

JUSTICE AND HOME AFFAIRS COMMITTEE

Tuesday 31 October 2000
(Morning)

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JUSTICE AND HOME AFFAIRS COMMITTEE

31st Meeting 2000, Session 1

CONVENER

*Alasdair Morgan (Galloway and Upper Nithsdale) (SNP)

DEPUTY CONVENER

*Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Scott Barrie (Dunfermline West) (Lab)

*Phil Gallie (South of Scotland) (Con)

*Christine Grahame (South of Scotland) (SNP)

*Mrs Lyndsay McIntosh (Central Scotland) (Con)

Kate MacLean (Dundee West) (Lab)

*Maureen Macmillan (Highlands and Islands) (Lab)

*Pauline McNeill (Glasgow Kelvin) (Lab)

Michael Matheson (Central Scotland) (SNP)

*Euan Robson (Roxburgh and Berwickshire) (LD)

*attended

WITNESSES

Denis Oag (Scottish Parliament Information Centre)

Connie Smith (Scottish Parliament Information Centre)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Fiona Groves

LOCATION

The Chamber

Scottish Parliament

Justice and Home Affairs Committee

Tuesday 31 October 2000

(Morning)

[THE CONVENER *opened the meeting at 09:31*]

The Convener (Alasdair Morgan): I open the meeting by apologising for the heating, or lack of it, in the chamber. I am not sure what the problem is, but it has been reported to the appropriate authorities. I also ask members to turn off their mobile phones.

Members will know that a visit to the courts in Glasgow is being arranged for Monday 27 November. The names down for the visit are Pauline McNeill, Maureen Macmillan and Michael Matheson. Names must be provided by 5 o'clock this afternoon at the latest to allow travel to be authorised. If anyone else is interested in the visit, which is organised by the Glasgow Bar Association, please give your name to a clerk by teatime.

Does the committee agree to follow its normal procedure and discuss the reports that we hope to have on stage 2 of the budget process and on the Leasehold Casualties (Scotland) Bill in private at our next meeting?

Members indicated agreement.

Legal Aid Inquiry

The Convener: A draft remit for the inquiry into legal aid in Scotland has been supplied to the committee, as has a list of potential witnesses from whom we would seek written evidence first. We had hoped that Frank Stephen, our adviser, would be able to answer questions today, but unfortunately he cannot be here. Professor Stephen works at the University of Strathclyde in Glasgow, and I think that he has a teaching commitment at 12 o'clock. Normally, it would be possible to attend the committee and return in time for that, but the disruption to the rail line near Polmont means that that is not possible. He sends his apologies. Do members wish to raise any points about the remit as published in the report?

Christine Grahame (South of Scotland) (SNP): I wonder whether there is any merit in asking the Sheriffs Association for evidence. I am just floating that idea. Sheriffs are often involved in cases in which legal aid becomes an issue in relation to expenses.

The Convener: Will you consider the remit first?

Christine Grahame: I was looking at its first page.

The Convener: I see that your point relates to the first page. I was looking at the second page. However, can we agree the remit first? We can revisit the remit during the inquiry if we think that appropriate. Do members think that the remit makes a reasonable starting point?

Christine Grahame: I feel inhibited from speaking now.

The Convener: Do not be; you can talk about the remit.

Christine Grahame: Like others, I asked Jim Wallace about the uptake of civil legal aid. The funding is being cut, as it was said that the money was not all being used. The Scottish Legal Aid Board is undertaking an inquiry into that. I also asked whether the views of solicitors and the rest of the legal profession were being taken into account. We should remind ourselves of that inquiry. Is it mentioned in the remit?

The Convener: Yes. The remit covers that inquiry.

Christine Grahame: The board is conducting an investigation. That issue was raised when we discussed funding at our meeting on 4 October; the discussion can be found in the *Official Report*. We should have the papers relating to that inquiry.

The Convener: Are members generally happy with the remit?

Members indicated agreement.

The Convener: Are members happy with the initial list of organisations from which we will seek written evidence? Would members like to add others to the list, which is not exhaustive or final? I would welcome any suggestions.

Christine Grahame: Now that Gordon Jackson has arrived, it might be useful to return to discussing the remit, because he will have a view on it.

Gordon Jackson (Glasgow Govan) (Lab): Sorry, Christine.

Christine Grahame: I am not blaming you, my darling.

The Convener: Cut to the chase, Christine.

Christine Grahame: The Sheriffs Association might have an input as one of the parties to be consulted. Sheriffs have a different kind of expertise on the operation of legal aid in the courts.

Gordon Jackson: Sheriffs see legal aid operating at grass roots. Representatives of the

association have always turned up and been helpful before.

The Convener: Fine. Are there any other suggestions? As I said, the list is not final and, obviously, there is also a public call for evidence. We can write later to organisations that are not listed.

Maureen Macmillan (Highlands and Islands) (Lab): Is it appropriate to ask victim support organisations for evidence?

The Convener: Yes, that is reasonable. Are members happy with the list?

Members *indicated agreement.*

STUC Women's Conference

The Convener: I received a letter from the Scottish Trades Union Congress and I thought that the committee should consider it, as it asks me to nominate a woman to represent the committee.

Phil Gallie (South of Scotland) (Con): On the ground of equality, I take great exception to the organisation's demand.

Scott Barrie (Dunfermline West) (Lab): Aw, Phil.

Phil Gallie: Scott Barrie may shake his head, but people cannot have it both ways. Either the committee has equality and treats males and females the same, or it does not. I have no doubt that many men are interested in the women's conference and I am surprised at the STUC's line.

The Convener: The letter was obviously hastily sent after the reshuffle of the shadow cabinet. It was addressed to me, but asked me or another woman to participate.

Regardless of the validity or otherwise of Phil Gallie's comment, it is up to the STUC to decide whom it wants to invite and it is up to the committee to decide whether to accept the invitation.

Phil Gallie: I move, that we do not accept the invitation, for the reasons that I have given.

The Convener: First, we must establish whether anyone wants to go. Is any woman member prepared to represent the committee, should we decide to follow that route?

Christine Grahame: I would go. Phil Gallie could go in a skirt if he liked.

The Convener: Mr Gallie moves that we should not have a representative. Does anyone wish to make a proposal to the contrary?

Gordon Jackson: I propose Christine Grahame.

The Convener: I think that a majority on the committee would like to send a representative. Phil Gallie can press the issue to a division if he wishes.

Phil Gallie: I am strongly against the idea behind the invitation, so I will press my motion to a division.

The Convener: We have a motion from Phil Gallie that we should not send a representative, and a proposal by Gordon Jackson that we should send a representative, who would be Christine Creech.

Christine Grahame: My surname is Grahame.

The Convener: Sorry, that was my fault. Old habits die hard, Christine.

Christine Grahame: I say to Phil Gallie that the STUC is asking for a woman's experience of the Parliament. It seems relevant that a woman should go. It would be difficult for Phil Gallie to describe that experience.

Phil Gallie: It would not be difficult at all. I am arguing for the principle of equality. The matter is up to the committee. To be honest, I can think of no better representative than Christine Grahame, but the principle is important and the terms in which the letter is couched give me cause for concern.

The Convener: The question is, that Phil Gallie's motion, that we decline the invitation, be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

FOR

Gallie, Phil (South of Scotland) (Con)

AGAINST

Barrie, Scott (Dunfermline West) (Lab)

Grahame, Christine (South of Scotland) (SNP)

Jackson, Gordon (Glasgow Govan) (Lab)

Macmillan, Maureen (Highlands and Islands) (Lab)

ABSTENTIONS

Morgan, Alasdair (Galloway and Upper Nithsdale) (SNP)

The Convener: The result of the division is: For 1, Against 4, Abstentions 1.

Motion disagreed to.

The Convener: I suggest that we follow Gordon Jackson's proposal. We will write to the STUC to say that Christine Grahame will be our representative. Is that agreed?

Members indicated agreement.

Social Partnership Funding

The Convener: The next item concerns an inquiry into alternatives to custody and sentencing and an application for funds for that inquiry. Before I became convener, the committee decided to explore ways in which we could sound out public attitudes to custody and sentencing. The Scottish Parliament information centre has prepared two alternative ways in which we could do that. Connie Smith and Denis Oag from SPICe are here to talk to those two suggestions. Is there anything that you wish to say as an introduction?

Denis Oag (Scottish Parliament Information Centre): Most of what we want to say is in the paper—I am happy to go through it, but I am also happy simply to answer questions.

The Convener: Members should have read the papers, which are very clear. Does anyone wish to express their views on the alternatives given?

Gordon Jackson: I like the first suggestion better, in that it will do the job that we want it to do, although it is more expensive. The only advantage of the second one is that it is cheaper. Does SPICe see any advantage in the second one, other than that it would cost less?

Denis Oag: The second one contains a dynamic and fairly new open-space exercise, which I think was originally designed to help organisations—rather than public bodies—to consider an issue and to come up with solutions to problems. A conference could be seen as a more passive activity, where people listen more than they contribute. The idea of the open-space exercise was that people would participate more as equals than as passive recipients of wisdom handed down from others.

The Convener: Obviously, the open-space suggestion is broader. How would we select which members of the public would attend that event?

Denis Oag: We would probably do that in tandem with whoever gets the contract to organise the event. There are ways of selecting a broad sample of the population. The sample would not be representative, but it might be a reasonably broad cross-section, including people with recent experience of the criminal justice system and people who work in that system. There would be a range of knowledge in the group.

The Convener: So the group would be selected in much the same way as focus groups might be selected.

Denis Oag: The method would be very similar. The group could be seen as a focus group writ large.

Gordon Jackson: I am grateful to you, because I did not see that distinction. I thought that the conference under the first proposal would have allowed such a dynamic of discussion, with people putting forward their views.

Denis Oag: That was the original idea—it still is. I am not saying that the second idea is better, but it is certainly cheaper. It represents a new way of obtaining similar results more cheaply. The conference is directed at getting feedback from people, but it tends to be more difficult at conferences to get people's direct input.

Scott Barrie: I concur with Gordon Jackson on this. I appreciate that the first option is slightly more expensive, but I like the fact that there are three separate stages to it. We could track how people were thinking during the process. Having been involved in something similar in my previous job, albeit on a much smaller scale, I think that that can be useful. When we first discussed this in February, we were keen not only to have a snapshot to find out what people were thinking but to understand what informs people's views. If we want to inform the committee about what the wider public think and how they came to those views, option 1 is better, as it breaks that process down into its constituent parts.

09:45

Connie Smith (Scottish Parliament Information Centre): We could combine the best parts of both proposals. If the committee is still keen to have the focus groups, we could have the omnibus survey and the focus groups, which could feed into a more dynamic, open-space consultation event—provided that the committee is happy to apply for resources for all three.

The Convener: Will that not put the budget even higher than the current highest option?

Connie Smith: Not hugely. It is for the committee to decide the most appropriate package. We will then try to access the resources.

The Convener: Given that the civic participation event has the same number of participants, why is it so much more expensive?

Connie Smith: The event is facilitated by professionals who are experts in the specific techniques and the structures used for them.

The Convener: There would be six facilitators at the conference. How many would we have at the open-space event?

Connie Smith: At the conference, the facilitators would be conveners for the groups—we would draw them from Parliament staff. The open-space event involves more expertise; as Denis Oag mentioned, identifying the range of people

takes more planning and professional input from the word go.

Gordon Jackson: I like the open-space idea, but we could make the conference as participatory as we wanted. I am impressed by Scott Barrie's idea of three stages. If we did only the second stage, as it were, we would be left hanging. However, we could have the second stage—with the focus groups—then, with some idea of what we are doing, we could have the third stage: the conference. We can have any dynamic we want for that. I prefer the three-stage option; although it is more expensive it is not, in terms of Government budget, hugely more expensive.

The Convener: Would it be attractive to members if we took up Connie Smith's suggestion of trying to bring the two suggestions together, so that the event was in three parts, with elements of the open-space option?

Members indicated agreement.

The Convener: We can come back to that at a future meeting. I thank Connie Smith and Denis Oag for attending.

Petition

The Convener: The next item is further consideration of petition PE89 from Eileen McBride on enhanced criminal record certificates. We now have submissions from Barnardo's, the Scottish Police Federation and the Law Society for Scotland. An e-mail from Eileen McBride has been circulated. There is also a note outlining suggestions for the way forward.

Scott Barrie: When the petition first came before the committee, we had only a brief discussion on it. I said that I thought that the proposals should be welcomed. They tidy up what can happen in practice at the moment in a secretive way, with nudges and winks—what people know about someone and what they pass on. I can understand where the petitioner is coming from and the concerns that are being raised. However, a number of organisations have given us the other side of the argument and explained why the issue is so important.

One of the difficulties with criminal records checks is that they record only whether somebody has been convicted. For a variety of reasons, people can often not be convicted. I know of one case where the police had charged somebody under the wrong act. It was not that the person was not guilty, but that they were let off on a technicality and, therefore, did not have a criminal conviction. Such things can be recorded in the enhanced records check.

Criminal records do not debar someone from obtaining employment, but they can be used to ascertain whether someone is suitable for a post. Potential employers can use a variety of means to ascertain whether someone should be given a job, not just whether in the past their name was included in the enhanced records checks. As we know from the police and others, there are checks and balances. The petitioner has a point but, as Barnardo's has said, young people do not have a voice in society—we have to provide one for them.

Phil Gallie: Mrs McBride has done a tremendous job. She is right to bring this issue to the attention of MSPs, many of whom have been in touch with her. We have all had a chance to think carefully about the issues and, when everything is considered, I think that the most important requirement is the protection of the child. In its submission, Barnardo's mentions not only the European convention on human rights, but the rights of children. I appreciate that there will be conflict, but I hope that the rights of the children will be first and foremost in our minds.

The submission from the Scottish Police Federation makes one recognise a precedent in

the situation with the licensing boards. That weighs heavily on my mind and persuades me that we are not breaking with a long-held Scottish judicial tradition.

The clerks have done a pretty reasonable job in putting together their recommendations for the committee. They have covered Mrs McBride's requirements to a degree, without meeting them in full. She will not be satisfied with this, but I believe that by adopting the recommendations we will go a long way towards allaying the doubts that she has sown in our minds.

The Convener: It is clear from the e-mail that Mrs McBride has sent that nothing short of total repeal of the relevant sections of the Police Act 1997 will satisfy her. I think that the clerks have in fact done a very good job—I am sure that that is what Phil meant by "pretty reasonable".

Christine Grahame: I thought that the Law Society of Scotland's comments were interesting, because it is difficult to strike the right balance. Obviously, we want to protect children, and I defer to Scott Barrie's knowledge of the informal lists that circulate. It would be better if they were regularised. The Law Society makes provision for people who are blacklisted in this way. On the second page of its submission—which is included in the clerks' paper JH/00/31/10—it points out that the white paper, 'On the Record in Scotland: Proposals for Improved Access to Criminal Records', states that the information

"should not include details which cannot be substantiated".

This is a difficult area. The Law Society is clear about what should happen in pending cases, but we are talking about people who have never been prosecuted and their associations or the information that the police have on them.

The next page of the submission deals with subsections of the Police Act 1997. It says:

"These subsections essentially allow the Scottish Ministers to permit the disclosure to a registered body or employer of sensitive or contentious information without advising the individual concerned about the nature of the information or that the disclosure itself is being made."

That is pretty hard stuff. It is interesting that, on the same page, the Law Society suggests that the act

"would not appear to provide for any facility through which an individual applicant could challenge the inclusion of information in the Enhanced Criminal Record Certificate before it is disclosed to the registered person or employer."

Those are issues that give me concern.

I will not go through the Law Society's points on appeals procedure in great detail, but it suggests mechanisms by which parties could be informed and thereafter have a right of appeal to an independent body against something being

disclosed about them. The appeal would be not to Scottish ministers, as they have an interest, but to an independent body—a sheriff or an arbiter of some kind. The submission does not say whether the results of that appeals procedure should be final.

I feel that there should be a mechanism for appeals. If even one person is wrongly blacklisted, that is one person too many. I say that while whole-heartedly believing that young people should be protected from paedophiles.

Scott Barrie: I have some sympathy with Christine Grahame's points, but problems arise when we think through the realities of how we would let people know. In previous discussions in this committee, we have talked about holding information on people and about the problems of letting people know that they are on a list. As soon as the fact that disclosures had been made came to light through an enhanced records check, people would know about it and, if they felt that that was wrong, they would go through the appeals procedure. That is the way that it should be done, rather than using the slightly cumbersome process that Christine may have been suggesting. I do not think that the problem is quite as bad as Christine and the Law Society are suggesting.

Gordon Jackson: I have a lot of sympathy with Christine Grahame's point that an appeal should be not to a minister but to an independent body. I am not absolutely sure about this, but I think that a minister's decision may be appealable—it may be made subject to judicial review. If it is—and I think that it probably is—there would be a further safeguard. Having to take an appeal to a Scottish minister may not therefore be as big a problem as we think.

Christine Grahame: As Gordon Jackson will see from the first paragraph on appeals procedure in the Law Society's submission, the applicant challenges

"the accuracy of the information contained in the Enhanced Criminal Record Certificate by making a written application to the Scottish Ministers."

That, of course, is only if they know that that information is held. I accept Scott Barrie's point about alerting people, but we should think more about this point. We are talking about people who do not have a criminal record but are being treated as if they did. That is a big step to take.

Gordon Jackson: I agree.

Phil Gallie: There is some sympathy with what Christine Grahame says. However, the third recommendation on page 2 of paper JH/00/31/10 partly deals with her concerns. Would she like to come up with a modification to that recommendation, to make that reasonable attempt

at an answer into a very good attempt?

The Convener: The suggestion is that we ask the minister to review the appeals mechanism. We will write to the minister, but it might help us to focus our views if the clerks and I draft a letter and highlight the points that we have made—perhaps expanding on them slightly—and then bring that draft back to the committee. It is not essential that we dispose of this issue this week.

Christine Grahame: At the end of the letter, we might ask for the minister's views on the pros and cons of informing the party in advance of information being placed on a certificate. The Executive may not wish to take that route, but I would like to know its reasons for that.

The Convener: We could include that in the draft letter.

Christine Grahame: Our position would then be more watertight.

The Convener: Is it agreed that we should bring a draft letter to a future meeting?

Members indicated agreement.

The Convener: We will discuss the next item in private.

09:59

Meeting continued in private until 11:18.

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