftly and positively.

The Convener: Thank you, minister. I am sure that I speak on behalf of the whole committee in welcoming the statement that you have just made. You will be aware that we were keen to explore the issue, and we are delighted with your response—as, I am sure, are Clydeside Action on Asbestos and all the other witnesses among whom there was consensus on the issue. They will be delighted with the Executive's approach in making the provisions of the bill apply retrospectively from 20 December 2006. The circumstances of these cases clearly require such a precedent to be set, although I appreciate that you will be keen for that precedent not to be followed in every other bill.

Stewart Stevenson: I echo the convener's remarks. The minister shows great wisdom in responding to the fact that all the witnesses, on both sides of the argument, appeared to support a change to the bill. I have one minor question, although I do not believe that the issue affects anybody. Why has the date from which the bill's provisions will apply been set as next week rather than today?

Johann Lamont: You will recognise that retrospection is a delicate matter—something that the convener has highlighted. We thought that it was important to give people notice of the change, so we allowed a week for notice to go out. Once people know about the change, they will have some certainty. We explored every option, including setting the date as today, but that was the advice that we received and it was on that basis that I made the announcement today.

Stewart Stevenson: So, in essence, by giving notice, the Executive is protecting itself from a particular kind of legal challenge, the effect of which would be to damage the effect of the bill. None of us wants that to happen.

Johann Lamont: The same wisdom that you reflected on earlier was involved in reaching a decision on the date.

Stewart Stevenson: That is fine. Thank you.

Marlyn Glen (North East Scotland) (Lab): What is the basis on which the Scottish Executive determined to legislate on the issue at this juncture?

Johann Lamont: The purpose of the bill was to address urgently and specifically a problem that the law of damages caused for mesothelioma sufferers, which is that most of them chose not to pursue their own claim in order that their families might benefit from the larger award that is made after death, as the committee heard in evidence. The conclusion of the consultation was that no comparable condition is on the horizon; a conclusion that was confirmed in oral evidence to the committee.

At present, under section 1(2) of the Damages (Scotland) Act 1976, claims that are made by the immediate family of someone who dies as a result of a personal injury are extinguished if the injured person settles their claim before they die. As the committee is aware, the bill seeks to disapply section 1(2) of the 1976 act in order to allow the immediate family of a mesothelioma sufferer to claim damages for non-patrimonial loss under section 1(4) of the act after the sufferer dies, irrespective of whether the deceased recovered damages or obtained a settlement. At the committee's last meeting, all the witnesses said in evidence that they supported the bill and agreed that it addresses the problem.

The Convener: Minister, you will be aware of the context for our consideration of the bill: the issues that were raised in a petition to the Parliament on how the court system affects mesothelioma sufferers; the Coulsfield report; and the work that the former Justice 2 Committee did in the previous session of the Parliament.

I remind you that the Coulsfield report reduced the timescale in which civil cases are heard. On the back of that, the former Justice 2 Committee agreed with the Lord President that an even shorter timescale could be made available to mesothelioma sufferers. Cases that would have taken up to three years to come to court have been taken in as short a time as six months. Do you agree that the bill was an inevitable consequence of shortening the process as a result of Coulsfield?

Johann Lamont: I am very aware of the role of the former Justice 2 Committee and the work that it did on Coulsfield. I am also very aware of the tireless work of campaign groups in bringing the issue to the attention of the Parliament, including through petitioning the Public Petitions Committee, and of the positive responses to that effort. I am aware of the work of MSPs in general in pursuing this issue, and in particular that of the Justice 2 Committee and Des McNulty MSP.

The convener asked whether the bill was inevitable. That is not necessarily the word that I would use. It is logical that if the time that it takes to make a claim is reduced, more people will be alive to have to make the dreadful decision that sufferers have to make at the moment. That emphasised to me the inevitability of death that people have to confront. In evidence last week, some groups said that some mesothelioma sufferers' lifespan can be a great deal shorter than the 18 months that is often given for the period from diagnosis to death. It is clear that shortening the period that it takes for a claim to be pursued has meant that more people have been caught up. The question of inevitability is a separate matter. The introduction of the bill reflects the capacity of committees, the Parliament and others to listen to the issues that were raised and pursued in such strong terms, particularly by the campaigning groups that speak on behalf of these families.

Mr McFee: I echo the remarks about your announcement on retrospection. That will help some of those who had decided not to pursue their claims to re-think their decision and make a claim that will lead to an earlier settlement. At least there will be some form of limited justice in the situation.

The insurance industry, particularly in its initial submissions, claimed that the bill was unnecessary. They suggested that it was possible within the current legal framework for a claimant to make a claim and an application for interim damages, and then to suspend the claim until after their death, thereby preserving the rights of their relatives. How do you respond to that argument?

Johann Lamont: In general, it seems from the evidence that people have accepted the necessity for the bill and, in so doing, have recognised that the interim damages approach will not satisfy the challenge that has been raised. Before we introduced the bill, we considered the view that it might be unnecessary because of the possibility of interim damages being paid and the sisting of cases until the victim dies. As the committee will be aware, there were only nine awards of interim damages for personal injury cases last year. We took the view that that would not be a reliable solution to the problem faced by mesothelioma sufferers. If it were, the dilemma would not exist.

In our view, legislative change is the only way to provide an early and certain solution to the problem. I believe that our view was borne out by the evidence that was given by witnesses last week. Despite close questioning by the committee, there was no consensus about the lack of use of the existing mechanism, and it was not clear that it would be used any more in the future. It will be able to be used alongside the change in the law that we are proposing, if that is what the parties agree.

I note that, last week, all the witnesses from the insurance sector supported the bill, and that there is no longer a suggestion that it is not necessary because of the possibility of interim damages being awarded.

Mr McFee: Indeed. I think that the majority of members will vote to pass the bill, but will you join me in urging the insurance industry to continue in its efforts to speed up the settlement of claims in these and other cases, so that people are not unnecessarily kept hanging on for months, or years in some instances?

Johann Lamont: We are very keen, particularly given the challenges of time and the circumstances of people with such conditions, for things to be done as speedily as possible, but as robustly as possible. We do not want there to be unnecessary or wilful delay. All those involved have now accepted the need for the bill, which indicates a willingness to take the proposed approach to the challenges that the families concerned are facing.

Mike Pringle (Edinburgh South) (LD): Could you explain the process by which the Executive determined not to include in the bill a ministerial power of amendment to extend its provisions to other types of disease or personal injury? Some people have suggested that it should include such a power.

Johann Lamont: I will ask those who were more responsible for the decisions around drafting the bill about that in a moment. We reflected on the comments that were made in response to the consultation about the importance of introducing legislation to address a particular problem that had been identified with a particular solution that would give certainty to those concerned. I do not know whether anyone wishes to comment more specifically about the decision not to take such a power.

Lorna Brownlee (Scottish Executive Justice Department): We examined the responses to the consultation carefully in relation to that point. As we have said before, there was a mixed response. People had reservations for a number of different reasons. Some people thought that uncertainty would arise. That is possibly the kind of uncertainty that you heard about from Lisa Marie Williams last week. There was also concern that there could be a diversion away from the primary purpose. In the absence of any other relevant condition, the priority was to focus on mesothelioma.

Mrs Mary Mulligan (Linlithgow) (Lab): I welcome your remarks this morning, minister. Having listened to the evidence last week, which indicated that there are already claimants who are waiting to find out the result of the scrutiny of the bill, I think that it is to the credit of the Scottish Parliament and the Scottish Executive that you have been able to respond as quickly as you have. People should appreciate that this is the sort of thing on which the Scottish Parliament makes a difference.

My question follows on from that of Mike Pringle and relates to other claims. Could you say a little more about any progress that has been made in reforming the law of damages and the work of the Scottish Law Commission in that regard? That was referred to by one of the witnesses last week.

10:15

Johann Lamont: As has been said, in introducing the bill so quickly, it was ministers' clear objective to help mesothelioma sufferers and their families. However, the need to take that action pointed up the fact that there are areas of the law of damages that should be reviewed. The evolution of the law relating to damages recoverable in respect of deaths resulting from personal injury and recoverable by relatives of an injured person has resulted in complex provisions that, together with practice and procedures, can have unintended consequences. Therefore, we have asked the Scottish Law Commission to undertake a review of the 1976 act and the relevant elements of the Administration of Justice Act 1982, taking into account underlying practices and procedures.

The review will consider the position of other personal injury victims and their relatives. At common law, a relative could only claim damages if the deceased could still claim damages at the time of their death. That provision has been enshrined in Scottish statute since 1976. To do away with it would create a new duty of care between the liable person and the deceased person's immediate family. That would run counter to the dependent nature of the relatives' claim, which currently lies in the existence of an undischarged liability to an injured person that is based on a duty of care that the liable person owes to the injured person.

To make provision for an independent duty of care to the relatives of the deceased would extend

the boundaries of delictual liability and, without a thorough appraisal of the rationale for it and an assessment of the impact and costs, it would be unwise and indefensible. Therefore, we have asked the Scottish Law Commission to report on the matter and reflect on the broader issues that have emerged from the focus on mesothelioma.

Mrs Mulligan: Have you placed any timescale on that consideration?

Johann Lamont: The Scottish Law Commission will report in 2008 and we—or, I should say, the next Administration—will then respond to its report.

Mrs Mulligan: Are you quite comfortable with dealing with the issues that are connected to mesothelioma separately from what will be a fairly wide-ranging review?

Johann Lamont: Absolutely. We recognise that there is a particular problem. A particular solution for the sufferers has been identified and supported, but it flags up the fact that there are other issues. I do not have a view on the range of those issues or the solutions to them, but the Scottish Law Commission will afford the Executive the opportunity for further consideration of those matters in due time.

Margaret Mitchell: When the Scottish Executive officials gave evidence, they seemed to envisage that the bill would trigger two actions—one for a sufferer's damages claim and one for their relatives' claim. However, Frank Maguire, who represents sufferers and who gave evidence last week, seemed to think that, in certain circumstances, only one action would be necessary. Will you comment on that?

Johann Lamont: I will make a couple of comments and then the officials will expand on them. We are aware that the issue was explored last week in committee. In the financial memorandum, we said that two actions may be raised instead of one in future because, if the victim is able to settle before death, the relatives will raise their own action. At present, if the victim does not settle, there is a single claim by the executor and relatives.

The committee heard evidence that pursuers would prefer one action rather than two, as having two separate actions would increase costs. I think that it would be reasonable to presume that defenders would also prefer there to be one action rather than two because of costs. We have noted that point and are looking into the possibility of a single action in such cases. It is my intention to report back to the committee as soon as possible. It may be that, when the bill is passed, some defenders will settle the relatives' claims without their having to return to court at all.

Paul Cackette (Scottish Executive Justice Department): It may beneficial if I add a few words to that, as I think that it was my evidence from two weeks ago that referred initially to the idea that two actions could be needed. The thinking behind that was that the way in which the bill resolves the dilemma that victims face, thereby allowing them to raise proceedings while they are still alive, gives rise to a slight mismatch between the victim's claim, which would be raised in their lifetime, and the relatives' claim, which would arise after and only because of the victim's death. It seemed to me that those were two mutually exclusive concepts and that it was difficult to understand how the initial action could include a claim by the relatives for damages that could not arise until a later date.

That is what led me to think that there might be a need for two actions, but that was a purist's analysis of the claim. I listened closely to what Mr Maguire said last week and I defer to those who have practical experience of dealing with litigation in the courts. If practitioners believe that a way can be found to ensure that cases can proceed with one action, we would welcome that. As I said, I defer to their assessment of how things work in practice. I have explained the underlying thinking that made me conclude that there might be a need for two actions, but if the matter can be resolved, we would welcome that.

Margaret Mitchell: So it will depend on the circumstances. If the sufferer managed to make their claim before death, that would be the first action and the second action would be triggered on their death when the relatives claimed. However, if a period of time passed while they were in pursuit of the claim or they did not quite manage it, the claim could be dealt with in one action by the executor, who would act on the information that they held about the beneficiaries. Even then, however, a little discretion would need to be left to the court because the information might have changed substantially—for example, the beneficiaries might have changed because someone had died in the interim, but that information might not have been relayed. Could that be dealt with quite quickly or would it be left to the court's discretion?

Paul Cackette: In practice, that is what happens when a victim dies before the case is settled. My understanding is that the executor takes forward the victim's case and the relatives' claim would arise at that point. In practice, the claims are rolled together into the continuation of a single case.

The scenario that we had in mind is one in which the victim was able to settle before they died. I perceive that, in such cases, a gap could arise. One of the various mechanisms that could be used is the sist. That could well be a means by

which the relatives' claim could be rolled together into the one action at a later point.

Margaret Mitchell: That is helpful.

Minister, has consideration been given to the financial consequences for insurance premiums? Like other members of the committee, I welcome your confirmation this morning that the bill's provisions will kick in on 20 December. Obviously, time is of the essence. However, will you comment on the effect on insurance premiums?

Johann Lamont: In oral evidence last week, the insurance representatives did not raise any concerns about costs. I do not know whether there has been a discussion about an impact on premiums.

Margaret Mitchell: I think that the concern was more about the issue of certainty, which you resolved today when you stated that the provisions will kick in on 20 December. You have given quite a bit of notice, which is entirely reasonable. Given the evidence that we heard last week, I think that the insurance companies will be satisfied with that.

Johann Lamont: That is my expectation, given what was said last week. Through the bill and my statement this morning, we seek to provide the certainty that everybody wants.

Mr McFee: Do you agree that some of the concerns that the insurance industry expressed earlier about costs should be more than offset by modern working practices, which mean that we will not have huge numbers of mesothelioma cases in future? Many cases arose from practices in the shipbuilding industry.

Johann Lamont: As I said at the beginning, the issue is not just about money. It is about justice and the recognition and acknowledgement of fault. I do not pretend to know a great deal about it, but poor working practices led to significant consequences for people. I am confident that industry is now aware of those consequences and I trust that those who are involved in it recognise the significance of health and safety, not because of potential financial consequences later on but simply in the interests of a good society. People should not have to live with the intolerable consequences of poor working practices earlier in their lives.

The Convener: I return to the question of the two separate actions, which we need to try to resolve, although we may understand how it will be resolved in practice. As you said, we heard from Frank Maguire, whose view is that the matter is for the courts to sort, perhaps by court rules or an act of sederunt. I am not happy to leave the situation like that. If that is how the issue is to be resolved, we should agree on that and leave it to the courts.

Several considerations need to be examined. Am I correct to say that the cases go to the Court of Session?

Paul Cackette: Yes. In practice, all the cases are taken at the Court of Session.

The Convener: So solicitors such as Thompsons Solicitors instruct a civil advocate to represent their interests at the Court of Session.

Paul Cackette: Yes.

The Convener: When a victim settles a case that is to go to the Court of Session, the question is whether the case is settled before it reaches court. I am thinking of cases that go to court. Solicitors would instruct a solicitor advocate or advocate to represent the victim. They would book a court for that and a fee would be charged for that. Later, the relatives could come along and make a claim, for which a solicitor advocate or advocate would be instructed and a court would be booked, unless the case was settled out of court, although even if that happened, administration work would still have to be done. Is it possible to achieve that in a single action or would the agreement of all the solicitors and the Faculty of Advocates be needed to achieve that?

Paul Cackette: I do not know whether Bob Cockburn wants to say anything about the court processes. In effect, for the reasons that led me to think that two actions could be needed, resolution of the dispute would need to take place in two phases, because the causes of action arise at slightly different times. Whether that would necessarily give rise to significant extra costs might depend on the practice that develops.

In that context, one point that comes to mind is that if an insurer admitted the core liability to the victim and agreed to settle the first claim, I would certainly be surprised if, in practice, the insurer insisted on a full-blown proof of the relatives' claim. We have heard evidence that there is reasonable certainty and clarity as to how much compensation relatives would obtain and it must be relatively easy to prove who the victim's relatives are.

It is right to say that one action would have at least two phases. If the second phase required a continuation and sharing of information, I would have thought that court rules could allow that, to save preparation of a new process that had to narrate the same information all over again to construct the relatives' claim. It is difficult to estimate how much money that would save, but some saving would result from it.

The Lord President, rather than the Executive, makes the rules of court. I suspect that he may consider whether—perhaps ironically—anything in the Coulsfield rules, which push towards quick

settlement and a rigid timetable, would inhibit the ability to continue or postpone a case until the victim dies, to allow the relatives' claim to proceed under the same process. I do not know whether Bob Cockburn has further thoughts on how things work in practice.

Bob Cockburn (Scottish Court Service): I doubt whether I can usefully add much to what Paul Cackette said. Your assessment is correct, convener. The second claim will involve some process. It will need to be set out and responded to in writing—that assumes that it needs to go to court at all. Some process will follow that. The two claims will be similar.

If savings are to be incurred, they will probably relate to the fact that the court will have access to the initial claims papers and some of the evidence that was made available for the first claim will be available for the second claim. However, as Paul Cackette said, it is difficult to quantify the saving financially.

The Convener: We need to consider this further. We might go back to some of the witnesses for a bit more detail. It might well be that if the court rules allowed the action to be sisted so that those involved in the second action could at least get access to the original papers, then the rest of it might be down to the arrangement that a solicitor has with their representative in the Court of Session.

Paul Cackette: The key thing is to ensure that nothing in the court rules will be able to stop that. It is that way round rather than the other way round.

The Convener: That is helpful.

Johann Lamont: As I have said, we intend to report back to the committee on our considerations and we will do that as soon as we can.

The Convener: That is helpful.

As there are no further questions, I thank the minister for her evidence. We are delighted with all that she has said. I also thank the bill team and the witnesses who have appeared this morning.

Having achieved a world record time in taking evidence from the minister this morning and dealing with the bill so speedily, we now have time to deal with other important matters.

Family Support Services Inquiry

10:31

The Convener: Item 4 is the family support services inquiry. Committee members might know that while we have been working hard, Mary Mulligan has been working even harder to continue the work that we did during our consideration of the Family Law (Scotland) Bill. She now has a report to present to the committee.

Mrs Mulligan: Thank you convener. I will not take advantage of the committee's time by dragging my report out to fill what should be the rest of this morning's meeting. However, it would be helpful if I drew out some of the points in the report that members have in front of them.

I will start by thanking a few people who have been involved in constructing the report, because I did not write it all myself. The first person to thank is Lewis McNaughton, the clerk who has supported me throughout the writing of the report. He missed one of the best football matches of last summer's world cup because we were stuck on a wet M8 on the way back from Hamilton. I am sure that he will have seen the recordings.

I also thank Sarah Harvie-Clark, who put together the mapping exercise, which clearly shows some of the service provision issues. We undertook several visits, and I thank all those who supported us in Hamilton, Easterhouse, Peterhead and Aberdeen, where we met representatives of various Grampian organisations.

I also thank Scottish Marriage Care, Couple Counselling Scotland, which has recently changed its name to Relate Scotland, and Family Mediation Scotland. I attended the cross-party group on children and young people, which was quite useful in giving me a feel for the issues that the group has been considering. I am grateful to the large number of sheriffs who contributed to the paper and were more than willing to meet and discuss their experiences of applying family law, particularly dealing with couples in breakdown and finding a resolution when children are involved. I met the Deputy Minister for Education and Young People, Robert Brown. I thank everyone who responded to the consultation.

I will structure my comments on the report by first considering the extent to which the services are provided and the issues surrounding their provision and funding. The committee was interested in finding out what services are being provided, whether there are gaps in provision and how the services that are being provided are funded.

At this stage, I should note that there are a number of children's services, including those that provide advice and support to parents. I have not specifically considered those services, although I think that it would be a useful exercise for the Parliament—although perhaps not this committee—to undertake. After all, children and families are being supported in those areas.

During its consideration of the Family Law (Scotland) Bill, the committee acknowledged the value of family life in whatever form, particularly in supporting children. However, we also recognised that relationships sometimes break down and were concerned that sufficient support and advice should be available to ensure that any breakdown was made less acrimonious and that, if children were involved, their interests were represented. In order to address that matter, we attempted to map current service provision. That was difficult, because the services do not fit into neat little boxes. However, in response to one of the committee's concerns, I have to say that we did not find much evidence of duplication. Indeed, we found that organisations, particularly local ones, were working closely with each other and, where necessary, were cross-referring.

I am sure that members will recall that, during our consideration of the bill, I was obsessed not only with looking at services dealing with relationships that have broken down but with taking a step back and considering services for those who were thinking about getting married or co-habiting. We found that relatively little was going on in that respect. It might be that such services were previously provided by churches but, because fewer and fewer people are now connected with the church, fewer of those support options are available to them. Although Scottish Marriage Care runs a focus group that offers advice and support to people who are considering marriage, that is the exception rather than the rule.

As far as counselling is concerned, I direct members to paragraph 24, which highlights our views on the matter. The role of the main organisations—Relate Scotland and Scottish Marriage Care—is to assist couples experiencing difficulties and, if those difficulties lead to breakdown, separation or divorce, to offer support through the process. At times, such support requires referral to mediation services and so on.

In paragraph 36, I refer to the provision of mediation services. The main role of the major service provider, Family Mediation Scotland, is to resolve the difficulties in a relationship and, in the event of a break-up, to try to ensure that it happens without any of the acrimony that can be involved. Of course, break-ups can affect not only the immediate couple but children and wider family relationships.

The final area that we looked at was the provision of child contact centres. During our consideration of the bill, we were concerned with ensuring that, in any situation that involved children, the child was able to maintain contact with both parents and with the wider family. As a result, we looked at supported contact centres, supervised contact centres and exchange contact centres. Clearly the most prominent of those was the supported contact centre, which simply provided facilities that enabled children to meet the non-resident parent.

Supervised contact centres are very rare; in fact, we saw no examples of them. I suppose that, as they tend to deal with extreme situations in which contact is being re-established, we should not expect them to be prevalent. However, their very rarity is an issue that should be examined.

Exchange contact centres are used to help families to re-establish their own arrangements. They are often used as a drop-off point where children can be left and picked up by the non-resident parent.

I am surprised that some local authorities do not have contact centres. Although it is possible that such authorities purchase the service from another local authority—we did not see any examples of that—practical problems arise if people need to travel to a contact centre. It is not always possible for people to do that unless they have their own means of transport.

We looked at contact centres because we recognise that they provide one way of resolving disputes over the child's contact with the non-resident parent or of re-establishing that contact where previous arrangements have broken down. We spent one morning in a contact centre in Hamilton, where we had the opportunity to speak to the users of the service, both resident and non-resident parents. I found that useful. All of them spoke very highly of the service that they received. Even those who had at first been reluctant to attend the centre—some of them were directed by the court to attend the centre—said that the service had made a difference.

People attend contact centres for a variety of times. Some will attend for less than a month, but others will attend for up to six months. By the time that they stop attending, people are at the stage where they can move on to the next step. That brought back to me the question how those relationships would be re-established if such centres were not available. I do not think that we had an answer to that.

Funding is always the major issue for all such projects. Most services are delivered through the voluntary sector and they often use volunteers. When we visited the Hamilton contact centre, the

two women on the door were volunteers. Their job during the week was working in family support services, but they gave up their Saturday mornings to supervise the centre. Given the importance of such facilities, should we rely on volunteers, good though they may be? That is an issue.

The funding generally comes from local authorities, although I will shortly deal with the exception that we considered. The funding is often insecure and short term. Even though the local authority officials and councillors to whom we spoke could see the benefits of such services and appreciated what was being done, they could not guarantee that funding would be available next year, let alone three years hence.

The anomaly is the family mediation services that are funded by the Scottish Executive. There was some concern that the Executive would decide to transfer the moneys for those services to the local authorities and that the funding that is currently provided would become lost among other local authority funding. However, during the period when we were compiling the report, the minister decided to delay that transfer for another two years so the organisations providing the services will continue to be funded by the Scottish Executive until 2008. For two years after that—until 2010—the moneys will be ring fenced within local authority allocations. That is a welcome move, because it will ensure that people can consider what services are needed and establish relationships with the local authorities so that the authorities take on board the responsibility to continue to provide that funding. I am pleased that the minister has recognised those concerns.

However, the minister has not yet confirmed whether that pot will be enlarged. At the moment, the Executive funds 11 services. Given the gaps that exist and the need to provide further services elsewhere, will the same size of cake simply be divided among even more local authorities or will the Executive increase the size of the cake so that we can support the services that already exist and set up new services? That question has still to be answered.

Finally on the issue of funding, the report mentions that all the services are provided free but that people are sometimes asked to give donations in recognition of the service that they have received. Although that will probably be done after they have been to the service two or three times—so there is no question of anyone not getting the service without making a donation—there is still an issue of where to find the balance in people paying for the service that they get.

10:45

We knew that the funding responsibilities were to transfer from the Justice Department to the Education Department, and we all agreed that that was not a bad move, because the Education Department has responsibility for children's services and social work. However, I have one concern. I spoke about the number of sheriffs who contributed to the report. All said that they recognised the value of contact centres and that, without them, they would struggle to find somewhere for families to re-establish relationships and contact. I wonder whether the Justice Department should still have a role in supporting those centres, in particular given that the sheriffs are using them. It is recognised that funding may need to be looked at in the round, and there may need to be a decision on where it comes from.

All the services are under financial pressure, and all are concerned about the short-term nature of funding. I possibly should have made this point in talking about contact centres, but the committee will remember that in our final deliberations on the bill we asked about the establishment of family contact facilitators. We did not come across them, although in an initial meeting with Executive officials we heard that work was going on. However, that was last spring, and we have not come across them since then, so it would be useful for the committee to get an update from ministers about what has happened. There was initial support and people were keen to establish them, but I am not sure what progress has been made. Members might like to hear from ministers on that.

I want to make a quick point about the sheriffs' responses. As I said, they all confirmed the usefulness of contact centres. We also met some solicitors in Aberdeen who work with Family Mediation Grampian but practise what is known as collaborative family law. That is when the representatives of both parties sit down together to discuss and try to resolve problems to do with contact, financial matters arising from a break-up and other such issues. It is less adversarial than the usual arrangements between solicitors. Indeed, we were told that some solicitors do not like it because they see their role as purely to get the best deal possible for their client. The collaborative arrangements are more about trying to come to an agreement that is acceptable to everybody. It is an interesting concept that could be pursued, particularly considering that there are no rights and wrongs in family law and it is often about making compromises. It will be interesting to see how it develops.

One sheriff in particular said that the role of solicitors was crucial in family law cases.

Sometimes, those solicitors had to say to their clients things that they did not want to hear but which would resolve the situation. Those who practise collaborative law are trying to bring that to the fore. The interesting point is that, if those solicitors cannot resolve the issues for the couples and families involved, they step back and let somebody else take on the more adversarial work. Therefore, they are not protecting their own situation—in a way, the arrangements make them independent.

I will quickly go through my conclusions. We asked whether there were gaps in service provision. Clearly, there are gaps, particularly in the provision of contact centres and early advice on relationships. I am pleased to say that a lot of partnership working is going on, both locally and nationally, which should be encouraged if we want to get the best value for the money that is being invested in the services.

However, as I have said, funding is inconsistent across Scotland. Some local authorities are proactive and imaginative in how they invest money—Hamilton's use of the changing children's services fund is one example—but most get money annually and there is no long-term funding. Even when there is present funding, there are no guarantees for the future and, as I said earlier, there is concern about the funding shifting from the Scottish Executive to local authorities, particularly if we do not increase the size of the general cake. I realise that service provision needs to be decided on according to local needs, which is why I do not have a problem with the Executive passing more responsibility to local authorities. The question is whether local authorities understand their responsibility and are geared to take it on.

In conclusion, we need to acknowledge the link between the services that I have examined in the report and the other services that I mentioned, such as children and family services. We must take those services more seriously. At the moment, I get the feeling that they are not seen as central and that they are somewhat on the periphery. However, not only are they important to the individuals, particularly children, who are involved, they also benefit communities by helping to resolve disputes.

Unfortunately, the number of relationship breakdowns is unlikely to fall—indeed, if anything, it is likely to increase. As a result, we need to boost current services to ensure that they do not become stretched. One family mediation group told me that it does not advertise or even tell people that it exists, because it would simply be overwhelmed. That is crazy. We must build on the existing good practice.

Not wanting to cop out on this matter, I believe that funding must be increased. The Scottish Executive and local authorities need to examine the issue, decide how funding should be provided, and then work with service providers on distributing funding and on developing and increasing service provision throughout Scotland.

The Convener: Thank you for that very comprehensive summary of an excellent report.

Do members have any questions?

Mr McFee: First, I apologise for not having read the full report, although I should point out that this is my fourth committee meeting this week.

Coming from a local authority background, I recognise many of the points that Mary Mulligan made about funding, particularly with regard to voluntary organisations. Because that funding is allocated, at best, from year to year, it prevents service development and makes everyone involved very tetchy. After all, although these organisations are voluntary, some people who work in them are paid and, without the guarantee of a wage for the next year, they will always be tempted to go elsewhere. I also acknowledge that future service provision will be in local authorities' hands, and I feel that that is probably the correct way of constructing suitable services.

However, given that local government now gets a three-year settlement, can we at least try to encourage local authorities to consider seriously—or, in some cases, implement—three-year funding deals for their voluntary organisations, in return for developing service level agreements with them? Surely that should now be within the gift of local authorities.

That said, any service provision that is transferred to local authority control must be fully funded. The method of hypothecating money for services is very unclear and, in many cases, local authorities cannot break moneys down. They are simply given a block figure, which they are told has to fund everything. Funding must be transparent if we are to encourage local authorities to guarantee more than year-to-year agreements. As I said, good service development does not happen if funding is guaranteed for no longer than 12 months.

Mike Pringle: I will make a couple of points. Mary Mulligan talked about meeting sheriffs. It may be too early to tell, but does any sheriff yet have a view on how the Family Law (Scotland) Act 2006 is working, which has been a particular issue for me since I became an MSP?

You refer briefly to Children 1st's development of what it calls family group conferencing. I do not know whether you visited Children 1st and saw at first hand what happens. I have done that,

because Children 1st happens to be based in Edinburgh South. The service appears to be very successful. As you said, it brings together with the different agencies not just parents and children, but the wider family. People sit together and discuss the situation, after which the professionals leave the room and leave the family to discuss issues and try to sort out the problems. After that, the professionals return. I am not sure how many councils have adopted that process—I tried to get the City of Edinburgh Council on board and involved with Children 1st, but it was reluctant to participate, which was probably because of a lack of resources. The system is not being widely used, but where it is used, it is extremely successful. Did you observe that in depth?

Margaret Mitchell: My questions are about the voluntary sector. You said that the service in Hamilton is good and that it is run by the voluntary sector, but you are concerned that it is run by volunteers and you asked whether the local authority should run it. I take the other perspective: the voluntary sector has the expertise, so if the service has been established, is there a case for directly funding voluntary organisations in some circumstances? That would avoid the sieve of local authorities, which your report says treat services differently. To be blunt, some local authorities would empire build, sideline the voluntary sector and put the money into new local authority posts whose holders would not—with the best will in the world—have the expertise or experience that the voluntary sector often has. I am concerned about that.

Have you considered the establishment of a pool of funding to which voluntary organisations could bid for money to increase their mediation services, establish new relationship preparation programmes or courses, and provide extra couple counselling in the hope of saving relationships when marriages experience difficulties?

Stewart Stevenson: I echo other members' remarks: the report is excellent and represents a useful contribution to our wider consideration of the subject.

My question is not really for Mary Mulligan but for the committee. The report has been produced—now what? As I will probably have to go off to another committee meeting shortly, I will leave a couple of thoughts. First, the committee should consider whether to adopt the report and therefore to accept what it says. I propose that we so do.

Secondly, what should happen to the report? I will not answer that, but I ask whether we could have a parliamentary debate on it. I realise that all that is happening between now and the end of March makes that unlikely, but we should not dismiss such a debate, because so much is in the report that it is worthy of wider debate, consideration and—perhaps—a ministerial response in that forum. If we cannot do that, perhaps we should invite the minister to a committee meeting to respond to the report after the Executive has had sufficient time to study it. The indication from our meeting yesterday is that we might be able to fit that into our schedule in the new year. I see the convener rolling her eyes, but the report is important enough for us to consider that option seriously.

Finally, we might invite civic Scotland more widely to comment on the report in order to inform future discussion of the subject. Without putting my force behind those suggestions, I think that it would be useful for the committee to consider those things. I would be disappointed if we did not adopt at least one of those ideas, and I would be delighted if we adopted them all.

11:00

Marlyn Glen: I support Stewart Stevenson. This is an important and excellent report. We should certainly adopt it and, possibly, take up Stewart Stevenson's suggestions. However, which minister would we want to respond to it? It crosses portfolios. I think that we should also send it out to other committees, but to which ones? It is a big justice issue, but it is also an issue for communities, local government and finance. The question is this: Who should we leave out? It would be a good idea to have a debate on the report in the chamber, if possible.

The report is couched in very temperate language—the opposite of our usual style. I would have been pleased to see a few uses of the word "shocking". The fact that we do not have a basic service for children across Scotland is more than shocking; it is absolutely ridiculous.

The Convener: How about "staggering"? [*Laughter.*]

Marlyn Glen: I hope that the report will go not only into our legacy paper, but into other committees' legacy papers. We should, therefore, write to other committees and suggest that they consider that.

I was talking to Mary Mulligan about this before the meeting. I am particularly shocked that there are no child contact centres in any of the areas that are listed in paragraph 44 of the report. I find that to be totally unacceptable. I am also concerned that supervised contact is not available for children throughout Scotland; in fact, only six contact centres provide it. I find that to be totally unacceptable. My only criticism of the report is that that should be brought out more strongly in its conclusions. We spent a lot of time on the Family Law (Scotland) Bill and we know the importance of

contact centres and of children being not just supported, but properly supervised in some cases. That is a justice issue.

As I said, we should go along with all Stewart Stevenson's suggestions and send the report to different committees, asking them to consider including it in their legacy papers.

The Convener: I am a bit concerned about the switching of the Executive department that is responsible for family support services. I voted for the reduction in the time limit for divorce because the Executive promised extra funding, some of which would go into reconciliation services. If I were to get confirmation of the fact that that issue is with the Education Department, I would not be so concerned. However, I do not think that it fits neatly, and I am worried that we are steering away from some of the ideas that the committee developed. We had differences of opinion around the subject, but I expected a chunk of that £300,000 to go to reconciliation services. I want to question ministers closely about how they are going to deliver on that commitment.

Like Marlyn Glen, I think that the family contact centres are crucial to development of the service. Members will know that I had a particular issue with the Family Law (Scotland) Bill about how we can improve contact levels for non-resident parents. We began by talking about contact officers, who are now called—what did we rename them? There were to be three pilot schemes: I think that they have been renamed, with the word "enforcement" taken out. I would like to know what progress is being made on that. For me, that is an important development. Sylvia Jackson and I agreed to withdraw our amendments at stages 2 and 3 on the basis that the idea would be developed.

Stewart Stevenson has made some suggestions as to how we should take the matter forward. I am happy to adopt the report as long as we can keep the issue live and Mary Mulligan is willing to be the link for that. It is, obviously, for her to comment on that.

Our problem in obtaining a parliamentary debate will obviously be time, for which we would have to bid, but I agree that such a debate is an excellent idea. It has been suggested to me that we could somehow work round the rules on members' business. I do not know about that; a committee report would not normally be the subject of members' business, but the report is in an individual's name. We can think about that—it would be a shame if the report could not be debated publicly. I am not sure whether the Minister for Justice and the Minister for Education and Young People should be invited to give evidence; I want to think more about it. I agree that at some point, we should invite others to comment on the report.

Quite a lot of comments have been made. I allow Mary Mulligan the opportunity to reply.

Mrs Mulligan: I will start at the beginning. Bruce McFee was right. I recently attended a conference about community care, at which voluntary sector providers were concerned about their relationship with local authorities and about the funding arrangements. That needs to be tackled.

I recognise the value of the voluntary sector's provision of the services, which Margaret Mitchell mentioned. Voluntary organisations are flexible and can respond more appropriately to local concerns. It is important to build on what they have established, but funding is a big issue for them. We know that there are never any guarantees but, at the moment, such organisations seem to live from hand to mouth and to be under such uncertainty. As Bruce McFee said, that means that staff must constantly consider their situations and must move on, even when they do not want to. That is a big issue for them. We should consider three-year funding, along the lines of what local authorities pleaded for and obtained.

Mike Pringle talked about the Family Law (Scotland) Act 2006. We asked the sheriffs how the act is playing in and they said that issues were starting to arise with divorce timings and family disputes, although it is quite early for them to give a substantive response.

Mike Pringle: I thought that that might be the case.

Mrs Mulligan: The sheriffs are aware that the act is changing the situation.

I did not attend a family group conference with Children 1st, but I know several people who work at Children 1st, so I had quite a long discussion with them about it. Mike Pringle is right to say that that has huge benefits. It is interesting that organisations such as Family Mediation Scotland are also using opportunities to bring in the wider family. That is the right direction of travel.

Mike Pringle said that he thought that the City of Edinburgh Council is not picking up family group conferencing because of funding. I think that is the case. We keep returning to that issue. Sometimes, local authorities ignore the provision of such services because they do not want to have to find the funds in budgets that they feel are already squeezed.

Margaret Mitchell mentioned local authorities and the voluntary sector; I have said a little about that. An argument exists for pooled funding to which bodies can bid for new money. However, both types of funding would have to be provided:

organisations need certainty in respect of core funding and could bid for more funding for aspects that they feel are more relevant in their areas. We would have a dual track rather than go one way or the other.

Considering what we said yesterday, I am surprised that I put no Z words in the report.

The Convener: I say for the *Official Report* that that was a bit of an in-joke. Without giving anything away about our private discussions, I can say that it refers to the fact that we have been discussing in great depth the language of our Scottish Criminal Record Office inquiry report.

Mrs Mulligan: I feel strongly about the subject of my report, as does the committee, which is why we wanted to pursue it. Despite having 101 other things on, we did not want to drop the matter after dealing with the Family Law (Scotland) Bill. From members' comments it is clear that there is a feeling in the committee that we need to continue the work, which will overlap with consideration of other family services in which the Executive is involved, such as children's services and parents groups, as I said.

It will be important for the Executive to acknowledge that the work cuts across many departments and cannot just be placed in the education portfolio and forgotten about. For example, the justice and communities portfolios will pick up on aspects. Scottish Marriage Care runs a project in Easterhouse—Lewis McNaughton will remind me of its name.

Lewis McNaughton (Clerk): It is the REACT—relationship, education and counselling team—project.

Mrs Mulligan: The REACT project in Easterhouse supports and addresses the needs of very young parents, in an area of deprivation in which there is a concentration of such issues. The communities portfolio has an input in that context, and other areas of the Executive need to consider provision. The committee is right to agree that the issue cannot be pigeonholed but should be considered across the board.

We now use the term "family contact facilitators"—it would be useful to have an update on that.

Mike Pringle: I should have said at the outset that Mary Mulligan's report is excellent. I congratulate her for it and I agree with Stewart Stevenson and Marlyn Glen that we should take it further. When I was in local government, I remember voluntary organisations that worked on that important issue and many others, but were funded for only one or two years, which was a nightmare. The problem will become bigger, particularly as a result of the changes in the law that were made by the Family Law (Scotland) Act 2006. We must put in the ancillary services that will back up the 2006 act.

I do not see why we could not have a parliamentary debate on the matter. We should put in a bid for parliamentary time. I am sure that such a debate would be heavily oversubscribed, unlike the debates on other bills and issues that we might have during the next three months.

The Convener: Does the committee agree that we should adopt the report?

Members *indicated agreement*.

The Convener: In adopting the report, do we also agree that Mary Mulligan continue to act as our reporter and pick up issues, if necessary? Is Mary Mulligan content with that approach?

Mrs Mulligan: Yes.

Margaret Mitchell: It would be good to add what has been said in the meeting, because we have come at the issue from different angles.

The Convener: Okay. That is agreed. Shall we send the report to ministers and ask for their comments? Which ministers should be sent a copy?

Margaret Mitchell: We should send a copy to the ministers who have responsibility for justice, communities, local government—

Marlyn Glen: And education and finance.

The Convener: Is Mary Mulligan happy with that approach?

Mrs Mulligan: Yes.

Mike Pringle: We should give ministers a date by which we would like them to respond, or the report will get lost.

The Convener: I think that there is a prescribed timescale for consideration of committee reports.

Callum Thomson (Clerk): The timescale is normally eight weeks but, given how close Parliament is to dissolution, it might be worth trying to expedite consideration.

The Convener: Yes. We will ask for a quicker response, given the shortage of time and the importance of the issue. We could also make a bid for a parliamentary debate, although such a bid is not likely to be successful.

Stewart Stevenson: We should still bid.

Mike Pringle: Let us do so. Who would make the decision?

The Convener: Bids are usually discussed at the Conveners Group before being referred to the Parliamentary Bureau for approval. We can bid on principle.

Mike Pringle: We can press our representatives on the bureau.

Mr McFee: The Conveners Group would have to refer the bid to the bureau first.

The Convener: Yes, but many of the slots for committee debates have been allocated.

Mr McFee: The Procedures Committee is conducting a review of parliamentary time, although the changes that might be made to the standing orders would not come into effect until the next parliamentary session. It is clear that although a minimum of 12 half sitting days is set aside for committee debates, the Conveners Group can ask the bureau for more slots, if it so desires. Even if the 12 slots have been filled, we should ask the Conveners Group to ask the bureau for another slot, because although the standing orders provide that 16 half sitting days are set aside for Opposition business, the number of half sitting days that is set aside for Executive debates is flexible; in practice, the Executive takes about 40 half sitting days. A slot could therefore be taken from the Executive's time. We can at least ask the Conveners Group to advance that argument at the bureau—it can say no.

11:15

Mike Pringle: If we know when the argument is to be advanced, we will be able to speak to the appropriate people and twist arms.

The Convener: We will raise the issue with the Conveners Group, ascertain whether slots are available and suggest that the bureau be asked whether a short debate could be added to the business programme. If that approach fails, plan B could be that Mary Mulligan and other members consider whether an aspect of her report should be aired in a members' business debate.

Mr McFee: A minimum of one members' business debate is required at the end of a meeting of Parliament, which means that we have two such debates a week. We should bear it in mind that nothing stops us having three members' business debates in a week.

Stewart Stevenson: That has happened.

The Convener: Do members have more comments?

Stewart Stevenson: As a courtesy, we should send a complementary copy of the report to the people in the voluntary sector who assisted in its preparation and who supported Mary Mulligan and Lewis McNaughton in their work, so that they do not have to buy copies.

The Convener: That is agreed. I am sure that those people will appreciate the report and the work that has been done.

Mr McFee: We should put on the record that the committee not only adopts the report but continues to give Mary Mulligan its full support if she wants to pursue issues.

The Convener: Yes. I think that we made that a condition of adopting the report. The committee did not want our adopting the report to bar Mary Mulligan from continuing to act as a reporter as she sees fit. We do not want to add to her workload, but we want her to be free to pursue issues on our behalf and report back to us. I thank Bruce McFee for clarifying that we adopted the report with that proviso.

We agreed that we would move into private session to consider item 5, which is our draft stage 1 report on the Rights of Relatives to Damages (Mesothelioma) (Scotland) Bill.

11:17

Meeting continued in private until 11:54.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, Scottish Parliament, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Friday 22 December 2006

PRICES AND SUBSCRIPTION RATES

OFFICIAL REPORT daily editions

Single copies: £5.00
Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75
Annual subscriptions: £150.00

Standing orders will be accepted at Document Supply.

Published in Edinburgh by Astron and available from:

Blackwell's Bookshop

53 South Bridge
Edinburgh EH1 1YS
0131 622 8222

Blackwell's Bookshops:
243-244 High Holborn
London WC1 7DZ
Tel 020 7831 9501

All trade orders for Scottish Parliament documents should be placed through Blackwell's Edinburgh.

Blackwell's Scottish Parliament Documentation Helpline may be able to assist with additional information on publications of or about the Scottish Parliament, their availability and cost:

Telephone orders and inquiries
0131 622 8283 or
0131 622 8258

Fax orders
0131 557 8149

E-mail orders
business.edinburgh@blackwell.co.uk

Subscriptions & Standing Orders
business.edinburgh@blackwell.co.uk

Scottish Parliament

RNID Typetalk calls welcome on
18001 0131 348 5000
Textphone 0845 270 0152

sp.info@scottish.parliament.uk

All documents are available on the Scottish Parliament website at:

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers

Printed in Scotland by Astron