

# **JUSTICE 2 COMMITTEE**

Wednesday 31 October 2001  
*(Morning)*

Session 1

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## **JUSTICE 2 COMMITTEE**

### **†29<sup>th</sup> Meeting 2001, Session 1**

#### **CONVENER**

\*Pauline McNeill (Glasgow Kelvin) (Lab)

#### **DEPUTY CONVENER**

\*Bill Aitken (Glasgow) (Con)

#### **COMMITTEE MEMBERS**

\*Scott Barrie (Dunfermline West) (Lab)

Mrs Margaret Ewing (Moray) (SNP)

George Lyon (Argyll and Bute) (LD)

\*Mrs Mary Mulligan (Linlithgow) (Lab)

\*Stewart Stevenson (Banff and Buchan) (SNP)

\*attended

#### **CLERK TO THE COMMITTEE**

Gillian Baxendine

#### **SENIOR ASSISTANT CLERK**

Claire Menzies

#### **ASSISTANT CLERK**

Fiona Groves

#### **LOCATION**

Committee Room 3

† 28<sup>th</sup> Meeting 2001, Session 1—joint meeting with Justice 1 Committee.



## Scottish Parliament

### Justice 2 Committee

Wednesday 31 October 2001

(Morning)

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

**The Deputy Convener (Bill Aitken):** Good morning, ladies and gentlemen. The convener has been unavoidably detained as a result of the deplorable Glasgow to Edinburgh train service, which has been a matter of serious complaint in the past. To expedite matters, I suggest that we proceed with some of the less contentious items on the agenda.

### Items in Private

**The Deputy Convener:** I invite the committee to agree that item 5 be considered in private and that the revised report on the Sexual Offences (Procedures and Evidence) (Scotland) Bill be considered in private next week. We usually consider such reports in private.

**Scott Barrie (Dunfermline West) (Lab):** Is item 5 the committee work programme?

**The Deputy Convener:** I am referring to two different agendas. I am asking the committee to agree to take in private item 5 on today's agenda—the committee work programme—and our consideration of the revised report on the Sexual Offences (Procedures and Evidence) (Scotland) Bill at the next meeting. Is that agreed?

**Members indicated agreement.**

**The Deputy Convener:** Item 2 is the reports on the case of the murder of Surjit Singh Chhokar. I suggest that we defer consideration of that item pending the arrival of the convener. Is that agreed?

**Members indicated agreement.**

## Petition

### Fatal Accident Inquiries (PE324)

**The Deputy Convener:** The next item is petition PE324 from Kay Reid on fatal accident inquiries. Have we all read the report from the clerk? Is there a view on the matter?

**Scott Barrie:** The petition has been live for some time and the issues that it raises fall within the remit of our inquiry into the Crown Office and Procurator Fiscal Service. We should consider those issues in the light of that inquiry. The petitioner has specific concerns but shares some general concerns. The committee's interest lies with those general concerns and considering them as part of our inquiry is perhaps the best way of dealing with the petition.

**The Deputy Convener:** I concur with that.

**Mrs Mary Mulligan (Linlithgow) (Lab):** I accept the opinion of the Scottish Law Commission that it might be inappropriate for every death in medical circumstances to be investigated. However, there is concern that it is left to the procurator fiscal to decide whether there should be an inquiry. In this case, the family feels that it has no way to address that decision, apart from through a judicial review. Obviously there are constraints on applying for such a review. We should consider the matter within our inquiry into the Procurator Fiscal Service, in which we can consider the determining factors and see whether there is any room for amendment. At this stage we would not want to do anything more than that.

**The Deputy Convener:** That point is well made.

**Stewart Stevenson (Banff and Buchan) (SNP):** Like Mary Mulligan, I want to focus on ensuring that the family has an accessible mechanism through which to put its view that it wants a fatal accident inquiry if the fiscal has decided otherwise.

**The Deputy Convener:** Having heard the various points, it seems clear that the committee wants to note the terms of the Lord Advocate's letter of 24 October and to consider those matters at the report stage of the inquiry into the operation of the Crown Office and Procurator Fiscal Service.

## Fur Farming (Prohibition) (Scotland) Bill

**The Deputy Convener:** The next item is the Fur Farming (Prohibition) (Scotland) Bill. We must consider whether to report to the Rural Development Committee on this legislation. There is no requirement on us to report. In fact, the Justice 1 Committee has decided not to do so. This committee may or may not take a contrary view.

**Scott Barrie:** I am slightly at a loss to know why we would want to consider this bill—not that it is not of interest. It is of interest and it is overdue, but I am not sure what legal aspects of the bill we might have to consider.

**Gillian Baxendine (Clerk):** Any bill that creates significant new offences tends to get referred to the justice committees.

**Stewart Stevenson:** I am a member of the Rural Development Committee, so I have all the relevant papers. Wearing that hat, I do not immediately see that input from this committee is required, but I am sure that if the Rural Development Committee takes a different view, it will ask this committee for input. I suggest that we leave the issue on that basis.

**The Deputy Convener:** Is that agreed?

**Members** *indicated agreement.*

10:16

*Meeting adjourned.*

10:17

*On resuming—*

## Convener's Report

**The Convener (Pauline McNeill):** I apologise to everyone for being late. I believe that my deputy convener did a good job of rushing through some items on the agenda, and making some remarks about the state of our railways, which I support. Bill Aitken and I may wish to do something about the Glasgow to Edinburgh train on behalf of the general public, which I am sure would be appreciated.

We will work back the way. There are a few things that I wish to report to the committee. First, subject to the Parliamentary Bureau's agreement, next week we expect two affirmative Scottish statutory instruments to be referred to the committee for consideration. They are the draft Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2001 and the draft Small Claims (Scotland) Amendment Order 2001, which increase respectively the limit for summary cause actions in the sheriff court from £1,500 to £5,000, and the limit for small claim actions from £750 to £1,500. The committee could consider those orders on Wednesday 14 November if the bureau agrees.

**Bill Aitken (Glasgow) (Con):** It might be useful to have an indication of when those limits were last increased.

**The Convener:** A note will be prepared for the committee as usual so that members know the background to the orders.

The second matter that I want to draw to members' attention is the two deaths that have recently occurred at HM Prison Cornton Vale. The committee will be aware that we have completed an interim report on women's offending and that we visited Cornton Vale with members of the Justice 1 Committee. I am sure that we intended to return to the matter, but I put it to the committee that, in the light of recent circumstances, we may wish to return to it as a matter of urgency.

Yesterday, I took the liberty of speaking to the chief inspector of prisons, Clive Fairweather. I told him that I would raise the matter at this morning's meeting. He said that, if the committee so wishes, he will be happy to come along and speak to us. I have also written to Tony Cameron and Clive Fairweather, saying that the committee is concerned about the recent events and may wish to do some further work on the matter.

There have now been 10 deaths at the prison since 1995. In its report, the committee felt that

one of the achievements of the management in the past few years was bringing that situation to some kind of closure; clearly, however, that has not been the case.

We need to consider two particular issues. First, there is a record number of inmates at Cornton Vale. We have to consider that as a possible factor in the recent deaths of the two women. Secondly, there have been considerable changes in the management team of the prison, including the governor, the deputy governor and the medical director. The committee may wish to examine those two issues. Later in the meeting, we will be considering our future work plan. I know that we already have a heavy programme, but I felt that I ought to raise this matter of great importance this morning. I invite any comments or questions.

**Stewart Stevenson:** The Scottish Prison Service estates review is expected to be published in the relatively near future. If Clive Fairweather makes himself available to the committee for the purposes that you have described, convener, and if time permits, it may be useful to extend our questioning of him to get his feedback on the matter.

I would also like to pursue with Clive Fairweather the position of Peterhead prison, and I am sure that other members also have interests. I would not want to spring that on you, convener, when and if Clive Fairweather appears, so I thought it appropriate to mention that now.

**Bill Aitken:** The fact that there have been 10 deaths in six or seven years must be of great concern to us all. The reasons for them may be many and varied. We will perhaps wish to see the sheriff's views in the fatal accident inquiries that require to be held on the most recent cases.

This is a complex matter. There is an argument that Cornton Vale may be overcrowded, and we must recognise also that there is an unfortunate trend of women committing more serious offences and getting longer sentences. It may be that a different form of treatment from what is available at Cornton Vale may have to be considered for long-term prisoners.

**Mrs Mulligan:** Stewart Stevenson talked about Clive Fairweather coming to the committee to discuss the estates review and suggested that we cover the matters concerning Cornton Vale on the same occasion. I am not sure how appropriate that would be, as Cornton Vale is an issue that we should deal with separately. When we consider the work programme later in the meeting, we should look for a space in which to consider the prison estates review. It would be appropriate to keep the two matters separate.

Although the evidence presented to the committee and to the members who visited

Cornton Vale was that things had improved in the prison, it is obviously very disappointing for everybody concerned that there have been two tragic deaths in the past week, and it is worrying as regards what the future might hold. We ought to seek further information on what has happened at the prison and on how problems can be addressed. We had already started to consider the appropriateness of sentencing and whether the women at the prison should be there. We should continue to review the other options that judges and sheriffs have to deal with women offenders.

**The Convener:** That is all helpful.

I know that Stewart Stevenson has an interest in Peterhead prison. The convener of the Justice 1 Committee has agreed that that committee will deal with the prison estates review. The committee meetings should not clash so that we can interact with one another on that subject. It was agreed that we would consider women's offending and young offenders and continue with our report on Kilmarnock. Therefore it is appropriate for us to call relevant witnesses on those subjects. Perhaps Stewart Stevenson could go to the meetings of the Justice 1 Committee at which Clive Fairweather gives evidence about Peterhead prison.

Mary Mulligan spoke about our continuing work on alternatives to custody. That is the most relevant aspect of the subjects that we need to consider. We have been saying that all along and, without prejudging anything, it is becoming urgent that we find some time to progress that issue.

**Bill Aitken:** We should not prejudge anything. However, the woman who took her own life most recently in Cornton Vale was serving a life sentence for murder. It is difficult to see how there could have been an alternative sentence in that case.

**The Convener:** The second prisoner was a remand prisoner. I spoke to Clive Fairweather last night and established that she was not held in the new remand wing that we saw. I am alerted to the fact that we need to go a bit deeper into what happened. The fatal accident inquiries will be compulsory because the women died while in custody. Obviously, we will not interfere with those inquiries.

When we talk about the future work programme we will return to the subject and find out how members think that it can be incorporated.

## Chhokar Reports

**The Convener:** Item 2 is the reports on the case of the murder of Surjit Singh Chhokar. The purpose of today's discussion is to consider the reports and identify the issues that are relevant to the Crown Office inquiry. I have taken the liberty of putting it that way but it is open to members to decide how to deal with the reports from Anthony Campbell and Raj Jandoo.

For your information, the Equal Opportunities Committee considered the Raj Jandoo report at its meeting yesterday. That committee agreed to hold a meeting before Christmas to take evidence from the Deputy First Minister, the law officers, the Chhokar family and any other relevant individuals and organisations. They have chosen a Lanarkshire venue in order to be sensitive to the Chhokar family's needs. This committee will consider how to take account of the reports for its own inquiry. We have to consider how to avoid duplicating the work of the Equal Opportunities Committee.

I discussed this issue with the clerks prior to putting it on the agenda. I started off thinking that we should concentrate our efforts on Anthony Campbell's report. However, the clerks suggested that we cannot separate the two reports and I agree. Jandoo's report contains quite a bit about the feelings in the Crown Office that seem to be relevant to the issues that we are considering. It would be useful to hear members' views.

**Stewart Stevenson:** I welcome the fact that the Equal Opportunities Committee will be taking a lead on the issue. Although the report is in a legal context, there are much broader issues for the community and every one of us as individuals to consider—issues such as how we think about people from different cultures and different religions. The Equal Opportunities Committee is best placed to deal with that broad remit.

Nonetheless, I concur with the view that Dr Jandoo's report is equally relevant to the Justice 2 Committee and that we should consider the legal aspects of the matter.

**Scott Barrie:** I agree with Stewart Stevenson. There are implications for wider society, not just for the legal system. We have to be sensitive and careful that there are not a lot of different committees going off and doing their own thing, even though they might have a legitimate interest in the matter. Everything has to be co-ordinated in a sensitive way.

I understand also that there may be a debate on the reports in Parliament in the near future. That will give a clear lead to any committees on what we are going to do.

In terms of the legal situation, some of the recommendations and points that have been made fit neatly with the inquiry that we will undertake. If we take evidence, we should take it in that context. Given that evidence will be given in public to the Equal Opportunities Committee, perhaps some or all of us should be at that meeting so that we do not duplicate it with extra meetings, and so that we get the information that we require for our inquiry. If members go to the meeting with that intention, it may be a way of dealing sensitively with two issues at the same time.

10:30

**Bill Aitken:** I will share with the committee the outcome of yesterday's Parliamentary Bureau meeting. There will be a full debate on both reports next Wednesday afternoon. The debate is scheduled to last the whole afternoon. The only caveat is the current health of Mr Chhokar senior, who you are aware is unwell. The indications are that at this stage, the family has no objection to the proceedings going ahead next Wednesday, but that caveat applies.

With regard to how this committee should address the issue, I concur with the view that we have an input to make on the Campbell and Jandoo reports. Clearly, we have to address a number of issues in both reports that have significant portent for the administration of justice in Scotland. There is merit in the suggestion that we should have a reporter on the proceedings at the Equal Opportunities Committee. As Scott Barrie said, this matter must be dealt with sensitively and sensibly. There will come a time in this unhappy matter when we have to move forward. We do not wish the family to be subject to unnecessary harassment by having to address more than one committee. The reporter suggestion is eminently sensible.

**The Convener:** I accept Scott Barrie's suggestion that we should appoint someone, or seek a volunteer, to liaise with the Equal Opportunities Committee. Obviously, I will speak to the convener, as I do regularly on matters with which we both deal. Is someone willing to commit to going to the Equal Opportunities Committee meeting?

**Mrs Mulligan:** Do we know where the meeting will be held?

**The Convener:** We do not have the details yet.

**Mrs Mulligan:** I assume that it will be in Hamilton.

**The Convener:** We have been told that it will be in Lanarkshire. I suppose that a venue is being sought at the moment.



**Mrs Mulligan:** Hamilton is a good venue.

**Stewart Stevenson:** I am on two major committees—this one and the Rural Development Committee—so it would be difficult for me to fit in being the reporter.

**Bill Aitken:** The meeting will be in the west of Scotland, so I would be prepared to go if no one else wishes to go. It is probably more convenient for me to go, provided that it fits in with my timetable.

**Scott Barrie:** We do not know when the meeting will be held, so we should not appoint someone and then find out that they have a timetable clash. We all have an interest in the issue. I did not volunteer because I do not know whether the meeting would fit in my timetable and because of geographical considerations. We should leave it to the convener to make sure that someone, or perhaps more than one person, is able to attend to report to this committee. I know that the convener has an interest in this matter and attended part of one of the trials. I appreciate that you have other demands on your time and may not wish to be a reporter, convener, but you may wish to represent the committee.

**The Convener:** I thank Bill Aitken for making that offer and hope that it will stand when we get the details. Next week, when I have the details, we can return to the subject and place on the record who is to be the reporter.

I take it that the committee is agreed that we will consider both reports. Are members happy that we consider them in the context of our inquiry into the Crown Office and Procurator Fiscal Service?

**Mrs Mulligan:** We need to do that because of the on-going inquiry. However, we have already accepted that the inquiry will take some months and it is important that we consider the reports fairly soon. I agree with considering them as part of the inquiry as long as we do so sooner rather than later.

**The Convener:** We will ensure that any witnesses whom members want to question on the matter will be incorporated into our work plan fairly soon. There are spaces to allow that to happen.

Are there any preferences as to which witnesses we should call?

**Bill Aitken:** If at all possible—on humane grounds—we want to avoid calling in the family unnecessarily. There is one witness, Mr MacDonald, the depute fiscal at Hamilton, who may well have some valuable insight into the matter. We will have to hear from one or possibly both of the law officers eventually.

**The Convener:** I agree. I suggest that we should also hear directly from Anthony Campbell. I

would like to go into some depth with him about the legal issues and the issues drawn out in the report about lack of preparation and so on.

The Solicitor General for Scotland has commented in the press about the 110-day rule. It is worth considering incorporating that into our work. We have said that our inquiry will consider all the issues that may put pressure on the Crown Office. Whether the issuing of fiscal fines for more serious offences is a pressure point, it seems that, given that that has already been raised in the public domain, we may have to consider it to be a pressure point in the system, albeit a sensitive one. The Solicitor General made comments on it at the weekend and we must take note of that.

**Stewart Stevenson:** I, too, noted the comments on the 110-day rule. It is slightly ironic that in today's climate in the public service in which, as in business, we are seeking to set targets, measures and incentives for people, the suggestion that we relax that particular rule has arisen. I would need to be very convinced of the benefits before agreeing that the time should be extended. It is a useful and beneficial source of pressure in that it sets a standard that we must ensure is sufficiently funded so as to be met. On the other hand, if I hear good evidence from elsewhere, I may be persuaded otherwise. I want to put it on record that it would take an awful lot to persuade me that the 110-day rule should be relaxed.

**The Convener:** I do not disagree. Given the number of members nodding their heads, it seems that most of the committee agrees with you. However, the issue is whether we should examine something that has been questioned. I support what you said about having to go a long way to change the rule but as the issue has been raised, I do not think that we should ignore it.

**Bill Aitken:** Do we have an indication of the Executive's intention on the matter? Is there a possibility that the 110-day rule will be dealt with before the publication of our report? I share your concerns. Scots law operates on the basis of the presumption of innocence and people should not be remanded in custody without being tried. I am all for banging up people who are guilty and who have been properly sentenced, but no one is guilty until they have been proven guilty. That is an important issue.

**The Convener:** There is no suggestion that the Executive is even going to look at the issue. The Solicitor General has simply commented in the press on the matter. Perhaps we should seek clarification in writing from the Solicitor General on what he said. Other people have discussed the issue—no more than that. Including it in our discussion would make our inquiry comprehensive.

**Scott Barrie:** Irrespective of recent comments in the press, the issue is of interest to our inquiry. We are investigating pressures on the Crown Office and Procurator Fiscal Service and even if the matter is not being raised all the time, if it has come up as a problem, it is worth taking evidence. That would be useful, even if only to allow us to say that we hold the 110-day rule sacrosanct. You are right to highlight it as an issue, convener.

**The Convener:** Thank you.

10:40

*Meeting continued in private until 12:41.*

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