JUSTICE 2 COMMITTEE

Tuesday 4 December 2001
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
34th 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)
Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Mr Kenneth Macintosh (Eastwood) (Lab)

WITNESSES

Nuala Brady
Daniel Cawley
Eileen Cawley
Susan Gallagher (Victim Support Scotland)
Alan Kerr
David McKenna (Victim Support Scotland)
Neil Paterson (Victim Support Scotland)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

Committee Room 1

Scottish Parliament

Justice 2 Committee

Tuesday 4 December 2001

(*Morning*)

[THE CONVENER *opened the meeting in private at 09:47*]

10:02

Meeting continued in public.

The Convener (Pauline McNeill): Good morning and welcome to the 34th meeting in 2001 of the Justice 2 Committee. I have received apologies from Margaret Ewing and from Alasdair Morrison, who replaces Mary Mulligan on the committee. I hope that we will be able to welcome him next week.

Crown Office and Procurator Fiscal Service

The Convener: I welcome Victim Support Scotland to the meeting. I thank David McKenna—the chief executive—Neil Paterson and Susan Gallagher for coming along and for the statement they gave us, which was very helpful. We will go straight to questions.

Stewart Stevenson (Banff and Buchan) (SNP): I start by focusing on the position of the victim in the criminal justice system. It has been suggested that victims are, in effect, excluded from that system. Will you comment on that?

David McKenna (Victim Support Scotland): I will start with a statement about where victims fit in at European level. If we consider support services and the role of victims in justice systems throughout Europe, there is no doubt that the victims of crime in Scotland are not badly treated. However, as has been illustrated by our evidence, there is still substantially more to be done to improve their position. The European Union recently published a framework decision on the position of victims; member states are required to implement that almost entirely by March next year. The framework decision begins to move the position of the victim forward and to give victims real rights in the Scottish justice system.

To answer the question directly, the reality is that the victim is not part of our court system. In the physical space of the court, there is the judge—I call judges "referees", but do not tell them that—the prosecution, the accused and the defence. The victim is never in that space except to give evidence as a witness. In our experience, which I am sure is borne out by statistical analysis, fewer than 2.5 per cent of victims of crime ever see the inside of a court. Most victims do not have their day in court, nor do they have an opportunity to put their case. There is a significant amount that can be done to improve the position of the victim. In that respect, we welcome the Government's strategy, which was endorsed by the Parliament earlier this year. The "Scottish Strategy for Victims" sets out a commitment to ensure that victims are given a real role in the justice system in Scotland.

Stewart Stevenson: You mentioned that only 2.5 per cent of victims go to court. Are you referring to a particular survey?

David McKenna: There are many different statistics: some say that the figure is 4 per cent and others say that it is 6 per cent. However, in our experience of working with victims of crime about two or three in every 100 end up giving evidence in court. The answer depends on whether we are talking about victims of reported crime or all victims of crime; 50 per cent of crime goes unreported so 50 per cent of victims are not involved in the criminal justice process because they have not reported the crime.

Stewart Stevenson: Does the effect of that and other ways in which the court relates to victims make the victims feel that they are revictimised?

David McKenna: It is the experience of the vast majority of victims of crime that the criminal justice process adds to their distress. Many victims tell us that the criminal justice process is worse than the crime. It is not unusual for victims to tell us that they would not have reported the crime had they known that they would have to go through such an experience.

Stewart Stevenson: Our focus in the inquiry is the Crown Office and Procurator Fiscal Service. What can that service do to address the concerns of victims?

Susan Gallagher (Victim Support Scotland): We support victims of a vast array of different crimes, from housebreaking and theft through to sexual assault and murder. The impact of the criminal justice experience depends on the crime. At the furthest end of the scale, people such as those who have been bereaved through murder have told us is that they feel that a crime has been committed against them, rather than against the state, which is how murder is regarded in legal terms. That is hugely distressing for them. When those people start working through the individual criminal justice agencies, such as the police, the Procurator Fiscal Service and the courts, there are specific elements of the process that retraumatise

them. For example, attending court can be particularly distressing and in such cases, it is usually the first time that people have ever entered a courtroom. That is a frightening experience.

Often, people do not understand their role in the court. If the person is a witness, he or she sits in a witness room, sometimes alongside witnesses for the defence. If their family is bereaved through murder they can end up in the public gallery sitting with the family of the accused. Frequently, people are not told about those things and so do not realise that such things will happen.

I am sure that the committee will know through the submissions it has received that information and explanation are crucial to helping people through the system. We understand that that is currently under consideration and we know that there have been improvements over the past year or so. However, there are still major concerns in that area.

Those concerns can be about getting basic information about the way in which people will travel to court and who will tell them about the case's progress, right through to getting information about the court process and about who will tell them, for example, what a not proven verdict means in reality for them when the case is closed. People go to court and, if a case is adjourned, they are often not told that the case has been adjourned and they attend for the court hearing. We have examples of people who have sat waiting in a witness room despite their case having been adjourned three weeks previously. They had no knowledge of that adjournment.

There are often situations in which, as I said, cases are not proven or terms have not been fulfilled, for example in terms of the accused's being set free for whatever reason. The families and people who are victims of crime are not told why and that adds to their original trauma.

Stewart Stevenson: Is your key focus on communication and the quality or lack of that communication?

Susan Gallagher: Yes.

Stewart Stevenson: Has the introduction of the witness service improved communication between victims, witnesses and the system as a whole? Could more be done?

Neil Paterson (Victim Support Scotland): The witness service has now been up and running for about five years, although it has been rolled out in any kind of substantial fashion only over the past 18 months. Prior to that, it operated in only three locations where it was funded and evaluated—successfully, I might add—as pilot schemes. We are now operating in 27 of the 49 sheriff courts in Scotland. By August 2002, we will have achieved full coverage, all being well.

It is fair to say that the operation of the witness service has made a difference, although it would be wrong for me to pretend that I have any statistical evidence or research to back that up. We are routinely in contact with all the key stakeholders—people who we work with, the Crown Office and Procurator Fiscal Service, the Scottish Court Service, the police, defence lawyers—and that liaison takes place locally and nationally. In part, the purpose of that contact is to ensure that the witness service meets the needs for which we set it up. We also routinely test what people who use the service think of it. I am confident, on that basis, that the service is making a difference. It would be wrong of me, however, to pretend that the service has eradicated all the difficulties. The witness service is not in control of the information—the Crown is in control of the information.

Crucially, the working relationships that develop locally are what will make a difference in a live sense. If fiscals give information to the witness service, we will be able to convey that to the witnesses and victims at a time and in a manner that is appropriate for them. There is an issue about being able to translate and deliver that information in a manner that people can understand. All the people who are sitting in this room are quite conversant with legal terminology and the way in which the system works, but not everybody is in that position. There is an issue about using plain English in the delivery and translation of information. I am confident that the witness service has made a difference, but there is still some work to do, as David McKenna rightly said.

Stewart Stevenson: I am grateful for your believing that we understand all the legal jargon; however, I beg to differ.

David McKenna: The publication by the Crown Office of the victim liaison office's strategy goes a substantial way toward addressing the information needs of victims, but I have yet to see what impact that will have on the care and support of victims. That plan has not yet been rolled out, and there is some discussion to be had about that over the coming months.

A crucial issue for victims relates to getting information from procurators fiscal about case decisions, such as explanations about why certain actions have been taken in certain cases. I acknowledge that there is always the issue of the balance between justice and the rights of an accused person. That said, it has been our policy view for several years that victims are entitled to more than simply information; they are entitled to explanations as to why certain decisions have been made. It is often the lack of explanation that

causes the most distress to victims of crime and to families of murder victims. We have some way to go in that regard and certainly in Scotland there is no commitment to move forward on that. If we are to tackle a substantial part of the distress that the justice process causes to victims, we must have a more open and transparent prosecution service that provides victims with explanations.

The Convener: We will come to that subject in a moment. Are there any flaws or failings in the witness service to which you would like to draw attention?

10:15

David McKenna: From our perspective, there are two issues. First, we are not in a position to roll out the witness service to the High Court or the district courts. Witnesses or families attending the High Court are often the people who are most affected by crime and, although district courts deal with crimes that have lower tariffs, vulnerability of the witnesses and the potential for intimidation and harassment mean that it is important that we provide support in the district courts.

Secondly, it is crucial that we work closely with the Crown Office in the roll-out of victim liaison offices throughout Scotland. One issue that occurred to us when we prepared our evidence is the need for a joint or cross-departmental advisory group to examine the role of the VLO, the witness service and perhaps other agencies to ensure an integrated service that meets the needs of victims seamlessly and without duplication.

Bill Aitken (Glasgow) (Con): You have highlighted the problem of lack of communication between the Crown Office and procurators fiscal on the progress and development of cases. How can those bodies be more supportive of victims and their need for information?

Susan Gallagher: A major improvement that we would like is more co-ordinated communication. At the moment, there tends to be disparity between different service provisions. In our experience, communication can depend on the individuals who work at the different levels. When procurators fiscal are more understanding and aware of victims issues, that impacts on the service that people receive. We encourage people to be more conversant with victims issues and victim awareness so that they can deliver an appropriate service. There should be communication between victims, procurators fiscal and the Crown Office. Although progress is being made, that does not occur regularly.

Bill Aitken: Can you tighten up on your suggestions and provide a methodology? For example, should someone in each procurator fiscal office be allocated that role?

Neil Paterson: That might be an option. From my understanding of its remit, the VLO has the capacity to deliver changes, provided that the focus and remit are agreed correctly. A slightly wider issue focuses less on the role of individual staff in the Crown Office and Procurator Fiscal Service and more on how criminal justice agencies liaise with one another at regional and local levels. Nationally, people are co-ordinated and talk to one another in a fairly informed and instructive way. However, there is no consistent framework or mechanism for players in the criminal justice system to get round the table and agree actions on key areas such as liaison with victims. Different parts of the country have examples of good practice that produce results, but provision is inconsistent and people have taken it upon themselves to provide it. It is worth considering whether the justice department should take the lead in suggesting how that good practice can be introduced on a more widespread basis.

The Convener: I want to go into a bit more detail about the kind of information that you think victims should have. You made the point that members understand some of the technicalities—certainly, we are beginning to—but lay people might not and distress makes it harder for them. I want to pin you down on the kind of information that is required. Should all the information be available or should simplified information be provided? I understand your point that agencies must integrate more, but a legal person at the Crown Office must be the starting point for the release of that information, or the system will not work.

David McKenna: That goes back to the point at which the crime was committed. The victims, or their families, need to know what is happening with the police inquiry, whether someone has been arrested and, if so, what that person has been charged with. They also need to know whether the accused person has appeared in court and, if so, what the outcome of that court hearing was. They need to know whether bail was granted and, if so, what bail conditions were imposed. I ask members to bear in mind the fact that standard bail conditions are often not read out in court, so the victim might not be aware that the accused person must not—as part of the bail conditions—interfere with witnesses.

People also need to know when the case has been set for trial. They need to know what will happen at future court hearings and they need other information about what actually happened, particularly if a family member has been murdered. People want to know how their daughter, son, husband or wife died. Thereafter, they need information about what is going to happen with the charge. Victims of rape are pretty clear about what happened to them and the police

might have charged the accused with rape. However, when the victim goes to give evidence in court, she hears that a serious assault charge is instead being prosecuted.

The Convener: Is not the difficulty with the release of such information that the police will hold some, the procurator fiscal will hold some and the Crown Office will hold some, given that the case goes through different stages?

David McKenna: That is right.

The Convener: At what stage would you expect that information to be available? Do you envisage a report being made available before the trial? I do not think that it is realistic for the victim to get a progress report at each of the stages that you outlined—I do not suppose that you would expect that to happen. Have you pinpointed the stage at which the victim should get that information? By the time bail conditions are set, a lot has happened. At what point should that information start to be released?

David McKenna: In its strategy, the police service seems to have accepted that victims have the right to know what is happening, what the procedure is for investigating a case, whether the police have arrested someone and what that person has been charged with. Making that information available is achievable. The key issue arises when decisions are taken about the charge that the prosecution will prosecute in court. If the original charge was rape, the Crown Office may for whatever reason—sometimes, if not always, the reasons are legitimate—change the charge. The first time that a victim learns of that change should not be when they are waiting to go into court to give evidence. Someone should sit down with the victim and explain why the change has been made. It could have been made for a host of reasons, such as the forensic evidence not being up to scratch or concern over the welfare of the victim/witness. At present, changes to charges are not explained to victims, who simply do not understand how they could have experienced a crime only for the state to prosecute a different crime.

The Convener: I accept those points, but I was trying to pin you down on what information should be given, and when and how it should be passed on.

David McKenna: That should be considered on a case-by-case basis. The prosecution will generally make a decision about the charges that it will follow long before the fiscal gets into court. The information should be passed on when a decision about the charge in a case is being made in the fiscal's office on Monday, but the hearing is still six or 10 days away. That should be done through the victim liaison office in conjunction with the victim support service and the witness service, in order to ensure that the victim is made aware of what is happening.

Neil Paterson is right: it is not about giving victims a lot of technical legal jargon. People should explain supportively and informatively why certain actions have been taken. I recently took a call in my office from an elderly gentleman who was going to the procurator fiscal's office. He asked me whether he would need to take his pyjamas with him and whether he would need to stay overnight. I could not understand why he was asking until he said, "I've got this letter that says that I have to attend for examination by precognition." He thought that he was going in for a medical examination because he had suffered a violent attack. Why cannot the fiscal say, in simple language, "We are asking you to come in to hear your side of the story"? When information is given to witnesses, it is important that it is given in a way that makes sense to them and that is supportive, as opposed to their being given legal jargon. Witness services and victim support services can play a role in that.

Bill Aitken: How far would you like the prosecuting authorities to go in giving explanations, especially in cases where there are desertions, acceptance of pleas on reduced charges, and so on? It seems to me that in some instances—especially following a fraught incident—it might not be advisable to go too far in giving explanations.

David McKenna: I accept that each case must be judged on merit, taking account of the circumstances that surround it. In some circumstances and for a host of reasons it might not be appropriate to give a victim information on the decision-making in a particular case. However, I suspect that in the vast majority of cases it is perfectly possible—without in any way unbalancing the scales of justice—to provide a victim with information and an explanation of why a particular course of action has been taken.

In the United States of America, the prosecution service will often sit down with the victim and say, "We are prosecuting a serious assault charge because we believe we can get a conviction. If we prosecute a rape charge, we don't believe we can get a conviction, so the person could walk scot free."

If something goes wrong in court and the prosecution lawyer realises that the prosecution is not going to be successful, and if the lawyer then agrees to accept a guilty plea on a lesser charge, what has happened will not be obvious to the victim. Why cannot it be explained to the victim that what has happened has been that some sort of conviction has been ensured?

Bill Aitken: How should the Crown handle the situation that arises when, in the course of the complainer's evidence, it becomes apparent that the evidence is valueless—not because the complainer is attempting to tell lies, but because of simple confusion. For example, an application could be made under section 97 of the Criminal Procedure (Scotland) Act 1995 meaning that the person was found not guilty. How could that information be given to a victim?

David McKenna: Victims of crime might not agree with the outcome of a case. If a 10-year-old girl is murdered, it does not matter whether the convicted person gets five years, 10 years, 25 year or 100 years, the parents will not agree with the outcome. However, the system should at least allow them to understand why that decision was arrived at. Then, although they might not agree with the decision, they can at least understand why it was taken. The difficulty that we have at the moment is that victims come out of court not understanding how decisions were arrived at; they therefore cannot believe that justice has been done.

We have supported families through the whole justice process and, although they are not happy about a sentence of 10 or 15 years, they understand what has happened. That helps them to move on in their lives. If people walk out of court believing that their point of view has not been heard, feeling that they have not understood what has gone on, and not knowing why the prosecution has taken particular actions, how can they believe that justice has been done? They cannot. It is not that victims should agree with the sentence—deciding the sentence is not their job—but they should at least understand how a particular decision has been arrived at.

Bill Aitken: In certain circumstances, could not it be painful for the relatives of a murder victim to be told that a reduced plea had been accepted because to do otherwise could, for example, have implicated their son as being a party to actions that had resulted in the murder?

David McKenna: Such things can be upsetting and distressing for people—that is fact of life. Another such example would be the case of people who apply for criminal injuries compensation to help cover the death costs for a son who has been murdered, only to be told that their application has been refused because their son was a known drug dealer. The family—law-abiding, upstanding citizens—might have known nothing about that, but will have to live with it. That will be upsetting and distressing, but people can live with it because—if we are talking about the family of a murder victim—the worst has already happened to them.

Bill Aitken: You have articulated well the shortcomings in the present system. To what extent do you attribute those shortcomings to a lack of resources in the Crown Office and the Procurator Fiscal Service?

David McKenna: I was present when the Crown Agent was giving evidence to I think the Justice and Home Affairs Committee. He said that resources were not an issue. If that is what he said, I have no reason to believe that that is not the case. I can talk about individual cases, but I cannot say that the issue is one of resources.

10:30

Scott Barrie (Dunfermline West) (Lab): Perhaps we can return to the subject of the victim liaison office. Neil Paterson spoke earlier about some of the inconsistencies that exist in witness liaison. Will you tell us what was Victim Support Scotland's involvement in the setting up of the victim liaison office?

Neil Paterson: We will answer that question in tandem, if we may. David McKenna will outline the strategic involvement and I will focus on the operational side.

David McKenna: I will be brief in my response, as I do not want to take up members' time. About three and a half years ago, the Lord Advocate set up a working group to examine the feasibility of setting up a witness service in the Procurator Fiscal Service. The group worked for about nine months and produced the outline framework report that resulted in the development of the victim liaison office. The report's principal recommendation was that it was feasible for the Crown Office to set up the service in the office of the Procurator Fiscal.

The service was to address the information needs of witnesses and victims and to progress case-specific information at different stages of the justice process. The working group's report mapped out the various areas in which victims and witnesses need information. Another key recommendation was to give victims and witnesses access to appropriate practical and emotional support in the aftermath of crime and during the process of the prosecution of the case.

That is how the victim liaison office came about. Victim Support Scotland was a member of the working group.

Neil Paterson: I will jump forward by about 18 months. We were well into our witness service development programme when the first operational proposals to pilot the VLO came online. As members will be aware, the pilot started in Aberdeen. It has since been extended to Hamilton and, in the not-too-distant future, it will move into Glasgow. We worked closely with the

Crown Office staff member who was involved in developing the pilot on a number of key areas, including how the two services might dovetail most effectively. As David McKenna outlined, the Crown Office is positioned uniquely to provide case-specific and generic information about how the Crown Office is taking forward a case. That is information to which the witness service does not and should not have access, unless it is given it by the Crown.

Our area of expertise is in giving witnesses practical and emotional support before, during or after a trial. We see a helpful demarcation between our area of expertise and what the Crown Office feels it is uniquely in place to provide. The discussions are on-going. In the new year, we will have a meeting with the new director of the VLO to pick up the discussions again. There has been something of a hiatus, which was nobody's fault; we have just been waiting for the appointment to be made.

The nascent VLOs in Aberdeen and Hamilton have worked closely with our community-based services and the witness services in the two courts to try to make those things come alive. There is still work to be done. The most recent update I received from my staff in Aberdeen was that things are progressing well up there. We are confident that, over time as the service rolls out, we will be in a position to join up all the dots to ensure that the things that need to be done will be done.

Scott Barrie: Is there an adequate blueprint, which is not too prescriptive and will allow for local variation so that the service will work when it is rolled out throughout Scotland? Are the various partners committed to the process?

Neil Paterson: Some work still has to be done to finish the blueprint. I do not mean to cause concern or anxiety by saying that. The VLO has been set up as a pilot. At the same time, we are rolling out a service that is still quite new. It would be unnatural if there were not some issues to resolve to ensure that things fitted together appropriately.

Scott Barrie's point about the blueprint not being too prescriptive is well made. Whatever arrangements we come to nationally must work on the ground. This is not about writing an operational agreement between the two services that is 80 pages long. Clearly, that would not work. It is about setting out the broad principles of each service and stating what we will major on. We must ensure that local managers are in a position to translate that into practice and that we can monitor the situation to ensure that that is taking place effectively.

I will reiterate a point that David McKenna made. It would be helpful to have an overarching advice or guidance committee in relation to the VLO. We found that model useful when we set up our witness service, because it allowed all the key stakeholders a forum to discuss what the operational issues might be. We must get together if we are to make the blueprint come alive.

Scott Barrie: Are there separate concerns about vulnerable and intimidated victims or witnesses, which need to be addressed within the system?

David McKenna: I am aware that the Scottish Executive is considering the definition of vulnerable and intimidated witnesses in Scotland. The legal definition of a vulnerable witness is restricted to children, victims of rape and sexual assault and people who suffer from a defined mental health challenge. As far as I am aware, the special provisions that are available to people with a mental health problem have never been used.

We believe that a much wider definition of vulnerable and intimidated witnesses is required to enable special provisions to be made available within a court setting. Those include screens behind which to give evidence, a closed-circuit television link, having a seat when giving evidence and the public galleries being cleared when certain types of evidence are given. The definition should be extended to recognise that witnesses/victims can be made vulnerable by the nature of the crime. That obviously relates to crimes such as rape and sexual assault, but a racist crime or some other type of crime might make the victim vulnerable. We also recognise that some victims could be more vulnerable because of their own characteristics, such as having a disability or a hearing challenge. The definition should be widened to allow the court to take into consideration characteristics of the crime and/or the witness/victim in determining access to special provisions in court. Similar provisions have been introduced in England and Wales. We must continue to press for change in Scotland.

Scott Barrie: How do you envisage such an application being made?

David McKenna: I am not sure that this can always be done within the law itself. There could be a clear range of definitions, and people who fell into those categories would automatically be entitled to access to those special provisions, or it could be incumbent on the procurator fiscal to make an application to the court for those special provisions to be made available. I prefer the possibility of the victim/witness making the application. In a busy court, the victim/witness can get lost in the middle of everything that is going on. It would have to be done at a much earlier point than the day of the court case. If special provisions are required, they must be planned in advance. It is important to pick up information

about the level of a witness's vulnerability at an early stage, so that that vulnerability is recognised in the way in which the victim/witness is treated at all points in the system.

Bill Aitken: You will be aware that the Executive is considering the introduction of victim statements, whereby victims would be able to describe to the court, in written form, how they felt the crime had affected them materially, physically or emotionally. Do you consider that to be a good idea or not?

David McKenna: Victim Support Scotland welcomes that development on the part of the Scottish Executive—even if I personally have been known to have some concerns about it. The position in Scotland is valuable, in that we have a consultation proposal on a pilot project. We support that and wish that evaluation to go ahead, to find out the benefit of victim statements to victims of crime. We believe that the Executive's proposal begins to address the need of victims to have a voice somewhere in the system. We welcome the consultation exercise and wish to support the development of the projects. We will consider the outcomes closely.

The Convener: The committee is interested in the information available to victims in the course of the pre-trial and of the trial, and after the trial. I am struggling to work out what the practicalities of providing it would be. It is clear to me that there would have to be direct input from the Crown Office, because we need a legal source. We need the right kind of people to be able to translate that information in the right way.

I take on board your point about the importance of integrating the agencies, and we have taken note of that. It would be useful if you could give some consideration to how the practicalities of providing the information would work, and the form that the information should take at different stages. There is much sympathy for the idea of establishing what the original charge is and how it changes by the time it goes through the Crown Office—if we are dealing with High Court cases. Perhaps you could get back to the committee at a future date if you have any particular thoughts on that. The weakness in the argument is that it is not clear how that information can be provided, although the idea is supported in principle.

David McKenna: The challenge lies in recognising that the characteristics of each case are different. The time scales might be different, and the process might be subject to different outcomes in different cases. The Crown Office has to have responsibilities for providing the information and recognising when it is appropriate to do so. The victims/witnesses require a support structure to help them interpret it and deal with it. If the information is put in the wrong way, that can be damaging.

The real issue is about establishing a seamless approach to supporting the victim through the process, which brings together the Crown Office and perhaps the victim support service—and also, when proceedings are taking place inside a court, the witness service. I think that that is achievable.

The Convener: I do not disagree with that, but I do not think that we can arrive at a practical suggestion if there is not a systematic basis to that. I take the point that each case has to be dealt with in its own sensitive way, and on its individual merits, but I do not think that it is realistic to ask the Crown Office and Procurator Fiscal Service to provide that input of information unless that is done systematically. The police and other organisations rely on systems because they deal with so much information, and we could not possibly ask for something tailor-made for every case. If we are to pursue the matter, we will, I repeat, be asking for something a bit more systematic.

Is there anything that you would like to say in conclusion before you leave us?

David McKenna: I simply thank you for having us along once again and for looking after the interests of victims.

The Convener: Thank you once again. I know that Victim Support has made a big commitment to the Scottish Parliament, and we are grateful for that. You have made a number of very good points, which we will be using in our report.

I now invite Nuala Brady, Daniel Cawley, Eileen Cawley and Anne McFadden to come to the table.

Some time ago, members agreed that they wanted to get on the record evidence of how victims are treated in the criminal justice system. We have heard from Victim Support Scotland, which has given us a useful general guide to how it sees victim services shaping up in future. The committee was very keen in the course of its inquiry to hear the experiences of some individuals and families. The committee is grateful to the MSPs who gave us information about their experiences and those of their constituents. We are very pleased at the number of responses that we received.

10:45

I welcome Nuala Brady, Daniel Cawley, Eileen Cawley and Anne McFadden to this morning's meeting. Ken Macintosh MSP is also here in support of the witnesses. We are very grateful that you have agreed to appear before us. We think that it is important for us to hear families' direct experiences of the system. We know that it will be difficult for you to give evidence and we are very

sensitive to that. Do not worry about being asked anything difficult: we simply want you to share with us as much as you can your experiences and the feelings that you had at the time when these events were taking place. We hope that your evidence will help us generally to make the system a bit better for others.

Bill Aitken, George Lyon and I will ask most of the questions. Ken Macintosh should indicate to me when he wants to intervene. Will Nuala Brady speak first?

Nuala Brady: I nominate Eileen Cawley as our main spokesperson.

The Convener: I invite Eileen Cawley to make some brief introductory remarks. You should not speak for too long, as I would like us to have an opportunity to ask some questions. You should not worry if you feel that not everything has come out in questions this morning. At the end of the session, I will give you an opportunity to say anything that you do not think has been covered. If you have any difficulty whatever, we can stop. You need only let us know that you would like us to do that. We are mindful of the fact that it is not easy for you to give evidence.

Eileen Cawley: I ask Nuala Brady to make an opening statement. Any questions can then be directed to me.

Nuala Brady: On behalf of the Cawley family, I would like to thank the committee for giving us the opportunity to speak to it today. As a family, we suffered great loss at the death of Christopher Cawley and have been further traumatised by our subsequent experience of the legal system. It means a great deal to us to have our voice heard here today.

Christopher Cawley was murdered at work on 8 September 2000 in an unprovoked attack. He died in front of some of his closest friends. Two men were charged with the murder, but one was acquitted at the end of the prosecution case. That allowed the remaining accused to blame the other, and both walked free. Discussions took place behind closed doors and we still do not know why the acquittal occurred. Despite the testimonies of 12 reliable eye-witnesses and matching DNA evidence on the murder weapon, no one was convicted of the crime. We feel that there has been a terrible miscarriage of justice, yet our family, as victims both of the crime and of the subsequent injustice, has been ignored and excluded from the entire judicial process.

Bill Aitken: I indicate for the record that Mrs Brady and I have met and have been in correspondence about the case.

I will ask you a series of questions. I will know the answers to them because of our discussions, but it is important that the committee has those answers on record. When I ask for information that I already have, you should not think that I am being any more obtuse than I usually am.

Could you outline in a little more depth the circumstances of the prosecution of the two men accused of murdering Christopher?

Nuala Brady: I will pass you to Eileen, who will answer the question.

Eileen Cawley: The two accused were brought forward. We were first led to believe that only one was being prosecuted; at a later stage we were told that the other one was to be prosecuted. We did not have much contact with a family liaison officer or anything at that point. For about three days during that period, we did not have any liaison with the court. We had to request to go to the court to see what was happening. The second accused was allowed to leave the court—we walked in alongside him the day after his acquittal. We had not been informed about his acquittal. Subsequently, the first accused was allowed to blame him and also walked free, despite all the evidence.

From the outset, we felt that we were not allowed to ask too many things. Many of our questions were left unanswered. We were not told about court protocol. The precognoscer told us that she would not be there at the start of the trial—she was on holiday until 7 or 8 January. That is one of the reasons why we asked to see round the court, which we did on about 20 December. When we arrived in court on the first day of the trial, I went to the front desk and said, "Good morning. I'm Eileen Cawley. There's supposed to be a room set aside for the Cawley family. We've been in touch with Victim Support Scotland, who have arranged to meet us here." The girl said, "They're not here yet." I said, "But I think a room has been set aside." She said, "You're just going to have to wait." I said, "Okay, that's fine."

I told the lady from Victim Support Scotland that I did not think that we were treated very nicely by the people at the court. She told me that they are used to dealing with people from all walks of life. I do not think that I was discourteous when I entered the court. I can understand that the people there are used to dealing with people from all walks of life, but I was pleasant enough and hoped that it could be reciprocated.

My husband and my father-in-law had been cited as witnesses, to identify Christopher. We had been told that they might not have to give evidence. They were put into the witness room, then they were allowed out into the court. At the beginning, we were not allowed into the court, so we had no knowledge of the charges or pleas. We had asked three or four times and were informed

that we would be told when we could go into the court. We missed the beginning of the trial, when the plea and so on were heard. However, the family of the accused were allowed to be there. I did not know whether that was normal protocol; I do not think that it could have been, because we were told later that we could have been in the court as well.

After the first day, I spoke to my family at great length. I did not feel right about the trial. I was assured by other individuals that the trial was going okay and that everything was fine.

The weekend passed. We went to the court on the Monday and the trial started again. I felt that there was no depth to it. I believe that we should rely on the weight of evidence; in many cases, that is fine. I am not legally minded—I do not know about such matters—but I just felt that something was happening that was not right. We know; we feel such things. There was nobody at the court for us to speak to.

On the Tuesday evening, a discussion in chambers took place. Witnesses were called and gave evidence. Donald Findlay QC, who was defending the second accused, said, "I don't feel this is a matter for the public. Could we do it in private?" Nobody was there to tell us what was happening. We had to leave.

The following morning, we went into court and the second accused walked in beside us. That was not pleasant. We were shuttled into a wee room by the precognoscer, who had turned up in court. That was the first time that we had seen her since the start of the trial—the trial had started on the Thursday of the previous week. She ushered us into a side room and said, "Someone has been liberated on bail overnight." I said, "We know that." I then asked, "Why has this happened?" She said, "I don't really know. I believe that someone hasn't lived up to their precognition." I asked, "Is he going to turn Queen's evidence and give evidence against the first accused?" We did not know any of the pleas. She said, "I don't think so. I am not sure." I asked, "Have all the witnesses been called?" She said, "Yes." I said, "I'm not happy with this."

I stormed out of the room and left the rest of my family there. I was just so upset. I had told my husband for so long that justice would be done. My husband was totally broken, as is the rest of his family, and I was trying to hold things together by saying, "We're going to get justice in four months' time. Hold it together. Everything will be all right then."

I got myself into a state and just went out of the room. I thought, "We can't allow this to happen. We're going to have to speak to someone."

We went back into the court and the second accused was allowed to sit in the public gallery; he was freed. The first accused gave his evidence. I thought, "This is not right. Something has to be done. We are going to go and speak to someone in the offices."

The Convener: You keep saying that something was not right. What do you mean by that? Do you mean that something was wrong in the way that the prosecution was handled?

Eileen Cawley: Yes. It was not right. I did not want to seem personal and to bring that into the discussion, but the prosecution was not right. There was no sure-fire questioning. The defence was running rings round the prosecution. The prosecutor seemed way out of his depth. I felt that I might be able to do better and I do not have much experience of law. The only experience that I have is in economics, but I felt that I could do better.

The Convener: Until that point, your only contact with a Crown Office official was with the precognoscer. Is that right?

Eileen Cawley: On the Wednesday morning. That is correct.

The Convener: And no one else?

Eileen Cawley: No. We had no family liaison or any kind of support. People from Victim Support were there, but they were saying, "Things seem to be going okay. Things will be okay. The weight of evidence is there." We put a lot of trust in them, even though there should have been other people there for us.

We had to contact Victim Support off our own backs. We had not been told that a body existed that could help us through the trial. We got in touch with Victim Support ourselves. I did not go. My sister-in-law, Anne McFadden, and my husband, Daniel Cawley, went to see Victim Support because they were badly hit by the whole experience. My father-in-law also went to Victim Support's headquarters in Daisy Street in Glasgow one evening. The organisation said that it would be there for us on the day of the trial, which it was. Perhaps we relied too much on it. The girl from Victim Support said, "It is okay. You do not need to speak to anyone." Earlier, before the prosecution started, the precognoscer said, "We are your lawyer. We will be there for you. You do not need anyone else."

Our family have never been involved in any sort of crime. My brother-in-law was murdered for doing his job—that is the only reason that we can see. He went to work and did not come home.

11:00

The Convener: The committee will go through

the process step by step.

Bill Aitken: The reply was comprehensive, but the committee wants to be clear about your contacts with the Crown Office and Procurator Fiscal Service. Would you run that by me again? We have dealt with the precognoscer, but did any other official speak to you from the week before the commencement of the trial until the conclusion of the trial?

Eileen Cawley: No.

Bill Aitken: So there were no other contacts.

Eileen Cawley: No. We went to the court. A letter was sent out to us by second-class post. We always had to make contact—there was no real contact to us. We had to ask to go to court to see its layout. At the court, we were told that the precognoscer would be on holiday until we came back.

Bill Aitken: Did anyone tell you at the conclusion about the evidential requirements of corroboration?

Eileen Cawley: No.

Bill Aitken: If I understand your evidence correctly, you said that the Crown case was presented in a fairly anodyne manner.

Eileen Cawley: Definitely.

Bill Aitken: As a lay person in court, did you think that you would have convicted, had you been on the jury? I realise that it is difficult for you to detach yourself from the situation,

Eileen Cawley: Yes—I think so.

Bill Aitken: It could therefore be argued that the jury's verdict was perverse.

The Convener: I want to stop you there, Bill. I do not want to go into that issue until we have heard everything about the process.

George Lyon (Argyll and Bute) (LD): Bill Aitken asked part of the question that I was going to ask. What was the sequence of events in respect of whom you dealt with—the police and the precognosce, for example—from the event to when you went to court? What role did your lawyer play? Why did you decide to bring in Victim Support Scotland? Did you think that you were not getting enough support and contact from the Procurator Fiscal Service?

Eileen Cawley: The police were there from the outset. They introduced a family liaison officer who was supposed to be with us throughout. She visited us for three days. I do not think that we were told that the second accused was being charged. At that point, the family liaison officer said that one person would be prosecuted and that that would be it. We did not have a family liaison officer to help us once someone was charged.

George Lyon: So you had a family liaison officer for only three days.

Eileen Cawley: Yes—for four days at the most. We had to go around police stations to try to find someone.

George Lyon: Did you have a lawyer?

Eileen Cawley: We did not have a lawyer because we were told that we did not need one. We were told that the Crown was our lawyer, that it would do everything for us and that, basically, the case was open and shut. Victim Support Scotland provided emotional support for my husband, his sister and my in-laws. I tried to be a rock; I tried to be strong and to prove that I was strong. My wee boy was only nine months old. My husband, sister-in-law and father-in-law went to Victim Support Scotland purely for emotional support.

George Lyon: At what stage was that?

Eileen Cawley: It was when we came back from Ireland.

Daniel Cawley: It was in early December.

George Lyon: Was that about three weeks after the incident?

Eileen Cawley: No, it was about a month after the incident. We had to wait about three weeks for Christopher's remains to be given back to us. We took his remains to Ireland, to bury him there.

The Convener: We have heard that you made contact with Victim Support Scotland and that its support—albeit emotional—is virtually the only support that you have had. There was no contact with officials; your only contact was with the precognition officer, who explained that there had been a bail release. During the trial—in the second week—you had concerns and felt that you wanted to speak to someone. Will you tell the committee exactly what happened at that point?

Eileen Cawley: That was when the second accused had been liberated. The precognition officer had asked my father-in-law how the trial was going. I thought that, if they did not know and were asking that sort of question, we needed to speak to someone. The closing statements had been read and I thought that someone would have to speak to us.

I went up to the procurator fiscal's office and asked to speak to someone. I was told that no one was there. Caroline Mcleod, who was the fiscal at the time, came to see us. I said to her, "Hello Caroline." She replied, "It is Ms Mcleod." I told her that I was Ms Cawley and asked her to brief me about what was going on in the trial, as I did not know much about it.

If the trial had been in the sheriff court, I would have known more about it. I briefed her slightly about what was happening and told her that no one had spoken to us. She said that they did not speak to just anyone. She said that if I had been reading the papers I would have known of an Australian case that had resulted in a mistrial because the judge had offered his sympathy to the family of a victim of a fire. I was flummoxed. I said that we had to speak to someone. She said that she would see if she could get the advocate depute to speak to us, but that would be in a wee room downstairs and only two of us would be allowed in.

Daniel Cawley: It was the smallest room in the court.

Eileen Cawley: I asked when that would be. She said that it would be the following morning. I was struck by her saying that the advocate depute did not speak to just anybody. I thought, "Hold on, we are the victims." From the beginning of the trial, I had not been told what was going on. I felt like I was a bit of dirt. That is how the majority of my family felt.

The Convener: Did she arrange for someone to speak to you?

Eileen Cawley: Yes, she arranged for the advocate depute to speak to us on the Thursday morning, after the jury had gone out. He came to speak to my husband and my father-in-law. He had not cross-examined anyone. It was as if he was going through the motions, flicking between pieces of paper all the way through the trial. I understand that that is the way sometimes.

The Convener: The committee is interested in the fact that you were granted a meeting with the advocate depute and were able to express your concerns about the conduct of the trial.

Eileen Cawley: I was not allowed into the meeting. Only my husband and my father-in-law were allowed in. The advocate depute told them that he did not badger people; that was not his style.

The Convener: Did the people who were at the meeting feel that they had answers at that point?

Eileen Cawley: No.

The Convener: What happened after that?

Eileen Cawley: We went to a room, where we waited. About an hour and a half later, we were told to go back through. I did not want to go into the courtroom, because I knew what was going to happen. I could feel that something was not right. When we all went back into the courtroom and sat down, the verdict was read out. It was not proven.

The Convener: At any point before that, was the first accused acquitted because of insufficient evidence?

Eileen Cawley: No, that was the second accused. That happened on Tuesday evening. On Wednesday, I spoke to the precognoscer. We are now talking about what happened on the Thursday.

The Convener: Did anyone attempt to explain to you what had happened?

Eileen Cawley: No.

The Convener: So you found out only when that person did not appear in court.

Eileen Cawley: Yes. No one had told us. We went home on Tuesday evening and, when we came back on Wednesday morning, he simply walked into court with us. That was a bit of a shock.

The Convener: Then the jury delivered a not proven verdict.

Eileen Cawley: Yes. Basically we were left to hang in the balance after that. No one came to speak to us. As a result, I decided that we had to speak to someone about what was going on.

The Convener: So when the jury delivered its verdict, no one in an official capacity was in contact with any member of your family.

Eileen Cawley: That is right. Even the Victim Support person fled to her room and said that she could not speak to us. She did not know what to say.

Daniel Cawley: The organisation has not been in contact since.

Nuala Brady: Mr Aitken asked whether we thought that the jury was perverse. We feel that, if the prosecution had handled our case properly, the jury would have been in no doubt about what had happened. With DNA evidence and good, reliable eye-witnesses, nothing should have gone wrong. I am sorry to interrupt, but the issue of the verdict was brought up. We feel that the Crown let us down in its handling of the case.

Eileen Cawley: I would actually rule anything else out, to be honest.

Bill Aitken: I want to underline the apparent lack of communication. I take it that, earlier in the proceedings, contact telephone numbers and the names of persons who would be available if the Crown needed to contact you urgently had been provided.

Eileen Cawley: Yes. The only notice we received was a 15 to 20-minute warning to gather at my in-laws' house.

Bill Aitken: On the evening when the first accused was liberated, no effort was made to

contact you.

Eileen Cawley: We heard nothing. We were all down at my in-laws' house that evening. We had provided mobile phone numbers and everything else.

The Convener: Where were the families sitting in court?

Eileen Cawley: We were sitting behind and to the right of the accused. The jury was on the right-hand side of the judge—obviously, the committee knows the layout of a courtroom—and the families or friends of the accused were sitting on the left.

The Convener: So the accused's families were sitting next to you in court.

Eileen Cawley: Yes.

The Convener: Was there any division between you?

Eileen Cawley: There was a small barrier, but that was all.

The Convener: I think that we have been able to get on the record the chronology of events so far. We have reached the end of the trial; we have had the verdict; no one has contacted you. What happened next? Did you make contact with the Crown Office or did it make contact with you?

Eileen Cawley: I made contact with the procurator fiscal. Those people were just allowed to walk out of court as though nothing had happened.

The Convener: How did you make contact?

Eileen Cawley: I went upstairs to the Procurator Fiscal Service and asked to speak to the person in charge. Mr D B Griffiths was the head of the service at the time. My husband, my father-in-law and I explained that my sister-in-law had had to be taken to hospital because she was four months pregnant. Everything blew out of proportion. She was four months pregnant, so her husband took her away. We were left flummoxed and I decided that we needed to speak to someone.

We had to wait about 10 or 15 minutes to see someone, which is probably normal. I described what had happened. We were told, "Oh, a not proven verdict happens quite a lot." I said, "It's not sour grapes over a not proven verdict. We want to talk about the protocol, which was totally off." We were told, "You could write to someone, but the not proven verdict is part and parcel of the system." I said, "I do not dispute that." We were told about someone who had tried for eight years to achieve a result and we were told, "If they have not got anywhere, neither will you."

The Convener: Did you ask Mr Griffiths for a meeting?

Eileen Cawley: Yes.

The Convener: Did he resist that?

Eileen Cawley: He said that he could not help us because he knew nothing about the trial.

The Convener: Did he attempt to arrange a meeting for you?

Eileen Cawley: No. We had to do everything in writing. He gave me addresses to write to, which I did.

11:15

George Lyon: Did that happen the day after the trial?

Eileen Cawley: That happened immediately after the trial. We told the lady from Victim Support what we would do and she said that she could not speak to us and had to go to her room. I said, "I'm going to speak to someone." She said, "I can't come with you, because I have to look impartial." I do not know the protocol. We could not let the matter go, so we went up to see Mr Griffiths. He spoke to us for about five minutes and told us that he knew nothing about the trial.

The Convener: Did he arrange a meeting for you?

Eileen Cawley: With the Crown Office?

The Convener: Yes.

Eileen Cawley: No. We had to arrange that ourselves. Mr Griffiths gave me addresses and told me who to write to. The next day, I wrote to the Lord Advocate, the procurator fiscal in Glasgow and D B Griffiths, and I sent everyone copies of my letters. I also wrote to the Minister for Justice. Everyone except the Minister for Justice said that the matter was in hand. I have heard nothing from the Minister for Justice. I do not know whether Nuala Brady or Glynis Walsh have heard anything. They have taken on everything lately, because I have not been too well.

The Convener: Did the Lord Advocate respond to your letter?

Eileen Cawley: I received only a card that said that the matter was being dealt with. About a month or six weeks later, I received a letter from S M Burns, who was temping. The letter was dismissive and quite insulting. It was all in legal speak.

The Convener: Did the letter from Burns refuse you a meeting?

Eileen Cawley: Yes, more or less.

George Lyon: Did the letters that you sent to all those people, including the Lord Advocate, ask for meetings or highlight your complaints about your

treatment?

Eileen Cawley: The letters asked for meetings and for the matter to be investigated.

George Lyon: Did you ask for the conduct of the trial or the way in which the system treated you to be investigated?

Eileen Cawley: We asked for everything about the trial to be investigated. Everything was written in the letters.

George Lyon: Did you complain about both those aspects?

Eileen Cawley: Both. The complaint was about everything. The letters were written two days after the trial. Everyone was coming down and everything was still fresh in our minds. We needed to get the ball rolling, because what happened should not have happened.

The Convener: You were not granted a meeting at that time. Were you ever granted a meeting?

Eileen Cawley: Yes.

The Convener: When did that happen and who was it with?

Eileen Cawley: A meeting took place on 4 May 2001. Nuala Brady and Glynis Walsh had taken everything on, because immediate family members were deflated by everything that had happened. We were grieving all over again. We thought that something would happen at the end of the process. A defeatist attitude was taken.

The Convener: You were granted a meeting on 4 May 2001.

Eileen Cawley: Nuala Brady and Glynis Walsh organised the meeting.

The Convener: Who was present at that meeting?

Eileen Cawley: Nuala Brady, Glynis Walsh, my brother-in-law Thomas Cawley, who stays in Ireland, and I were present. There was an introduction, which my husband, my father-in-law and Anne McFadden attended.

The Convener: Virtually the whole family was present.

Eileen Cawley: Yes.

The Convener: Whom did you meet from the Crown Office?

Eileen Cawley: We met Frank Crowe and Jim Brisbane, who had just been appointed head of the High Court unit.

The Convener: How did the meeting go?

Eileen Cawley: It was very heated. A few times Mr Crowe was talking in a different language and was veering off what we were there to speak about. However, I think that we got our points across. Questions were raised and we are still waiting for answers to some of them. Then there was the unreserved public apology. We asked if they would go public with that and they said yes. Later that day they did. That was it, really.

The Convener: Was that the end of your involvement with the Crown Office?

Eileen Cawley: No. We had raised some questions with it, so we were subsequently called back on 27 July for the second meeting. Nuala Brady, Glynis Walsh, my husband Daniel and I were at that meeting.

The Convener: Was the meeting with Frank Crowe?

Eileen Cawley: Yes. Jim Brisbane was also there and another gent was taking notes. They are still coming back to us about what I said in reply to some questions. One of my main questions was whether all the witnesses had been called. Two witnesses had been called after the second accused had been liberated on bail. Those two witnesses would have been paramount in saying that that accused was involved in something in some way. All that I asked the precognoscer was whether all the witnesses had been called—I never specified the prosecution or the defence—and she said yes.

The Convener: What the committee needs to know is whether your questions have been answered.

Eileen Cawley: No, not in full. The matter is still on-going.

The Convener: Do you feel that you achieved anything from those two meetings?

Eileen Cawley: An apology. I hope that from now on there might be something for other families, but I did not get anything. The apology should not have happened as far as I am concerned. People can easily apologise. I can bump into somebody in the street and apologise and be sorry—it is something that happens every day.

Bill Aitken: I want to go back a few stages to your initial meeting with Mr Griffiths in the High Court. Would it be correct to say that, while fully recognising that he knew nothing about the case, you would have liked him to have taken details and passed them on to the person who did know?

Eileen Cawley: Yes.

Bill Aitken: You would have been satisfied at that stage.

Eileen Cawley: Yes.

Bill Aitken: You then had correspondence with S M Burns, who was, you said, dismissive in that correspondence. However, a meeting subsequently took place. Was that after the intervention of elected members?

Eileen Cawley: Yes.

Bill Aitken: That was what caused the meeting.

Eileen Cawley: Yes.

George Lyon: Did you get an apology from the Lord Advocate or from Frank Crowe?

Eileen Cawley: From Frank Crowe.

George Lyon: Was the apology about the way in which the service had treated you? If not, was it about the conduct of the prosecution case? Those are, in some ways, separate issues.

Eileen Cawley: The apology was for not informing us about the acquittal.

George Lyon: The apology was for the way in which you had been dealt with and for the fact that, as the victim's family, you had not been provided with information.

Eileen Cawley: They apologised for not informing us of the liberation of the second accused.

George Lyon: That is your biggest complaint about the way in which the whole thing happened.

Eileen Cawley: No. My complaint is about everything. My biggest complaint is that a conviction was not secured.

Mr Kenneth Macintosh (Eastwood) (Lab): You have made the case clearly about the lack of support and the lack of explanations throughout the trial. There was uncertainty about which charges would be brought—for example, the police charges were not the ones that were brought by the prosecution. Charges were then dropped halfway through the case without explanation.

Tell me if I am wrong, but you have obviously made some progress with the Crown Office in the two meetings. The only point that has not emerged is the one thing that you were pushing for from those meetings—the fact that you had no recourse to some sort of independent investigation. When you came out of the trial, you were unhappy. You wanted the issues to be examined. Can you tell the committee what happened? What was the Lord Advocate's initial response? Who investigated your complaints about the handling of the case? Why do you consider that the initial investigation was not satisfactory?

Nuala Brady: The Lord Advocate's initial response to the request for an investigation was to ask the man whose handling of the case we wanted investigated to write the report. To lay people like us, that is like someone being asked to write their own reference. We find it hard to accept that that is allowed to happen. We have tried to get an independent examination of what went on but we have been asked to accept the situation. However, we find it unacceptable.

Mr Macintosh: You asked the Lord Advocate to investigate the handling of the case by the advocate depute who conducted the investigation. The Lord Advocate asked the advocate depute to report back to him and, when he did so, the Lord Advocate informed you that he was happy with the report, which was not shown to you, and said that he would take no action.

Nuala Brady: That is right, but we find it hard to accept that situation as that is not independent scrutiny.

George Lyon: That is a fundamental point. Have you complained about the fact that that person was, basically, investigating his own performance during the trial? What response did you receive from the Lord Advocate on that point? That practice cannot stand up to any kind of scrutiny.

Nuala Brady: The Lord Advocate is still saying that he is happy with the handling of the case, but his opinion is based on the report that was written by the person whom we would like investigated. There is no accountability. There is nowhere that we can go to get this matter investigated and we have tried to complain about that. We got as far as a meeting to ask for an investigation and the next thing that we hear—through the newspapers—is that, rather than having been investigated, the man has been appointed a judge. The total lack of accountability is shocking. In no other organisation would that happen.

The only reason why we are here today is that, after the trial, we found that there was nowhere for us to go. We wrote to our MSPs and talked to anyone who would listen to us. We wrote many letters and have had to work night and day—literally—to get to this stage because there is nowhere for us to go. Many other people are in the same situation. There needs to be somewhere for us to go.

George Lyon: There has been no satisfactory independent examination of the way in which the investigation was conducted.

Nuala Brady: That is right. We are not happy.

George Lyon: Is an offer of such an investigation on the cards?

Nuala Brady: No. I know that the Lord Advocate recently spoke in Parliament about an inspectorate, but he said that it would not consider individual cases. However, we need someone to

consider our case. Perhaps not every case needs to be considered individually, but our case is exceptional, given the amount of evidence and the specific circumstances. It speaks for itself.

When there has been a miscarriage of justice, people like us have nowhere to go. There is an appeal mechanism for a convicted person but, if victims are not happy with a verdict, they have nowhere to voice their concerns or discuss the handling of a case. The amount of work that is involved in raising such issues is too much to ask of people who are already grief stricken. We need people working for us. We are glad that our MSPs have got us to this stage and we thank you all for what you have done.

The Convener: From what you have said, I think that this case reflects just about everything that could possibly go wrong for a family, starting with the way in which you were treated when you arrived in court. You had no special place to wait, no protection and no one to explain to you what was going on. You found yourself sitting next to the second accused with no explanation of why that had happened. On top of that trauma, your family obviously feels that the quality of the prosecution needs to be questioned, but you have found that there is no route for doing that.

We are grateful that you have explained your experiences in great detail to the committee. We are concerned by what we have heard, but it is fair to say that we are not completely surprised. That is one reason why we took advantage of this opportunity, which was arranged through Ken Macintosh. We are hopeful that we can do some good; you have done some good already by recounting your experiences. We are optimistic that broader lessons can be learned. We have taken careful note of the fundamental points that you have made.

I want to ask a final question. We are concerned that in the first letter that you received, from, I think, Susan Burns, you were refused a meeting with the Crown Office. You got a meeting only because of the intervention of politicians. I am mindful of the fact that, while you were trying to obtain a meeting, the Chhokar family were facing not dissimilar circumstances. Did the Chhokar reports have any influence on the fact that you finally had a meeting?

11:30

Eileen Cawley: Possibly. There was a lot of media interest at the time. As I mentioned, Nuala Brady and Glynis Walsh went round all sorts of rallies and got the support of MSPs such as yourselves. We thank you for your support. I think that it was paramount that the Chhokar case had been highlighted. I think that the Crown Office did not want too much publicity. It was as if it would give us the meeting if we would go away.

The Convener: Unfortunately, we must now conclude. Is there anything that has not been covered that you would like to mention?

Nuala Brady: I have a few points. When I think about what happened to us, four words come to mind. First, we needed liaison. My aunt and uncle received disjointed pieces of information from various bodies. It would have been ideal if someone could have liaised with those bodies and then come back to us. It is hard to understand information when you are grief-stricken. Secondly, accountability is needed. We found it hard to have our case investigated. Thirdly, an appeal mechanism would be ideal for people like us. Finally, there is an imbalance. People like us do not seem to have the same chance in the courts system. I will leave it at that, but those four things come to mind when we talk about the way forward.

The Convener: I cannot thank you enough. I know that it has been a difficult morning for you. Everything that you have said will be recorded so that you will be able to read it. I am sure that Ken Macintosh will arrange that. I thank Ken Macintosh for coming along to support the family. I am sure that they are grateful.

We move on to the final session of our inquiry. If members are prepared to carry on, I can promise them that there will be a break at 12 o'clock.

Alan Kerr is a constituent of Cathy Jamieson MSP, who unfortunately cannot be present today. I believe that she has sent her researcher, Paul Kilby, to help. The committee will again have a great opportunity to question individuals who have had direct experience of the Crown Office and Procurator Fiscal Service.

Good morning, Mr Kerr.

Alan Kerr: Good morning.

The Convener: Thank you very much for agreeing to come along. We are examining two experiences as part of our Crown Office and Procurator Fiscal Service inquiry. We cannot thank you enough for agreeing to share your experiences with the committee. As well as asking questions about the failings of the organisations, it is vital that we take direct evidence from victims. Would you like to say anything by way of introduction, or are you happy to answer questions?

Alan Kerr: I have three main complaints. The first is that there appears to be no mechanism in the Scottish judicial system for making a complaint. The second concerns communication. The third is about the procurator fiscal's office making mistakes. That is really it. I also have individual complaints, but they are personal and

are to do with the case that I was involved in.

The Convener: If you do not mind, we will ask you to take us through your experience. Scott Barrie and Stewart Stevenson would like to ask you questions.

Stewart Stevenson: Good morning, Mr Kerr. I hope that you do not mind if I address you as Alan. Is that all right?

Alan Kerr: That is fine. That is what I am known as.

Stewart Stevenson: Will you start by describing the background to what happened to your son and how you became involved with the Crown Office and Procurator Fiscal Service?

Alan Kerr: My son was out with his pals. The next thing I knew was that I got a phone call telling me that he had been stabbed. When I got there, he was in the ambulance and the police were just arriving. When we got to the hospital, we found that he had been stabbed three times.

The police picked up the boy who did it. My son was able to tell them the boy's name. The police went and got him, took him down, charged him and took him back home. Later, when they contacted the hospital, they discovered that my son had life-threatening injuries, because he had a punctured lung. They then went to get the boy again and charged him with attempted murder. His mother was with him.

We went to court. The time we spent in court was basically a joke. That is the only way that I can describe it. In my opinion, the advocate was an absolute disgrace to his robes. I am not saying that he is a bad lawyer under normal circumstances, because I do not know whether he was handed the case 10 minutes or 10 months before it started, but the bottom line is that he was not there to do rocket science. He would have asked similar questions in various cases. The fact is that he did not ask some questions, and some of the things that he let go were absolutely astonishing.

When we were outside the court, in the morning or after lunch, the pressure that we were under from the accused's friends was a bit frightening at times. They were seriously trying to intimidate us. Our witnesses were all 15 or 16 years old at the time and it was hard to tell them not to lift their hands when someone was barging by them in the court. Even when we complained, nothing was done. There was no segregation.

Nobody told us what was happening. Evidence that, in my opinion, should have been heard in court was not heard. There was a big issue about a belt, for example. Medical records that should have been used were not used. We had a meeting with the fiscal's office and all that the procurator fiscal did was apologise for the mistakes that he had made.

Stewart Stevenson: May I focus on the fiscal's office? My colleague Scott Barrie will focus on the experience in court. When did you first have contact with the fiscal's office? Was it before the trial?

Alan Kerr: Aye. My son was 15 at the time and so I was his guardian. The fiscal came to Cumnock police station where we went to meet him.

Stewart Stevenson: Was that the precognition? Is that how it was described?

Alan Kerr: That rings a bell.

Stewart Stevenson: I know that these legal terms are not very helpful.

Alan Kerr: My son gave a statement about what had happened. The fiscal came back and took a second statement. Apparently, the second statement was just in case my son had remembered something that he had forgotten when he gave the first one. He had been in hospital, at death's door, so that gave him time to think about things. We had phone calls in between.

Stewart Stevenson: Were the phone calls from the fiscal to your family?

Alan Kerr: We had to make all the contact. The fiscal's office contacted us to arrange a meeting for my son to give his statement. In every other case, we had to contact the fiscal's office. The boy was on bail—very strict bail—and that was flaunted left, right and centre. We did not know anything about it. We thought that the boy had been remanded, but we went down the street to the shopping centre and there he was, facing us. We were not told that he had been given bail.

Stewart Stevenson: Did you know the conditions of his bail?

Alan Kerr: When we phoned the fiscal, he told us the conditions. We then contacted the police, who interrogated us to find out why we knew what the bail conditions were and they did not.

Stewart Stevenson: Do you think that the fiscal should have provided you with information?

Alan Kerr: Yes.

Stewart Stevenson: In the immediate run-up to the trial, were you clear when it would take place?

Alan Kerr: No. The trial was supposed to take place in Kilmarnock. It was postponed to a second date in Kilmarnock. It was then transferred to Glasgow. We were given several different dates for the trial. In one instance, the police were on their way round with a citation for the trial and

even before they reached us, we had a phone call from the fiscal to say that the trial had been postponed again.

Stewart Stevenson: How many times was the trial postponed before it finally came to court?

Alan Kerr: It was postponed five or six times.

Stewart Stevenson: Were you informed of that on each occasion or did you have to phone to find out?

Alan Kerr: The police let us know.

Stewart Stevenson: Right. When you went to court, did you have contact with the individual fiscal or the Crown Office, to let you know what was going on?

Alan Kerr: The fiscal was at the court and introduced us to someone else who had something to do with the court—a clerk or whatever. I am not sure what the person's job was, but he explained that my son would be first in the witness box. That was it. We did not have a clue who the advocate was. I do not recall being told the advocate's name and I do not know it to this day. I might know his first name, but I have not got a clue about his surname. Even when the case started, he spoke so low that I could not hear half of what was said.

George Lyon: I want to go back to the point that you made about the six postponements of the trial. Were you told why it was postponed?

Alan Kerr: No.

George Lyon: Was any explanation offered?

Alan Kerr: No. When we asked for reasons we were just told that it had been postponed. No one could tell us why, where or how.

George Lyon: So there was no explanation at all.

Alan Kerr: We do not even know why the trial was transferred from Kilmarnock to Glasgow. We were never given an explanation. I can understand that when someone goes to court, the case preceding theirs may overrun by three or four hours and they may have to go back the next day—I accept that no one can put a specific time on a case. However, I object to the fact that this case was moved from pillar to post and went on for months, as the dates kept being changed. We never received any indication that the case was being moved because Kilmarnock could not cope with it or because Glasgow was too busy. We were simply told that the trial had been postponed and were asked to go back to court on another day. I changed the dates on the citation to help me remember when the case was due to be heard.

Stewart Stevenson: Clearly you were not receiving satisfactory information in response to your queries. When you asked questions, did the fiscal's office come back to you fairly quickly?

11:45

Alan Kerr: When I contacted the fiscal's office, staff were not immediately prepared to speak to me over the phone. They would not do so until I had given them the case numbers and the details on the citation, such as who was fighting whom. Only then were they happy that I was who I said I was. That is fair enough, because I could have been Joe Bloggs.

Staff at the fiscal's office replied to my questions fairly quickly, but if I had not thought to contact them I would have been left in the dark. The office did not keep me informed that a hearing had been cancelled because it was impossible to get all the witnesses together or for some other reason. I was never told anything unless I thought to contact the office.

Scott Barrie: Good morning, Alan. In answer to a question from Stewart Stevenson, you started to tell us about your experience of being at court and the difficulties that you and your family encountered there. Will you say more about that experience? I do not know whether you had to give evidence.

Alan Kerr: I was never asked to give evidence.

Scott Barrie: However, you observed what happened from the public gallery.

Alan Kerr: From the word go. I had to take my son to the court because of his age at the time.

Scott Barrie: What difficulties did you encounter when you were at court?

Alan Kerr: When we arrived with our citation, we were taken into a wee room. A fellow explained to us that we were the victim's witnesses and told us where we were to go. My son was to be the first witness. Two or three hours later the same man came back to tell us that the trial had been postponed until the next day, because someone had not turned up to give evidence at the previous trial.

When we went back to the court, we were taken into the same room. When lunch time came, we went to get our lunch, but then nothing happened. It was as if there was a blank space in the court. The families of the accused and of the victim were sitting in the court dining hall glowering at each other across the tables—believe me, people do, because they get very upset about what has happened. After lunch, we waited at the entrance to the court. Instead of taking the direct route to the toilet, the family and friends of the accused would take the long way round so that they could

barge into people who were standing waiting to go into the court. The same thing happened in the morning, when we arrived at the court. Their aim was obviously to incite the half a dozen young boys aged 15 or 16 who were in the court. You know what young people are like nowadays—they do not like being pushed around; nobody does.

There must be segregation. I do not like using that word, because I do not believe in segregation, but I do not see any other way. The two parties have to be split up somehow so that no animosity builds up between them.

The Convener: Are you telling the committee that, because there is no segregation or separation of the family and the accused, there is too much scope for intimidation of witnesses in the court?

Alan Kerr: Not so much in the courtroom.

The Convener: In the court building.

Alan Kerr: In the court building, there is nothing to stop intimidation. If I had gone to the toilet, there would have been nothing to stop someone coming in and jumping me. I am not saying that that happened—it did not happen—but the possibility was there.

The Convener: I note what you are saying.

Scott Barrie: So, your son was under 16.

Alan Kerr: Yes, he was 15.

Scott Barrie: He was the victim of an assault. The charge was attempted murder and he was also giving evidence.

Alan Kerr: Yes.

Scott Barrie: What support did he receive from outside agencies?

Alan Kerr: We were quite fortunate. Victim Support phoned us, to see whether we wanted somebody to come and speak to my son and us. We were not sure what to do at the time, so we went to the office, which is open on certain days of the week, and the fellow there put us in touch with a victim support officer, who happened to be somebody I know anyway. Kenny offered to come. If we had not been happy that the officer was someone we knew, he would have gladly got someone else to come whom we did not know. I talked with my son. He knows Kenny and he said, "No, I would rather have somebody I know." I know that some people would rather not have someone they know, but in this case my son preferred that.

Kenny was very helpful. He told us more than anybody else told us. He offered to take my son to court, to show him what happens in court and how the cases proceed. I cannot say a bad word about him. I was quite happy with him.

Scott Barrie: So, that was very helpful for you and your son.

Alan Kerr: Oh, aye. It helped us too—not just my son. We had a better idea of what was going on.

Scott Barrie: Did that support continue after the not guilty verdict?

Alan Kerr: No, but my son had a lot to do with that. He said, "Look, it's by wi. I want to get on wi my life." That was his way of dealing with it. I am quite sure that, had I approached Kenny, he would have come back, but nobody approached us.

Scott Barrie: You may or may not know—forgive me if you do not know—that the Scottish Executive is considering whether to introduce victim statements. That would allow victims of crime or their families to make a written statement to the court about the impact of the crime on them. Would you be in favour of the courts' considering such statements?

Alan Kerr: I think I would.

Scott Barrie: Did you know that that was a proposal?

Alan Kerr: No. I could agree with the idea, but statements will work only if they are taken on board. A lot of things seem to be getting pushed to the side in the judicial system. It is quite frightening, at times, to see how often doors are slammed in your face. People are not prepared to talk to you when you have a query about something. It really gets you angry. It is as if you are banging your heid against a brick wall and folk are slamming doors in your face. I am 100 per cent convinced that I want to make a complaint about somebody, but I cannot do it, because there is no way to do it—or, if there is, nobody will say. There should be a way. In every walk of life that I know of in this country, a complaints procedure is in place. It does not matter what job it is, there is a complaints procedure. However, there is not one in this case—or, if there is, nobody is talking about it. I feel that that is totally wrong.

The Convener: Getting doors slammed in your face has been a recurring theme in the evidence that the committee has heard. We may use your phrase when we come to write our report.

Alan Kerr: I have no argument with that. My other favourite phrase at the moment is brain deid.

The Convener: You said earlier that you felt unhappy with the quality of the prosecution in court. Did you at any stage attempt to complain about that?

Alan Kerr: To whom?

The Convener: So you did not.

Alan Kerr: The procurator fiscal was not there half the time. He was there for something like three hours one day and two hours the next.

The Convener: Are you telling the committee that you wanted to make a complaint, but you did not know how to go about making it?

Alan Kerr: The bottom line in my case was that I was inches away from standing up in court and shouting at the judge that the advocate was a clown. I may be using strong words in calling him a clown or saying that he was thick, but a first-year law student could have done better. That is how bad he was.

The Convener: You did not feel that there was any way to vent your frustration by—

Alan Kerr: The situation made me so angry and yet there was nowhere to go and no way of protesting about what was happening.

The Convener: Your only recourse was to Cathy Jamieson, your MSP.

Alan Kerr: Yes. Some evidence was not even brought to court. The people at the procurator fiscal's office held up their hands and said, "We're sorry. We apologise. We know now that the evidence should have been there." That was a bit late after the fact. We were only talking about two items and neither of them was there.

The Convener: For the record, I understand that you had a long journey—something like 48 miles—to get to court.

Alan Kerr: I am not sure. It was something like 48 or 50 miles.

The Convener: We will not argue over a couple of miles, but that was the kind of distance that you had to travel to find out that the trial might not proceed.

Alan Kerr: I am sorry, I see that you mean the journeys we made before and during the trial. The trial did not start until the third day that we travelled to the court. We did 90 miles a day for two days for nothing.

The Convener: We want to put the distance on the record.

Alan Kerr: From the house to the court is about 54 or 55 miles. We counted the journey from Cumnock to Glasgow as between 44 and 45 miles.

The Convener: We want to ensure that that is on the record, as that is quite a distance to have to travel. That was an additional factor in your experience.

I thank Mr Kerr for coming to give such clear evidence to the committee. The evidence of your experience is invaluable. I thank Cathy Jamieson MSP for taking the trouble to write to the committee. If she had not done so, we would not have been able to invite Mr Kerr. We will write up the report and, should you wish to see the report and the *Official Report* of your evidence, the clerk or Paul Kilby will make arrangements for that to be done through Cathy Jamieson.

Alan Kerr: Thank you for having me and for listening to me.

Meeting closed at 11:57.

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