

JUSTICE 2 COMMITTEE

Tuesday 20 November 2001
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE

32nd 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

WITNESSES

Iain Gray (Deputy Minister for Justice)

Paul Lockley (People Experiencing Trauma and Loss)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Tuesday 20 November 2001

(Morning)

[THE CONVENER *opened the meeting in private at 09:45*]

09:55

Meeting continued in public.

The Convener (Pauline McNeill): I welcome everyone to the 32nd meeting of the Justice 2 Committee in 2001. I have received apologies from George Lyon. I have nothing to report as convener.

Subordinate Legislation

Draft Small Claims (Scotland) Amendment Order 2001

Draft Sheriff Courts (Scotland) Act 1971 (Privative Jurisdiction and Summary Cause) Order 2001

The Convener: Agenda item 1 concerns two draft orders. I refer members to the note by the clerks, J2/01/32/3, which summarises the submissions received and the applicable procedure.

Members will note that we have received several submissions other than those requested by the committee last week. In the intervening period we have received submissions from the Scottish Council on Deafness, Pain Association Scotland, Grigor and Young, Govan Law Centre, the Transport and General Workers Union and the Association of Personal Injury Lawyers. We have also had late submissions from the Graphical, Paper and Media Union and from the Union of Shop, Distributive and Allied Workers. Under exceptional circumstances, in order to assist members' consideration of the orders, the clerks have managed to summarise those late papers at very short notice. I am minded to point out that this is not the best way to conduct committee business.

It is unusual to refer subordinate legislation for a further meeting, but we all agreed that we had not been given enough time to consider the orders. I note that the minister is not yet here, although I am informed that he is on his way. I propose to adjourn the meeting for a few minutes to allow the minister to join us.

09:57

Meeting adjourned.

09:58

On resuming—

The Convener: I welcome the minister and his team to the Justice 2 Committee. I know that Iain Gray has not been very well and we are grateful that he could be here this morning. The committee's comments this morning could be of great importance.

I have listed the organisations that made submissions to the committee on their views on both statutory instruments. The time scale has been extremely short. I am sure, like me, that members are doing their best to plough through all the submissions, which contain complex issues that we have not been able to examine fully. Last week, we agreed that we would try to clarify questions from committee members as far as that was possible.

Thompsons has clarified that the GMB, the petitioner, was consulted through the offices of the Scottish Trades Union Congress. To be fair, owing to the time lapse since 1998, many people have become confused about whether they were consulted. They were consulted, but it was a long time ago. The committee should note that the Executive has to undertake consultation. As a committee, we have to consider whether we can recommend the orders to the Parliament.

It is also clear that, given the short notice, Thompsons is unable to provide the statistics that the committee wanted about the number of cases that would be excluded from the Court of Session were the orders to be passed. I am unhappy that we do not have that information.

Because of the complexity of the orders and the short amount of time that the committee has been given for their consideration, it is very difficult for us to recommend that they be approved by the Parliament. The matter is ultimately one on which the Parliament will decide. Our view will, of course, carry a lot of weight.

The committee has a choice: it can debate the merit of the issues that have been put in front of us, ascertain whether we are able to clarify the points and make a decision about a recommendation; or, owing to the complexity of the issues and the shortage of time, it can decide that we are not in a position to make a recommendation. I do not feel in a position to make a decision as to whether the passing of the orders would create a major impact. I would like more time to decide on what the issues are.

10:00

Scott Barrie (Dunfermline West) (Lab): I am inclined to agree with the convener. As she rightly said, one of the major difficulties has been the delay that has followed from the original consultation. People have forgotten or are no longer aware that the consultation was done or whether current references are to that consultation.

Given that the minister is with us, is it possible for the Executive to further consult, discover what the current position is and get answers to some of the questions that have been raised? If the Executive remains certain that it is desirable to pass the orders, they can be reintroduced at a later stage. Is that one way out? In consequence of the delay between the consultation taking place some 18 months ago and the laying of the orders, people have forgotten that they were taken away and are now being reintroduced.

The Convener: I suggest that the minister hears what the committee has to say before he responds.

The Deputy Minister for Justice (Iain Gray): Yes, by all means.

Bill Aitken (Glasgow) (Con): I am concerned at the way in which the matter has been dealt with. Some important and substantive issues have to be addressed. The minister's contribution last week was extremely helpful, as it cleared up some of my concerns, but I am far from satisfied that individual committee members and the committee as a whole have had sufficient opportunity to look at the matter in the depth that is required.

As the convener said, the matter is complex. That should not concern us—we expect to deal with complex matters, but to do so within a time scale that is reasonable. Given all the last-minute submissions, we do not have sufficient time to make a measured judgment of the orders. I would be unhappy about being placed in a position whereby we recommend positively to the Parliament that the orders be approved. At the end of the day, it may well be that the orders should be approved, but I want to be satisfied that that is the correct course of action.

Stewart Stevenson (Banff and Buchan) (SNP): I cannot support recommending these orders to Parliament at this stage. I am not opposed to raising the claim limits. That is quite proper. My concern is about the further input that we are getting—in particular from some legal firms—that is at odds with the Law Society of Scotland's submissions. I am not sure why that should be so. It might be useful to have a period of time for the Law Society of Scotland to consult its members and for them to give direct input if they want to.

I also think it would be useful if the deputy minister could tell us who would be disadvantaged by our not passing these orders at this stage, so that we can understand the implications of postponing their implementation. We understand many, if not all, of the benefits, but it would be useful to put on the record, if the minister can, the disadvantages of not proceeding at this point and who might suffer, so that we have a balanced view and Parliament, if it debates the matter in the near future, has the benefit of that information.

Mrs Margaret Ewing (Moray) (SNP): I want the minister, in responding to the concerns—which I share—that were raised by other members, to say what he sees as the implications of postponing this recommendation. What would be the knock-on effect for people who are looking for summary claims or who are going through the small claims courts? Also, when did the Scottish Executive last advertise information about these orders in the Scots Law Times and the Journal of the Law Society of Scotland? I am concerned about the fact that I am receiving letters from legal companies who claim that they are unaware of this matter. When was it last advertised that the claims limit was being reviewed?

Iain Gray: I appreciate the opportunity to come back this morning and take part in the continuation of the discussions that we had last week. It seems fairly clear to me that the sense of the committee members is that they neither support nor oppose the orders that are before them. They do not feel that they can make a reasoned and reasonable decision. I must take cognisance of that fact. We are keen to move these orders and the proposed claim limits forward on the basis of a consensus. We do not think that there should be dissension about the matter.

The purpose of the orders, which we discussed last week, is to improve the system of civil justice. I was asked who might be disadvantaged if we maintain the status quo for a period. Our view is that there is a potential disadvantage to litigants who under the new orders, if they are passed, would have access to the simpler, more straightforward, procedures—including timetable procedures—of summary court procedure. I must acknowledge, however, the opposite argument that that would not be a real advantage. Some of those who have made submissions to the committee argue that case. There seems to be no distinct group of people who will be clearly disadvantaged if the committee feels that the proposed change to the claim limits must be considered further.

The limits have not changed since 1988 and we believe that they should now be reviewed. We expect to return to that debate at some time in the future. However, taking account of the feeling of

the committee, the most sensible way forward is to withdraw these orders and return to them at a later date. That will allow the committee more time to consider the arguments and allow the Executive more time, perhaps, to produce further information that will address some of the points that have been made.

I was asked whether we will undertake to have another consultation, given that it is some years since the initial consultation. We are reluctant to commit to the expense of a full-scale consultation, but, following last week's and today's debates, it is incumbent on the Executive to produce further evidence for what we believe to be the beneficial effect of the changes. Last week, I mentioned the commissioning of research and undertook to seek ways of producing evidence on cases that settle and on those that are defended in court.

I hope that the committee is willing to accept the withdrawal of the orders. In the time that is created by doing that, we will seek co-operation from appropriate firms to try—without breaching confidentiality—to find harder evidence about the number of cases that are involved and the way in which they settle. The lack of evidence is the basis for the committee's difficulty in trying to ascertain what the situation is.

I propose that we withdraw the orders and return to them at a later date. That will allow us to garner further information and will allow committee members, if they wish, to pursue the matters for which they need more time to investigate.

The Convener: I think that the committee finds that response helpful.

Members *indicated agreement.*

The Convener: The minister can see that members find it helpful. The suggestion will allow time for the committee to consider taking evidence on the matter. He does not need our agreement on the withdrawal of the orders, but I am pleased that we have reached a consensus on the need for more time. Is the minister in a position to give an approximate time scale?

Iain Gray: If the committee is prepared to bear with us, we will take some time to consider the time scale. It would be helpful to have an indication from the committee on the course of action that it seeks to pursue. The debate has moved quickly and, rather than tying ourselves to a time scale, we must take a little time to consider how to pursue the matter.

Mrs Ewing: I appreciate that, but an open-ended time scale might cause concern among the people who made representations to the committee. You said that you are unwilling to commit the Executive to further full consultation. Will you tell the committee about the consultation

that the Executive will undertake?

Iain Gray: If it is acceptable, I will respond to that in writing after I have taken time to consider the best way forward.

The Convener: It would be useful if we kept in touch by letter so that we know the eventual time scale and can consider the action that we wish to take.

Crown Office and Procurator Fiscal Service

The Convener: Agenda item 2 is the committee's inquiry into the Crown Office and Procurator Fiscal Service. The committee agreed to take evidence on witnesses' experience of the justice system. With us this morning is Paul Lockley, who is a consultant with People Experiencing Trauma and Loss—PETAL for short. I welcome Paul to the committee and thank him for coming. We look forward to hearing more about your organisation and we have a number of questions. Before that, you have a few minutes to say something about PETAL.

Paul Lockley (People Experiencing Trauma and Loss): PETAL was founded in March 1994 by two families who were bereaved by murder. It provides relief from the trauma of murder, although recently we have also helped those affected by suicide. A secondary, subsidiary, aim is to make relevant officials such as the police, lawyers and court helpers aware of the trauma and complicated grief of those who are affected by murder.

PETAL is based in Hamilton and serves principally North and South Lanarkshire, but takes referrals from greater Glasgow and beyond. Its services include home visits, a support group for adults, a group for children and one-to-one counselling. Pre-court visits and support for clients in the High Court are also provided. Telephone support may be an option, especially for clients in more distant areas of Scotland. Services are provided by unpaid but trained volunteers. No one in PETAL receives a wage. Most people in PETAL have been affected by murder, although they cannot work for the organisation until two years after the murder.

10:15

Referrals come from the police—particularly from family liaison officers—and from victim liaison officers, psychologists, mental health workers, general practitioners, victim support and social work departments. Client referrals may be taken up at any time from a few days to years after the murder. Clients receive help for as long as they want it or see us as necessary.

Training is provided for support work and for trainers. That gives volunteers the option not only of providing services but of developing personally, so that they can become trainers in PETAL. Training helps volunteers who have been affected by murder. The support work not only helps to deal with trauma, but helps clients to return to a fuller social life and employment.

PETAL continues to extend its service to children, who may be overlooked by their grieving parent or parents.

The Convener: I would like to have a flavour of any differences between the experiences of families in 1994, when PETAL started, and their experiences now.

Paul Lockley: I was not in PETAL in 1994. PETAL was founded because no services existed for families. Services vary. In the past year, the Procurator Fiscal Service has improved. Now, it meets families before cases reach court. However, the Crown Office is rather different. Families do not receive replies from the Crown Office. The only people whom the Crown Office contacts are MPs or MSPs.

It is also difficult to obtain a satisfactory answer from the Crown Office. We have a client who writes every month to the Crown Office to try to obtain a satisfactory reply. He has yet to receive one, and he has been writing for two and a half years.

The Convener: Are you saying that the Crown Office replies, but not in a way that satisfies the complainer?

Paul Lockley: After a trial, people want the Crown Office to tell them why decisions were made about that trial. They do not receive answers.

The Convener: Do families of victims or witnesses feel excluded from the criminal justice process?

Paul Lockley: Yes, almost completely. Members must understand that we are talking about people who have lost someone through murder. They want to grieve for the person who has been lost, but they cannot. They have been traumatised by the murder and by the suddenness and unexpectedness of the death. When children are murdered, people are traumatised by the fact that they died before their parents. We expect our children to outlive us and it is traumatic when they die first. The unexpectedness of the death causes trauma and any violence involved in the death increases that. Family members might have witnessed the murder or they might have seen the marks of violence on the body. They might also have seen blood splattered on walls or heard about the violence that was involved.

Families cannot even begin to grieve for the person whom they have lost and are desperately trying to hold on to life. They try to control what is happening to them by working through their trauma, but they are unable to do that because they are retraumatised by subsequent events. Once a person has been traumatised, it is easy for them to be retraumatised by the investigations of

the police and precognition officers, or by the fact that the victim's body no longer belongs to them and is cut up by a pathologist. They can be retraumatised again and again. As a result, they feel totally powerless and disorientated—they do not know what is happening or why. They do not know who they are any more and wander about almost in a dream.

Members must understand that when one deals with people who have been traumatised in that way, one must attend to their needs. If someone is disorientated, one of their needs is to be given information. That should be done not simply to allow them say, "Oh, now I know what is happening". Giving them information can help them begin to get some control over their life. Quite often, they are excluded and do not receive information. Alternatively, information comes in legal-speak, so they cannot understand it, or it deals with concepts that they do not understand, such as the difference between provocation and self-defence.

From the very beginning, the families have to deal with a judicial system that is difficult for them to understand and that does not give them information. Thereafter, they walk into a trial in which they have no say. Most people would want the person who murdered a member of their family to die, but, instead of that, they must face the procedures of the judicial system. Their natural desire for revenge is subsumed into the social process of justice. They expect the system to give them some input, some fairness and a correct verdict. They might achieve one of those aims, but usually they do not achieve any of them.

The Convener: When it comes to the trial, would it be helpful for families to have with them someone whose job is to explain what is going on in the trial as it proceeds?

Paul Lockley: Yes, absolutely. We have found that the new victim liaison officers in Hamilton are useful. Most people are not used to courts at all and, in particular, they are not used to the High Court. We conduct pre-trial court visits with them, simply to enable them to see where people stand in the court and what happens during the trial. They do not have even that basic information.

Stewart Stevenson: Thank you for coming today, Paul. We are already beginning to get a clear and valuable understanding of the experiences of relatives and friends of murder victims.

I will pursue a couple of lines of questioning. What concerns do your clients bring to PETAL and what are the organisation's responses to those concerns?

Paul Lockley: Our clients are concerned that they do not know what is going on. In particular,

they are concerned about postponed trials. That has got worse over the past year. Nowadays, trials rarely start on the first day. That might seem to be just an inconvenience, but for families it is quite devastating. To go to a trial they have to rev themselves up. They prepare themselves, then they are told, "Sorry, it's not on today." They are not even told for sure when it will begin. We often have to phone up almost on a daily basis to find out when a trial is going to take place.

Stewart Stevenson: What notice of postponement are people getting? Is it adequate? Could it be better managed?

Paul Lockley: They can turn up to the court and then find that the trial has been postponed. In one case, the family waited around until the afternoon and then were told the trial was postponed. The issue is a physical one. They have to travel to the court, which is difficult if they have children, then they have to go home and go back again. That can happen several times.

Stewart Stevenson: Are there facets of the court experience that it would be useful for you to tell us about so that we can do something about them? Obviously, there is the court itself, the surrounding media attention, and the different roles of people in the court. How do you support people in dealing with those facets?

Paul Lockley: It should be realised that because people have been traumatised, and are being retraumatised, they tend to be sensitive to what is going on. If a trial is postponed, to some that might be an inconvenience, but to those people it sends a message. They are just told, "Sorry, it's not on today." As far as they are concerned, that means, "You are suffering now, and you will continue to suffer." That is what happens. People who are affected by murder view the situation differently from the way that the legal service sees it.

Training for procurators fiscal would help them to understand that. Having said that, there are some good procurators fiscal, but others are not good. Many of the issues around murder are emotive, and it is clear that procurators fiscal do not want to deal with them. Sometimes they will walk out of the room when such issues come up. The family then think, "What have I done? I have caused this." They take it on themselves.

Training is important. We are concerned that inexperienced procurators fiscal are given murder cases without enough support and supervision. People should not learn on the job when the case is murder. They may do so with lesser cases, but not with murder. Procurators fiscal need support as well.

Stewart Stevenson: Finally—

The Convener: Before your final question, I ask Bill Aitken to come in on that point.

Bill Aitken: In your experience, Mr Lockley, how many relatives of murdered people will go to court? That may be a difficult question.

Paul Lockley: Usually, relatives go to court. They want to hear what happens. They want to know why the murder happened. They want to get to the truth. Unfortunately, courts want to prove whether someone is guilty or not, which is different. However, relatives want to appear and that causes difficulties. You have to remember that they are walking into a court where the families of the accused might be, and they do not know who they are. We have had cases where they have sat down together, and the families of the accused have started speaking about the case. Obviously, they have their own side. That is quite difficult.

Bill Aitken: I read with interest about your organisation's positive contribution in the Chhokar case. One thing to come out of that case was that people are simply not aware of what happens—you spoke about that in your presentation. In counselling a client prior to a trial, do you go through the procedures and what could happen?

Paul Lockley: Yes. It is important that they have some idea of what is happening. It is also useful to be in the court with them to explain what is happening. The procedures are sometimes explained in the courts, but usually they are not.

10:30

Bill Aitken: PETAL explains matters, but should there be a separate Government agency—for want of a better term—with responsibility for doing so? There is a practical difficulty in that there cannot be a running commentary in the course of legal proceedings, but should an agency, rather than your organisation, explain what is happening from the start?

Paul Lockley: There probably should be an agency in the courts. I mentioned victim liaison officers. There are two in Hamilton and I know of one or two around the country. They are helpful. Perhaps the scheme can be expanded. We spend a lot of volunteer time in courts. That is useful, but a lot of time is spent sitting and waiting. In the main, that time is non-productive.

Bill Aitken: You pointed out, fairly, that some procurators fiscal are good in an advisory role. In your experience, do many attempt to carry out that role who are more inexperienced than the norm?

Paul Lockley: Over the past year, the service has become more aware of the needs of victims and those affected by murder, but perhaps some need more training. In the legal service, people are brought up in a certain way of thinking that is

different from the victim's way of thinking. Those ways of thinking should be married together so that victims can understand more. That would be helpful because victims are often traumatised. Simple matters should be understood. For example, a person who has been traumatised does not easily take things in. A piece of paper should be given to them so that they can refer to it at a later date. Sometimes, solutions are as simple as that.

Stewart Stevenson: The convener has given me dispensation to move slightly away from the Crown Office and Procurator Fiscal Service in the light of a constituency case that relates to civil consequences for the family of someone who was murdered. I will briefly paint the circumstances and ask if the case is typical or if there are similar cases.

After a long period of violence, an abusive husband murdered his wife. The grandparents of the children of the murdered woman became the guardians of the children. It was only because the murderer consented voluntarily to sign over the ownership of the house in which the woman had lived with the family that the children were able to continue to live in a house of adequate quality and maintain continuity in their schooling. It was extremely traumatising to the family to find that they were almost penalised in the civil law through the husband's inheriting the half of the house that the murdered wife had owned. In that case there was a happy outcome because of the co-operation of the convicted murderer.

Have you found similar cases or other cases where the civil law inadequately responds to the victims of murder?

Paul Lockley: To be honest, I would have to go back and check on that.

Stewart Stevenson: I realise that you did not come prepared to answer that sort of question.

Paul Lockley: There are a lot of difficulties after a murder, especially with children. Children are often overlooked, partly because parents are caught up in their own grief and cannot deal with the children. Children also respond differently to those situations. All I would say is that difficulties are likely and, if children are involved, those difficulties are always increased.

One of the sad things about cases of murder is that there are less-well-known spin-offs, although that might not be the right word. After a child is murdered, the parents are likely to split up, even if they have been together a long time. The death of a child brings tremendous stress to a marriage. In a way, the whole family is the victim. In the same way, the death of a child greatly increases the risk of suicide by a sibling.

All sorts of things can happen when there are children involved. I apologise because I cannot answer your question straightaway.

Scott Barrie: Your evidence has touched on some crucial issues. In coming to terms with what has happened, is it essential for the welfare and future recovery of relatives that they be fully informed about the progress of the case? Is that the crux of what you are telling us this morning?

Paul Lockley: Yes. When something like that happens, the family's whole life is put on hold, especially if relatives do not know what is happening in the case. The family cannot begin to move on until certain things are out of the way and the trial is over. In trying to get through the traumatisation and retraumatisation, the family members have to know what is happening, even if it is simply that someone is still interested in the case or that the police are still investigating. They might need to hear only one sentence to feel okay.

Scott Barrie: I turn to the issue of contact and liaison with the Crown Office and the Procurator Fiscal Service. What sort of contact do you have with those organisations prior to attending the court with your clients? You seemed to suggest that contact with the Procurator Fiscal Service is slightly better than contact with the Crown Office.

Paul Lockley: Recently we have found that, if phoned beforehand, procurators fiscal are much more inclined to meet the families. That makes a lot of difference to the families. They are suddenly involved in the process and feel that they are being recognised and acknowledged. It does not matter that very little is said. They are recognised as the family involved.

Contact with the Crown Office usually comes after the trial when we are trying to find out why certain things happened. That is a fairly negative experience for most families, but it is important for a family to know why a charge was reduced, for example. The family members are not consulted about that. No one tells them about it; they just hear suddenly.

Scott Barrie: Are you suggesting that, during the progress of a case, while liaison with the Procurator Fiscal Service could be improved but is okay, there is no such liaison with the Crown Office, that people do not know what is happening to the case during that period and that contact is made with the Crown Office only after the trial?

Paul Lockley: Yes.

Scott Barrie: From your perspective of working with families, would you rather have a system that allowed contact with the Crown Office during progress of the case in order to help people?

Paul Lockley: I would be quite happy if the Crown Office actually wrote to the families—full

stop—and explained why it did something. However, that does not happen.

Scott Barrie: Why do you think that might be? Is neither the Crown Office nor the Procurator Fiscal Service aware of the needs of victims and their families? Is each branch so caught up in servicing the legal process that it does not think that such liaison is its job, or are the branches not sufficiently aware that there is something that they could be doing?

Paul Lockley: Each branch says that that is not its job, nor is it within its remit. Furthermore, the service overall is not user-friendly. There are ways of dealing with inquiries from people who have gone through a terrible experience—to be stonewalled or passed around only makes things worse. A few more social skills might be useful.

Scott Barrie: Has there been any progress in the area that the convener mentioned in her opening remarks, or are things just as bad as when your organisation was set up or when you became involved in it? Are people who are entering the service beginning to understand that there is a need to explain circumstances a bit more, to meet people and to talk to them in a more appropriate way than would have been the case 20 or 30 years ago?

Paul Lockley: There is a growing awareness of victims and co-victims and the fact that they are outside much of the legal system. The problem is often hidden. For example, in the Chhokar case, people were right to be concerned about racism, but there was no concern about how families are acted upon by the legal system. Inquiries about the Procurator Fiscal Service and the Crown Office simply highlight what happens to families who come into contact with the legal system. I am not criticising anyone—everyone does their job—but the systems have been set up in such a way and the perceptions are such that, for whatever reason, victims and co-victims do not get a look-in.

Scott Barrie: We have already taken evidence from the Procurators Fiscal Society which acknowledges—as you have done—that we must move the issue on and improve the system. On that point, how could the concerns of victims and their families be best conveyed to the Crown Office and the Procurator Fiscal Service?

Paul Lockley: There has been change in the Procurator Fiscal Service with the introduction of victim liaison officers. As it is, many procurators already show a fair degree of understanding. Perhaps training with other agencies would still be useful.

This issue perhaps also affects the service's remit. For example, you can get hold of a procurator fiscal only before 9 o'clock, after which they will be in court. You might catch them after 4

o'clock, or you might not.

Knowing whom to use is also an issue. Sometimes the High Court social workers are better for giving information than the procurators fiscal. We also have to recognise what remits various people have and how best we can come together.

Scott Barrie: If there were no organisations such as yours, people who were coming to the justice system as victims for the first time would find it difficult to know where to go to. They would not know such things. That is one of the difficulties that people encounter.

10:45

Mrs Mary Mulligan (Linlithgow) (Lab): I will ask a supplementary question before I come to my main questions. Twice this morning—in answer to the convener and to Bill Aitken—you said that the Procurator Fiscal Service has improved during the past year. Has there been any particular impetus for that improvement in that time scale? Is there anything on which we could build?

Paul Lockley: I am not sure why that improvement has taken place. You will have to ask the Procurator Fiscal Service. From our point of view there has been a welcome improvement. We find that the service is fairly flexible. We usually have good relationships with PFs.

Mrs Mulligan: You are probably aware that the Scottish Executive is consulting on proposals to introduce victim statements. Obviously, in murder cases, it is the families of victims who would make statements to the court if the consultation concluded that victim statements should be introduced. Would such statements be welcomed and would families find them useful?

Paul Lockley: I think that families of victims would find victim statements very useful. Families would feel that they had some input into the process. It would surely help families to write down and let someone in authority know what has happened to them and how they have been devastated—whatever happened to the statement. The statement might have some effect, but the mere fact that the family would be brought into the process is a definite advantage of the proposal.

Mrs Mulligan: Do you think that there would be quite an uptake of victim statements, if they were introduced?

Paul Lockley: Yes.

Mrs Mulligan: On the technicalities, do you envisage the victim statement being oral or written?

Paul Lockley: I would hope that the victim statement would be written. We would like to help

people to prepare victim statements. We would want not to write the statements for them, but to help them. Families of victims can be all over the place and they would need support to write statements.

Mrs Ewing: I have found the evidence that you have given today informative and moving. I am impressed by the work that you are doing. The leaflet that you have given us states that you are funded by

"North and South Lanarkshire Councils, Charitable Trusts and Fund Raising."

As we all know, work always requires money. Do you receive adequate funding? Are there mechanisms whereby more funding could be given, not just to PETAL, but perhaps to set up similar groups throughout the rest of Scotland?

Paul Lockley: You will not be surprised to hear that we do not get enough funding. To be specific, we are seeking funding for at least one waged person. We get so many inquiries that we want someone permanently in the office. We are forced to have rotas as otherwise there would not always be someone in the office.

The difficulty with fairly small organisations that are dedicated to giving services to clients, is that they do not spend enough time trying to raise money. We raise money, but within limits. We are caught between raising money and the other demands that are put on the organisation. We are in a difficult position. I cannot remember how much funding we receive, but it is fairly low.

Mrs Ewing: In your opening remarks, you referred to Lanarkshire and greater Glasgow, but do you receive inquiries from other areas of Scotland?

Paul Lockley: Yes.

Mrs Ewing: What kind of mechanisms do you put in place to support people who phone from elsewhere?

Paul Lockley: We carry out home visits and try to persuade people to come to group meetings in Hamilton. Obviously, that is difficult for people who live some distance away so we offer them telephone support. Those people might have local services, but many people want to speak to someone who has been through similar experiences or has been affected by murder. It is their choice. We would like to help more people, but we cannot because the demand is too great.

Mrs Ewing: You said that you want one permanent full-time waged person in your office. What kind of training would you expect that person to have? For example, would you like someone with a social work, counselling or legal background? The job is not simply picking up a phone.

Paul Lockley: We would require someone with administrative and managerial experience because the job would involve dealing with letters, making phone calls, fundraising and working with volunteers. We would want someone who was sympathetic to the ethos of the organisation. They would not have to have been affected by murder, but they would have to understand how people in that situation feel, so a counselling or social work background would be suitable.

The Convener: I want to go over in more detail some of the points that you mentioned. What percentage of ethnic minority families do you deal with and what can you tell us about their experiences?

Paul Lockley: Apart from the well-known case, we have not dealt with people from ethnic minorities. We are aware of the difficulties of breaking into that area, which is why I have been in touch with racial equality organisations. We are considering not only how we can have the right services, but how we can provide a service that is useful. It might be that we cannot provide such a service for people from ethnic minorities because support should come from their communities. We do not want to colonise parts of ethnic communities in our work so we must consider whether it is acceptable.

The Convener: You said that procurators fiscal often lack experience. How do you know that?

Paul Lockley: Volunteers are in touch with PFs and follow how the cases develop—PFs sometimes admit that they are not too experienced. We can quickly pick up a fair idea of whether they are experienced.

The Convener: You would not be the first witness to make that statement. Would that extend into the trial itself, for instance to advocate deposes?

Paul Lockley: I am not sure. I would not like to give a definite answer on that.

The Convener: On liaison, you talked about how important it is for families to get information. As the case progresses, families want to be kept in touch. You are saying that the family should know what is going on right through the trial. Are you clear about whether the person who does that job is independent from the Crown Office? I ask that because the Crown Office will say that the person who is prosecuting or conducting the trial has to be independent to do their job as a prosecutor and therefore may not be the right person to talk to the family. Do you have a view on that?

Paul Lockley: All I can say is that there are certain needs. It is up to the judicial system to work out who does what. We are not in the

business of telling people what they should be doing. We are just saying, "Look, here is a need. Some people are fulfilling that need and some people are not." I understand that there are good reasons why people cannot always give information. For example, family liaison officers are part of an on-going inquiry so they can only give so much information. I also realise that victims or co-victims constantly want information and it can be slightly annoying for people to have to keep giving it to them.

Bill Aitken: I found your evidence particularly interesting. How many cases did you deal with in the past year?

Paul Lockley: I am afraid that I cannot give you any statistics. We sent a whole batch to the committee, but I understand that there have been some difficulties with the photocopying. We made the mistake of sending them in colour—apparently the colour cannot be duplicated. I hope that you will get the statistics.

Bill Aitken: My second question is on the extent to which your clients are kept informed of what is happening. Do you accept that it is sometimes difficult for the Crown Office to advise your client about the reason behind a decision, for example to accept a reduced plea, without hurting them more?

Paul Lockley: I accept some of that, but I do not accept that the Crown Office cannot reply at all to families. If the Crown Office says that there are difficulties it could give the family some kind of abbreviated response. We are all realistic and so are the families we deal with. It is the difference between being acknowledged and not being acknowledged.

Bill Aitken: I envisage a situation such as a murder in a gang fight. Two or three people are indicted for murder, then a culpable homicide plea is accepted from one or two of them because the victim of the crime was involved in the initial incident. Do you think that the victim's relatives, for example his parents, might find it difficult to be told that a plea had been accepted because their son was initially involved?

Paul Lockley: Yes. That might be difficult. However, it is much more difficult for the relatives to accept that they get no reply at all. The explanation that you have presented would be fine—the family could work on it and accept the situation. The main problem is that, by failing to reply to their letters, the Crown Office is further excluding people who have been excluded or who feel that they have been excluded.

Bill Aitken: That must be an issue of grave concern.

The Convener: Thank you for your evidence.

The committee has been very moved by your comments, which I am sure will be useful to our inquiry. I am certain that the committee will want to take action on many of the points that you have raised.

Paul Lockley: I also have some written evidence that I would like to leave with the committee.

The Convener: If you give it to the clerks, we will be sure to read it.

Marriage (Scotland) Bill

11:00

The Convener: Subject to Parliamentary Bureau approval today, the Marriage (Scotland) Bill will be referred to the Local Government Committee as the lead committee. The justice committees will be the secondary committees because the topic of marriage more generally falls within the remit of the Minister for Justice. The committee is invited to consider whether it wishes to examine the bill at stage 1 and report to the Local Government Committee on its findings, with a likely reporting date of early December.

The committee recently considered a petition from the Humanist Society of Scotland on related matters. I understand that the Humanist Society has been invited by the Local Government Committee to provide written evidence. There is no requirement to report. However, I believe that one of the justice committees should report to the Local Government Committee on the matter because we should not fail in our duty to report on matters of civil importance as well as those of criminal importance. That will also have to be weighed against our work load. It might be appropriate for me to have a discussion with the convener of the Justice 1 Committee, Christine Grahame, to find out that committee's views. The Justice 1 Committee is considering its position tomorrow.

Bill Aitken: I would be quite relaxed about allowing our colleagues in the Local Government Committee to deal with the bill. However, I would not want to fall out with anyone over the issue.

Scott Barrie: Your suggestion seems eminently sensible, convener.

The Convener: I note what Mr Aitken has said, but I assume that, in principle, the committee would not be opposed to a discussion with the Justice 1 Committee about one of the justice committees having some input into the Local Government Committee.

Scott Barrie: It is a legal matter and it is incumbent on one of the justice committees to consider it.

Bill Aitken: I concede with indifference. If that is the majority view, I am happy to go with it.

The Convener: Your indifference is noted.

Stewart Stevenson: Perhaps we could deal with the issue by appointing a reporter.

The Convener: Are you volunteering, Stewart?

Stewart Stevenson: No, I am not volunteering.

The Convener: We will hold that suggestion in abeyance until we get a volunteer.

Stewart Stevenson: What about George Lyon?

Scott Barrie: Is it in order to raise a small matter that is not on the agenda but which I think we should discuss? I am referring to the ruling by Sheriff Gillam at Linlithgow sheriff court last week, which halted the trial. I am not suggesting that we discuss the matter today, but it is clearly a cause for concern. Perhaps as convener of the Justice 2 Committee you could raise the matter with the Minister for Justice.

The Convener: It is in order for you to raise the matter, but it is for members to comment as to whether they wish to take the matter further.

Mrs Mulligan: I support Scott Barrie's suggestion that the convener should write to the minister for further information. One of the justice committees might want to consider the issue. Given our position in relation to the inquiry that is already under way, it might be more appropriate for us to take that on. It is something that the general public find difficult to understand and the public might find it strange if the Parliament did not take an interest.

The Convener: I agree with Mary Mulligan's point about public concern—not just in the recent case, but in other cases where there has been lack of clarity about search warrants.

Bill Aitken: That is an acceptable course of action. My concern is not so much the sheriff's judgment—in terms of law, that was correct—but the extent to which there are inaccuracies in the warrants presented to sheriffs and justices. In my experience, 20 to 25 per cent of the warrants placed before me were flawed—names and dates were wrong, or documentation had been signed prior to the deponent being put on oath.

The Convener: Thank you. I cannot allow this discussion to go any farther—it would have to be put on the agenda. I note members' comments. I suggest that I write to Jim Wallace raising our concerns in the wider context. My quarterly meeting with Jim Wallace and Christine Grahame is due and although it has been cancelled for about the sixth time, I am sure that it will happen eventually. Does the committee agree that it is appropriate that I put the issue on the agenda for that meeting and perhaps bring the deputy convener to the meeting as he has some relevant experience?

Members indicated agreement.

The Convener: Our next meeting is on Wednesday 28 November.

Meeting closed at 11:06.

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