

JUSTICE 2 COMMITTEE

Tuesday 6 December 2005

Session 2

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JUSTICE 2 COMMITTEE

34th Meeting 2005, Session 2

CONVENER

Miss Annabel Goldie (West of Scotland) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

Jackie Baillie (Dumbarton) (Lab)

Colin Fox (Lothians) (SSP)

*Maureen Macmillan (Highlands and Islands) (Lab)

Mr Stewart Maxwell (West of Scotland) (SNP)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

COMMITTEE SUBSTITUTES

Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Carolyn Leckie (Central Scotland) (SSP)

*Mr Kenny MacAskill (Lothians) (SNP)

Margaret Mitchell (Central Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Vaughan Barrett (Scottish Prisons Complaints Commissioner)

Sarah Crawford (Scottish Prisons Complaints Commission)

CLERK TO THE COMMITTEE

Gillian Baxendine

Tracey Hawe

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Steven Tallach

LOCATION

Committee Room 2

Scottish Parliament

Justice 2 Committee

Tuesday 6 December 2005

[THE DEPUTY CONVENER *opened the meeting at 14:05*]

Scottish Prison Complaints Commissioner

The Deputy Convener (Bill Butler): Good afternoon, colleagues, and welcome to the 34th meeting of the Justice 2 Committee in 2005.

We have received apologies from Colin Fox—Carolyn Leckie is substituting for him—and Stewart Maxwell, in whose place Kenny MacAskill is attending. We have also received apologies from Jackie Baillie, although she might be along later, and from the convener, Annabel Goldie.

Item 1 concerns the Scottish prison complaints commissioner. Today, the committee will take evidence from Vaughan Barrett, who is the Scottish prisons complaints commissioner, and Sarah Crawford, the case worker with the commission. I welcome them both to the committee.

Mr Barrett, I believe that you wish to make a short opening statement before we proceed to questions. Is that correct?

Vaughan Barrett (Scottish Prisons Complaints Commissioner): If I may, Mr Convener.

The Deputy Convener: Certainly. Please proceed.

Vaughan Barrett: I apologise in advance if I call you Mr Convener. I am used to being in court, where we use forms of address such as “Madam Justice” and “Senior Justice”. If you would prefer me to address you just as convener, I am prepared to do that.

The Deputy Convener: “Convener” is fine, or Bill—whatever you prefer.

Vaughan Barrett: I express my appreciation for the opportunity with which the committee has presented us to answer questions on our operations and, more specifically, on our annual report. It is my understanding that this is the first opportunity that the commission has had to appear in front of the Justice 2 Committee, and I hope that it will be repeated annually. If not, we will make ourselves available at any opportunity you present us with; we consider it a great opportunity to be able to make MSPs more aware of our operations and remit.

I am aware that some questions have been raised—or at least some interest has been shown in this; perhaps that is the best way to put it—about the proposal that we submitted to the Minister for Justice on the possibility that our remit could be entrenched and defined in statute. I will add a little caveat on an issue that might be of interest to members and might be raised today. Among the issues of concern that we raised in our annual report is the protocol that the Scottish Prison Service has initiated, although it is still in draft form—I will explain that in a moment—to give itself the authority to determine whether to allow us access to certain confidential information for the purposes of fulfilling our investigative remit on complaints that we receive. The SPS has asked me not to speak on the specifics of the protocol, because its position is that the protocol is still a draft; I understand that, even when it has been finalised, it is to be confidential. I accept that, of course, but I am prepared to mention the issue, as I did in the annual report, and to answer any questions that committee members might have on the gist of the protocol.

I have also brought along copies of the response to the protocol that we filed with the SPS. No confidential information is contained in our response, and I am prepared to provide a copy of it to each committee member. I appreciate that that is somewhat unusual; normally, we would have filed the paper with the clerks in advance to allow the committee to view it in advance, but the situation is a little bit like a two-chapter book. I thought that it would be a bit unusual to give you chapter 2 without chapter 1; that is, to have given you our response without providing you with what we were responding to. If members want a copy of the response either during or at the end of the meeting, I am prepared to provide it.

I said that the protocol has been initiated, even though it is still in draft form. We have now filed with the SPS seven separate applications for access to information in response to complaints that we have received, but we have been denied access on each and every one of those seven requests. Notwithstanding the fact that the protocol is still in draft form, it is being used.

I leave myself open to any questions that you may have.

The Deputy Convener: Thank you, Mr Barrett. That was an interesting precursor to our discussion. You referred to the document other than the annual report that we have had time to look at, which is the commission’s proposal that the Scottish prison complaints commission should have a statutory basis. We might go into the detail of that as we go through the main parts of the annual report. For the committee’s information, have you had a response to your proposal from the Scottish Executive?

Vaughan Barrett: As noted on our website, we filed the proposal for statutory entrenchment with the Minister for Justice, Cathy Jamieson, in January this year. We were advised that the proposal had been sent to the Justice Department's administrative personnel. Based on information that we received, we were optimistic that a new staff member, who would review the proposal and make recommendations on how or whether it should be taken forward, would come on board by early summer in one of the divisions in the Justice Department. However, by midsummer I had no more information than I had in January. I contacted management in the Justice Department to ask whether our office could do anything to facilitate movement on the proposal or provide more information; we offered to avail ourselves in any way that would facilitate movement. I was advised that nothing was happening at that stage—the end of August—and that things were on hold. I will quote from the response that we received from the Justice Department because it is important. It states:

"The Minister has made it clear that she wants to include this proposal in wider considerations. This will be a longer term issue".

That is all I was told and I have not since then been given information that suggests that there has been any progress.

The Deputy Convener: So, other than the response that the matter is being considered as a longer-term issue, there has been no progress.

Vaughan Barrett: I have certainly not been advised that there has been progress. I should also point out that I have not been advised what the "wider considerations" are.

The Deputy Convener: I am grateful for that information as, I am sure, is the committee.

Page 5 of the annual report refers to the method of investigation. It states that careful examination of relevant documents is the starting point prior to consideration of prison rules and SPS policies. That is followed up by personal interviews with staff and the prisoner or prisoners concerned. I am slightly worried by some comments in the preamble to the annual report. Are documents readily accessible in most circumstances? Is the SPS helpful in assisting with access to documents, especially in what you call "conciliated cases"—the local cases?

Vaughan Barrett: I am sure that you are aware that I refer specifically to the issue a little further on in the report, and that I made similar comments in last year's annual report. I stated that our dealings with management at local level have been

"characterised by an atmosphere of openness, trust and co-operation."

I cannot overemphasise how much we appreciate the co-operation that we have received from the SPS at local level—the respective prisons that are the genesis of complaints. Governors and their staff have been most co-operative in our investigations. We appreciate that because it helps to facilitate not only our operations but the complaints process generally.

The short answer to the question is that we have not had difficulty in accessing the documents that are relevant to such complaints. For example, in an orderly-room proceeding we will want to see what the adjudicator's decision was, what evidence the adjudicator considered and what weight was given to particular evidence.

14:15

The Deputy Convener: That is at the conciliated level.

Vaughan Barrett: Yes.

The Deputy Convener: From my reading of your report, that situation seems to be positive. You make particular reference to the assistance that you received at Barlinnie, which is one of the largest prisons.

Vaughan Barrett: Yes.

The Deputy Convener: So there is good practice. Do you face problems or challenges when a complaint moves from being one that can be conciliated at local level on to your making a formal recommendation to the chief executive of the SPS?

Vaughan Barrett: Yes. That matter is covered not only in this year's report; if you have had the opportunity to examine last year's report, you will see that I specifically referred to my belief that there is "room for improvement"—I think I worded it that way.

The Deputy Convener: Was "room for improvement" a euphemism?

Vaughan Barrett: Yes.

The Deputy Convener: If you were not employing a euphemism, what would you say?

Vaughan Barrett: I would say that I think that it would be to everyone's advantage if some of the management at SPS headquarters were a little more open and inviting, not only to the recommendations that we make but to our suggestions to increase and improve communications between our respective offices.

The Deputy Convener: How many formal recommendations to the chief executive of the SPS are successful or acted upon?

Vaughan Barrett: On average over the past two years, 26 per cent have been acted on. The figure was 25 per cent last year, and 27 per cent the year before that.

The Deputy Convener: I see—about a quarter of recommendations are acted on.

Vaughan Barrett: Yes.

Carolyn Leckie (Central Scotland) (SSP): Thank you very much for your statement. You referred to seven separate applications to the SPS for information, in which access to information was denied. I know that there are confidentiality concerns, but was there a theme in those applications? That might enlighten us as to why there has been an access problem.

Is there also a theme in recommendations to the SPS that are not implemented? I am not sure how much information you can give us, but are there particular issues on which it is more difficult to have your recommendations implemented? As I said, I know that confidentiality is an issue, but could you give us a flavour of the subject of complaints and the issues that are involved?

Vaughan Barrett: On your first question on access to confidential information, we have summarised the matter in the annual report without going into great detail. In all the information that we have had to request under the protocol, the key has lain in one issue, which is the confidential sources of information on which the SPS has relied in making certain decisions.

Each of the seven cases to which I have briefly referred involved decisions on downgrading of prisoners. Downgrading is a process whereby when concerns arise about a person being in an open prison or a top-end prison, it is decided to send them back to a more secure prison. Obviously, that can result in some pretty dramatic results for prisoners in terms of access to the community, access to placements, weekend leave with family and so on. If we are dealing with somebody who is coming up for a tribunal review, that is a major issue.

Carolyn Leckie: So the problem is about the use of intelligence.

Vaughan Barrett: Yes. In cases in which the SPS has relied on information from confidential sources, we have determined that we simply cannot complete our investigations of complaints without knowing about the reliability of the information on which the SPS has based its decisions. I have discussed the issue with staff and people from outside many times, and I have been unable to identify any way of questioning or even examining the credibility and reliability of information without having access to the names of the confidential sources of information, so that we

can carry out our own background checks to determine whether those sources should be considered credible and whether the SPS should rely wholly on their information in its decision making.

The information that we have requested has on every occasion related to downgrading issues. Each time, we have said that we need specifically to know the names of informants so that we can do background checks on them. I do not want to go into the specifics—members can see what I have said in the report—but we now have to file a formal written request with the SPS when we want that information and it is the only information for which we are required to do that. The SPS determines at HQ whether it will grant us access to the information.

We thought it appropriate, in the event that members requested such information, to include in our response to the SPS all the undertakings that I am willing to give to address any and all security concerns that the SPS has about the sensitivity of the information and about ensuring that its human source is in no way jeopardised. I have not only provided a list of undertakings that I am willing to give, but have said that the list is not exhaustive. I have asked the SPS to tell me what it wants, so that I can consider making other undertakings that would address its security concerns while allowing us to fulfil our investigative remit.

Carolyn Leckie: Do you get information about reward systems that are in place for intelligence?

Vaughan Barrett: That is one of the things that we would like to know about.

Carolyn Leckie: Prisoners tell me that reward systems for intelligence are in place.

Vaughan Barrett: If you will allow me to make a point on the side, I had the opportunity yesterday to discuss this generic issue with the office of the prisoner ombudsman for Northern Ireland. I was assured that that office is entitled to the type of information that the protocol might allow the SPS to deny us, which it has done in the seven requests that we have made. Further, the prisoner ombudsman made clear, and the director general of the Northern Ireland Prison Service agreed, that there are occasions on which it may be necessary for the prisoner ombudsman for Northern Ireland to investigate and interview sources of information on which the Northern Ireland Prison Service relies—in other words, confidential sources. We are not asking for that.

The short answer to the question is that I am not sure how we would find out whether any reward system is involved without having an opportunity to interview sources of information. We are concerned that the confidential sources to which we refer may also be prisoners who have been

downgraded. The SPS computer system may confirm that information has been received from an individual who is involved in activities such as drug dealing and bullying in the prison environment and we need to see whether there is something on that prisoner's record. At this stage, we are asking only to be allowed access to the information that the SPS has about the background of confidential sources, so that we can confirm that those people are probably—or could at least be presumed to be—reliable sources of information.

Carolyn Leckie: My other question was about the failure to implement your recommendations.

Vaughan Barrett: It may be inappropriate for me to generalise too much or to say that there has been a common theme in the SPS's failure to implement 74 per cent of our recommendations. I cannot help but say that it is my impression that perhaps the SPS is cautious about opening a can of legal worms. It may feel that if it accepts a recommendation, that will set a precedent that it does not particularly want for the future.

The SPS may be concerned about how a recommendation will impact on prison operations. We are all aware that the SPS is under considerable pressure to be fluid and flexible in its operations because of the changing dynamics of prisoner numbers and so on. It is probably not appropriate for me to speculate on whether that helps to explain what I regard as the failure to accept a large number of our recommendations. The SPS certainly seems to be concerned not to set precedents. I do not mind saying on the record that I cannot help but get the impression that there is a little too much emphasis on whether SPS is legally required to do some of the things that we recommend, as opposed to its doing them in good faith.

The Deputy Convener: Just before I let Maureen Macmillan speak, I will say that we would be interested to receive copies of your response to the SPS draft protocol at the end of the meeting. Thank you for that.

Maureen Macmillan (Highlands and Islands) (Lab): I will follow on from what Carolyn Leckie said and ask for more detail. Am I right in thinking that the SPS sometimes releases confidential information about prisoners, or does it always refuse to release it? What are the reasons given for refusal?

Vaughan Barrett: Decisions have been made by the SPS to refuse us information from confidential sources in seven out of seven cases.

Maureen Macmillan: That is what I wanted to know—there are no cases in which you get the information either in whole or in part; it is always refused.

Vaughan Barrett: The information is always refused. I should include a bit of a disclaimer and confirm what I mentioned earlier to the convener: we have been successful in our dealings with SPS management at local level, which has provided the documentation that we have needed to confirm local decisions. We have received a lot of co-operation in that area.

Maureen Macmillan: Is the SPS's reason for not giving you confidential information that you have no legal entitlement to it?

Vaughan Barrett: I am reluctant to say that that is the reason. The reason that we have been given—I do not think that this should be considered confidential—is that the SPS says that the information that we have requested is confidential because its releasing that information to us could endanger the safety of the human intelligence sources who provided the information. With all due respect, I find that response somewhat patronising and I have let the SPS know that. Of course it is confidential and of course it could endanger the safety of the human intelligence source if it were released—we acknowledge that.

It is frustrating when the SPS says that it treats each case on its merits, examines it carefully and then determines that the human intelligence source could be at risk if it releases the information to us. My response to that has been to ask why the SPS needs to go through any formal process to make that determination. We take it as an absolute given that the release of such information could endanger the human intelligence source; therefore, we would treat it with the highest sensitivity. I have said to the SPS that it is telling us what we already know, but it does not tell us why it denies access to information to our office, which is an independent investigative body that is charged with investigating decisions on policy and incidents that occur in the SPS arena.

Maureen Macmillan: So the SPS treats you as if you were a risk.

Vaughan Barrett: I am reluctant to say that, but I guess that that is what it comes down to and how it should be interpreted. In my submissions to the SPS on that point, I have emphasised that we do not represent prisoners; it is not as if the SPS would be releasing the information to prisoners' counsels. We are totally independent and operate under the provisions of the Regulation of Investigatory Powers (Scotland) Act 2000. It is interesting that RIPSAs does not provide for any special circumstances for protecting the source of confidential information, but that the UK Regulation of Investigatory Powers Act 2000 does. We accept that. Our office is also governed by the strict confidentiality rules of the Official Secrets Act 1989.

Maureen Macmillan: If the commission had a statutory basis, would there not be such questions?

Vaughan Barrett: I firmly believe that if we could turn to statute and say, "The legislature has made it very clear that this is expected in our functions", we would be allowed to access that confidential information. In order that we can fulfil our investigative remit, it is crucial that we are able to access that information.

I have been in the awkward position of having to tell seven complainants that, because we could not access the appropriate information, we have been unable to conclude that the SPS's decision to downgrade them was inappropriate, and that we were therefore unable to make a formal recommendation that its decision be overturned. I have had to make it clear that we could not go one way or the other because we simply could not complete our investigation. That is an awkward position for our office to be in.

14:30

Mr Kenny MacAskill (Lothians) (SNP): Are there differences between the powers of the ombudsman in Northern Ireland and those of the ombudsman in England and Wales? Obviously, Northern Ireland has a particularly troubled background, so there is probably a good reason for prison officers to come from one particular community. Are the powers in Northern Ireland—whether statutory or arising through protocol—different from those that exist in England and Wales?

Vaughan Barrett: The remit of my counterpart Mr Stephen Shaw, the prisons and probations ombudsman for England and Wales, is not defined in statute. As I mentioned in our proposal, a remit was drafted and was ready to be debated in Parliament just before the election. Now everything has been put on the back shelf because of the growing and stretching process in the Home Office as it deals with the new dynamics. Stephen Shaw has informed me that, although the remit has been put on hold, it will of course be revisited. It is in draft form and has been the subject of some debate in the present year. He expects it to be considered again in 2006.

That said, Stephen Shaw made it abundantly clear to me verbally and by e-mail that his office has absolutely unfettered access to all information, including all confidential information. When I discussed in general terms the protocol with which we must work, Mr Shaw said that he considered it to be completely outrageous, that he would never accept such a protocol and that, if Her Majesty's Prison Service in England and Wales tried to initiate such a protocol, he would be outraged and

would make his way to pound on the doors of the Home Office.

The office of the prisoner ombudsman for Northern Ireland has recently been created. I have a wonderful opportunity to meet my counterpart from Northern Ireland tomorrow—he is coming over to spend the day in our office to share ideas with us. The office in Northern Ireland was created through secondary legislation. The ombudsman has told me that the statute makes it abundantly clear that his office is entitled to unfettered access to all information, including confidential information. He was not aware of what Mr Shaw had said, but he told me that his office would not stand for our situation and that, if the Northern Ireland Prison Service tried to introduce such a protocol, he would try to expose it on national television.

Mr MacAskill: The seventh of your suggested provisions is for

"expansion of the Prisons Complaints Commission's remit to include death in custody investigations."

In Scotland, the Procurator Fiscal Service has a role that is distinct from that of the Crown Prosecution Service south of the border; it has a duty and locus to act in the public interest. Fatal accident inquiries are, in my experience, usually the outcome of a death in custody. I am curious to know whether your suggestion is that, in such circumstances, an FAI should not be carried out and that the prison complaints commission should take over. Why should that happen? If the two processes are to run in parallel, what is the purpose of the proposal? I am intrigued by the suggestion. Have you spoken to the Crown Office and Procurator Fiscal Service on the matter and, if so, what is its view about local procurators fiscal proceeding with FAIs?

Vaughan Barrett: I have had no communication with the Procurator Fiscal Service on the issue, although I recently gave serious consideration to the matter. About two weeks ago, the office of the prisoner ombudsman for Northern Ireland informed me that it had been given that role as part of its remit and had already carried out one death in custody investigation. The office told me that funding has been promised from the Government to expand its operations.

Mr MacAskill: Is not that on the basis that Northern Ireland has a Public Prosecution Service? Scotland has the Procurator Fiscal Service, which acts in the public interest. I have professional experience—before I was elected to the Parliament—of acting as an agent in a case that was brought to some extent by the fiscal but in which defence agents or private solicitors represented the family. I can understand why Northern Ireland and England have the systems

that they have, because the prosecution services there have a different locus. In Scotland, the Procurator Fiscal Service is not the prosecution alone. That is why I am curious about your suggestion.

Vaughan Barrett: The short answer is that expansion of our remit to include death in custody investigations is not something that I have been lobbying for and it is not critical to our being entrenched in statute. I raised the issue simply to point out that my counterparts in England and Wales and in Northern Ireland have that role as part of their remit. We are open to discussion on the matter.

We do not pretend to have any expertise in the matter and I am not suggesting that we have received complaints about the Procurator Fiscal Service's effectiveness at carrying out investigations. I have no reason to believe that investigations are not done professionally and thoroughly and I would regret it if my suggestion number 7 was interpreted as a suggestion that the Procurator Fiscal Service is not carrying out that function effectively. That is certainly not my intention. I simply raise the matter for discussion.

During discussions with people from other jurisdictions, it was mentioned that the Procurator Fiscal Service might not be regarded as completely unbiased by all members of the public because it has a connection with the Executive's Justice Department so, as with the SPS, there are issues. My understanding is that the prisons and probation ombudsman down south—Stephen Shaw—carries out death in custody investigations in parallel with the investigations that are carried out by the coroner's office; the inquiries are not separate. The ombudsman's approach is, "If our office carries out the investigation, that will at least address any public concern that it may not be as independent as it could be."

I would hate to think that our proposal for statutory entrenchment of the Scottish prisons complaints commission hinged on whether death in custody investigations should be included in our remit. If it did, I would say that they should not be included in our remit.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): The commission has been established as a complaints body for more than 10 years. Is there a pattern in the types of complaint that have been brought to you? Do the complaints that you receive now differ from those that you received in previous years? If there is a pattern, what are the standard types of complaint?

Vaughan Barrett: As you will be aware from our annual reports, I have been in post for only two and a half years, but I have had the opportunity to read through every previous annual report,

including the five annual reports that were issued under Professor Jim McManus during the first five years of the commission's operations.

The subject matter of complaints has not varied much from year to year. The recurring themes come as no surprise—they are things that are important for prisoners' physical and mental well-being, such as access to family visits and downgrades, which can impact on prisoners' access to family and placements in the community.

I cannot say that there has been a dramatic shift in the subject matter of complaints, but from the many conversations that I have had with Dr McManus I can say that, following the first few years of the commission's operation, most prisoners have come to the realisation that our office is not here to act as their personal advocate and that they should look to resolve problems locally.

Our annual report shows that problems arise in a wide range of areas, but it is not inaccurate to say that three or four types of personal problems have been endemic in the complaints we have received during the past 11 years. Prisoners realise that some complaints—particularly those about SPS policies—will probably not be resolved locally. Prisoners have become much more aware that it is better to resolve some complaints locally and that it is almost a given that some complaints will end up coming to our office. The fact that prisoners are more accepting of those distinctions in complaints augurs well for our operations.

Jeremy Purvis: You have been the commissioner for a limited time, so you might not be able to answer my next question. Is it your judgment that the SPS, and governors in particular, are more, less or as receptive to resolving complaints operationally in institutions?

Vaughan Barrett: Perhaps I may say as a bit of an aside that the acceptance rate for formal recommendations was considerably higher during the first five years of our operation. I do not want to second-guess why we have not been so successful in recent years.

I cannot say that significant change has occurred locally. There has certainly not been any change that I have recognised. My experience, and my understanding from discussions with Dr McManus, is that prisons have always been very open to communicating with, trusting and sharing information with our office. Seemingly—more than seemingly—it is fair to say that prisons are as determined as our office has been to resolve problems that can lead to hostile experiences in the prison arena.

Jeremy Purvis: I want to ensure that I heard you right. Did you say that informal

recommendations from the commissioner had a higher success rate earlier in the commission's life?

Vaughan Barrett: I referred to formal recommendations.

Jeremy Purvis: Does the same apply to informal recommendations?

Vaughan Barrett: We make informal recommendations locally. My experience is that acceptance of them has consistently been at a fairly high rate.

The figures in our annual report for complaints that we have conciliated might seem rather low in comparison with the number of complaints received, but they reflect the complaints that we have found to be meritorious. When we feel that complaints have merit, we approach governors or staff to discuss them and try to find a resolution that is acceptable to all parties. We have concluded in many of the complaints that we receive that neither the SPS policies nor the law defined in the Prisons (Scotland) Act 1989 or the prison rules has produced fundamental unfairness for prisoners. Prisoners are not happy to receive that information, but that is the conclusion that we draw.

It is fair to say that we do not find many of the complaints that we receive meritorious, but we have been consistently successful locally in conciliating meritorious complaints.

Jeremy Purvis: My next question may link with formal recommendations. What is your relationship with HM chief inspector of prisons? Do you have an informal relationship? Do you do any joint working with outcomes? One would think that significant complaints that require you to make formal recommendations would involve changing practices or important issues. The chief inspector might or might not have picked them up, which might or might not add weight to your recommendations. What formal or informal interaction do you have with the chief inspector?

14:45

Vaughan Barrett: Informally, Dr Andrew McLellan and I are very good friends. I am very pleased to say that; he is one of my most favourite people. However, when we get together informally we avoid talking shop. We think it best for the independence of both our operations to avoid talking about the specifics of issues that we are dealing with. I certainly do not discuss specific complaints that we have received.

It would not be unusual, however, for me to discuss issues mentioned in his annual report, such as overcrowding or food, or to discuss observations that he had made on a particular

prison. I might get him to elaborate a little so that I have a better understanding of the circumstances. He investigates nooks and crannies of prisons that I often do not. I will ask him to elaborate so that I get a clearer and fuller picture of the prisoner experiences that have led to complaints that we have received.

There is not a symbiosis in the sense of saying, "Yes, we can support each other's recommendations and go forward accordingly." We have never suggested that to each other. However, I can get a clearer picture from his annual report and from our informal discussions. As I say, we try to avoid talking shop in our informal discussions, but he can flesh things out for me.

There have been occasions on which I may have done a similar thing, saying, for example, "Yes, we have received 10 complaints on that sort of issue." However, we do not talk about the specifics and I do not in any way suggest to him that he should be paying attention to particular issues on his inspections.

It is hardly surprising that the issues that Dr McLellan highlights in his annual report as problematic—the issues that he recommends should be addressed—are the very issues that are the genesis of complaints to our office. That does not surprise me, and Dr McLellan is aware of that from reviewing our annual report.

We have very general conversations, but we purposely avoid compromising the independence that each of our offices is expected to have.

Jeremy Purvis: I was just wondering—

The Deputy Convener: Is this your final question?

Jeremy Purvis: Yes—I am sorry convener.

It is unfortunate that the SPS might find it easy not to respond to a formal recommendation from you; and a recommendation from the chief inspector might be only annual or even less frequently. If there were a mechanism for having joint recommendations—or recommendations that were supported by both the chief inspector and the complaints commissioner—it would be much harder for SPS not to respond positively.

Vaughan Barrett: I totally agree. The only response that I can offer to that observation is this: when I—either in informal discussions with SPS management or in a formal recommendation—raise an issue that has also been raised by HMCIP in the annual report or in discussions, the response that I receive is, "That is being duplicitous. You don't need to go into that because it is more of an inspection issue. We've already heard about it and you are layering things." I then say exactly what I just said to Mr Purvis: I express

my surprise that anyone would find it surprising that the issues raised in complaint with us are the very issues that HMCIP says are problematic and have to be remedied.

In an ideal world, what Mr Purvis suggests would make our formal recommendations more effective. However, so far, our recommendations have not been received in that way.

Mr MacAskil: If the committee was minded to give you more powers, would there be a system to sift out vexatious, frivolous or downright malicious complaints against the SPS or individual officers?

The Deputy Convener: Perhaps Sarah Crawford, the case worker, would like to answer that before Mr Barrett comes back in.

Sarah Crawford (Scottish Prisons Complaints Commission): Are you asking specifically about complaints against staff members?

Mr MacAskil: I am asking about all complaints. Obviously, if someone wrote to say, "Warden John Smith gave me a doing last week," the issue would have to be put to him.

I presume that certain individuals write to you regularly. That is not to say that their complaints should not be considered, as everybody has the right to make a complaint, but I am keen to work out whether you sift out complaints that have some foundation from those that may border on the frivolous. How do you do that so that, after being contacted by your office, the SPS does not have to go to great lengths to clarify matters? Do you undertake an initial sift of complaints that you receive in order to clarify matters, so that the SPS does not have to undertake a full-blown internal investigation?

Sarah Crawford: We consider all complaints that are within our jurisdiction and which have exhausted the internal complaints process for the SPS, regardless of the matter. I then undertake an initial sift, finding out the background to a complaint by speaking to the prisoner or staff member. After that, I discuss the complaint with Vaughan Barrett. Together, we work out what we think the merits of the complaint are and whether it is vexatious.

The Deputy Convener: And then?

Vaughan Barrett: Unfortunately, neither I nor my colleagues down south or in Northern Ireland have come up with a formula for sifting out vexatious and frivolous complaints. That is a continuing concern for us all; not only for those of us who deal directly with the complaints but, generally, for the SPS. Some serial complainants—that is the phrase that is used—take up an enormous amount of SPS time at the local level, and that is taxing on resources. We are aware that that is a problem.

Over the past 11 years—certainly over the past couple of years, while I have been on board—prisoners have come to realise that we are pretty dismissive of vexatious and frivolous complaints, although we will not turn away a complaint as soon as we receive it, as we do not think that it is appropriate for any one of us to have that full responsibility. I discuss matters with Sarah Crawford and my assistant, Andy Smith, and we make a determination on a lot of the complaints fairly quickly. For example, one complainant has filed 17 complaints in the past week. Four, five, six or seven of them have been made against one staff member, although nobody has complained about that staff member before.

We do not have a set formula to use as a screening test, but we appreciate the fact that it can be stressful for staff members if a complaint is made against them. If we decide to carry out a full investigation, the first thing we do is get in touch with the staff member and say, "Don't take any of this personally. We're aware that there may be vexatious motives underlying this complaint. We simply want to get the facts together." We have never filed a formal recommendation that an SPS staff member should in any way be reprimanded as a result of a complaint. We have received dozens of complaints about SPS staff members, but we have never drawn the conclusion that the staff member concerned should be reprimanded.

On a few occasions we have issued an aide mémoire to local governors, suggesting that some local initiatives or policies could be introduced to minimise the likelihood of prisoners being in a position to make vexatious complaints. For example, to prevent a prisoner from being able to say that a staff member came into their cell by himself and said this, did that or was threatening, we suggest that it might be best for staff members to go into cells two at a time. If a staff member had to address an individual prisoner who seemed to be inclined to file complaints, perhaps the prisoner should be brought out into the open rather than interviewed in their cell. We make such suggestions to minimise the likelihood of staff being made vulnerable to complaints.

There is no simple answer but, judging by the types of complaint that we receive now, it seems that prisoners have got the message pretty clearly that our office will deal rather dismissively with frivolous or vexatious complaints.

The Deputy Convener: The witness session has been illuminating and I thank Sarah Crawford and Vaughan Barrett on behalf of members of the committee for coming to the meeting, answering our questions and informing us. As the old saw goes, we are now better informed, although perhaps we are none the wiser.

Colleagues may wish to consider whether the convener and the clerks should write to the Minister for Justice to find out whether any more progress, other than that to which Mr Barrett has referred, has been made on the proposal that was submitted in January this year for the complaints commission to be given a statutory footing. Do members agree that that should be done?

Members *indicated agreement.*

The Deputy Convener: Again, I thank Sarah Crawford and Vaughan Barrett for attending the meeting. Perhaps such meetings will become annual events. We look forward to seeing you again.

Vaughan Barrett: I thank members for inviting us; it is very much appreciated.

Subordinate Legislation

Firefighters Pension Scheme Amendment (Scotland) Order 2005 (SSI 2005/566)

14:56

The Deputy Convener: Agenda item 2 is subordinate legislation. The committee is invited to consider the Firefighters Pension Scheme Amendment (Scotland) Order 2005 (SSI 2005/566), which is subject to the negative procedure.

The Subordinate Legislation Committee sought clarification of plans to amend the scheme to take into account civil partnerships. The Executive's response advised that the scheme will be amended by way of a United Kingdom instrument, which was due to come into force on 5 December. The Subordinate Legislation Committee has drawn the matter to the attention of the Justice 2 Committee, which is the lead committee, and the Parliament. As members do not have any issues to raise, are members content with the order?

Members *indicated agreement.*

Petitions

Legal Profession (Regulation) (PE763)

14:56

The Deputy Convener: Agenda item 3 is consideration of two petitions, the first of which is PE763, from Julia Clarke, on behalf of the Consumers Association. As members will know, the petition calls on the Parliament to urge the Scottish Executive to implement urgently the findings of the Justice 1 Committee's session 1 report on regulation of the legal profession.

Members will be aware that the Scottish Executive intends to legislate in the area and that the Law Society of Scotland has recently said that it is in favour of independent regulation of the legal profession. In the circumstances, it has been proposed that the petition should be closed, strictly on the understanding that the issues that have been raised will be addressed in the forthcoming legislation and that the petitioner will be able to make a submission at stage 1, which will be scrutinised by the Justice 2 Committee or whichever committee is designated as the lead committee.

Do members agree to what has been proposed or should another course of action be taken?

Carolyn Leckie: I agree to what has been proposed, but we should make it clear to the petitioner that we will ask them to submit evidence rather than simply that we recognise their right to submit evidence. We should be explicit.

The Deputy Convener: I take your point. We can make that crystal clear when we write to the petitioner. Do members agree?

Members indicated agreement.

Police Complaints Commission (PE890)

The Deputy Convener: The second petition is PE890, from Mr James A Mackie, which calls on the Scottish Parliament to support the creation in the Police, Public Order and Criminal Justice (Scotland) Bill of an independent police complaints commission. The petition was lodged at the beginning of October.

As members are aware, the bill was introduced on 30 September. The committee interrogated people at stage 1 and, having heard all the evidence, is drawing up a report that will be put to the Parliament in due course. On that basis, it has been suggested that we should note the petition in the meantime and consider it in the context of the committee's stage 1 report on the bill. Do members agree to that approach?

Members indicated agreement.

The Deputy Convener: That ends the meeting. I thank everyone for attending.

Meeting closed at 14:59.

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