

JUSTICE COMMITTEE

Tuesday 11 December 2007

Session 3

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JUSTICE COMMITTEE

13th Meeting 2007, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

*Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)
*Nigel Don (North East Scotland) (SNP)
*Paul Martin (Glasgow Springburn) (Lab)
*Stuart McMillan (West of Scotland) (SNP)
*Margaret Smith (Edinburgh West) (LD)
*John Wilson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)
Marlyn Glen (North East Scotland) (Lab)
John Lamont (Roxburgh and Berwickshire) (Con)
Mike Pringle (Edinburgh South) (LD)

*attended

CLERK TO THE COMMITTEE

Douglas Wands

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Euan Donald

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 11 December 2007

[THE CONVENER *opened the meeting at 10:16*]

Petitions

Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 (PE767)

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I remind everyone to switch off their mobile phones. I have received no apologies—we have once again a full turnout of members.

The first item on the agenda is consideration of petitions. PE767 is by Norman Dunning, on behalf of Enable, and calls on the Scottish Parliament to urge the Scottish Executive to review the operation and effectiveness of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976. As members will recall, we have considered this petition before. Since then, we have received correspondence from the Cabinet Secretary for Justice.

I draw members' attention to the options listed in paragraph 9 of paper J/S3/07/13/1. Are there any comments?

Bill Butler (Glasgow Anniesland) (Lab): Like other members, I have looked carefully at the clerk's paper and the cabinet secretary's response. However, I feel that certain points still need to be developed and questions answered fully.

First, as we all know, legal aid presents no problems for people who either have no means or are very rich. However, those of middling means will find that their costs, which might run to £20,000 or £30,000, are insupportable. There is no real support for those families and individuals; moreover, they do not receive any victim support money, which is another outstanding issue.

Secondly, as far as delays are concerned, I believe that the cabinet secretary says that most FAIs are held quickly. That is true, but only when they are not contested. My information is that when a case is contested it might drag on and on with delays of up to three or four years because of adjournments.

Another issue that needs to be addressed is the fact that, at a cost of perhaps more than £100,000, these inquiries are also hugely expensive to the taxpayer.

I acknowledge the cabinet secretary's comment that FAI recommendations will be monitored through postings on a website. However, such a step is small and quite insignificant and is certainly not what the petitioners were looking for. Such recommendations need to be monitored in some proper way by the justice department.

I am not content with the suggestion that we close the petition, as I think that there are more issues to be considered, some of which I have outlined. We might want to write to the cabinet secretary with those supplementary questions.

If we agree to send that letter but receive a similar response from the cabinet secretary, would it be possible for us to refer the matter of the review of the operation of the 1976 act to the Scottish Law Commission? Perhaps the clerks could advise us whether it would be within our power to do so. We should consider doing that, given that the law has been on the statute books without a review.

The Convener: That point is well made. One difficulty that we would have is that it would not be possible for us to refer the matter directly to the Scottish Law Commission. However, we could recommend to the Cabinet Secretary for Justice that that be done. Bill Butler has made some sound points that are worth following up.

Margaret Smith (Edinburgh West) (LD): I find myself largely in agreement with Bill Butler. Members might be aware that I have intimated a wish to introduce a member's bill that would touch on FAIs, in the sense that it would deal with the deaths of service personnel overseas. Currently, their families have to engage with the coroners court process in England. In some cases, there can be a delay of anything up to five years. I am investigating that situation at the moment and I thought that I had better preface my comments by saying that I have an on-going interest in the wider FAI issue.

As a constituency member, I have had a couple of quite distressing cases involving families who have felt let down by the FAI process and the way in which they have been dealt with.

I would like to clarify something on page 3 of the cabinet secretary's letter to us. He says:

"Inquiries are mandatory in cases of death as a result of an accident in the course of employment or in legal custody."

Of course, that is true only if there is no other legal case. If there is another legal case, fiscals will often decide not to hold an FAI—even if that is against the wishes of the family. It would be useful to clarify that point with the cabinet secretary, just so that we have the full picture.

There is an issue about how relatives are dealt with. I note that the cabinet secretary says that that has been the subject of training, but I think that we could do with a bit more information about what that training has entailed.

I share Bill Butler's concerns about the situation in relation to FAIs, legal aid and victim support. I think that the response on the monitoring of recommendations does not go far enough. Therefore, I am minded to suggest that we keep the petition open and ask the cabinet secretary about certain points.

Next year, we will probably face a much tighter business programme than we have had to date—as I am sure you are well aware, convener—but I would prefer us to keep the petition open, pending consideration of the work programme and any further response from the cabinet secretary.

The Convener: Again, there is not much that I would disagree with in those words. I should underline the fact that the Crown would be inhibited in the event of a fatal accident inquiry and a prosecution coinciding. Clearly, the Crown could not hold an FAI if the evidence that would be heard during the FAI would be largely identical to that which would be heard in, for example, a murder trial, as that could be prejudicial.

If I detect the mood of the committee correctly, I think that our view is that we should keep the petition open. Members will recollect that, before the meeting, we discussed informally whether the issue raised in the petition might be worthy of inquiry, in connection with a wider issue, when the time becomes available.

I suggest that, in the meantime, we keep the petition open and write to the cabinet secretary in line with what Bill Butler said. Once we have received a reply, we can revisit the petition with a view to taking any further action that we consider necessary. Is that agreed?

Members *indicated agreement.*

Margaret Smith: Can we also ask for more information about the extra training that has been undertaken in relation to relatives?

The Convener: That is fine. We will incorporate all those comments and questions into the letter that we send to the cabinet secretary.

Abusive Parents (PE997)

The Convener: PE997 is by Peter Cox, on behalf of the Mothers for Justice Campaign, and calls on the Scottish Parliament to urge the Scottish Executive to provide greater protection to the children and partners of abusive parents.

The petition has been considered by the committee before. Since members last considered

it, correspondence has been received from the Cabinet Secretary for Justice and Sheriff Frank Crowe, who is in charge of the Judicial Studies Committee. I invite members to consider the paper from the clerk, which is informed by the content of that correspondence.

It is perhaps worth reflecting on the fact that some of the issues have already been dealt with. All reference to “access” and “custody” under the Children (Scotland) Act 1995 has been changed—modern usage is “contact” and “residence”. We have seen the correspondence; do committee members have any comments?

Paul Martin (Glasgow Springburn) (Lab): I am not sure that I am satisfied with the response from Sheriff Crowe. His letter says that sheriffs show an enthusiastic approach to training, but I would have welcomed a more specific answer. He could have given the percentage of sheriffs who take part in training programmes rather than just say that they are enthusiastic. The petitioner is making the point that some individuals—children in particular—have had poor experiences. We have to follow that through properly and ask what percentage of sheriffs take up training at the moment.

Neither Sheriff Crowe nor the cabinet secretary really deals with the question whether training should be compulsory. They refer to training, but we need them to be more specific. Both the cabinet secretary and Sheriff Crowe should be straight with the petitioner and say whether they think that compulsory training is a good idea. I appreciate that legislation is imminent, but it would be helpful for people to be clear about where they stand. I personally think that a compulsory element of training would not be a bad thing, particularly when dealing with children, and I do not see why people cannot commit themselves either way.

We must also ensure that we deal with all elements of the petition. In his letter, the cabinet secretary refers specifically to issues relating to reporters, but does not discuss the other elements that were raised with him. I am not sure whether that is because of what we asked him in our letter—I hope that he was asked to respond to the petition. I just want us to reach a situation in which the petitioner has had all their questions answered and people are clear about where they stand.

The Convener: The legislation that Paul Martin refers to is the proposed judiciary bill, which is scheduled to come before us during the third week in January. Under that legislation, responsibility for training will pass to the Lord President of the Court of Session. It will be open to us to ensure that the legislation is formulated in such a way that the training referred to in the petition will be compulsory.

Nigel Don (North East Scotland) (SNP): That is where I am coming from—indeed, I could have said something along the same lines about the first petition.

It is probably a good idea to consider which elements of training should be compulsory. Most other professions would recognise that specialist training is required in areas of specialisation. Clearly, we cannot address that issue now as we cannot consider the particulars until we get there, but we ought to recognise that training will be an important issue.

10:30

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I would like to keep the petition open because of the legislation that is to be introduced. The petition is about civil actions, and the review of civil processes will report back next year. In my opinion, it will be worth reconsidering the petition then so that we can consider how children who have been abused might best be served.

The Convener: If I judge the mood of the committee correctly, I think that our view is that we will keep the petition open and reconsider it when we receive the appropriate legislation. We will then be able to consider how that legislation, once enacted, might answer the questions that are raised in the petition. Do members agree that we should go along those lines?

Members indicated agreement.

Subordinate Legislation

Licensing (Relevant Offences) (Scotland) Regulations 2007 (SSI 2007/513)

10:31

The Convener: Agenda item 2 is consideration of subordinate legislation. Specifically, we are to consider a negative instrument, which is the Licensing (Relevant Offences) (Scotland) Regulations 2007. We have received a response from the Scottish Government that deals with the points that were raised by the Scottish Beer and Pub Association. The response was received only yesterday and has been circulated.

Do members have any questions on the regulations?

Margaret Smith: I do not have a question, but I want to intimate that I raised concerns on the back of the Scottish Beer and Pub Association's submission and that I am content with the response that we have received.

Nigel Don: I must confess that I was concerned as I read through the Subordinate Legislation Committee's report on the regulations. The issues seem to be summed up neatly in paragraph 8, where that committee mentions that

"the lack of clarity ... leaves doubt as to what is covered."

That registered with me.

I am sure that I am not the only member who was formerly a member of a licensing board, and I think that licensing boards are perfectly competent at working out whether something is sensible. Therefore, I am not terribly worried that the regulations are not very specific. In this area, the legislation does not need to be absolutely black and white. On the basis that licensing boards are well capable of sorting out the good from the bad, I am not terribly worried if we have slight elements of doubt.

The Convener: The issue is whether interpretation and the application of local knowledge are matters for us as legislators or for licensing boards. On balance, I think that the matter can be left in the hands of licensing boards, but it was important that the points that the Scottish Beer and Pub Association raised were clarified.

Cathie Craigie: For clarification, if a licensing board had a difficulty—perhaps because lawyers were arguing a case on how the point should be interpreted—would the letter that we have received back up the intention of the legislation? Would that be considered?

The Convener: It would be very relevant in any action that was generated on the question of interpretation. In effect, I think that the cabinet secretary has more or less closed the door, but the matter would be for a court to determine if it ever came to that.

In the circumstances, can we simply note the regulations?

Members *indicated agreement.*

Budget Process 2008-09

10:34

The Convener: Agenda item 3 is on scrutiny of the draft budget.

I remind members that members of this committee were invited to attend the Health and Sport Committee meeting at which evidence was to be taken from three cabinet secretaries, including the Cabinet Secretary for Justice, on the budget for tackling alcohol and drugs misuse. Margaret Smith and I were mandated to attend the meeting on this committee's behalf and we duly did so on 28 November. The meeting was addressed not only by the Cabinet Secretary for Justice, Kenny MacAskill, but by the Cabinet Secretary for Health and Wellbeing, Nicola Sturgeon, and the Cabinet Secretary for Finance and Sustainable Growth, John Swinney.

The meeting was useful to a point, but it was inevitable that a meeting to discuss the finance aspects of drug treatment and rehabilitation spread on to a rather wider vein. I know from experience that it is always difficult to restrict discussions at this time of year to finance considerations. Margaret Smith will no doubt agree that it was inevitable that the discussion spread into the wider issues of drug treatment and rehabilitation, which was interesting, but it might have been easier if we had concentrated on what gives us literally the best bang for our buck. Some sound issues were raised. I refer members to the *Official Report* of the meeting—I will arrange for the clerks to furnish members with copies, if they wish one.

Our involvement in the matter is fairly minimal, in that the preponderance of the drugs budget comes from the health and local government budgets. Nevertheless, on behalf of the committee, I stressed the need to have appropriate information on what works and what does not work. Only on that basis can we determine whether we are getting best value and whether the budgetary provision is sufficient and then move on from there. The Deputy First Minister largely accepted that point.

As I say, some interesting points were raised—you learn something new every day, and I found much of what was brought before what one might call the conjoined committee to be useful. However, the meeting might have been better had it focused on the real issue, which was consideration of the budget.

I ask Margaret Smith whether she has anything to add.

Margaret Smith: I have one comment, which reiterates that point. I found the meeting fairly useful, but I am not sure that it should have been held as part of the budget process. In future, I would like meetings to be held in which members from various committees come together to discuss cross-cutting issues. The meeting was useful and, for the most part, members came at the matter from the perspective of their portfolio or committee interest, although there was a cross-cutting element in members' questions. The meeting was a temptation for some of us to go outwith the narrow remit of the budget—I succumbed, unfortunately.

The Convener: That is certainly not like you.

Margaret Smith: We all know that there is great difficulty in finding information in the budget, because only a certain number of lines deal explicitly with any subject. The explicit mention of drugs work in any of the budgets that the committees are considering is limited. On that basis, it was particularly difficult to keep going for a prolonged period, with 13 or 14 members trying to ask questions of three cabinet secretaries. The concept is a positive development but, given the nature of the budget and even the issue that we discussed, the meeting was not necessarily the best way in which to pilot the concept. However, our committee should bear in mind the idea for the future; I hope that other conveners and committees consider it, too.

The Convener: I agree with that entirely. That type of meeting has value, but it was perhaps not held at the best time or on the best issue.

John Wilson also attended the meeting. Do you have anything to add, John?

John Wilson (Central Scotland) (SNP): I have a comment on the time that was given over to the discussion. Other committee meetings had to take place at 11 o'clock that morning, which meant that the speed of the discussion did not give us a good opportunity to examine many of the issues. The convener and Margaret Smith mentioned that the discussion went off the budget and on to general drugs policy. If there had not been so much pressure on time, we could have had a more fruitful discussion on the budget. The fact that we moved on to general drugs policy marred the debate. We could have had a debate about the level of budgetary spending in the three portfolios to tackle drugs abuse in Scotland.

The Convener: Again, I agree totally.

As there are no questions, do we agree to note that report back?

Members *indicated agreement.*

The Convener: The next two agenda items will be taken in private, as previously agreed. I thank

members of the public for attending and ask them to leave, so that we can consider draft committee reports.

10:40

Meeting continued in private until 12:49.

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