JUSTICE 2 COMMITTEE

Wednesday 5 September 2001
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
20th Meeting 2001, Session 1

CONVENER

*Pauline McNeill (Glasgow Kelvin) (Lab)

DEPUTY CONVENER

*Bill Aitken (Glasgow) (Con)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)
Christine Grahame (South of Scotland) (SNP)
*Ms Margo MacDonald (Lothians) (SNP)
*Mrs Mary Mulligan (Linlithgow) (Lab)
*Tavish Scott (Shetland) (LD)

*attended

THE FOLLOWING ALSO ATTENDED:

Mrs Margaret Ewing (Moray) (SNP)

WITNESSES

Peter Beaton (Scottish Executive Justice Department)
Barbara Brown (Scottish Executive Justice Department)
Stuart Foubister (Office of the Solicitor to the Scottish Executive)
Louise Miller (Scottish Executive Justice Department)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Wednesday 5 September 2001

(*Morning*)

[THE CONVENER *opened the meeting at 10:01*]

The Convener (Pauline McNeill): As we are quorate, I will start the meeting. First, I welcome members back from the summer recess. I hope that you are suitably refreshed and raring to go, because we have a big justice agenda—that is for sure—over the next few months. We have a fair-sized agenda this morning. I will do the usual—getting the important things done—and check that everyone has switched off their mobile phones and pagers.

There are a few matters to report under the convener's report. First, it is proposed that we have a joint stock-taking meeting with the Justice 1 Committee on the morning of 19 September, when we will hear from the Deputy First Minister and Minister for Justice and from the Lord Advocate about progress to date. We will also hear about plans that the Scottish Executive has for the justice department and the possible impact of those on the justice committees. Do members agree to have that meeting?

Members *indicated agreement*.

The Convener: Members should also be aware that on Tuesday 11 September, from 1.30 to 2.30, the Justice 1 Committee will be hearing evidence in the chamber from HM chief inspector of prisons, Clive Fairweather, on his 2000-01 annual report. Members should advise the clerks if they want to attend that meeting so that the clerks can advise the Justice 1 Committee of that. It is important to note that—when we can fit it on to our agenda—we will be considering the parts of the inspection report that relate to the work that we have been doing. Members might want to think about whether they can attend that meeting.

Finally, I remind members that stage 3 of the International Criminal Court (Scotland) Bill will be debated on Wednesday 12 September.

Interests

The Convener: Item 1 is declaration of interests by new members. I welcome Bill Aitken to the committee. Margaret Ewing, who is present, and Stewart Stevenson will also join the committee at some point. As Parliament has not yet agreed their membership of the committee, Margaret Ewing is attending in a reserved capacity today. Parliament has agreed the membership of Bill Aitken and I welcome him formally to the committee. It is my duty to invite him to declare any interests of a general nature.

Bill Aitken (Glasgow) (Con): Thank you for your welcome. I have no relevant interests to declare.

Deputy Convener

The Convener: Item 2 is the election of a new deputy convener to replace Lyndsay McIntosh, who has left the committee. The new deputy convener must be a member of the Conservative party, which means we have one candidate only. However, I require a formal nomination from members for the post of deputy convener.

Mrs Mary Mulligan (Linlithgow) (Lab): I nominate Bill Aitken.

The Convener: As there is no requirement for the nomination to be seconded, I congratulate Mr Aitken—[*Interruption.*] Before I congratulate him, I should check that members agree with his nomination.

Bill Aitken was chosen as deputy convener.

Bill Aitken: Thank you. Never in my entire career have I had such a meteoric rise.

The Convener: Just wait.

Item in Private

The Convener: Do members agree to take item 7 in private? That will allow us to discuss where we are in respect of our inquiry into the Crown Office and Procurator Fiscal Service.

Members *indicated agreement.*

Gaming Act (Variation of Fees) (No 2) (Scotland) Order 2001 (SSI 2001/230)

The Convener: Item 4 is subordinate legislation. Members have a background note that explains the content of SSI 2001/230, which is a negative instrument. Members can see for themselves what the order is about. I recommend that, unless members wish to raise any points, we simply note the order.

Members *indicated agreement*.

Sexual Offences (Procedure and Evidence) (Scotland) Bill: Stage 1

The Convener: Item 5 is our first formal evidence-taking session on the Sexual Offences (Procedure and Evidence) (Scotland) Bill. I invite Barbara Brown, Louise Miller and Peter Beaton, who are from the Scottish Executive justice department, and Stuart Foubister, who is from the office of the solicitor to the Scottish Executive, to take a seat at the table.

The bill deals with some complex issues and it is important that, from the outset, members gain a good understanding of what the bill is about. I propose to take questions under subject headings, if possible. In other words, members should not worry if they do not ask all their questions in one go, as I would prefer to keep the discussion flowing rather than switch back and forth between different subjects.

Would Peter Beaton like to make a few introductory comments?

Peter Beaton (Scottish Executive Justice Department): Thank you, convener. We are pleased to be at the committee's first meeting on the bill, to which the Executive attaches a great deal of importance. Members have in front of them a variety of materials, including the bill itself and the memoranda that accompanied it when it was introduced in the Parliament.

With me are the key members of our team. On my immediate right are Louise Miller and Barbara Brown, who have been working directly on the bill for the past few months. On my far right is Stuart Foubister, the lawyer who is assisting us. I am here as head of the civil justice and international law division of the justice department. Evidence is part of that division's responsibilities.

At the request of the clerks, Barbara Brown has prepared an introductory statement. We would like to offer members that statement as a supplement to the policy memorandum on the bill, as it deals with certain issues that the clerks invited us to address. We are happy to explain the policy of and the background to the bill. We will endeavour to do so during the remainder of today's proceedings.

Barbara Brown (Scottish Executive Justice Department): As Peter Beaton said, members already have the policy memorandum and the explanatory notes. I will not repeat what they say in detail; instead, I will give a general overview of the bill. I was asked to cover some specific points and I will try to do so.

My first point relates to the current law and procedure on cross-examination in sexual offence cases. At present, such cases are no different

from any others. An accused is entitled to conduct his defence personally in any case. There are only limited circumstances in which the court would appoint a legal adviser for someone who did not have one—for example, if an accused who was representing himself seriously misconducted himself in court to the extent that the trial could not continue. We understand that, in practice, such cases are extremely rare.

The bill prevents an accused in a sexual offence case from conducting his defence personally. Therefore, it also prevents him from cross-examining the complainer, or complainers, in a sexual offence case. The restriction will apply to all sexual offences, including rape, indecent assault, lewd and libidinous behaviour and all—or virtually all—the statutory sexual offences. There is also a provision whereby the court can apply the bill's provisions to a case that does not fall within the list that is given in the bill but that has a significant sexual element. That provision is intended to cover cases such as stalking, which might appear as a breach of the peace charge, or even offences such as housebreaking, where it is clear from the activity that went on in the house that the crime had a sexual motivation.

The second part of the bill deals with the questioning of the complainer as to his or her character and other sexual activity or behaviour in which they have taken part. The existing rules about such questioning, which are contained in the Criminal Procedure (Scotland) Act 1995, make it inadmissible to ask any question or lead any evidence that is designed to show that the complainer—the victim—is not of good character in sexual matters, is a prostitute or has engaged in any sexual behaviour that is not part of the charge. An application can be made to allow such questioning on a number of grounds, including the general ground that it would be contrary to the interests of justice to exclude such evidence.

At present, such applications are made orally during the course of the trial and arguments would be heard outwith the presence of the jury. The bill replaces the existing provisions with a new set of provisions that will cover the same list of offences but that adopt a different approach. The new provisions create a general rule that the court is not to allow questioning or evidence that is designed to show that the complainer is not of good character, has ever engaged in any sexual behaviour that is not involved in the charge or has engaged in any non-sexual behaviour, or is subject to a condition or predisposition that might be used to imply that the complainer had consented or that he or she should not be believed. Questioning about something that happens at the same time as, or close in time to, the acts that form part of the charge is allowed.

The new provisions will require applications to be made in writing, usually before the start of the trial, and to be disposed of at that point if possible. Applications will have to give detailed reasons for the evidence that the defence seeks to introduce. Such applications will be determined outwith the presence of the jury and on the basis of argument.

The intention of these new provisions is that questioning about the complainer's character generally, or questioning about any behaviour, either sexual or non-sexual, other than that which occurred at the time of the events described in the charge, or questioning on matters such as the complainer's medical history, usually will not be allowed. Their purpose is to focus attention on the events that took place as part of the alleged crime and on the accused's actions and intentions, rather than allowing attention to be diverted in such a way that the trial becomes more concerned with the complainer's behaviour or character than with that of the accused.

The bill also provides a process in which evidence that would be excluded under the general rule can be admitted if the court is satisfied that it is relevant and sufficiently important to outweigh any possible prejudicial effect that it might have. The phrase "prejudicial effect" is intended to cover both the infringement of the complainer's privacy and dignity and any possibility that the evidence might distort the issues.

I hope that that gives members an outline of the basic provisions of the bill.

I was also asked to address the consultation process. As members are aware, in November last year we issued the consultation paper "Redressing the Balance: Cross-examination in Rape and Sexual Offence Trials". The consultation closed on 31 January and the bill was introduced in June, so the timetable between the end of the consultation and the introduction of the bill was pretty tight. We received a large number of responses—about 70 in total. Some did not arrive until March, but we still took account of them.

While we were writing the consultation paper, we also held a number of meetings with interest groups, such as the legal professions, a senior judge, victim support groups, rape crisis groups and women's support groups. We received written responses from a similar range of groups, as well as from local authorities, legal academics, police organisations and some individuals. As we had expected, there was a fairly clear divergence of opinion between the legal professions and the judges on the one side and victims, women's support groups and other voluntary organisations on the other.

The legal professions and judges were generally

not enthusiastic about the proposals. They tended to take the view that no changes to the law were required, whereas other respondents tended to agree that changes were needed, and were fairly supportive of our proposals. The divergence of opinion was greater on the question of preventing an accused conducting his defence personally compared to that of opinion on the sexual history and character evidence proposals.

10:15

Nearly all respondents among the legal profession and judges took the view that none of options 1 to 4 in the consultation paper was necessary or acceptable. However, their opposition to the proposals on sexual history and character evidence was less strenuous. Some respondents acknowledged that there might be a problem, but most of them felt that those matters would be better tackled through training and encouraging changes in attitude. We published a report on the consultation in June, which is available on the Scottish Executive website. On the option chosen for cross-examination being conducted personally by the accused, a majority of respondents were in favour of option 3, which is adopted by the bill.

I will turn now to legislative competence. I was asked to give an explanation of the Executive's reasoning on the option that has been chosen, specifically in relation to its European convention on human rights implications. If members bear with me, I will try to do so without using too much legal jargon. Members will be relieved to hear that I do not intend to quote specific case law. We have seen a research paper produced by the Scottish Parliament information centre that provides a very good summary of the background law and relevant cases.

In prosecuting crime, the state has a clear interest in ensuring public order and safety and maintaining the confidence of members of the community. In doing so, it has to have regard to the rights of individuals, both those accused of crime and the victims of crime. The question is whether the bill strikes the right balance between those rights. In the Executive's view, it does.

The convention right that most clearly concerns cross-examination by the accused personally is article 6.3(c), which is the right of an accused

"to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require".

The question is whether that confers an absolute right on the part of the accused to conduct his defence personally. In our view, having looked at the relevant case law, it does not. The convention case law recognises what is known as the margin of appreciation, under which it is left to individual states that are party to the convention to make rules suitable to their own circumstances within the general principles set down in the convention.

The body of law that has been built up by cases in the European Court of Justice indicates that a rule requiring an accused to be legally represented will usually be considered to be legitimate. A number of the cases indicate that the accused does not have the absolute right to decide for himself how his defence is assured. It is clear that any limitations of the rights conferred by article 6.3(c) will be legitimate where particular circumstances make that appropriate in the interests of justice and, in particular, where the accused's rights under article 6 have to be balanced against the rights of others under the convention.

In essence, we do not consider that the accused has an absolute right to defend himself in person and we consider that it is legitimate to require the accused to be legally represented in certain circumstances. The question is what the appropriate circumstances are under which such a requirement can be imposed.

The questioning undergone by a complainer in a sexual offence case is always likely to be a distressing and, possibly, humiliating experience, involving detailed descriptions of sexual behaviour, frequently of a degrading nature. Such questioning may give rise to issues concerning the complainer's rights under article 8 of the convention

"to respect for private and family life".

Although article 8 does not impose an absolute prohibition on interference with the

"Right to respect for … family life",

any such interference must be in the public interest and must be proportionate to the purpose of the proceedings.

Some interference with article 8 rights is justifiable as an essential part of the process of the prosecution of crime. However, that should be limited to the extent necessary for dealing with the crime involved and ensuring the fair trial of the person charged.

Our policy aim is to protect the complainer in a sexual offence case from being subjected to the potentially humiliating experience of being cross-examined by the person alleged to have committed the offence. As a matter of principle, the Executive considers that in no case should a complainer in a sexual offence case be faced with the possibility of being questioned directly by the alleged attacker.

In the Executive's view, the complainer having to fear the possibility of such a confrontation represents an unnecessary aggravation of an already distressing experience. Therefore, it seems reasonable to ensure that distressing questioning is done only by someone who is not personally involved and is carried out in a detached and professional manner, as we might expect of the legal professions.

More generally, it could be asked whether the proposals contained in the bill are a proportionate response to circumstances that pertain in Scotland. There are two elements to that question. First, is there a real problem in Scotland that needs to be addressed? Secondly, have we gone too far in requiring the accused to be represented throughout the trial, rather than simply during the cross-examination of the complainer?

On the first issue, we are aware that there have been few reports of Scottish cases of sexual offences in which the accused has chosen to represent himself. An analysis of the cases that there have been does not show that complainers were subjected to serious humiliation without the court intervening. The court has the power and the duty to protect complainers from harassment and intimidation.

In Scotland, there have not been cases of the seriousness of, for example, Ralston v Edwards in England in 1996, in which the complainer was subjected to six days of questioning by the accused. However, that does not mean that such cases could not arise here—in the Executive's view, the risk of that happening and accordingly of a complainer's rights to dignity and privacy being infringed beyond what is necessary for a fair trial, is more than negligible. Therefore, it is appropriate to propose measures to Parliament that would have the effect of protecting complainers from such a risk.

On the second issue, as we consider that it is legitimate to prevent the accused from representing himself for part of the proceedings, we examined how that would affect the whole conduct of the trial in the context of the Scottish criminal justice system. We were concerned that although requiring the accused to be represented for only part of the trial was justifiable under the ECHR, in some circumstances that might have a knock-on effect on the adequacy of the presentation of the defence of the accused.

Option 3 offers clear practical advantages in reducing that risk by giving the lawyer the chance to prepare the defence case, ensuring consistency of presentation during the trial and avoiding disruption during the trial. As I have mentioned, ECHR case law confirms that the accused does not have an absolute right to decide in what manner his defence is assured.

An accused who does not take heed of the numerous occasions on which he is advised that he must be legally represented at the trial will end up with a lawyer appointed for him by the court. Some might argue that that infringes the right of the accused to

"legal assistance of his own choosing",

in that he cannot then dismiss that lawyer. We do not think that there is any substance to that argument. The accused will have had ample opportunity to appoint his own lawyer up until shortly before the trial.

The court's duty to appoint a solicitor for the accused comes into effect only where the accused has no solicitor and the court is not satisfied that he intends to engage one—where the accused is not exercising his right to appoint legal assistance of his choosing. If the accused were able then to change his mind and dismiss the solicitor appointed by the court, saying that he wanted to appoint his own solicitor, that would give him a way of delaying the trial indefinitely. That cannot be consistent with the interests of justice.

On the provisions of the bill that relate to evidence about the complainer's character or sexual history, the relevant convention right to be considered, as regards the interests of the accused, is article 6.3(d), which is

"to examine or have examined witnesses against him".

In the Executive's view, that does not give the accused an absolute and unqualified right to put whatever questions he chooses to witnesses. Therefore, we take the view that it is permissible to modify or restrict the right, as long as the fundamental right of the accused to a fair trial is not infringed.

The provisions of this part of the bill are directed at protecting the rights of complainers in sexual offence cases in respect of their private lives, as outlined in article 8 of the ECHR. Again, it is a question of finding the right balance between the competing interests of the accused and the complainer. Because of the impossibility of predicting in advance what kinds or items of evidence may be relevant in a particular case, we did not think it appropriate to provide that a particular type of evidence is never relevant. In some cases, such a provision might tip the balance too far in favour of the complainer and give rise to unfairness to the accused.

Instead, we set out a general rule that restricts the admissibility of certain types of evidence and combines that with a judicial discretion that would be exercised within clearly defined boundaries and according to a detailed two-stage process. The court has to decide whether the evidence is relevant and then weigh its value against any

prejudice that it might cause in relation to invasion of the complainer's rights to privacy or distorting the issues.

Such a process should achieve a reasonable balance between the interests of the accused under article 6 of the convention and those of the complainer under article 8. Members might be aware from press reports of a recent case in the House of Lords—R v A—which concerned the ECHR compatibility of comparable English provisions in section 41 of the Youth Justice and Criminal Evidence Act 1999. The outcome of that case has confirmed our view that the courts are likely to consider our approach to be compatible with the convention.

Overall, the Executive considers that both parts of the bill strike a reasonable balance between the community interest and the rights of individuals, but that is a matter for the Parliament to debate and decide on. I hope that my explanation of the Executive's views on those issues will inform the debate and help the committee and Parliament to reach a conclusion on the acceptability of the bill.

As I have been speaking for more than 15 minutes, I will say no more at this stage. I will be happy to take members' questions.

The Convener: Thank you for that helpful introduction. For the record, I should note that the Parliamentary Bureau has not yet agreed that the bill should come to the Justice 2 Committee, although it is expected that that will happen.

Perhaps we should first deal with the issue of the prohibition of personal conduct of defence by alleged sex offenders. Do members have any questions on that matter?

Ms Margo MacDonald (Lothians) (SNP): I apologise for being late. I was not certain whether I should be present at the meeting, because I have been yanked off the committee. I greatly regret that, as I have always enjoyed taking part. Although I wish that I could stay for more of the meeting, there is no point in doing so as I cannot pursue the matter. I will pursue it instead in the full debate in the chamber. Thank you very much.

The Convener: Thank you, Margo. I wish you well as the new convener of the Subordinate Legislation Committee.

Ms MacDonald: I wish the committee well.

The Convener: We will miss you. However, as you are still a member today, you are perfectly entitled to ask questions.

I call Scott Barrie to open the questioning.

Scott Barrie (Dunfermline West) (Lab): Before I get on to the bill itself, it might make more sense to ask a few more general questions. In your statement, you said that there were very few cases in which the alleged perpetrator had chosen to represent themselves. Do you know how many such cases there have been?

Barbara Brown: No statistics have been collected on that issue. We know only of cases that have reached the public press.

Scott Barrie: Without making any statements off the top of your head, do you think that it would be one or two, a handful, 10 or 12, or more?

Barbara Brown: It is almost impossible to guess accurately, but we think that, for serious sexual offence cases, the number would be a single figure.

Bill Aitken: My information is that there have been only two such cases in the past 15 years, both of which have involved the same accused person.

Barbara Brown: I know the cases that you are referring to; there was another one, a summary case, that got into the public prints.

Bill Aitken: You spoke about the evocative English case from 1996. From your experience, do you think that what happened there could have happened in Scotland? It seemed to me that the judge in that trial should have been much more interventionist. A Scottish judge would have come down much more heavily.

Barbara Brown: I do not think that it is fair to make such comparisons. Judges here have the power to intervene, as they do in England. We do not think that what happened in England is likely to happen here, but it is not impossible.

10:30

The Convener: I would like to deal with option 3 in the Executive's consultation paper "Redressing the Balance", which is the option that it has chosen. It is to do with prohibiting a person from conducting their own defence.

Scott Barrie: From what I have read, it seems that the Executive has chosen option 3 because of the difficulties connected with the other three options in the paper. Would it be fair to say that option 3 was not the obvious one to choose? Was it chosen simply because the others would have involved more difficulties?

Barbara Brown: We think that option 3 fits the Scottish system best. It may be useful if I give some background information. In England, the system of pre-trial disclosure of evidence is much more detailed. A lawyer who is dropped into the middle of a trial in England is able to read up on pre-trial statements. In Scotland, evidence emerges during the course of the trial. Therefore, if someone has not prepared the case and has not sat in on it from the beginning and heard how the

evidence has emerged, it is much more difficult for that person to represent the accused's interests. We therefore felt that, in the Scottish context, option 3 best ensured that the accused's case would be properly presented.

Mrs Mulligan: How will the solicitors who will represent the accused be chosen? Given the circumstances in which they would come to a case, what additional help could be made available to them?

Barbara Brown: We hope that such situations will not happen very often and that the courts—by identifying someone who is available, willing and able to take on the case—will be able to make practical arrangements. It may be that we will have to set up a more detailed process, but we hope that, because such situations will be so rare, the courts will simply be able to find someone who is, as it were, around.

The Convener: The Law Society of Scotland is quite concerned about the relationship between the client and the solicitor when the client does not co-operate. It is concerned that such situations could leave a trial open to appeal.

Barbara Brown: We understand that such situations would not be comfortable for a solicitor. However, his job is to represent the interests of the accused and to present the case to the best of his ability. If a solicitor agrees to be appointed, he will have to try to take instructions from the accused.

Peter Beaton: At this stage, convener, we are founding on two propositions. The first is the proposition in the bill, which is that a solicitor must represent the interests of the accused and the second is the professional duty of a lawyer to act at all times in the interests of the client. I understand that the Law Society of Scotland feels that those two propositions are inadequate to safeguard the interests of the lawyer. We do not agree. We feel that, in all circumstances, a lawyer founding on the duty to represent the interests of the client can do so—even if the client behaves wholly unreasonably.

As Barbara Brown has said, at the moment we are planning an informal approach. Given that there are relatively few cases to go by and we do not know what the experience in the south has been, we have nothing specific to found on. We can only found on the propositions in the bill and in the law.

We understand the Law Society's position but ministers have taken a clear decision as to the way in which they want the proposition to be worded in the bill. The committee and the Parliament will have plenty of information to enable them to decide whether the Executive's position is correct.

Ms MacDonald: Would it be unreasonable behaviour for an accused person to say that they do not want a particular solicitor and to give their reasons for not wanting that solicitor? We have already said that the accused cannot reject a person appointed by the court and you said that they would have plenty of time to come to a decision. However, if the accused stands firm and says that, for whatever reason, they do not want that solicitor and there is an ad hoc arrangement whereby someone willing will be found, that is less of a procedure and more of a hope.

Barbara Brown: If the accused could come to court and give good reasons for not wanting a particular person to represent them, the court would listen to those reasons. If those reasons were valid, the court would then try to find someone else. It is for the court to decide whom to appoint and the accused is required to accept that decision.

Ms MacDonald: Does that then lay the ground for a possible challenge under the ECHR?

Stuart Foubister (Office of the Solicitor to the Scottish Executive): I do not think so. At the outset, the accused has the same free choice as anyone else has to obtain a lawyer. There is plenty of case law under the ECHR that shows that if people do not exercise their choices, they cannot subsequently complain about fairness at their trial.

Ms MacDonald: They have to take what they get.

Stuart Foubister: They have a free choice. Putting themselves in the position of having the court appoint a lawyer is the result of a choice not to appoint their own lawyer. As Barbara Brown said, if there are cogent and individual reasons for not wanting a particular lawyer, the court will listen to those reasons. A system has to be set up that will prevent a difficult accused from continually rejecting any lawyer given to them in a situation where they are not prepared to make their own choice and get their own lawyer.

Ms MacDonald: It is a question not simply of the accused playing for time and refusing to co-operate, but of them saying that they do not want a particular lawyer. It might not then be possible to find a suitable lawyer if there is no fallback position. The accused surely has the right to say, "I don't want that solicitor," and to say why.

Stuart Foubister: The court would be flexible about issues such as dates for trials so that if a difficulty arose of the nature that you have identified, the court would have the flexibility to cope with that.

The Convener: The evidence that North Lanarkshire Council submitted raised the point

that there should be provision in the bill for a change of solicitor. Has that been considered?

Barbara Brown: If a situation arose where a solicitor felt that they could not continue to act, it would be possible for that solicitor to use the existing flexibility and come back to the court and say that they cannot continue to act. The court would then be able to find another solicitor.

The Convener: Is it entirely a matter for the court? Do you see no need to include provisions in the bill to make that clear?

Barbara Brown: We already have a complicated raft of procedural provisions and, to be frank, we do not want to make the bill any more complicated than it already is. It is unlikely that the situation will occur given that the court already has discretion to regulate its own procedure for cases that are not otherwise covered.

The Convener: I can see that.

I want to be sure that we have the right balance between the accused person and the vulnerable witness or victim. That could be important because, as Margo MacDonald said, the accused might not be happy with the line of questioning or they might have a genuine issue with the way in which their defence is being conducted.

Barbara Brown: There is nothing to stop the accused discussing those issues with the lawyer who is representing his interests. The lawyer has to represent the accused in the way that they think would be in the best interests of the accused. That is their duty under the bill.

Mrs Mulligan: I understand that it is unlikely that the situation will arise, but even if it is only in one case, we must still be in a position to respond to such circumstances. For example, if an accused says that they want to represent themselves and they are told that they cannot do that and that a solicitor will be appointed for them and the accused then says, "I do not want that solicitor; I will choose somebody myself," you have said—referring to the case that Pauline McNeill mentioned—that you would not want them to change solicitors because it could delay the case. How do you incorporate flexibility?

Barbara Brown: Flexibility already exists, which is what I thought I had said. The background is that the High Court has power to regulate its own procedures. Any court has inherent power to deal with unexpected situations and that power would have to come into play.

Stuart Foubister: We can consider further whether we need to make that point express in the bill. We have made it express that there is no right for the accused to dismiss the solicitor and that must be retained. We can consider whether we need to make express a right to go to the court in a situation where the court appoints a solicitor, but where it is satisfied that the accused is taking steps to allow his chosen solicitor to apply.

Bill Aitken: I turn to the question that might arise in the course of a trial, where the accused feels that the solicitor is not representing his interests as he would wish. I am aware of the appeal case of Anderson v Her Majesty's Advocate where the High Court upheld the fact that the accused could have a limited degree of control—albeit on the basis of his instructions. Are you confident that another appeal could be defended if the situation arose in a case of sexual assault that the accused was able to point out that the proper defence had not been run?

Louise Miller (Scottish Executive Justice Department): The bill is clear that a court-appointed solicitor must attempt to obtain the accused's instructions as to what his defence should be and that he should normally follow those instructions. The only circumstances in which he would be acting off his own bat would be if the accused declined to give instructions or if he was given inadequate or perverse instructions, which would cover both situations of simple inadequacy where the accused did not give his lawyer enough to go on. It would also cover a situation where the accused wanted a line of argument to be advanced that, if normal rules of professional ethics were applied, it would be improper for the lawyer to advance. There is no significant risk of a successful appeal on the basis that a lawyer did not put forward a line of defence that either he was not instructed to put forward by the accused, or he could not have put forward if normal ethical standards were applied.

We do not think that there will be a raft of successful appeals by accused people. There might be appeals—it is difficult to stop people appealing—but an accused would have to show justification for the view that his lawyer had defended him inadequately. He would not be able to do that on the basis of saying, "I know I did not tell you to do this at the time, but now I have changed my mind."

Bill Aitken: Quite, but bearing in mind the nature of such cases, which tend to be distressing, we do not wish to see opportunities for appeals being successful where that can be avoided. It could be argued that if the accused wished to sack his counsel in the middle of a trial, then carried on and the defence was not as one would have wished it, that is down to the accused. If he has had a lawyer imposed on him, there is the difficulty of the relationship between the client and the lawyer. That creates a vulnerable situation in which the lawyer does not present the arguments that the accused wishes and that can be proved.

Louise Miller: In the case of Anderson v Her

Majesty's Advocate, the decision was that a lawyer cannot ignore the accused's instructions concerning his defence. If the accused says that his defence is consent, the lawyer cannot decide unilaterally to plead a different defence. However, I expect that any court-appointed lawyer—and any lawyer who is not court appointed—who suspects that he has a difficult client, or one who might complain later, will take careful notes during the case to show what instructions, if any, he received. Later, the lawyer would be able to point to the fact that the accused did not instruct him to pursue a specific line or that the accused declined to give him instructions.

10:45

The Convener: Is there any guidance on what would be considered perverse instructions?

Barbara Brown: No, we do not propose to issue specific guidance.

The Convener: Will the court's power to appoint a solicitor apply to the trial diet as well—for the whole proceedings?

Barbara Brown: Are you asking whether that power will exist during the trial diet?

The Convener: If there was a trial diet, would that be the point at which the solicitor would be appointed?

Barbara Brown: I am not sure what you are getting at.

Stuart Foubister: The system is intended to identify early those cases in which the accused is making no attempts to obtain a lawyer, and to have a court-appointed lawyer put in place. It is also designed to be flexible so that, if the accused sacks his lawyer at a late stage and makes no attempt to appoint another one, the court will be able to appoint one.

The Convener: The point that I am trying to make is one that was made to us by the Public Defence Solicitors' Office. The court should have the power to appoint a solicitor for the accused during the trial diet. Are you assuming that that is when it would happen?

Stuart Foubister: That is a fair point. That aspect of the bill needs still to be examined.

Mrs Mulligan: The evidence that we received from the Association of Scottish Police Superintendents and the Association of Chief Police Officers in Scotland refers to the police advising the accused that he would not be able to conduct his own defence. You did not mention that in your opening statement. Would you care to comment on that?

Barbara Brown: The provision in the bill is an amendment to an existing provision, whereby the police must advise an accused of his right to have a solicitor. It will simply add an extra bit to that duty.

Mrs Mulligan: Do you understand why the police are unhappy with that?

Stuart Foubister: Do they think that the provision is too burdensome?

Mrs Mulligan: The evidence suggests that the failure of the police to give that advice to the accused in certain circumstances would compromise the case.

Barbara Brown: There is a provision that would prevent that from happening.

Mrs Mulligan: In the bill?

Barbara Brown: Yes.

Stuart Foubister: The relevant section is that which is inserted by paragraph 2 of the schedule. It states:

"A failure to comply with subsection (1)"—

which is the duty to advise the accused of the need to get a lawyer in due course—

"does not affect the validity or lawfulness of the arrest of the accused or any other element of any consequent proceedings against him."

I do not think that there is any validity in the police officers' concerns.

The Convener: We have received evidence from an individual stating that, if we inhibit the right of an accused person to conduct their own defence, that principle should be extended to all offences. Why should the legislation inhibit that right only in cases of sexual offences?

Barbara Brown: Sexual offences are different from other offences in many ways, because of the nature of the evidence that must be produced in court. The process is very distressing for the complainer, which is why we are legislating for them.

The Convener: However, the point is made that there are other situations in which victims or vulnerable witnesses will be distressed—for instance, in a case of serious assault.

Barbara Brown: We continue to do work on vulnerable witnesses. We will consider whether the measures that are available to protect them when they give evidence need to be extended. In that work, which is taking place alongside the work that we are doing on the bill, we will consider whether restricting personal cross-examination would be appropriate for some other types of offence. We will issue a consultation paper on that and on other issues to do with vulnerable witnesses, probably early next year.

Bill Aitken: Bearing it in mind that there has been some controversy about that—particularly in the eyes of the legal profession—and that witnesses have different levels of vulnerability, did you consider provisions to differentiate between, for example, cases in which the complainer is an adult and cases in which the complainer is a vulnerable child?

Barbara Brown: Provisions for child witnesses exist. As I said, we will consider a range of measures that relate to vulnerable witnesses, including children and adults who have different characteristics that might make them vulnerable. That is just part of a bigger piece of work that we are doing on witnesses and vulnerability in general.

The Convener: We have exhausted our questions on that topic.

Is it correct that the bill contains the power—I am not sure where it fits in—to extend the list of sexual offences at a later date?

Louise Miller: That is the bit of the bill that deals with amending the list in new section 288C(2) of the Criminal Procedure (Scotland) Act 1995 by statutory instrument. It is designed to deal with the possibility of changes in the common law background. If there were changes to the statutory sexual offences, we would normally expect that the bill that made those changes would amend the list as necessary. The power allows for the possibility of judicial decisions that might, for example, redefine the boundaries of a particular sexual offence and that might make it necessary to change the list of offences.

The Convener: We will move on to questions on the prohibition on the alleged offender personally precognoscing the complainer. Everybody seems to welcome that measure. I do not think that there is anything controversial about it.

Bill Aitken: As I think one of the papers says, for the alleged offender personally to precognosce the complainer would be inconsistent, because the bail order that is likely to have been made will have forbidden the accused from approaching the complainer anyway.

The Convener: There seems to be a mixed response on whether notice of a defence of consent is necessary. Are there any questions on that subject?

Bill Aitken: There is a difficulty with that. The obvious defences to rape are "It didn't happen" and "It wisnae me" and it is difficult to think of any ways to defend the action. Why is it thought necessary to insist that there should be prior notice of the defence of consent?

Barbara Brown: That is intended to make it clear at the beginning of the trial what the issues are and also to give the complainer warning—if possible—of the type of questioning that he or she is likely to face.

The Convener: In your view, is that measure helpful to the complainer?

Barbara Brown: The responses that we have had indicate that it will not make a big difference in a large number of cases, because the complainer will know that consent will be the defence. However, there will be some cases in which that will not be clear. The responses that we have had from some rape crisis groups indicate that it would be helpful for the complainer to know that the defence will be consent in cases in which he or she may not have been aware of the line that the accused was going to take.

The Convener: I will move on to restrictions on evidence. The view is widely held that judges have not used the powers that are available to them. The perception is that some witnesses have undergone unnecessary intimidation. Existing provisions have not been used—you talked about that in your introduction. Some submissions to the committee say that we should try to enforce the existing provisions. Will you say a word or two more about that?

Barbara Brown: We are aware of those comments. We are trying to create a more focused process, so that clear reasons must be given when an application is made and a fishing expedition is not allowed. When applications are dealt with, the court must take account of matters such as the privacy of the complainer and whether the issues will distort the trial process. I have slightly lost the thread of what you wanted me to cover.

The Convener: The part of the bill that is involved is quite complex, because it will amend the Criminal Procedure (Scotland) Act 1995. The provisions are quite intricate.

Barbara Brown: The provisions are quite complicated. Do you want me to explain again what the relevant provisions will do?

The Convener: The question is one of balancing the enforcement of existing provisions that allow judges to intervene earlier and the provision of more protection. We have received submissions that say we should train judges in the existing provisions and try to enforce them, rather than legislate. We know from experience that the bill will not be enough, because we will still have to tackle how the law is applied in court and ensure that judges use the provisions that are open to them.

Peter Beaton: Existing law is deficient on the relevance of the information that is sought to be elicited by cross-examination. A central proposition of the new provisions is to make that a central focus of the decision on whether questioning should be admitted. That deficiency could not be dealt with by seeking a change in the attitudes of those involved.

The other major issue is that the proposed provisions would make the Crown subject to the exclusions on evidence. The reason for that goes back to work that was done not long after the existing provisions came into effect in the late 1980s, following a report by the Scottish Law Commission. Research found that evidence that would not normally be admissible had been inadvertently admitted, because the Crown sometimes led questioning in examination in chief of witnesses that brought their past sexual experience into play. For example, seemingly innocent questions about marital history have been used by the defence as justification for cross-examination.

On those two matters, it is intended to ensure that the defence and therefore the court place a proper focus on whether the information is necessary for a fair trial of the issues before the court. The other main task that we are trying to perform, which links to the earlier question on consent, is to have such questions dealt with before a trial starts. It has been clear, as the evidence from a research report issued at the beginning of the 1990s revealed, that sometimes it is too late do anything about such information, because it is out in the court before anyone can intervene.

Those are the three main reasons that we think these provisions are necessary.

Bill Aitken: Have you carried out any research with the Crown Office into how frequently deputes in the High Court have had to intervene when they felt that unnecessary badgering of a complainer was taking place or that totally irrelevant evidence was being introduced—about something that happened, for example, in 1973?

Barbara Brown: We do not have any such statistics.

Bill Aitken: Have you any anecdotal evidence?

Barbara Brown: Not that I am aware of.

11:00

Peter Beaton: A distinction must be drawn between what we are doing in the bill and the general background to a trial. The bill deals with evidence relating to sexual behaviour and experience, or evidence that the complainer is not of good character—in both instances, where that evidence is not relevant to the case. The comportment of questioning—the nature of questioning, and whether witnesses are being harassed or intimidated—is a separate matter. It is part of our general work to examine whether something needs to be done in that area. However, the issues that Bill Aitken raises concern people's behaviour in a trial setting, rather than the admissibility of evidence. Section 7 relates specifically to the admissibility of evidence—which evidence should not be admissible or should be admissible only in certain circumstances.

The Convener: The bill refers to the "proper administration of justice" and the admissibility of evidence that might otherwise be prohibited. When might the proper administration of justice include information about a complainer's sexual background?

Barbara Brown: It is very difficult to give specific examples. That is a matter for the court to decide in every circumstance. There is a huge variety of circumstances.

The Convener: Could you give us an example?

Stuart Foubister: The bill includes a definition of the proper administration of justice, setting out the matters to which the court should have regard. Those include:

"(i) appropriate protection of a complainer's dignity and privacy; and

(ii) ensuring that the facts and circumstances of which a jury is made aware are, in cases of offences to which section 288C of this Act applies, relevant to an issue which is to be put before the jury and commensurate to the importance of that issue to the jury's verdict".

The bill gives considerable guidance to the court on the issues that it should bear in mind when making decisions.

The Convener: Are you saying that those measures will be substantially better than the provisions that are already in place, because they are much better defined?

Stuart Foubister: The present provisions offer a general framework, but experience shows that they are not working in a terribly desirable manner. The framework in the bill attempts to focus minds on what the Executive considers are the important issues, but in a manner that should not prevent anyone from getting a fair trial.

The Convener: Does the Executive want to tidy up those provisions because it believes that the changes will encourage more women who have been the victims of rape or sexual offences to come forward, because it believes they are necessary to ensure ECHR compliance, or for both reasons?

Barbara Brown: Certainly one reason for making the changes is to encourage more women

who have been the victims of rape or sexual offences to come forward. People will be more confident about doing that if they can be assured that irrelevant evidence about them will not be presented in court. I cannot comment on the issue of ECHR compliance.

Stuart Foubister: We do not regard the present arrangements as contravening the ECHR, but we must remain conscious of the fact that witnesses, like all other persons, have rights under the ECHR. If a witness felt that she had been subjected to humiliating treatment under the current system, that could lead her to make a claim for damages, or claim that her rights under the convention had been breached. We cannot rule out the possibility of such a claim being made. We bear that in mind when proposing changes to the law.

Ms MacDonald: I have listened to what has been said, and I am aware of the fact that you are never going to get things perfect.

Stuart Foubister: It is a balancing exercise. I agree that it is not easy.

Ms MacDonald: It also places a huge responsibility on the courts to decide on the fair administration of—

Stuart Foubister: The "proper administration of justice".

Ms MacDonald: That is what much of the unease has been about, because there has sometimes been a lack of sympathy, experience or sensitivity on the part of the courts. I do not know whether it is possible to legislate for that. However, one must judge whether the way in which one has chosen to approach an issue makes it more likely that people will appeal on the ground that there was no proper administration of justice because evidence was not allowed, or that more people will complain that they were treated in a way in which they did not expect to be treated. Is it fair to say that you just cannot get the matter right and that you might have tipped the balance the other way?

Stuart Foubister: It is difficult. We must recognise that there are competing rights at issue and that witnesses, like the accused, have convention rights. I also agree that we are very much in the hands of the courts, because the courts must operate the provisions. As public authorities, the courts are bound to act in a manner that is compliant with the ECHR. I hope that we have got the balance about right. I also hope that the introduction of a number of new factors will not lead to a huge number of additional appeals.

Ms MacDonald: I have one final question, which might appear to be irreverent or even facetious. What are you going to do about the courts? They must play the same game that you are now playing.

Stuart Foubister: The independence of the judiciary is a very important factor.

Ms MacDonald: Of course.

Stuart Foubister: It is not for the Executive to order the judiciary around in any manner. It is for the Executive to legislate. In so far as discretion is left to the court, it must be for the judiciary to carry that through.

Ms MacDonald: I know that it is awful to pursue this point, but there was a consensus that perhaps the courts were not sensitive enough to all the issues that are involved in the trial of such sexual offences. That underpinned much of the need for new legislation, but you are telling me that it is something that cannot be legislated for.

Peter Beaton: Perhaps I could try to deal with that point. It is really about training; it is not a question of whether the courts should be told how to handle such matters, because as things stand we rely on judges to exercise discretion on such matters. Questions of the relevance of evidence are matters for the courts, although they can be led into questions of relevance by the parties.

In this instance, however, the peculiar issue that we are considering concerns a case in which evidence is sought to be led and nobody objects. There is a real training issue there, and the concern has been expressed in the past that courts have been slow to intervene. We propose to address that issue in due course with the Judicial Studies Committee for Scotland.

The Convener: The committee would welcome that, because that is probably our biggest fear. We know that there are some provisions that could have been used but have not been used, on both sides. There is new, more robust legislation that everyone welcomes, but we must return to the question of how we can ensure that it has the effect that the Executive wants.

Peter Beaton: It is not just the judiciary that is involved. Members of the legal profession must exercise discipline and forbearance. The law makes it clear what is expected. Assuming that Parliament, after due consideration, decides that the Executive has got the balance about right, the professions will have to consider how they approach the new situation. The Executive believes that the professions will need to consider the new situation. It is up to individuals in the professions to ensure that they act in accordance with their own professional codes and the law. On sexual history evidence, the basic factor is that we are re-emphasising a rule of common law, which is that irrelevant evidence should not be submitted to

the court.

The Convener: That is helpful."Redressing the Balance" mentioned allowing the introduction of previous convictions in certain circumstances, but the Executive has not legislated for that in the bill.

Barbara Brown: We wanted to think further about that provision, about which we received a number of comments. It is a difficult proposal and we might lodge a stage 2 amendment to deal with it.

The Convener: You said that you wanted to achieve a balance between the rights of the accused and of the victim. Is that why you did not proceed? If the rules on sexual history evidence are to be tightened up, previous convictions might not be so important. I understand that current provisions mean that, if evidence of sexual history is used, under certain circumstances it is competent to raise the issue of previous convictions.

Stuart Foubister: That opens up the possibility of an application by the prosecutor for previous convictions to be revealed.

The Convener: Would the inclusion of previous convictions tip the balance of a trial?

Barbara Brown: We received comments that that would be the case, and we are considering the matter. We will refine the proposals that were made in "Redressing the Balance".

Louise Miller: "Redressing the Balance" suggested that certain convictions might be disclosed automatically to the court in the event of a successful application being made by the accused for character or sexual history evidence to be disclosed. In the light of some of the comments that have been made, we are considering the automatic aspect of that disclosure.

The Convener: Does the Executive plan to assess whether the bill—or act when it is passed—will make a difference?

Barbara Brown: Yes, as was mentioned by Peter Beaton, we hope to update the Jamieson and Burman research of ten years ago, by taking a picture of the present situation. That would be a baseline study of current practice and we plan to study further the difference that the bill's provisions make when it is enacted, assuming that that is the case. I confirm that we plan to assess the impact of the bill.

The Convener: I thank the witnesses for their presentation, which was very helpful.

We will take a break and return to discuss item 6.

11:13

Meeting adjourned.

11:27

On resuming—

The Convener: We resume our consideration of the Sexual Offences (Procedure and Evidence) (Scotland) Bill. A weighty pile of evidence has been submitted. I do not know how much of it members have managed to plough through, but some of it is interesting. Many organisations and individuals made a number of good points for us to examine. We should now consider whom we might want to call before the committee and what we might want to do with the written evidence.

The clerks have produced a useful summary of the submissions. Perhaps we should go through that and discuss the evidence. We have taken oral evidence this morning from the Scottish Executive solicitors and members might want to discuss issues arising from that.

We have received written evidence from Professor Peter Duff, the Association of Chief Police Officers in Scotland, the UK Men's Movement, the rape counselling and resource centre, the Association of Directors of Social Work, North Lanarkshire Council, the Scottish Rape Crisis Network, Fiona Raitt, James Chalmers, Scottish Women's Aid, the Association of Scottish Police Superintendents, Dr Burman and Dr Jamieson, the Equality Network, the Public Defence Solicitors' Office, the Faculty of Advocates—although members should bear in mind that the comments that follow that heading in the paper are actually the comments of the Scottish Legal Aid Board, which also submitted evidence—Ms S Watson, Ms X, the Scottish Human Rights Centre and the Law Society of Scotland.

Gillian Baxendine (Clerk): The Faculty of Advocates sent us a draft of its evidence that had not been approved by its full council, which is why there is no summary of that evidence in the committee's public paper. We expect that the final version will be sent shortly.

The Convener: Nevertheless, the orange document that we have is the draft response from the Faculty of Advocates and it will give members an idea of what the faculty has to say. When reading the summary, I saw all the points about legal aid and wondered why the Faculty of Advocates was concerned about that. I then realised that heading was wrong.

If members indicate whom they would be interested in taking evidence from, we can take it from there.

11:30

Bill Aitken: We should hear from the Faculty of Advocates, as it is obviously on one side of the argument and has made some good points.

I was interested in the written submission from Dr Burman and Dr Jamieson. I do not know either of those ladies, nor have I heard of them; nevertheless, they clearly have some expertise in this field that we would want to utilise. Professor Duff, who also has that expertise, should be invited as well.

The Convener: That is a helpful suggestion as a starting point. Some of our general questions about the legislation and some of the figures might be answered if we took oral evidence from Dr Burman, Dr Jamieson and Professor Duff, if they were willing. Would members be happy with that?

Members *indicated agreement*.

The Convener: Do members have any other suggestions? Scott?

Scott Barrie: I was nodding in agreement. It would be useful to take evidence from people who have conducted research in the subject, as they may be able to answer some of the questions that we asked this morning. It is always useful to take evidence from such people.

The Convener: I would like to invite the Scottish Human Rights Centre, as its views are clear on cross-examination and the proposed prohibition on accused persons conducting their defence. It might also provide a useful perspective on the ECHR and related issues in the bill. Would members be happy with that?

Members *indicated agreement*.

The Convener: There are few organisations that I would not want to invite to give evidence, and although we must prioritise, perhaps we could try to squeeze them all in. I presume that we would want to invite Scottish Women's Aid, Scottish Rape Crisis Network and the Law Society of Scotland. The Public Defence Solicitors' Office has sent a long list of points, which is quite useful. We should certainly hear from the Association of Chief Police Officers in Scotland, unless members think that it would be more appropriate to hear from the Association of Scottish Police Superintendents. We could hear from both.

Scott Barrie: As we have received written evidence from them, we might not need to invite both organisations. I do not think that there are huge implications for them, although it would be useful for them to clarify their written evidence.

Bill Aitken: That is a good point. We might need to hear only from ACPOS.

The Convener: The two organisations make similar points. Shall we invite ACPOS first and then consider inviting the Association of Scottish Police Superintendents if we feel that further examination is needed?

Members *indicated agreement*.

The Convener: The Equality Network also made some interesting points and has raised a point that we have not mentioned to the Executive. It thinks that there is an anomaly in the list of sexual offences, which would give rise to unfair treatment of people of a certain sexual orientation. It talks about consensual non-private sexual acts between men and the fact that that might be caught up in the list of offences. Do members agree that we should hear from the Equality Network?

Members *indicated agreement*.

The Convener: That is not an exhaustive list of organisations to invite, but it is enough to be getting on with. We will check our timetable, but I do not think that we can draw the line there.

Bill Aitken: Are you aware that the timetabling of the bill was agreed at the Parliamentary Bureau meeting yesterday? I think that the deadline is 16 November.

The Convener: No, I did not know that.

Gillian Baxendine: May I confirm the list, convener? It includes the Faculty of Advocates, Drs Burman and Jamieson—and possibly also Professor Duff—the Scottish Human Rights Centre, Scottish Women's Aid, the Scottish Rape Crisis Network, the Law Society of Scotland, the Public Defence Solicitors' Office, ACPOS and the Equality Network.

The Convener: That is quite a lot. Have you had any requests from anyone wishing to give evidence?

Gillian Baxendine: People have tended to say simply that they are willing to give evidence. The only group that may be particularly keen to give evidence is the UK Men's Movement, although a representative has already appeared at a Justice 1 Committee meeting on a similar issue.

The Convener: We can consider that.

Mrs Mulligan: Would it be possible, if a representative of the movement has already appeared before the Justice 1 Committee, to make that evidence available, so that we can see whether there are any further issues that we want to explore?

Gillian Baxendine: Yes.

The Convener: That would be helpful. If there are any points that members feel they have missed this morning, please let me know. If so, I

will simply put those in writing and highlight to the Executive that some answers are still required.

Scott Barrie: I was wondering about the financial implications. We did not touch on that, but we have heard evidence about training implications. There is the whole financial aspect of court-appointed solicitors or advocates to consider. It would be useful to know what thinking, if any, the Executive has done in that area, and whether it has any idea, even tentative, about the sums that may be involved and where the budgetary implications might lie.

The Convener: That is a useful point. I will draw up a note about that, and we will get an answer in writing. We can pursue the matter if needs be.

That deals with item 6. Members agreed earlier to take item 7, on our inquiry into the Crown Office and Procurator Fiscal Service, in private.

11:37

Meeting continued in private until 12:29.

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