JUSTICE 2 COMMITTEE

Tuesday 18 December 2001
(*Morning*)

Session 1

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JUSTICE 2 COMMITTEE
36th 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)
Mr Alasdair Morrison (Western Isles) (Lab)
*Stewart Stevenson (Banff and Buchan) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Dr Richard Simpson (Deputy Minister for Justice)

WITNESSES

Betty Bott (Crown Office)
Dr Alastair Brown (Crown Office)

CLERK TO THE COMMITTEE

Gillian Baxendine

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Fiona Groves

LOCATION

The Hub

Scottish Parliament

Justice 2 Committee

Tuesday 18 December 2001

(*Morning*)

[THE CONVENER *opened the meeting at 09:50*]

The Convener (Pauline McNeill): Good morning. The committee is quorate, so we shall start.

I welcome everyone to the 36th meeting in 2001 of the Justice 2 Committee, which is taking place in grand surroundings. Unfortunately, it might be a one-off meeting in these surroundings, but we appreciate them.

I have received apologies from Alasdair Morrison; George Lyon will join the meeting at around 10.30 am.

I have one or two matters to report. It is anticipated that next year's programme of committee meetings will be agreed this afternoon at the conveners liaison group. I am pleased to inform members that the proposal is that the committee meet on Wednesday mornings. That is important, because a number of members have clashes or must travel a long distance. The proposal should enable full attendance.

Mrs Margaret Ewing (Moray) (SNP): Well done.

The Convener: I thought that the committee would be pleased about that. Arrangements will be confirmed once the conveners liaison group has agreed the programme.

We discussed where we should try to convene a meeting outside Edinburgh. George Lyon suggested a venue in the Borders, but it is proving impossible to get one. We are trying to organise a meeting in the Inverness area. I must ask the clerks to clarify that because, if the suggestion goes to the Parliamentary Bureau, I have a difficulty on the day in question—I have a meeting in the morning that I cannot get out of. I am concerned about travel arrangements.

Scott Barrie (Dunfermline West) (Lab): When will that meeting be?

The Convener: On the afternoon of Monday 14 January 2002. We will need to discuss practical arrangements—how to get there and overnight accommodation—with members. There is no other choice as the Borders is ruled out.

Stewart Stevenson (Banff and Buchan) (SNP): A meeting in the Inverness area would not cause me any problems.

Mrs Ewing: It would not cause me any problems, either, if I am still a member of the committee.

The Convener: Stewart Stevenson, the clerks and I can help with travel arrangements. If members have any other difficulties, they should let us know. Any requests will be accommodated as far as possible.

Items in Private

The Convener: Does the committee agree to take in private item 2 on lines of questioning in the Crown Office and Procurator Fiscal Service inquiry and item 7 on the next steps in that inquiry?

Members *indicated agreement*.

09:53

Meeting continued in private.

10:01

Meeting continued in public.

Sexual Offences (Procedure and Evidence) (Scotland) Bill: Stage 2

The Convener: Agenda item 3 is the Sexual Offences (Procedure and Evidence) (Scotland) Bill. I welcome the Deputy Minister for Justice, Richard Simpson, and his legal team.

Members should, as usual, have in front of them a copy of the bill, the second marshalled list of amendments—this is day two of stage 2 of the bill—and the suggested groupings of amendments. Members should also have received copies of a letter from the Deputy Minister for Justice and the Executive's justice department relating to a group of amendments on the disclosure of previous convictions. Submissions on that group of amendments have been received from the Equality Network and Professor Christopher Gane. In addition, we have received a fairly weighty submission from the Law Society of Scotland. It is our intention to complete stage 2 of the bill today, as we have only three groupings of amendments to deal with.

Before we consider the amendments, I have a matter to raise. I have not had an opportunity to discuss the matter with the committee before the meeting, but I will take any comments after I have said what I am going to say and will ask the minister to reply. As the convener of the Justice 2 Committee, I am unhappy that the amendments on the disclosure of previous convictions have been lodged after the stage 1 debate. I do not have any difficulty with the content of the amendments, which we are about to debate, and we will hear from the minister about that. However, I feel strongly that the fact that we have not been able to take oral evidence on the amendments has put the committee in a very difficult position.

We have checked the *Official Report* to remind ourselves exactly what was said about the matter at a previous meeting. I asked the Executive officials whether it was the Executive's intention to lodge such amendments. Barbara Brown said:

> "We wanted to think further about that provision, about which we received a number of comments. It is a difficult proposal and we might lodge a stage 2 amendment to deal with it."—[*Official Report*, *Justice 2 Committee*, 5 September 2001; c 347.]

I am sure that the minister will say, in defence, that it was stated that lodging amendments at stage 2 was a possibility, but I feel that it should have been made clearer at that point.

I have to discuss with the committee how to deal with this. However, if we get calls for evidence before stage 3, it would be only fair to consider that. The provisions might not be contentious, but it is a principle of the Parliament that they should be scrutinised orally by people who have an interest. We have not been allowed to do that.

Will the minister take the opportunity to reply to those comments before we start on the marshalled list of amendments?

The Deputy Minister for Justice (Dr Richard Simpson): Previous convictions have always been capable of being admitted to the court. There has been a process for that, as I will explain when we debate the amendments. We are proposing a change to the way in which that is done, to bring it forward and to balance more directly the interplay between the rights of the accused and the rights of the complainer. There was always an intention to consider that. As members will see from the length of the amendment, it was always going to be very detailed; it took longer to draft than we had anticipated. I apologise for the fact that you received the letter so late in the day.

That does not address the central point of the committee's argument, which is that, in a unicameral system, the need for the committee to be given the opportunity to take evidence at stage 2 on all the elements of the material is very important. Having been a back bencher until recently, and having been faced with a similar situation in the committee of which I was a member, I understand the committee's feelings. We will fully understand if the committee feels the need to consult widely on the issue before stage 3. I hope that amendment 16 is robust and will not require further amendment. However, we appreciate the fact that the committee may wish to consult further; it is the right of the committee to do so.

Stewart Stevenson: I welcome the indication from the minister that a period for consultation on the subject might be available to us.

With the convener's indulgence, I would like to broaden the matter slightly in anticipation of what the Appeal Court may do today with Lord Abernethy's judgment in Aberdeen on the subject of what defines rape. Might the opportunity exist for some limited consultation on the subject, with a view to deciding at stage 3 whether a definition could be incorporated? I realise that that is not a trivial subject, but on the other hand it could fit within the bill. That might be the earliest opportunity for the Parliament to address the Appeal Court's decision. To say that may be to anticipate the decision, but it is important that we at least table the decision as something to think about. I would not like it if the Appeal Court's decision were to leave things as Lord Abernethy left them, which would severely restrict the definition of rape.

The Convener: It is significant that we are discussing the Sexual Offences (Procedure and Evidence) (Scotland) Bill on the same day that seven judges in the High Court will determine Scots law on rape. However, the Lord Abernethy ruling is not within the scope of our discussions on the bill. The scope of the bill is defined as procedure and evidence in court, although it would apply to the law of rape and other sexual offences. I realise that there is a connection, but we are not at liberty to deal with anything that is outside the scope of the bill. The amendments that we will deal with this morning are within the scope of the bill—that is clear—and no one will argue that they are not. The basic principle is that the Parliament was unable to discuss previous convictions at stage 1, when many organisations would have liked to have had their say. We will need to come to that and make a decision on how to deal with it.

Bill Aitken (Glasgow) (Con): The minister has been conciliatory in his approach. He recognises that the matter has not been handled terribly happily. I do not propose to labour the point unduly, but I have serious concerns. We are dealing with a principle of Scots law that has probably been enshrined in statute for 300 years, yet we are seeking to amend and dilute that principle in rather a cack-handed manner.

I will listen with interest to what the minister says. I accept that there is an arguable case for the amendment, but it is a pity that we cannot deal with the matter in a more considered manner.

The Convener: Does the minister accept that, whatever the result of the division today, the committee reserves the right to discuss how it wishes to deal with the matter and that there would be no problem in our taking evidence if we so wished?

Dr Simpson: I am not clear whether the Parliament's procedures would allow the committee to do that, but I have no problem with the committee consulting before individual members lodge stage 3 amendments.

The Convener: To my knowledge, there is no procedural difficulty. We would get ourselves into difficulty if we were to support the amendment without saying anything to the contrary, then to go to Parliament at stage 3. If we said at stage 3 that we were unhappy, other members would rightly question why we supported the amendment at stage 2. It is correct to get it on the record that we reserve our right to take evidence before stage 3. That would give us the opportunity to air anything that we were unhappy about. The procedure is unusual, but to do it the other way would give us difficulties when we voted on the amendments.

Dr Simpson: The wish of all of us is that the legislation should be robust. If the committee feels that that is an appropriate way to proceed, I have no objections.

Stewart Stevenson: I want to return to my point about Lord Abernethy, without pushing it too hard. Proposed section 288C(2) lists rape as one of the offences, at paragraph (a). With the Protection of Wild Mammals (Scotland) Bill, words have created some difficulties, so a set of definitions of what offences mean has been incorporated in the bill. If doubt is emerging about what an offence might mean, we could consider introducing a definition. I may come back to that at a later date.

Dr Simpson: Our view is that the matter is outwith the scope of the bill. The Parliament has made its view clear that it might wish to return to the issue in a future debate, depending on the Appeal Court outcome on the Abernethy decision. It is the right of Parliament to do that, and I do not think that the Executive would have any objection. However, we would feel that to extend the problems—which, to some extent, we have created with amendment 16—by introducing yet further amendments at this stage, without taking evidence formally, would be to compound the problem. Therefore, if the matter needs to be raised—and I accept its importance—that should occur at a separate time and a separate place.

The Convener: With that understanding, we can move on. I will give the committee an opportunity after today to decide how it wishes to proceed.

Section 8—Exception to restrictions under section 274 of 1995 Act

The Convener: We move to the second marshalled list of amendments at stage 2. Amendment 13, in the name of the minister, is grouped with amendments 16 and 17.

Dr Simpson: Amendment 13 is a drafting amendment. The words that are being removed concern the deadline for lodging an application to introduce evidence about the complainer's character or past behaviour. Amendment 16 creates a new, somewhat stricter provision about that elsewhere in the bill; members will see that in new section 275B(1), which amendment 16 would insert in the Criminal Procedure (Scotland) Act 1995. By removing the words from their current location, amendment 13 is simply clearing the way for amendment 16.

Amendment 16 adds a new section 275A to the Criminal Procedure (Scotland) Act 1995. We have already discussed the way in which that has come about, and I will not reiterate the difficulties that we have had with it. The matter is complex and it is central to the bill redressing the balance, which was the Executive's intention when it lodged amendment 16.

10:15

Sections 7 and 8 create a new regime for character and sexual history evidence. In the future, there will be tighter restrictions on the use of such evidence about the complainer. However, there will still be occasions when the accused succeeds in persuading the court that such evidence is relevant to his defence, has significant value and should be admitted.

When that happens, a further question arises. If the accused has argued successfully that evidence about the complainer's past is relevant, what about the accused's past? Can the accused legitimately say that, although the complainer's previous behaviour is relevant, his own behaviour is not? The law allows evidence about the accused's previous convictions to be admitted in certain circumstances. When the accused has attacked the character of any prosecution witness, the Crown can apply to introduce evidence on the accused's previous convictions. It is up to the court to decide whether to grant the application.

However, as committee members will be aware from Professor Gane's evidence at stage 1, the existing law is rarely used in sexual offence trials. The perception seems to be that the courts are reluctant to grant applications and the prosecution does not often make such applications. From a reading of the material on the matter, it is also evident that the need to attack the character of the complainer arises at a late stage. One of the central tenets of amendment 16 is to shift the stage at which the debate on such matters would occur.

Amendment 16 will strengthen the existing laws in two ways. First, when the accused makes a successful application to introduce evidence about the complainer's character or past behaviour, the court will be required to consider disclosure of the accused's previous sexual offence convictions. That consideration will be done automatically, rather than the court waiting for the prosecution to make an application. Secondly, there will be a presumption in favour of disclosure. However, it will be open to the accused to overturn that by satisfying the court that it would be unfair in the circumstances of his case for his records to be disclosed.

I turn now to the detail of amendment 16. Subsections (1) to (3) of the proposed new section that would be inserted in the bill by amendment 16 make consequential changes to the Criminal Procedure (Scotland) Act 1995. The sections to be amended contain rules forbidding disclosure of previous convictions before the sentencing stage and forbid questioning of the accused about them during the trial. As we have seen, the existing law includes exceptions to that, but an additional exception will need to be made to cover the proposed new provisions in amendment 16.

Proposed section 275A(1) states that, where an accused makes a successful application to lead evidence about the complainer's character or past behaviour, the prosecutor shall forthwith place any previous relevant conviction of the accused before the judge. There will therefore be a duty on the prosecutor to do that.

Proposed section 275A(10) defines "relevant conviction", of which there are two types. The first type is a conviction for a crime that is contained in the list of offences to which the bill's provisions apply automatically. The second type is a conviction for any other offence that has a substantial sexual element.

There are two qualifications to that definition. First, a conviction is not a relevant conviction unless it has been specified in the notice of previous convictions that is served on the accused in advance of the trial. Sections 69 and 166 of the 1995 act currently provide for those notices to be served. Secondly, where the conviction is for an offence that is not on the list in the bill, it is not a relevant conviction unless the notice of previous convictions has been accompanied by an extract of that particular conviction. An extract is an official certified copy of the conviction. The extract must disclose the alleged sexual element in the commission of the offence, so it will have to set out the precise wording of the charge.

The purpose of those qualifications is to ensure that the accused receives adequate notice of the previous convictions that might be disclosed. His lawyer will then be able to advise him appropriately. Members will notice that only sexual offence convictions are defined as relevant convictions. We think that it is those convictions that are most likely to have a bearing on whether the accused committed the current offence. Other convictions, for offences such as dishonesty, are of more dubious relevance and the existing law will continue to apply to those convictions.

Proposed section 275A(2) provides that a relevant conviction will automatically be admitted in evidence, unless the defence objects. Proposed section 275A(4) sets out the grounds on which an objection can be made. The first ground for objection is that the conviction is for an offence that is not included on the list in the bill and the accused denies that there was a substantial sexual element in the commission of the offence. The second ground for objection is that admitting the previous conviction in evidence

"would be contrary to the interests of justice".

We anticipate that that will be the most commonly used basis for objections. The third and fourth grounds relate to alleged inaccuracies in the prosecution's claims about the accused's record—

for example, that the accused was not the person convicted of a particular offence in the past.

Proposed section 275A(7) provides that where the accused has objected on the basis that disclosure would be contrary to the interests of justice, the onus is on the accused to satisfy the court that that would be the case. Whenever the onus is on the accused in a criminal trial, it is always on the balance of probabilities rather than being beyond reasonable doubt. There is no need for the bill to spell that out.

We have not restricted the accused in the arguments that he can make to overturn the presumption in favour of disclosure. For example, it would be possible for the accused to argue that the extent of his exploration of the complainer's past was minor and that the prejudicial effect on him of disclosing his past record would be disproportionate. It could also be argued that his previous sexual offence convictions were not analogous to the current charge and so lacked relevance.

Proposed sections 275A(3), 275A(5) and 275A(6) explain what information about previous convictions can be admitted in evidence. An extract of a previous conviction can set out the full wording of the charge, providing more than the basic details such as the name of the offence and the date of conviction. Proposed section 275A(3) states that an extract cannot be allowed as evidence unless it has been served on the accused before the trial. That is so that the accused can predict the material that is liable to be disclosed if he attacks the complainer's character.

Where the accused objects to his previous convictions being disclosed, proposed section 275A(5) allows the prosecutor to put an extract before the court in response to that objection and without any prior notice to the accused. The prosecutor cannot know beforehand what the accused intends to do. It would not, therefore, be reasonable to make the prosecutor give notice in those circumstances. When an extract is placed before the court for that purpose, it must be used only to consider the accused's objection. Once the judge has made a decision on the disclosure, the extract must be discarded and must not be shown to any jury. In other words, the conviction will be presented to the jury but the extract will not be shown unless prior notice was given at the beginning of the trial.

We have taken care throughout to ensure that the accused's advisers will be able to establish exactly what information about the accused is liable to be disclosed, if the complainer's character is attacked. Proposed section 275A seeks to ensure that fair notice is given to the accused.

We believe that, when the accused has insisted on bringing in evidence about the complainer's past, the court should also receive relevant information about the accused's history. That provides the balanced picture to which we are endeavouring to give effect in the bill. Otherwise, there is a danger that the evidence that the court hears will be skewed in favour of the accused.

The accused will continue to be entitled not to have his past behaviour disclosed and to be tried purely on the evidence of what happened at the time of the alleged offence. However, he must accept that that cuts both ways. When the accused argues successfully that the complainer's history is relevant and significant, the prosecution should, in principle, be able to disclose the accused's past record.

There is a balance to be struck between the rights of the accused, the rights of the complainer and the rights of the wider community. Rape, in particular, is a crime with a low conviction rate. Consent defences that involve an exploration of the complainer's past are commonplace in sexual offence trials. It is in the public interest that accused persons who have committed sexual offences are convicted and are not allowed to escape justice by criticising the complainer's character or behaviour in a one-sided way, given the accused's past. It is not in the complainer's interests for the accused to be able to attack her character in the knowledge that it is unlikely that there will be any adverse consequences for him, despite his previous convictions for similar offences. However, nothing that we do can, or should, deprive the accused of the presumption of innocence. The accused has a fundamental right to a fair trial and, to that extent, his rights must be paramount.

It might help the committee if I were to say something about the impact of the European convention on human rights on amendment 16. Article 6 of the convention confers the right to a fair trial. In particular, article 6.2 entitles an accused to the presumption of innocence. That means that it is for the prosecution to show that the accused committed the offence. Until that happens, the accused is entitled to be regarded as innocent of the charge. However, article 6.2 does not mean that the accused is necessarily entitled to have evidence that might reasonably affect the likelihood of his having committed the offence concealed from the court.

In many of the continental countries that are signatories to the convention, the accused's previous convictions are disclosed during the trial as a matter of routine. The European Court of Human Rights has held that that practice does not, in itself, infringe article 6. Of course, there are substantial differences between those continental systems and our system. Many of the continental

systems do not use lay juries and do not have an adversarial court procedure; instead, they have a process of fact finding by a trained judge. It could be argued that the judges who operate in those systems are more likely to evaluate accurately the relevance to the case of a previous conviction, rather than responding rapidly to it—such a response might be too adverse to the accused.

Even in England and Wales, where jury trials are the backbone of the system, evidence of previous convictions is admitted more often than in Scotland. The doctrine of similar fact allows evidence of past offending behaviour to be introduced where it reveals a pattern of similar behaviour that can also be seen in the case that is being tried. Similar fact evidence can also include evidence of behaviour that has never resulted in a conviction. An example in the rape context is the recent case of R v Z, in which the accused was being tried for a rape. Four different women had previously accused him of raping them, resulting in one conviction and three acquittals. Details of the accused's alleged behaviour were similar in all the cases. The House of Lords held that the prosecution could put the four previous complainers into the witness box and use their evidence of what had happened to them against the accused in the current trial.

English case law on similar fact evidence has become very complicated, with a long line of decisions about just how similar the past behaviour must be. The Law Commission for England and Wales has suggested a simplification of the law, in which the probative value of the past behaviour could be weighed up against its prejudicial effect. As far as we are aware, it has not been suggested that English law in that area contravenes the ECHR, or that the Law Commission's proposals would do so. For all those reasons, we are confident that amendment 16 is ECHR-compatible.

10:30

Members of the committee may know that the Executive's original proposal, which was outlined in the consultation paper "Redressing the Balance", was to make disclosure of the accused's previous sexual offence convictions automatic following a successful application by the accused to introduce evidence about the complainer's character or sexual history. A majority of the consultees supported that proposal, but, on further consideration, we decided that such a provision could be too sweeping, for two reasons. First, the bill creates a weighing exercise that must be gone through before evidence about the complainer's past can be admitted. The original proposal on previous convictions would not have involved any weighing exercise for the accused's convictions. In the context of the other provisions in the bill, we thought that the original proposal could be unfair to the accused by removing the judicial screening that would have taken place when he applied to lead evidence about the complainer. Secondly, we thought that we needed to make some allowance for our system of criminal justice, which is confrontational in nature and which relies on lay juries in serious cases. Without some measure of judicial control, there could be a danger that individual juries would react negatively to a criminal record that was not really similar to the offence that was being tried. Our view was strengthened when we considered how those matters are dealt with in England and Wales.

We were anxious to be able to introduce the bill before the summer recess, so that MSPs and others would be able to consider it during the summer. We did not want the provision on previous convictions to hold up the introduction of the bill. However, we did not feel that we could simply press ahead with the original proposal on previous convictions in the light of some of the concerns that had been expressed and which we felt, on further consideration, might be justified. We decided to introduce the bill without a provision on previous convictions and to take time to work out and draft a proper alternative to the original proposal. Hence, we are in the position that the convener referred to. We believe that amendment 16, as lodged, is fair and practical and that it respects the accused's human rights.

Before I conclude, I will deal briefly with proposed section 275B, which is also inserted by amendment 16 into the Criminal Procedure (Scotland) Act 1995. Proposed section 275B(1) will require applications to introduce evidence about the complainer's character or past behaviour to be made no later than "14 clear days" before the start of the trial

"unless on special cause shown".

That provision should avoid the unnecessary disruption that would be caused by applications being made shortly before or part of the way through the trial. Where that happens, there is a risk that the trial may need to be postponed or adjourned. We think that applications at such a late stage should rarely be justified. A defence solicitor who has been involved from an early stage should have taken statements from all the witnesses and should know how a witness is likely to respond to a specific question.

Proposed section 275B(2) of the 1995 act simply provides that an application to introduce evidence about the complainer and an objection by the accused to disclosure of his previous convictions must be heard in the absence of the jury, for obvious reasons, and in the absence of the complainer, other witnesses and the public. The

existing provisions of the 1995 act make corresponding provision for sexual history evidence applications.

Amendment 17 adds some wording specifically on disclosure of previous conviction to the long title of the bill, and follows on from amendment 16.

I move amendment 13.

The Convener: Thank you for your comprehensive and helpful statement, minister.

Stewart Stevenson: I suspect that my points, which seek clarification, are relatively simple. First, when speaking about section 275A(10) in amendment 16, the minister used the word "charge" rather than the word "conviction". If he meant the charge rather than the conviction, I suspect that that would change the effect of section 275A(11), because the conviction might reflect evidence of a sexual element in the commission of the offence, which emerged quite separately from anything that the charge might say. I would like clarification on that. I suspect that the minister might wish to change the word that he chose, "charge", to "conviction".

Secondly, the phrase "substantial sexual element" appears in the bill in subsection (4) of the proposed new section 288C and in amendment 16 in subsection (10)(b) of the proposed new section 275A as the test that will admit evidence of previous convictions. Section 275A(11) does not use the word "substantial". Perhaps the minister will be able to confirm that the reason for the omission of "substantial" is to provide wider scope for the court to consider what will be substantial in regard to convictions. I would welcome confirmation of that.

Thirdly, on section 275A(10), the minister referred to a similarity test in his statement to us. I can see nothing in amendment 16 that makes any requirement for similarity to be a test in allowing previous convictions with a sexual element to be admitted. It merely allows any previous conviction with a sexual element to be admitted. I would welcome clarification on the intention and effect of the similarity test that the minister introduced.

Dr Simpson: On indictment, the charge will list the convictions, so that answers your first point about the word "charge". The extract will add to the name of the offence that the accused was convicted of by indicating whether there was a sexual element.

Stewart Stevenson: I want to clarify that the word "charge" refers to the current case and the word "conviction" refers to previous cases.

Dr Simpson: That is correct.

The answer to your second point is that it is up to the court to decide whether the sexual element is substantial. We did not want to limit the court's right to determine that.

I have taken advice on the similarity test. Its purpose is to protect the accused by enabling the judge to decide whether to admit the sexual offence element on the grounds of its relevance to the charge. Even although there was a sexual element in the extract that accompanied an offence of which the accused had been convicted, it might not be of a type that has any bearing on the current charge. The similarity test further protects the accused's rights in that respect.

Stewart Stevenson: For my benefit and, I suspect, for the benefit of my colleagues, I ask the minister to point to the part of amendment 16 that introduces the requirement for the court to apply the similarity test. Does the phrase "relevant conviction" introduce that requirement? If not, where is it required that the similarity test be applied in deciding what previous convictions with a sexual element can be laid before the court?

Dr Simpson: I think that the relevant paragraph is section 275A(4)(b), which refers to whether the disclosure would be

"contrary to the interests of justice".

That is an all-embracing provision, which allows a judgment to be made at that point.

Stewart Stevenson: It is important that we pin the matter down. Is it an existing provision in Scots law that that would imply the application of a similarity test, as you led us to believe?

Dr Simpson: I gather that, in the form in which it is written in amendment 16, the provision is new. On the other hand, there is an implication that that is the way in which the judge would act anyway. Section 275A(4)(b) clarifies that, because it is specifically relevant to the sexual element of cases. That is where the novelty comes in.

Stewart Stevenson: I suggest that the minister and his team should give some further consideration to that. I entirely support what you are trying to achieve, but I am concerned that amendment 16 might not be sufficiently specific on the similarity test, unless you can persuade me otherwise.

Dr Simpson: The reason that section 275A is very complex is to achieve a balance whereby the accused's rights are not infringed. Subsection (4)(b) allows the judge to give clear consideration to whether it would be

"contrary to the interests of justice"

to introduce the previous conviction and the extract that relates to the sexual content of an offence not listed in the bill. That additional element is important in protecting the accused.

The Convener: Following from that, you spoke earlier of a weighing exercise. That is relevant to the present point. You are asking the judges to apply a weighing principle to that kind of evidence.

Dr Simpson: Absolutely. I referred to whether the admission of a sexual element in a previous offence would be disproportionate. If it was disproportionate to the material that was being led on the complainer, the judge or the sheriff would have to weigh that up.

The Convener: Now that we have debated the issue at stage 2, Pepper v Hart would come into play. In other words, if the court was confused about what the Parliament meant by

"contrary to the interests of justice",

it could discover, by reading the *Official Report* of this meeting, that it was expected that there would be a weighing up of the evidence—that the admission of a sexual element in a previous offence should not be disproportionate.

Dr Simpson: The court will be able to have regard to the stage 2 proceedings.

The Convener: Being able to refer to the *Official Report* always covers our back, if a court is in any doubt about what Parliament meant. However, Stewart Stevenson makes the valid point that perhaps there should be some consideration, before closing the matter, of whether the bill should include something more specific about how the weighing-up process is to be done.

Dr Simpson: We will certainly look at the *Official Report* of today's proceedings before stage 3 to assess whether we need to add anything. The feeling is that we do not need to add anything, but we will examine the issue closely.

Bill Aitken: As has already been said, we are dealing with a difficult and complex matter, which requires deep consideration. That is why I shall reserve my position on the matter until stage 3. Further evidence or research may be necessary.

10:45

There are a number of issues that I hope that the minister will address this morning. First, I would be interested to learn whether any statistics are available—I accept the fact that statistics may not be available—to indicate how many cases there have been in which an accused in a rape trial has had convictions for previous offences of the type that would be raised under the provisions in amendment 16.

Secondly, I would be grateful if the minister could explain once more the intention behind amendment 16. If an accused person seeks to attack the character of a witness, he does so in the hope of undermining the witness's credibility. The argument could be made that, for the sake of equity, the Crown should have the opportunity to do the same. However, it is perhaps not quite so simple. If a conviction is laid before a jury indicating that a person has been convicted some years or months before of an offence in which there was a sexual element, that evidence would be highly prejudicial to the accused's case. We must be very careful in achieving a balance.

Is the intention behind the proposed inclusion of these provisions in the bill to allow the prosecution to retaliate to an attack on the complainer's credibility, or is there an evidential reason for including them? I am thinking of the Moorov doctrine in relation to corroboration. When corroboration is difficult to come by—as it inevitably is in cases of this type—the evidence of a single witness can be corroborated if it can be proved that there is a pattern of behaviour. The provision could be used to corroborate the evidence of a complainer, as happened in the English case to which the minister referred. I am not certain whether that is a desirable situation.

Thirdly, the minister states, in his correspondence, that he does not think that a conviction for petty dishonesty—which would clearly not be analogous to the conviction that would be presented to the court in this instance—would be relevant. It would, however, be relevant if the accused had been proved to be dishonest in the past, when a court did not believe his evidence. The prosecutor may ask the court why it should believe the accused now if a court disbelieved him on that occasion.

I would like the minister to clarify those points.

Dr Simpson: In answer to your first question, we do not have any statistics on previous offences.

On your second question, I understand that the Moorov doctrine is not about corroboration. Nonetheless, I take your point that it could be regarded as being so if it were used to establish a pattern of behaviour. We are trying to achieve a balance. The provisions could not be used unless the accused wished to lead on the character of the complainer. That balance is important. The accused must realise that there are consequences for him if he chooses to seek the court's approval to lead material on the complainer's background, character and behaviour. In those circumstances, his behaviour should also be considered. The amendment seeks to achieve that balance. What you are saying makes sense. Such evidence could be used to establish a pattern of behaviour. However, that is not corroboration.

Bill Aitken: Arguably, it is. There is a problem when a woman stands in a witness box and says "That man there raped me" but no one can

corroborate her evidence. That is a difficult problem. None of us has the solution to overcoming the lack of corroboration in rape cases, no matter how we have tried to be fairer to complainers in the past. The problem is insurmountable. There would be her evidence plus a guy's sentence for a conviction—libelled and put in a schedule before the jury—for committing rape some years earlier. It is inevitable that that would be highly prejudicial and would corroborate—not in law but in the jury's mindset—that the accused had committed the crime.

Dr Simpson: I understand what you are getting at, but I want to make two points. First, the judge's direction would be important. Secondly, it is an inevitable consequence of the bill that, in redressing the balance, the character and past behaviour of the complainer and the accused will come into court. You are therefore correct. There would be an influence, otherwise there is little point in such evidence. However, the current charge will still have to be proven and I presume that the judge or sheriff will direct whether the previous rape is relevant.

Bill Aitken: Do you agree that there is inconsistency in that argument? Last week, you said that if fishing expeditions were undertaken by the defence, the judge's charge would not be sufficient protection from those expeditions influencing the jury.

Dr Simpson: Except with special cause, fishing expeditions are, in effect, being ruled out. I understand that the current practice is that evidence about the complainer tends to be introduced at the last minute—in more than 60 per cent of cases, I think, it is introduced just before the point at which that evidence is to be led. We are trying to shift the balance back to make it clear to the accused that, if that happens, there will be consequences in respect to revelations about his past and behaviour. We are trying to protect the accused by informing him fully about what will come out so that he can take it into account and, with his defence solicitor, weigh whether he wishes to proceed on that basis. We are trying to protect the accused and the rights of the accused while ensuring that the central thrust of the bill—to achieve a balance for the complainer—is achieved.

Bill Aitken: Thank you.

The Convener: I have a few questions, minister. First, why have not previous convictions for perverting the course of justice or perjury been considered as examples of relevant evidence? If an accused person has been convicted of perjury or perverting the course of justice, that might be relevant. Has consideration been given to including those as relevant previous convictions?

Dr Simpson: I understand that the law currently allows those offences to be introduced as evidence if a prosecution witness is attacked. That practice will continue.

The Convener: That would apply only during a trial.

Dr Simpson: Correct.

The Convener: Do you want to give more consideration to that? Consideration can be given of whether an accused's previous convictions are relevant, as under sections 266 and 270 of the 1995 act in respect of the complainer and a Crown witness. However, it would also make sense to include the procedure at the beginning, when a written application is made.

Dr Simpson: We will consider that point further.

The Convener: That relates to my second point, which is on a matter that I want to understand correctly. The new provisions allow for the previous convictions procedure to be considered at the beginning of the trial in response to an application to use evidence on sexual character or bad character. However, sections 266 and 270 of the 1995 act will remain intact.

Dr Simpson: Yes.

The Convener: The provisions of those sections could be used during the trial.

Dr Simpson: Yes.

The Convener: Is it also the case that, if a Crown witness is attacked, sections 266 and 270 of the 1995 act can be reverted to?

Dr Simpson: Yes, if the witness who was attacked was not a complainer.

The Convener: My next question relates to serving notice of previous convictions. Has consideration been given to additional work load for procurators fiscal? Will the work load be the same because the fiscals would be doing that task anyway? Would making information about previous convictions available 14 days prior to the trial place an extra burden on any person within the criminal justice system?

Dr Simpson: Information about previous convictions will be served with the indictment, as happens at the moment.

The Convener: So there would be no additional work load in bringing that forward.

Dr Simpson: There would be no additional work load.

The Convener: My next point is about proposed section 275B, which refers to the 14-day notice. I wonder how that squares with the preliminary trial diet.

Dr Simpson: I have considered that matter. I am assured that all the timelines are correctly matched and that there is no problem between the different elements.

The Convener: That would mean that, if one wanted to include evidence on sexual history, one would have to make an application 14 days prior to the start of the trial.

Dr Simpson: Yes.

The Convener: The trial diet that might deal with that matter would be set 14 days before the trial starts. How that would work?

Dr Simpson: Amendment 14 deals with the different diets.

The Convener: I realise that we will debate amendment 14. However, I wonder how both diets can run at the same time. The application for evidence on sexual history has to be made 14 days prior to the trial and the application has to be considered 14 days prior to the trial. Surely the application needs to be made before that 14-day period.

Dr Simpson: Those are two different notice periods, although they are both 14 days. There is no problem. I discussed that matter this morning with my officials, who assure me that there is no difficulty, as the timelines are not the same.

The Convener: Perhaps it is just me. The timelines seem to amount to the same period.

Dr Simpson: I know. That was my initial impression, too. However, I am assured that, in fact, the timelines are not exactly the same. However, we will consider that matter further, so that we make it absolutely clear and certain that the timelines are not the same. I am assured that that is the case and that there is no problem.

Stewart Stevenson: Why are those periods set at 14 days? Last week we talked about a 10-day period for prior notice of the defence of consent. Why are the time periods different?

Dr Simpson: The 10-day period refers to the defence of consent, which is a different matter.

Stewart Stevenson: Why is the calendar for the defence of consent different from that for the notification of previous convictions?

Dr Simpson: That is just the way in which the defence of consent calendar has developed; the time period for prior notice was set at 10 days.

Stewart Stevenson: You are not convincing on this matter, minister.

Dr Simpson: I know. That time period has just been left at 10 days. I have tried to get a grip of all the timelines, because they are confusing if one is not a lawyer. However, I understand that one of the principles has been that we should not change more than we have to. Therefore, the 10-day period has not been changed.

The Convener: It would be helpful if the minister was prepared to share the information on the timeline with the committee so that we can understand what the timetables are.

Dr Simpson: I will write to the committee and provide the information on that. I am assured that the timelines are correct.

Bill Aitken: I suspect that someone has been talking about working days and that someone else has been talking about calendar days.

Dr Simpson: I could not possibly comment on that.

The Convener: We will get the matter cleared up one way or another. As no other members want to speak to the amendments, I ask the minister to wind up.

11:00

Dr Simpson: I am not going to reiterate how we arrived at where we are. However, I appreciate the fact that the committee will want to take a further look at the timelines before stage 3. If doubts arise, I hope that we can communicate with each other. I suggest that the convener and I meet should members become aware of any difficulties that have not hitherto been spotted because of the committee's inability to take evidence on the issue at stage 2.

The important thing is that we are endeavouring with amendment 16 to strike a balance between the complainer's rights, the public interest and the accused's rights. We believe that we have achieved that in the rather lengthy and complex section 275A that amendment 16 will insert into the 1995 act. I hope that the committee feels able to support amendment 16 with the reservations that members have indicated.

The Convener: I thank the minister for his assurances; what he said was very helpful.

Amendment 13 agreed to.

The Convener: Amendment 14 is in a group on its own.

Dr Simpson: Amendment 14 is a tool to prevent delays in trials. If a trial sitting is under considerable time pressure, it may be desirable to have an application to introduce evidence of the complainer's character or past behaviour. That should be dealt with before the trial, if possible.

The Criminal Procedure (Scotland) Act 1995 contains a system of pre-trial hearings, which can be used to assess how ready the case is for trial or deal with preliminary issues. Those hearings

are called first diets in sheriff court cases prosecuted on indictment, preliminary diets in the High Court and intermediate diets in summary cases.

First diets are mandatory, so there will always be one. Amendment 14 allows such a diet to be used for the additional purpose of deciding an application under section 275. Preliminary diets are not mandatory. If either side wants one, it has to be applied for. The prosecution can apply for such a diet to be held to deal with a section 275 application at the moment, because a preliminary diet can already deal with a matter of which notice has been given. However, amendment 14 also gives the court the power to fix such a diet to deal with a section 275 application when the court believes that that is necessary, even if neither side has asked for a hearing to take place.

Intermediate diets are mandatory in most sheriff courts. However, there are some courts, mostly in fairly remote areas, where they are not. Amendment 14 allows an intermediate diet to be used for the additional purpose of considering an application under section 275. It also allows the court to fix a diet specifically to consider such an application. That is without prejudice to any duty that the court may have to fix an intermediate diet to deal with other issues, where intermediate diets are already compulsory in that court.

I move amendment 14.

The Convener: I ask the minister to clarify a point. The committee recently visited Glasgow High Court, which does not have preliminary trials, because of difficulties with planning and the availability of sheriffs and judges. Has there been any discussion of the impact of the amendment on Glasgow High Court if such an application is made?

Dr Simpson: We have not had any discussions to date, but it is our intention to have a discussion if amendment 14 is agreed to.

The Convener: My only worry is the inclusion of that provision. To our certain knowledge—we have visited the High Court in the past six weeks—the procedure is not used now. I suspect that that is because it imposes an extra burden of planning for additional courts and for judges to be available to hear the application.

Bill Aitken: Do you intend to deal with the matter on an accused-and-counsel basis only?

Dr Simpson: Yes, the procedure would be a legal debate.

Bill Aitken: The convener has outlined the problem. When we visited the High Court in Glasgow, I raised the possibility of intermediate diets, hoping that a lot of pleas and business could be taken out of the circuit in that way. I was told that there would be two problems with that. First, human nature being what it is, no one will ever plead guilty until they are confronted with a situation in which their conviction is inevitable. Secondly, those who run the court would encounter a difficulty in finding court space and available judges, as the convener said. Are you satisfied that the matter has been thought through, given that the vast majority of High Court business nowadays seems to emanate from Glasgow—to my eternal shame?

Dr Simpson: The measure is quite narrow. We are giving the court the power to fix such a diet in addition to the existing right of either side to apply for one. Our advice is that the amendment would not add significantly to the weight of the court's work load. Nevertheless, as the convener has made that point, we will consult further on the matter.

The Convener: That would be helpful. Correct me if I am wrong, but I think that the Executive is trying to provide a range of options for courts to determine such an application.

Dr Simpson: Yes.

The Convener: There was some confusion about the way in which that would be determined. We discussed at length the provision for a trial within a trial and the Faculty of Advocates took time to explain to us what that was, as none of us has been involved in such trials. I presume that that provision is intended to be used when a matter that arises during a trial has to be dealt with.

Dr Simpson: Yes. That situation can still arise if, during a trial, special cause is shown to introduce evidence on the complainer's behaviour and character. The accused will retain the right to introduce such evidence, but they must now show special cause. The jury and public would then be dismissed. Everyone would have to leave the court and there would be a discussion about whether that evidence could be led and whether the accused's convictions could be introduced. There is still the possibility of a trial within a trial.

The Convener: We are now a bit clearer about what the Executive envisages. All the evidence seems to be stacked in favour of dealing with the application before the trial starts. The reason for the confusion is that many of our witnesses—who were not all totally familiar with the provisions of the bill—were concerned that the complainer might have to give evidence twice. The Law Society of Scotland made that point strongly. However, you are saying that, in the main, the complainer will not be involved specifically in giving evidence, as the matter will primarily be for the judge, which is what the Executive envisaged. Is that a fair summary?

Dr Simpson: Yes. The complainer may have to be involved, but that would not be the norm and is unlikely to occur.

The Convener: If a judge cannot determine whether an application for the inclusion of sexual history evidence should be granted, it is open to him or her to call the complainer at the pre-trial diet.

Dr Simpson: Yes. Proposed section 275(6) states:

"The court may reach a decision under subsection (1) above without considering any evidence; but, where it takes evidence for the purposes of reaching that decision, it shall do so as if determining the admissibility of evidence."

That allows such evidence to be used if it is absolutely necessary.

The Convener: Thank you, minister, for that helpful comment. Do you wish to make any winding-up comments on amendment 14?

Dr Simpson: I will be brief. Amendment 14 deals with preliminary diets and tries to tidy up the bill by allowing its provisions to be dealt with during preliminary diets in an appropriate way. I hope that amendment 14 fulfils that objective.

Amendment 14 agreed to.

Section 8, as amended, agreed to.

After section 8

Amendments 15 and 16 moved—[Dr Richard Simpson]—and agreed to.

Before section 9

The Convener: Amendment 32 is in a group on its own.

Mrs Ewing: Amendment 32 is not as complex as the other amendments that we have debated this morning. I hope that it is non-contentious. It is based on some of the evidence that was given to the committee by organisations such as Victim Support Scotland, which felt that regular reports back on the operation of the bill would be helpful. I echo that sentiment. Sometimes we legislators think that we have fixed a problem and go off to fix the next one that comes along without monitoring what we have done already. The issue is not substantial, but I think that the amendment would enhance confidence in the legal system and in the processes of the Parliament.

I move amendment 32.

The Convener: If the committee had any worry about the bill, it would be about the operation of the bill in practice. In the stage 1 report, the committee felt that, in the main, the bill contained good, well-balanced provisions. However, we said in the report that there must be a robust way of considering whether the bill—which is soon to be enacted—has had an impact. Witnesses have made accusations that the bill will make no difference to what goes on in the courts. Your comments on the amendment are important, minister. I realise that it would be unusual for a bill to include such a provision, but if we do not include the proposal in amendment 32 in the bill, we will need strong reassurance from the Executive that a way of assessing whether the bill has achieved its objectives can be found.

Dr Simpson: There is no disagreement on the need to monitor the bill. However, amendment 32 would impose a statutory duty on the Executive to monitor the effects of the legislation. I want to put on record that the Executive has every intention of monitoring the bill. We believe that our intention should be made clear, but we do not believe that a statutory duty is required to ensure that the monitoring happens. We hope that the committee will agree that amendment 32 is unnecessary.

The Executive introduced the bill with the intention of improving the position of victims in our criminal justice system. We are determined to follow through on that commitment. I am happy to outline our plans to monitor the effects of the legislation in greater detail and to place those comments on record. We are starting with a research project that will establish where we are at the moment. As members know, the research by Dr Brown, Dr Burman and Dr Jamieson, which has been referred to on a number of occasions, is some 10 years old. We need to update that research so that a true comparison can be made between how the system operates at present and how it will operate after the bill has come into force. A specification for a research project to do just that has been prepared and will start as soon as access to tapes of High Court proceedings can be arranged.

11:15

As soon as the legislation has been brought into effect, we can start collecting statistical information on, for example, the number of solicitors who have been appointed by the courts, the number of section 275 applications that have been made and granted and the number of consent defences that have been lodged.

However, that will not give us the full picture. We also want to know what, if any, difference the provisions will make to the way in which victims perceive the court process. We will want to check whether the new provisions are successfully excluding irrelevant sexual history and character evidence and whether there is any correlation with the conviction rate. Qualitative research is needed for that type of information and that will take more time. The new provisions must be given time to

bed in to ensure that any teething problems are sorted out. Starting the research too early might give us a distorted picture, so there would be no point in carrying out such research until 18 months to two years after implementation. It is therefore unlikely that a final report would be available until a year after that.

I am happy to assure Mrs Ewing and the committee that we are as concerned as she is to ensure that the bill has the desired effect. I also repeat our undertakings to monitor its effect carefully. No doubt Mrs Ewing and others will ensure that the Parliament holds the Executive to account. We believe that a statutory duty is not needed in this respect and I ask Mrs Ewing to withdraw amendment 32.

Mrs Ewing: Although the minister's remarks are interesting, research projects by various academics do not give much reassurance to many of our citizens. If the collection of statistical information is to start as soon as the bill is enacted, I do not see why there is such a difficulty in giving more than a general commitment of the Executive's intention to monitor the bill's effects. Could some other mechanism be used to incorporate the intentions behind amendment 32 into the bill? The minister mentioned that it might be three years before the final report is available. If amendment 32 were lodged at stage 3 with the words "two years" changed to "three years", would that be acceptable to the Executive?

Dr Simpson: The most important point is that, on this matter, a statutory duty is not needed. We must set up the research in the way that is most likely to give us a clear answer. If the legislation appears to bed down more quickly, we can advance the point at which the qualitative research is undertaken. We would wish to make that judgment ourselves. However, if it will give the committee some comfort, I am happy to repeat at stage 3 the undertaking to monitor the situation that I have given on the record in this stage 2 debate. I believe that that is sufficient and that a statutory duty on the matter is not necessary.

Mrs Ewing: As consideration will be given to the issue at stage 3, I ask to withdraw the amendment.

Amendment 32, by agreement, withdrawn.

Section 9 agreed to.

Long title

Amendment 17 moved—[Dr Richard Simpson]—and agreed to.

Long title, as amended, agreed to.

The Convener: That ends stage 2 consideration of the Sexual Offences (Procedure and Evidence) Bill. I thank members, the minister and his team. We will have a brief coffee break before we go on to the next item.

11:18

Meeting adjourned.

11:26

On resuming—

Crown Office and Procurator Fiscal Service

The Convener: I welcome Betty Bott, who is the project manager of the victim liaison office, and Dr Alastair Brown, who has become the most regular if not the predominant attendee at our committee meetings. I welcome both witnesses and thank them for taking the trouble to come along. I believe that you will make an introductory statement, Dr Brown.

Dr Alastair Brown (Crown Office): Yes, convener. As I know that you have time pressures, I will take as little time as possible over my opening remarks. I am the deputy head of policy at the Crown Office and, as such, the departmental committee liaison officer. Betty Bott is, like me, a senior depute and is currently project manager of the victim liaison office. Each of us has more than 20 years' experience in prosecuting and in all aspects of the work of the service. However, I should point out that victim and witness issues have been a very significant theme in much of what Betty has done throughout her service, which means that she is particularly well placed to help the committee on such issues.

I read with much interest and some concern the *Official Report* of the evidence that the committee has received over the past three meetings. I am keen to make a short opening statement for two reasons. First, I want to flag up some issues that have arisen, although it is up to members whether they want to follow them up. Secondly, I want to put several points on record. We will obviously be happy to expand on any of my comments during questions, but I want to be quite concise in my opening remarks.

We accept that there is room for improvement in our relationship with victims and witnesses. The committee can read what we have to say on that subject on page 16 of our substantial written submission. Some of the evidence that the committee has received over the past three weeks or so suggests that the situation is improving, which is encouraging. We want to build on the practices and developments that have led up to that point.

11:30

Other evidence suggests that we have some way to go. Some evidence suggests that there is confusion about our role. For example, it is not the case that the prosecutor is the lawyer for the victim. I doubt whether it was a member of our service who suggested that. The prosecutor's role is to prosecute independently in the public interest. Undoubtedly, there is a relationship with the victim and with other witnesses, and there are duties associated with that. However, the relationship and duties are by no means the same as those in a solicitor-client relationship.

More fundamentally, some of the evidence about communication with victims and their families highlights the effect of different points of view on the whole process. First, it should be remembered that the Crown Office and Procurator Fiscal Service is a single organisation. It is organised on the basis that the fiscal's office has the direct relationship with the victim because it is local and the fiscal is the link. The notion that some mentioned that the Crown Office High Court unit should communicate directly with the victim as well as the fiscal doing so would introduce the potential for confusion. It would also add to the already substantial burden on High Court unit staff.

Next, the fact that the victim does not find the information that we give them satisfactory does not necessarily mean that we could have given more. There was evidence about someone who was said to have been writing to the Crown Office monthly for eight years. A few of the files that I handle in the policy group are like that, although I am unable to identify particular cases. In cases like that with which I have been concerned, I have given full information. The correspondent is unwilling to accept either that I am telling him the truth or that the matter that he is seeking to raise is perhaps not an issue for the Lord Advocate and I cannot help him. There are issues of perspective involved.

In one case that I could identify, you were told that a particular letter, sent by a named person, had been dismissive and insulting. Having looked at that letter, I can say that it was four pages long, it gave individual answers to 13 questions, it was identical to a letter written by the Lord Advocate—

The Convener: It would be helpful if you could tell us what letter you are talking about.

Dr Brown: The letter that was said to have been sent by Susan Burns.

The Convener: Thank you.

Dr Brown: The letter was identical to the letter that was sent by the Lord Advocate to the MSP and the Lord Advocate is not dismissive or insulting to MSPs. I hope that that is your experience; it is certainly mine.

I know that the letter was written wholly in Susan Burns's own time. She devoted a whole Sunday to getting the information out. The point of view that

sees fiscals as high-handed fails to take into account the commitment that many of our people give. A lot of the issue is about points of view. We have to recognise that what we do and achieve might not be what we are setting out to achieve. At the same time, that does not imply a certain attitude.

The letter contained some jargon, which has since been explained. Plain English in documents is desirable and the committee has heard evidence about that. However, it is worth pointing out that, in at least some of the documents that we send to witnesses, we are bound by the rules of court.

I think that I have said enough. Those are not all the issues that came up in evidence, but they are the ones on which I felt it important to comment. We are now at your service.

The Convener: Thank you. Before I ask members to indicate whether they have a question, I will say that I was aware that you wanted a chance to reply to some of the evidence and that that was why we agreed to an introductory statement. For the record, the committee can tell what is witnesses' opinion. However, we felt that the inquiry would not have seemed real if the committee did not hear from individuals about their experience. We committed ourselves to drawing anything that seemed to be a general issue out of witnesses' evidence and we have said that we will not dwell on individual points.

Dr Brown: I understand that and am grateful for that assurance. Frankly, I was concerned that a person had been named and criticised. I felt it important that the position was made clear on the record. I understand and appreciate the approach that the committee will take in relation to its report.

The Convener: I am more than happy for you to have made that point. There is a point of principle in relation to fairness—if someone is named, someone should be able to reply on their behalf. You have done that and that is only fair. However, I must emphasise that what you heard was an individual's experience and we can draw whatever conclusions we want from that. The committee is not confused about the role of the Crown Office, although individual witnesses might be.

Dr Brown: Indeed.

The Convener: We put to the families the whole question of the independent nature of the Crown Office. The committee is quite clear about that.

Dr Brown: I am sorry if I seemed to suggest that the committee was confused.

The Convener: Okay. It is useful to get that out of the way. I assure you that we will be taking general points of principle from that evidence. We feel that we had a good session as some important issues came out of it. We pressed Victim Support Scotland quite hard on its recommendations for improvement. I have written to Victim Support Scotland asking for a more specific response on how practical some of the suggestions are. We support the general idea—as I know you do—that more should be done to provide information. I recognise that we are heading in that direction. However, I assure you that the committee has been quite hard on the witnesses in getting them to give more thought to how that could be done in our busy criminal justice system. We hope that that dialogue is about to begin.

Dr Brown: I will follow it with great interest.

Stewart Stevenson: Dr Brown has brought to my mind a metaphysics course that I did at university many years ago. For a term, we studied Gilbert Ryle's book on perception and reality. I have often encapsulated this idea by saying that what matters is not what one does or thinks, but what people think that one does. That is something that we might do well to bear in mind.

The victim liaison office says that it provides victims and witnesses with specific and general information about criminal justice systems. What sort of information have you provided to date and what information have victims asked for that you have not been able to provide or it was not proper for you to provide?

Betty Bott (Crown Office): I have brought with me the remit of the victim liaison office for the committee's interest—it is just one sheet of paper. At the moment, we provide case-specific information for the victims. For example, in a domestic violence case, where a woman—although it can be a man—has reported their partner and that partner has been taken into custody, the custody list would be available to the procurator fiscal and the victim liaison officer. It is the duty of the victim liaison officer to consult the procurator fiscal every morning, look over the list and find out what cases are victim liaison office cases. As soon as a referral is made and accepted by the victim liaison officer, the victim liaison office will begin procedures. The officer will find out whether the procurator fiscal intends to oppose bail and the general attitude towards the case.

When the victim liaison officer has collected the bail information on all the cases that he is involved in—from now on, I will use the word "he", although we have a male and a female victim liaison officer—he will go back to his office and prepare a piece of paper that specifies the cases in which he is interested. That piece of paper is faxed to the custody sergeant in the court, so that the sergeant is aware of the interest of the victim liaison officer. At the end of the hearing, the custody sergeant

sends the victim liaison officer a fax detailing what has happened in court and includes a copy of the bail order—if the accused has been placed on bail.

The victim liaison officer writes by first-class post to the victim, advising them of what has happened and whether there was a plea of guilty or not guilty. If the plea was not guilty, they are told the dates of the trial and intermediate diet. They are informed whether it is an indictment matter and whether there is CFE—committal for further examination—or full committal. If there is a bail order, it is copied, minus the address of the accused, and sent to the victim with the letter, so that the victim is aware of the bail conditions and whether they are standard or special bail conditions.

In some areas, such as Grampian, the police have domestic abuse liaison officers, who prefer to contact the victims by telephone. We have not intervened with that arrangement. In those areas, we contact the domestic abuse liaison officer, who will probably telephone the victim. However, there have been occasions where the officers have been busy and have asked the victim liaison officer to make that phone call. There are no domestic abuse liaison officers in Strathclyde police; in Hamilton, if we have the phone number of the victim, we will try to phone. The victim will get a phone call, followed up by a letter by first-class post, including a copy of the bail order with the bail conditions.

In addition, the victim will receive our general leaflets, which say what services we provide and give contact addresses, phone numbers and e-mail addresses. They also receive a copy of the agencies that we think would help them. For example, in a domestic abuse case, they will receive details of the local Victim Support Scotland and Women's Aid, other local voluntary agencies and, in Hamilton, the Eva project. For domestic abuse cases, we have a leaflet that explains that the Crown understands that domestic abuse is sometimes a difficult crime for the victim to report. Victims often feel unsupported and the leaflet offers support. We have general leaflets on domestic abuse, sexual assault, precognition and deaths. There is a draft leaflet on racial awareness. We have a number of leaflets giving general information. We send the victim the leaflet that we think is relevant to the crime that has been committed. That goes out in an initial letter.

We continue to give case-specific information—unless the victim says that they do not wish to receive that information—until the appeal stage. After conviction we say, "This is the result. If you wish to know about an appeal, please contact us." Otherwise, we give information at every stage of the criminal procedure. For example, in a custody case where an accused has pled not guilty, once we have told the victim about the intermediate diet and the trial diet, we get in touch to tell them what happened at the intermediate diet. At that stage, we give information about appearing as a witness. If the trial is adjourned or accelerated, we give information about that. If the accused pleads guilty at the intermediate diet—or at an adjourned or accelerated diet—we give that information. That is the case-specific information that we give in relation to the remit cases that we have, of which there are eight categories. The general information we give is according to the leaflets. We also give a lot of information over the telephone and information is received by phone and passed on.

It may interest the committee to know that the service extends to victims whether or not criminal proceedings are commenced by the procurator fiscal. If a case has been marked "No proceedings", it is part of the remit of the victim liaison officer to ensure that the victim knows that fact, which at the moment is passed on by the procurator fiscal and not by the victim liaison officer.

While I would not say that we are always able to give information that we are asked for, we give a vast amount of information. It is difficult to say what information we do not give that we are asked for. Generally, the initial letter generates a phone call and a lot of information is exchanged over the phone. Quite a lot of the process is to do with reassurance. I was acting as a victim liaison officer in Hamilton when one of my staff was on holiday and, in relation to a domestic abuse case, I sent out a letter to say that the accused had pled not guilty in his trial and to outline the current situation. The lady to whom I sent the letter phoned me to ask what the fact that he had pled not guilty meant. In conversation with her, it became clear that she did not know what those words meant. It was useful for me as a lawyer to learn that even the words "not guilty" are difficult to understand. She also wanted to know what his plea meant for her and whether she would have to give evidence and so on.

11:45

The lady asked whether the plea meant that her son would have to give evidence as he was the only other person who was present and, if he did have to do so, what could be done to help him give evidence. That example demonstrates that one letter with specific and general information about a case can provoke a request for a lot of information. The woman would have got that information later on, especially in relation to her son giving evidence, but being told early—the day after the accused had appeared in court—reassured her. She was glad to hear that the child would be supported in giving evidence, that there

could be court visits and so on. My perception is that victims are assisted not only by getting information that they have never had before but by getting access to a dialogue that they have never had before. They can time that dialogue themselves.

Stewart Stevenson: I take from what you say that, although there is diversity in the way in which the initial contact is made with the victim—in Grampian, the domestic abuse officer does that and in Hamilton, a member of your staff does it—by and large, the victim is contacted by letter.

Betty Bott: We always get in contact with the victim via a letter. Unlike Stewart Stevenson, I am not a metaphysicist, but I take the view that, if people are traumatised, they do not always take in what is said to them. A letter works as confirmation that can be read at the victim's leisure. It is better if everything is in writing. However, I also take the view that it is important for victims of crime to know what decisions are as soon as possible. Therefore, if we have their telephone number, we will try to pass information on by telephone.

I am conscious that we are a new service and that it would not be appropriate for us to stomp in big tackety boots over what is being done by a number of organisations, both statutory and voluntary. I have therefore tried to find out what relevant bodies exist in the various areas in which we operate and to work with them. It would not be appropriate for us to trample all over the strategy that is being worked on in Grampian, which has a domestic abuse liaison officer. Strathclyde does not have domestic abuse officers, so we make the phone calls. Grampian wants to make the phone calls, so, as we are confident that that contact is being made, we work with Grampian on that.

I am also keen for witnesses to know what a bail order says. If I rattle away to a victim about her husband's bail conditions, it is handy for her—or him, if the accused is female, which has been the case in a domestic abuse case in Hamilton—to have the bail conditions. A piece of paper that lists those conditions gives a certain reassurance.

Stewart Stevenson: There is a matter with which I suspect my colleagues might want to deal before going on to other matters. In what percentage of cases in which the initial response from you is by letter are subsequent responses by phone? In other words, how frequently do you establish a dialogue by conversation—by less formal means?

Betty Bott: I cannot give you that information, because we do not hold such statistics at the moment—we are a new service.

Stewart Stevenson: Do you have a subjective feel for the percentage?

Betty Bott: My perception is that the type of response depends on the case. Domestic abuse cases generate a lot of dialogue. I call cases involving children kiddie cases—I do not mean that as an insult to children, as I have dealt with such cases for about 14 years. We tend to have a high level of dialogue with kiddie cases and petition cases—which, of course, include murder cases. We have a lot of dialogue in death cases, too. Having said that, with some domestic abuse cases, we hear nothing at all. There are people who use the service a lot and there are people who do not take it up.

Perhaps I should go over the eight categories for members: victims in all serious cases, where the nature of the charges is indicative of solemn proceedings; the next of kin in cases involving deaths that are reported for consideration of criminal proceedings and fatal accident inquiries; the next of kin in all cases—including suicide and drug cases—that result in their being invited by the procurator fiscal to discuss the circumstances of death; victims in cases of domestic abuse; victims in cases with a racial aggravation or in which it is known to the procurator fiscal that the victim perceives the offence to be racially motivated; cases involving child witnesses; victims in cases involving sexual offences; and any other victim, next of kin or witness for whom the procurator fiscal and the victim liaison officer agree that, because of particular vulnerability, the provision of the service would be beneficial.

So we are talking about people who are vulnerable. Of course, the victim liaison office is at the start of the process. The categories that I listed are those on which we thought we would concentrate to begin with. Out of those, domestic abuse cases have the highest take-up rate and the highest level of dialogue. Next come kiddie cases, which are often sexual abuse cases—members can read a bit into that—followed by petition cases and cases involving next of kin.

Stewart Stevenson: Finally, you said specifically that you write to victims when there is to be no prosecution. It has come up that the Crown Office does not give reasons publicly for not proceeding. Does the victim liaison office give victims and potential witnesses such reasons?

Betty Bott: The Lord Advocate has said in various speeches on the victim liaison office that people have a right to know what has happened in their case. Perhaps because of my procurator fiscal background—I have been a procurator fiscal for 24 years—I took the view that it is not appropriate for the victim liaison officer to advise victims of no proceedings. It is more appropriate for the procurator fiscal to do that.

My experience is that the victim wants to know first whether there are to be proceedings.

Knowledge that there are to be no proceedings is hotly pursued by the question "Why?" It would not be appropriate for the victim liaison officer to give reasons. As project manager, I took the view that, in the category cases that I have outlined, we would ask the procurator fiscal to advise the victim that there are to be no proceedings and would offer our services at a meeting to facilitate any explanation that the procurator fiscal gives and the victim wishes for.

In my experience, procurators fiscal are generally fairly articulate. I hope that that is the experience of others. Victims are often not so articulate and, in any event, are overcome by their trauma and the questions that they want to ask. It is therefore useful for them to have someone present who understands what they want to know and who can help to articulate that for them in a forum that is not confrontational. The duty of the victim liaison officer is to be present at meetings at which a decision is notified to a victim. That victim may not be told of the reason for the decision, but is at least told that there are no proceedings. That is important.

I should say that, when the committee has time and examines the remit cases, it will see that they do not fall into a category of case in which there are a lot of no pro decisions. In cases on which a no pro decision is made, a procurator fiscal would make that decision carefully. In the time that we have been working, we have only had two instances in which a no pro decision has been taken in relation to category decisions. In each case, the procurator fiscal has written and offered a facilitating meeting.

When the procurator fiscal writes to offer such a meeting, we then write and say, "We understand that the procurator fiscal has written to you to advise you that the case is not proceeding any further. We offer our services as facilitators at any meeting that you might like to have." We have not been taken up on that offer, but we have made it. In death cases, we find that the next of kin take us up on facilitating meetings. We have on occasion been asked to attend to assist in information being given when the next of kin meet the procurator fiscal.

Dr Brown: The committee might find it helpful to refer to the evidence that the Lord Advocate gave to the Justice 1 Committee on 5 December this year in the context of the Freedom of Information (Scotland) Bill. In the course of that, in answer to a question that Donald Gorrie asked, the Lord Advocate set out his position on the giving of reasons for decisions to take no proceedings. I will not trouble the committee with the detail because it is in the *Official Report*, but he said that he believes that greater openness is desirable and:

"In very serious cases, we also try to explain the reasons for decisions to the complainer. We have done that for a long time in rape and sexual offences cases and are now doing it in murder cases."—[*Official Report*, *Justice 1 Committee*, 5 December 2001; c 2972.]

I do not want to suggest that that works uniformly well, but the Lord Advocate's position is set out in the report of that meeting and the committee may find reference to it helpful.

The Convener: We would. That topic will be of interest to the committee in the course of its inquiry. Is the Crown Office's policy to give some kind of response automatically to victims or victims' families who ask for it? Is that systematic? Have you given any thought to that?

Dr Brown: Do you mean specifically a response to a request for reasons for no proceedings?

The Convener: Yes.

Dr Brown: There are fairly clear instructions in the book of regulations about what one should do with such a request. The general rule is that reasons are not given. However, in specific cases, such as those that the Lord Advocate identified—cases of sexual assault and now murder cases—and also in many cases that involve children, substantially more information can be given. That is set out clearly in the book of regulations.

We expect that, in any case on which somebody has asked for reasons, the fiscal would at least reply to explain that the general policy is not to give reasons and to explain the kinds of considerations that go into a case. In the cases in which we have departed from that general policy, it is expected that the fiscal would give more detailed reasons. The circumstances of each case have to be considered. I have been involved in cases in which to give a full, or even an adequate, explanation to one victim will mean breaching the privacy of another victim. That has to be handled with great care. If I have not been the decision maker, I tend to fudge the issue by saying, "I cannot give the particular reason in this case, but if I had been making the decision, I would have been exercised about those sorts of things." A bit of sensitivity has to be used in each case.

The short answer is yes, we would expect a response when a request is made. However, as I tried to indicate in my opening statement, the response that we can give will not always satisfy the person who is asking. There are some cases in which that discrepancy is intractable.

12:00

The Convener: It is appreciated that there are sensitivities and there has to be some discretion.

In relation to past practice, would you say that the Crown Office is going to make progress and give more people answers?

Dr Brown: The Lord Advocate said:

"I am a believer in greater openness in the Crown Office and Procurator Fiscal Service. Greater insight into what we do and how we conduct our business would be helpful. The service has been damaged by recent events, and greater openness might help to restore confidence in it."—[*Official Report*, *Justice 1 Committee*, 5 December 2001; c 2970.]

As I read the Lord Advocate's evidence to the Justice 1 Committee, I think that we are moving in that direction. However, he did not articulate a general policy of giving reasons in all cases. He stopped short of that.

The Convener: I appreciate that Colin Boyd has a commitment in so far as he has spoken to the Justice 1 Committee and the Justice 2 Committee about being more open. What concerns me is that it should not be up to individual personalities in the role of Lord Advocate to say whether the system should be more open. We are looking for a policy change at the Crown Office that would apply no matter who was in the post of Lord Advocate. I am not arguing with all that you have said about sensitivities, but we would not want there to be a situation in future where there is a different Lord Advocate and we go back to square one on the matter.

The former Justice and Home Affairs Committee received various petitions from murder victims' families who had been given the public interest as a reason for no proceedings. That is the bottom line and is not acceptable. To me, that is no information at all. I worry that, if the Crown Office does not have a specific policy, the situation could be changed at whim. There should certainly be a commitment that families in which someone has died should have more detailed reasons than "in the public interest".

Dr Brown: I understand that, convener. So far as an issue not being in the public interest is concerned, we have now—at least in the prosecution code—expanded that and given a lot more detail about what kinds of issues that phrase covers. However, I recognise that that will still leave individual victims wondering what is meant in their particular case.

Where a general Crown Office policy is concerned, we need to remember that the Crown Office and Procurator Fiscal Service is a civil service department. Ultimately, policy is made by the minister. To an audience such as the one we have today, that must be quite clear. That must mean that a change of minister in any department could mean a change of policy and one that could be radical. We, as civil servants, are not in a position to entrench a policy in such a way that, if we got a minister who disagreed with that policy, he or she could not change it. That is just the way the system is set up.

More positively, the current Lord Advocate has made his position clear and is setting that agenda. We will see change along the lines that he has indicated so far as he wants change. Once that happens, it will be rather difficult to move back from it. I am reasonably confident that we are not going to get into a situation in which a future Lord Advocate would take a view that was completely insensitive to victims' needs. However, I am ultimately in the hands of my political masters, as are all civil servants.

The Convener: Perhaps we will debate some of those points another day.

Betty Bott: I want to make the point that, in the past, we have not told people when there has not been any decision. There has already been a move forward because, in such cases, there is an agreement that the victims should be told at least that the case is proceeding in the sheriff summary district court by a means other than prosecution or that there will be no proceedings. My experience is that people have found that better. Victims are being told what the decision is in all victim liaison offices. The victims may not be given a reason for the decision—there may be reasons why they are not being given the reason—but at least they are being told the decision. That is a step forwards.

Scott Barrie: Are you in a position to tell us whether you believe that the victim notification scheme has been successful?

Betty Bott: I am not in a position to tell you that. We have not been running very long and it is not something that we have been particularly involved in.

The Convener: Who could help us with that?

Dr Brown: I think that you are interested in those aspects of the scheme that involve, for example, the victim being told when someone is liberated on bail or from prison. The victim is invited to indicate whether they want to know whether someone is liberated from prison and it is not the Crown Office and Procurator Fiscal Service that implements that—it is the Scottish Prison Service.

The Scottish Executive justice department might have information on how successful that has been. Information about whether someone has been liberated on bail is provided, but in the light of the evidence that the committee has heard, I would not dare say anything other than that success has been patchy. Sometimes we are able to get the information to the victim and sometimes we are unable to get information to the victim until after she has seen the accused in the street. Perhaps she was at work when he was released from court and we were unable to get in touch.

Under the pilot victim liaison office projects, the

sending of a letter with a copy of the bail order should be an effective form of communication with the victim. That should also tell the victim the conditions of bail. I have read some of the evidence that you have heard and it seems that an absence of information about the limitations on the accused's behaviour has been an issue. There are pilot projects in two regions at the moment, but they are going to be rolled out. I hope that I can predict greater success in that.

Betty Bott: As far as the two pilot projects are concerned, we provide not only information from the local court on a daily basis, but information from the bail court in Edinburgh. We have a similar system. It is not always easy for us to know that an accused person has applied for bail. In Hamilton and in Aberdeen, the sheriff clerks, with whom we have liaised, advise us immediately when an accused person who has already been remanded makes an application for bail. We then fax that information to the bail unit in the Crown Office in Edinburgh. After the bail court hearing, the bail unit faxes information to us immediately. We then follow the same procedures that we follow in the local court. If the victim is on the telephone, we telephone them so that they know. We follow up that contact with a letter and a copy of the bail order, which we get from the bail unit in Edinburgh.

We immediately tell the procurator fiscal's office—we find that, in practice, we often receive the information before the Procurator Fiscal Service does—and the police. In Aberdeen and Hamilton, a victim should know within a few hours, if they are on the telephone, and certainly within 24 hours if we have an address to which we can write. We share Alastair Brown's view that the last thing we want is for a victim to meet the accused in the supermarket.

In both locations, the system is working with, I hope, 100 per cent success. As I go from region to region, I try to ensure that the same arrangements are in place. I have had no difficulty with trying to do that. All the agencies with which I have liaised have been very positive about assisting us to get information to the victim as timeously as possible.

Mrs Ewing: I have found it interesting to listen to your comments on the pilot schemes. There was to be a formal evaluation of those schemes. Has that evaluation been undertaken and, if so, when will the committee be able to see it?

Betty Bott: We are talking about pilot schemes—the point of the schemes is to learn from them. The scheme in Aberdeen has been interrupted, if you like, because the victim liaison officer resigned from the service and returned to the social work department. From memory, we were without a victim liaison officer from the beginning of July until the middle of October. We kept the office going, but there was no official appointee. An interim evaluation of the Aberdeen office has been conducted, but it was agreed that that evaluation should stop, pending the appointment of a replacement victim liaison officer. The evaluation should recommence once that person has their feet under the table and the office is working again.

I keep talking about Aberdeen, but the committee will recollect that the service covers Aberdeen, Banff, Peterhead and Stonehaven—we are talking about a bigger area. I mention that because I like to think that our approach in Aberdeen has been fairly innovative and modern. The lady who has been appointed as the victim liaison officer was a serving police officer who was pregnant. Her baby was due around the time that she was to take up her appointment. She will now take up her appointment on 1 March. We then appointed a gentleman as an interim victim liaison officer to cover Aberdeen, Peterhead, Banff and Stonehaven until 1 March. Thereafter, the victim liaison officer will cover Aberdeen and Stonehaven and the interim victim liaison officer, who will have his office in Peterhead, will look after Peterhead, Banff and the islands. We have been fairly innovative, both in our choice of people and in the work that we are doing.

The Hamilton office has not been evaluated yet, but, as the project manager, I have been evaluating what happened in Aberdeen with my project team. We have taken the lessons that we learned in Aberdeen and put them into practice in Hamilton. The evaluation of the Hamilton office will commence once the final draft of the contract has been agreed. The same company that evaluated Aberdeen and which is involved in the feasibility study—Lambda Research and Consultancy Ltd—is going to do the Grampian and Hamilton evaluations.

Mrs Ewing: I am sorry to hear about all the difficulties up in the north-east, but that is useful information. Clearly, the evaluation is being undertaken and is well under way, in particular in Hamilton. The "Scottish Strategy for Victims" document indicated that there should be a VLO in each region by spring 2002. Will that happen?

12:15

Betty Bott: I am working in Glasgow and Kilmarnock at present. We have just completed the appointment of people for Glasgow and Kilmarnock and are waiting for them to take up their appointments. I understand that quite a few of them have done so. The accommodation is being prepared in Glasgow and Kilmarnock, so we are well ahead. I have started to liaise with the various statutory and voluntary agencies in those areas. I hope that the Glasgow and Kilmarnock

offices will be up and running by the beginning of February.

I have noticed from some papers that I have read that the committee is interested in training. The committee will be reassured to know that before they take up their appointments, all victim liaison officers will have at least a fortnight's inductive training. I hope to do that training for the Kilmarnock and Glasgow staff in the first fortnight of February. I should say that all the voluntary agencies, and indeed the statutory agencies, will be invited, as they were in Aberdeen and Hamilton, to participate—to give the training, so that we learn about them, and to learn from us what we do. That invitation was taken up in Aberdeen and Hamilton, and I anticipate that it will be taken up in Glasgow and Kilmarnock.

As far as Edinburgh and Dundee are concerned, we have accommodation in both locations—in the fiscal's office in Edinburgh and in Dundee in accommodation adjacent to the fiscal's office, literally through the wall. We are going to make a hole through the wall so that they can run to and fro. Accommodation is a big thing. The pilots showed clearly that it is imperative for the victim liaison office to be co-located with the procurator fiscal's office. There is no doubt in my mind about that. Accommodation has been found, and plans are going ahead. We have not started recruiting yet; we will start in the new year. The director, as members know, has been appointed, and she will be taking up her appointment on 1 March. We will see what will happen.

My own view—and I must be candid with the committee—is that it will be the late spring when the Dundee and Edinburgh offices roll out, simply because getting together the Glasgow and Kilmarnock offices will be a huge piece of work. If I may explain, in the other offices we have just two people: a victim liaison officer and an assistant liaison officer. Getting them to work together has not been a difficulty—I mean difficulty not in the sense of a problem, but of a challenge.

In Glasgow, we have a team of eight victim liaison officers and two assistant victim liaison officers, who are from different disciplines. At the moment we have people from social work, voluntary agencies, the Procurator Fiscal Service and the police. Bringing all those people together and expecting them suddenly to work as a team is not realistic. To bind them together into a team and to train them to work at a completely new job will take quite a bit of time and concentrated tender loving care. That is what must be done, in my view, as the project manager. I have to get them together, get them to work as a team, get them to understand what they are doing and get the other agencies to understand what they are doing. Glasgow and Kilmarnock will delay things slightly.

Perhaps I am talking a bit out of turn, as I have not addressed a note to that effect to the Lord Advocate, but I think that, realistically, we will be talking about the late spring—although it will still be the spring—to get the offices in the six regions up and running. Of course, we will have an added office in Peterhead, for which we had not planned, but I am pleased about that. I was procurator fiscal in Inverness for 16 months and I appreciate the difficulties of working in Grampian and the Highlands and Islands. I am delighted that we have an additional office in Peterhead, where there will be a High Court. The Peterhead officer will try to do things for the islands on that side.

The Convener: Unfortunately, we must stop at this point. We are encouraged by what we heard this morning, but we would like to know more. I suggest that, with the help of Dr Brown, we come to the Crown Office and discuss further the outstanding issues, analysing in more detail the evidence that we have had. Is that agreeable?

Dr Brown: Certainly.

The Convener: We need to get our heads round the victim notification scheme and who runs it, but we can do that in other ways.

I thank both of you. We are grateful that you took the trouble to come along. We appreciate that and we are encouraged by what we heard.

Dr Brown: Thank you. As a regular attender who does not intend to be here again before the end of the year, I presume to offer the committee and its staff a merry Christmas.

The Convener: We wish the same to you. Pass on to your Crown Office colleagues that we wish them all the best for Christmas and the new year. We look forward to your attendance again some time next year.

Dr Brown: I am sure that that will happen.

The Convener: I am conscious of the time, so I will speed through the remaining business. Members should let me know if I go too fast for them.

Subordinate Legislation

Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2001 (SSI 2001/438)

Act of Sederunt (Fees of Sheriff Officers) 2001 (SSI 2001/439)

The Convener: Members have the papers that explain the background of and procedures for the two negative instruments under consideration. Is it agreed that we simply note the instruments?

Members *indicated agreement*.

European Document (COM (2001) 505 final)

The Convener: I will not rehearse all the background to the document. Suffice to say that we agreed that it was important to have an interest in the European Community justice pillar to learn what happens. We want to track what happens with a specific document.

Members have a briefing paper that contains a French proposal on jurisdiction for parental responsibility for children. Members have options, but I cut to the chase by suggesting that we ask the Executive for a background note on where we are with this regulation. That is important because someone needs to examine how people are being consulted about the proposed regulation's impact. We also need to ensure that the UK delegation takes into account aspects of the Scottish legal system that might need to be addressed when considering mutual recognition of the proposed regulation. Is my suggestion acceptable?

Scott Barrie: It is acceptable. I appreciate that we are short of time, but it is important that we follow this matter through because we previously agreed to do so. We agreed that we would track a European regulation all the way through. You especially, convener, are concerned that we tend to just nod through major European legislation. It is important that we get information from the Executive about what it has been doing and what it proposes to do about this regulation. I agree with what you suggested.

The Convener: Thank you. It concerns me greatly that citizens who could be involved in a situation that the regulation might cover will only discover the regulation's existence when they have to use it. That is not acceptable. Are we agreed on the suggested action?

Members *indicated agreement*.

The Convener: We will discuss the final item, on the Crown Office and Procurator Fiscal Service inquiry, in private.

12:24

Meeting continued in private until 12:35.

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