

JUSTICE COMMITTEE

Tuesday 1 December 2009

Session 3

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JUSTICE COMMITTEE

33rd Meeting 2009, Session 3

CONVENER

*Bill Aitken (Glasgow) (Con)

DEPUTY CONVENER

Bill Butler (Glasgow Anniesland) (Lab)

COMMITTEE MEMBERS

*Robert Brown (Glasgow) (LD)

*Angela Constance (Livingston) (SNP)

*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)

*Nigel Don (North East Scotland) (SNP)

*James Kelly (Glasgow Rutherglen) (Lab)

*Stewart Maxwell (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

Aileen Campbell (South of Scotland) (SNP)

John Lamont (Roxburgh and Berwickshire) (Con)

Mike Pringle (Edinburgh South) (LD)

Dr Richard Simpson (Mid Scotland and Fife) (Lab)

*attended

THE FOLLOWING GAVE EVIDENCE:

George Burgess (Scottish Government Criminal Justice Directorate)

Robert Gordon (Scottish Government Director General Justice and Communities)

Kenny MacAskill (Cabinet Secretary for Justice)

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 1 December 2009

[THE CONVENER opened the meeting at 10:04]

Decision on Taking Business in Private

The Convener (Bill Aitken): Good morning, ladies and gentlemen. I formally open the meeting by reminding everyone to switch off mobile phones. We have an apology from Bill Butler MSP, who is unfortunately unwell.

Agenda item 1 is a decision on whether to take in private item 5, under which the committee will consider whether it wishes to be involved in the scrutiny of the Alcohol etc (Scotland) Bill at stage 1. Does the committee agree to take item 5 in private?

Members indicated agreement.

The Convener: Thank you.

Item 2 is also a decision on taking business in private. Does the committee agree to take in private at future meetings consideration of written and oral evidence received on the Legal Services (Scotland) Bill at stage 1?

Members indicated agreement.

Inquiry into Decision on Abdelbaset al-Megrahi

10:05

The Convener: Agenda item 3, which is the main business of the day, is an evidence-taking session with the Cabinet Secretary for Justice and Scottish Government officials as part of our inquiry into the decision on Abdelbaset al-Megrahi. I welcome our witnesses: the Cabinet Secretary for Justice, Kenny MacAskill; Robert Gordon, director general justice and communities; and George Burgess, head of the criminal law and licensing division. Gentlemen, good morning to you.

Let me outline our proposed format this morning, which I hope will allow for a fairly logical flow of evidence. We intend to ask questions under the following headings: the prisoner transfer application; the medical evidence; the cabinet secretary's visit to Mr al-Megrahi in prison; the consideration given to where Mr al-Megrahi would reside—other than in Libya—on release; and how the decision to release Mr al-Megrahi on compassionate grounds compares with previous decisions on such applications. Clearly, there will be overlaps under those headings, but I am sure that we can live with that. I remind the cabinet secretary that he may be questioned on any matter within the inquiry remit—I understand that he has been given a copy of the remit. A maximum of two and a half hours has been set aside for this agenda item.

Mr MacAskill, you were asked yesterday whether you wanted to make an opening statement. Can I take it that you are not minded to do so?

The Cabinet Secretary for Justice (Kenny MacAskill): I am happy to go straight to questions.

The Convener: Let me open the questioning by asking about the general timescale for both the prisoner transfer application and the application for release on compassionate grounds.

Will you outline the timescale between the Government's receipt of al-Megrahi's application and the decision being made? Basically, the Government failed to meet the 90-day deadline in that respect. Will you give us an explanation for that?

Kenny MacAskill: The prisoner transfer application was received on 5 May 2009. Thereafter, we required to consider what evidence we would take and from whom, and we carried that out. We required to meet a variety of parties. Clearly, the 90-day timescale is not mandatory, although it is certainly desirable, and we indicated

that we would try to meet it. The final decision was taken by me on 19 August and was announced on 20 August.

The Convener: Was there a desire that both applications be dealt with more or less simultaneously?

Kenny MacAskill: Not initially, as the application for prisoner transfer came in on 5 May 2009 and the application for compassionate release did not come in until 24 July 2009, when we had already embarked on taking evidence from a variety of parties. Once the two applications had been made, there was some logic in dealing with some matters concurrently. That is why, for example, when I met Mr al-Megrahi, both applications were discussed even though the initial purpose of the meeting had been to do with the prisoner transfer application.

The Convener: It seems—I think that you will agree with this—that different criteria applied in respect of each application.

Kenny MacAskill: That is accepted.

The Convener: Therefore, I have no difficulty understanding the logic behind any wish to deal with the two applications simultaneously. The fact that different criteria applied to them is evidenced by the eventual decision, in which one application was refused and one was granted. Was Mr al-Megrahi influenced in any way to lodge another application on the basis that it was likely that the initial application for prisoner transfer would be rejected?

Kenny MacAskill: Not at all. The application for prisoner transfer was made by the Libyan Government, not by Mr al-Megrahi; the application for compassionate release was made by Mr al-Megrahi. The applications were not solicited in any shape or form by the Scottish Government. As I said, they were lodged by the individual and by his Government.

The Convener: Are there any other questions on this issue?

Robert Brown (Glasgow) (LD): Yes—first, I apologise for my voice.

I want to pursue the question of prisoner transfer. The application that came in—I think you said in May—from the Libyan Government, which is item 2a in our documentation, talked about

“a written undertaking to the Libyan side”

from Mr al-Megrahi

“stating that he is willing to abandon his appeal if the other party”—

the Scottish Government, obviously—

“approved his transfer to his home country”.

I am struck by the conditional nature of that observation in the initial application by the Libyan Government. It is echoed in a note of a meeting with the Libyan Government on 22 July—which is item 4c—which says that Mr Alobidi, who is the Libyan representative, said

“he had a written undertaking from Mr Al-Megrahi that he would abandon his appeal.”

Of course, the appeal was not abandoned until very much later. What discussions were there with the Libyan side about the circumstances or conditions under which the appeal might be abandoned?

Kenny MacAskill: It was always made clear to the Libyans that the abandonment of the appeal was a matter for them and them alone and that our decision would be made on the criteria before us. Our position is that the criteria specified that there had to be no proceedings outstanding—on that basis, an appeal would require to be abandoned. That said, the position of the Libyans and Mr Tony Kelly, the agent acting on behalf of Mr al-Megrahi, was that matters could be homologated—we could decide to release Mr al-Megrahi, which could then be homologated by their abandoning the appeal. That was not our interpretation of the law. We always made it quite clear that our interpretation of the law was that to deal with the prisoner transfer application there had to be no proceedings outstanding. Thereafter, it was a matter entirely for the Libyans whether they wished to abandon the appeal.

Robert Brown: The question of the abandonment of the appeal seems to have underlain all the discussions and considerations from an early stage. I am struck by the fact of the later point at which all this happened and the choreography, if you like—in a way, it all seemed to fit into place at the end. I appreciate that you did not ultimately grant the prisoner transfer application, which perhaps gives an artificial look to the whole thing, but the appeal always underlay it. How were you able to deal with the prisoner transfer application without the abandonment of the appeal? That was the case until the very last minute, was it not?

Kenny MacAskill: We made it quite clear throughout the proceedings that our interpretation of the prisoner transfer agreement was that there could be no proceedings outstanding. That said, we made it quite clear that these were decisions that had to be made by the individual and his legal representatives. No pressure was or would be put on him, but our interpretation was different from that of Mr Kelly, the agent representing Mr al-Megrahi. We always made it quite clear that we were happy to consider the application. The application had been lodged. Thereafter, we required to see whether all criteria were met. One

of the criteria that had to be met was the requirement that there be no matters outstanding.

Robert Brown: But that is essentially my point—it was manifest from the beginning that at that stage the appeal was outstanding and the application could therefore not proceed. Why did you continue to consider it? Was it not made clear that unless and until the appeal was abandoned, the Scottish Government could not look at an application for prisoner transfer?

Kenny MacAskill: No. We could look at it. We were required to look at it. It had been properly and formally lodged. We could not grant it, however. We had to go through due process and we had to listen to the application. For that reason, we then carried out the appropriate procedure, which was to consider who had an interest on which they could make representations. Throughout the proceedings it was made quite clear that before we could come to a decision, if we were going to grant the prisoner transfer application, all the criteria that were laid down—including that of there being no matters outstanding in court—had to be met. Certainly, it was perfectly possible for us to consider the application, even though until such time as the appeal was dealt with—under our legal advice as opposed to that being given to Mr al-Megrahi—it could not have been granted.

Robert Brown: The difficulty is that from the outsider's point of view, all of this looks a bit like negotiation. It would be much clearer, would it not, if you had made it very clear at the beginning—

Kenny MacAskill: I think what you are suggesting is that I should have refused the—

Robert Brown: Let me finish the question, if you do not mind. It would be much clearer if you had made it clear at the beginning that the whole question of the prisoner transfer application could not be considered while an appeal remained outstanding. Would not that have been a clearer way to deal with it?

Kenny MacAskill: No. We believed that we could consider matters; we then made representations back to the Libyans. The decision about whether to continue with the appeal was entirely for Mr al-Megrahi to make. We felt that the application had been lawfully made and that, although not all the criteria had been met at that time, we were required to consider it. If you are suggesting that we should have refused the application on 5 May, I would argue that that view is certainly open to interpretation. If we had refused it then, we would probably have been subject to judicial review by the agents representing Mr al-Megrahi.

10:15

Robert Brown: I will take you a bit further on that issue. With great respect, cabinet secretary, if the application was, in effect, not competently made because all the conditions were not met, how could you possibly be subject to challenge for indicating that it could not proceed while the appeal remained outstanding?

Kenny MacAskill: We had to consider whether all matters had been dealt with. As I said, Mr al-Megrahi's application was lodged, and we considered it and investigated matters. Our interpretation was that all elements had to be dealt with, and no legal matters could remain extant. That is—or was—disputed by Mr al-Megrahi, the Libyan Government and the agents representing him.

The Convener: I will follow up on one or two points. You take the position quite firmly that absolutely no influence was brought to bear on Mr al-Megrahi or his legal advisers to drop the appeal.

Kenny MacAskill: Yes.

The Convener: We have some contradictory evidence—it has not been examined by the committee, but, as you are aware, your party colleague Christine Grahame has said that it exists. Have you any comment to make in that regard? The two views cannot be reconciled.

Kenny MacAskill: I cannot speculate on that. We have also had comment from Mr Kelly—not Mr James Kelly MSP, who is here today, but his namesake, Mr Tony Kelly, who is the agent representing Mr al-Megrahi. Mr Kelly was quite clear that no pressure was put on Mr al-Megrahi by the Government, and the Libyan Government has made it clear that no pressure was brought to bear on it or on Mr al-Megrahi. We are quite clear that we acted according to due process.

The Convener: My difficulty is that Ms Grahame has said in the press that she has seen e-mails to the effect that influence was brought to bear in respect of the dropping of the appeal. I take it that your position is that you have not seen any e-mails, and that you question their existence. As I see it, the two views cannot be reconciled, can they?

Kenny MacAskill: I have not seen any. I am here to give evidence, and cannot speculate.

James Kelly (Glasgow Rutherglen) (Lab): I will press you again on the issue of the criteria for considering the application. It is clearly outlined in article 3(b) of the prisoner transfer agreement that the judgment must be final. When the application was lodged, Mr al-Megrahi's appeal was still live, and so was the Crown appeal.

Leaving aside the discussion that we have just had about the al-Megrahi appeal and the decision to drop it, the fact remains that, when you came to make your decision, the Crown appeal was still live. However, in your statement at item 5 in our documentation, you make no reference to the Crown appeal. When you came to make your decision, the fact that the Crown appeal was still live should have meant that the application should have been disallowed at the outset. It seems strange that you make no reference to that in your statement.

Kenny MacAskill: The position with regard to both the Crown appeal and Mr al-Megrahi's appeal is the same, which is a point that was made by the agent for Mr al-Megrahi, Mr Tony Kelly, who is, I think, not unknown to you. It was made quite clear that those matters could be homologated: that is to say, a decision could be taken, and the appeals could thereafter be abandoned if desired. We refused the prisoner transfer application for a variety of reasons; you are quite correct to say that it could not have been granted because a matter—namely the Crown appeal—was still extant.

However, we had decided prior to that that there was clear reason to believe—if not evidence to suggest—that undertakings had been given to the United States Government and the victims' relatives that Mr al-Megrahi would serve his sentence in Scotland. I made the decision on that basis, but you are correct that a provision in the legislation meant that he could not have qualified anyway, as a Crown appeal was still outstanding. However, the logic of Mr Tony Kelly, the Government of Libya and Mr al-Megrahi was that we could consider matters even if we could not make that final decision.

James Kelly: The question remains: why in your final statement is there no reference to the fact that the Crown appeal was still live?

Kenny MacAskill: Because I had decided to rule out the application after speaking to the relatives of the victims in the United States and, indeed, the US Attorney General Eric Holder, who seemed to me to be a very credible witness. Not only is he the serving Attorney General, but he was Deputy Attorney General when discussions about the transfer and the nature of the agreement with regard to the trial were going on. He made it clear to me—and this was to some extent corroborated and supported by the relatives of the American victims—that he had reason to believe that Mr al-Megrahi would serve his sentence in Scotland. That was why, although I granted consideration of the application, I accept that I could not have granted the transfer itself. However, I was satisfied that the American Government and the American families had been led to believe by the United Kingdom Government,

if not given specific assurances, that the sentence would be served in Scotland.

James Kelly: Would it not have been competent and, indeed, comprehensive to include in your concluding statement the fact that the Crown appeal was still live?

Kenny MacAskill: I thought that the concluding statement was fairly comprehensive. As you might imagine, I have reread it for today's meeting; although I might slightly modify some of its terminology or whatever, it still makes clear two specific things: our refusal of the prisoner transfer application and our granting of the application for compassionate release.

James Kelly: With regard to the note of the 22 July meeting, which Robert Brown referred to—

The Convener: It might be helpful if you gave the document reference number, Mr Kelly.

James Kelly: I was just about to do that; it is document 4c. You did not attend the meeting, cabinet secretary; it was a meeting with the Libyan Government that was attended by Mr Burgess and Dr Fraser. Paragraph 13 says:

“Mr Alobidi”

from the Libyan Government

“said that he had a written undertaking from Mr Al-Megrahi that he would abandon his appeal.”

In what context was that introduced into the meeting?

Robert Gordon (Scottish Government Director General Justice and Communities): As the cabinet secretary has made clear, in our conversations with the Libyan authorities we had discussed the criteria that would have to be met for the prisoner transfer agreement application to be granted, compassionate release issues and, on previous occasions, the application to the court for interim liberation. We had sought to draw a distinction between matters for the Scottish Government and matters for the courts. Mr Alobidi told us—on more than one occasion, I think—that he had a written undertaking from Mr al-Megrahi about abandoning the appeal, but we made it clear that that was a matter for Mr al-Megrahi, his legal advisers and the courts. It was not for the Scottish Government to receive that undertaking.

James Kelly: So is it fair to say that Mr Alobidi made the statement in the context of a discussion about the prisoner transfer agreement, the conditions regarding the application's competence and the fact that Mr al-Megrahi's on-going appeal would disallow it?

Robert Gordon: We had given an undertaking to the Libyan authorities that the Scottish Government would entertain an application under

the prisoner transfer agreement, but we had discussed the fact that a number of factual criteria, including Mr al-Megrahi's Libyan citizenship, had to be met.

We had, at a number of meetings with the Libyan authorities, gone through the conditions or criteria that would have to be met for Scottish ministers to decide on the application. By the time of the meeting to which you refer, the application was before Scottish ministers.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I will continue with the prisoner transfer application; with the convener's permission I will then move on to the cabinet secretary's meeting with Mr al-Megrahi.

The Convener: Can you deal with them separately? It is probably tidier if you deal with the prisoner transfer application, then we will review the situation. You will get first cut when we move on.

Cathie Craigie: I think that colleagues have dealt with any question that I would have had on the prisoner transfer application.

The Convener: Right. Please proceed.

Cathie Craigie: Cabinet secretary, it seems strange that you would decide to visit Mr al-Megrahi in prison. Indeed, from what I can see from the written material, it appears that the Government made that offer to Mr al-Megrahi. Can you give us any further comment?

Kenny MacAskill: We were obliged to make that offer. The Government did so because of the regulations in the prisoner transfer agreement that the United Kingdom Labour Government brought in. It specifically introduced the provision whereby an application could be made by the prisoner's Government rather than by the prisoner. It was clear that, in such circumstances, the prisoner had to be given the opportunity to make representations. For example, a prisoner might not wish to go, in which case it would be preposterous to transfer him or her.

The regulations therefore made it clear that we had to ask the prisoner. We wrote to Mr al-Megrahi, which is a matter that is in the public domain. He indicated that he wished to take up the opportunity to be heard. Clearly, I had met other people in St Andrew's house and elsewhere, but it was more convenient to visit Mr al-Megrahi, given that he was an incarcerated prisoner serving a considerable sentence, than it was to have an entourage bring him to St Andrew's house. We were therefore obliged to meet him because of the terms of the prisoner transfer agreement.

Had we not met with Mr al-Megrahi, we would have left ourselves open to judicial review. Mr al-Megrahi is represented by Mr Tony Kelly, who is

an experienced agent who would undoubtedly have argued that it would be preposterous if, for something as important as the prisoner transfer application, we did not at least take the views and evidence of the individual concerned. As the convener knows well, Mr Kelly has involved the Government in many judicial reviews at great cost.

We were therefore obliged to act as we did, first, because of the legislation that was brought in by London under the prisoner transfer agreement; and, secondly, because it seemed to us that it would be a clear breach of natural justice to carry out a consideration relating to a prisoner, which was fundamental to his rights, welfare, liberty and so on, without asking him about it. It seems clear to me that we would have faced judicial review had we not acted as we did. For the two reasons that I have given, we had to meet Mr al-Megrahi.

It seems to me that it was much better for me to have gone in a Government car service vehicle to see Mr al-Megrahi in the governor's office in Greenock than to have had an entourage coming along the M8 in the opposite direction with armed officers and whatever else—never mind the shenanigans and the disruption to those working in the justice department that that would have caused.

Cathie Craigie: I am sorry, but why were you obliged to act as you did? I have heard what you have said this morning, but can you point me to where it says in the legislation and the agreement that you, as cabinet secretary, were obliged to go and meet the prisoner?

Kenny MacAskill: When the matter was going through Parliament, Jack Straw made it clear that, because this was the first situation in which a Government made an application, the prisoner should be given the opportunity to make representations. That was made clear by Jack Straw as the matter went through the Westminster procedures south of the border—it did not go through the Scottish Parliament; to an extent it was foisted on the Scottish Parliament, if I may put it like that.

Does George Burgess wish to comment?

George Burgess (Scottish Government Criminal Justice Directorate): If I might, in order to assist. The undertaking to which the cabinet secretary referred was given by Jack Straw to the Joint Committee on Human Rights at Westminster when it was considering the prisoner transfer agreement, which was the first that did not require the prisoner's consent.

In the normal run of events, all that would be required would be to get the prisoner's view. The committee has my advice to the cabinet secretary of 27 May—

10:30

Cathie Craigie: What number is that?

George Burgess: I am afraid that I do not know what number it is in the member's folder. The advice set out the process that we envisaged in dealing with this prisoner transfer application. As the committee is aware, we took evidence directly from many other interested parties, either face to face or by videolink, and at a higher level than we would have done in almost any other case. In those circumstances, it was considered absolutely appropriate for the cabinet secretary to give the same level of opportunity to the subject of the request.

Cathie Craigie: There is no question but that evidence has been taken at a higher level than in any other case. However, as far as I am aware, nothing that Jack Straw said in support of the transfer agreement indicated that the Cabinet Secretary for Justice or Scottish ministers had to meet the subject of the request in person. Receiving representations can be quite different from meeting someone in person. The prisoner's consent can come in writing—a face-to-face meeting is not required. Do you regret the fact that a meeting took place?

Kenny MacAskill: Mr al-Megrahi was asked whether he wished to make representations. He made clear in writing that he desired to exercise the right to make representations; the items in question are available on the web and are doubtless with Ms Craigie, if she has not had the opportunity to consider them before embarking on her line of questioning. Once he had indicated his wishes, I felt that I was obliged to give him a hearing, as we would otherwise have faced the possibility of being judicially reviewed. First, the law made quite clear that he had the opportunity to make representations. Secondly, hanging over the Government was the possibility of being judicially reviewed if we did not act in a manner that accorded Mr al-Megrahi the same justice rights that have been accorded to others. Others have been given a hearing, so he was given the same opportunity. Had we not acted in that way, I have no doubt that Mr Tony Kelly, representing Mr al-Megrahi, would have taken some action.

Cathie Craigie: Did Mr al-Megrahi request a meeting with you first, or was the meeting offered by your office?

Kenny MacAskill: He wrote asking to meet us.

Cathie Craigie: He wrote—

Kenny MacAskill: We wrote to him offering him the right to make representations. He requested the right to do so and, as I recall, asked for a meeting. It was logical to hold such a meeting not

with security guards in my office but at the prison, which would be more conducive to public safety.

I refer members to the final paragraph of the letter from George Burgess, dated 7 July 2009. It states:

“As part of this process you have the opportunity to put forward your own representations either in writing or personally to Mr MacAskill. Please let me know through whether you wish to make representations and whether you would prefer to do this in writing or by meeting with Mr MacAskill.”

The second paragraph of the letter from Bridget Campbell, the director of criminal justice, dated 29 July 2009, states:

“Mr Omar Jelban, Chargé d’Affaires at the Libyan People’s Bureau in London responded on the 8 July, confirming that you wish to meet Mr MacAskill. You have also confirmed that you wish representatives from the Libyan People’s Bureau to be in attendance at the meeting.”

We obliged them. The meeting was attended by representatives of Libya and Mr Tony Kelly, the agent representing Mr al-Megrahi.

Cathie Craigie: Can you confirm that the Government’s interpretation is just that—an interpretation—and that the agreement to meet Mr al-Megrahi had nothing to do with anything that Jack Straw had said? The transfer agreement provides for representations to be made by the prisoner; the decision to meet Mr al-Megrahi was based on the Government’s interpretation of that agreement.

Kenny MacAskill: No, we were acting on what Jack Straw had stated to the Westminster committee.

Cathie Craigie: Can you quote what he stated?

Kenny MacAskill: I do not know whether we have that with us but presumably it would be available in *Hansard*. Mr Straw certainly made it clear that as this was the first ever prisoner transfer agreement under which an application could be made by a Government as opposed to a prisoner, the prisoner had to be heard. It is a matter of interpretation. It is clear to us that the rights of representation meant that we had to ask Mr al-Megrahi how he wished to make his representations. It is part of how the Government has been set up that we are subject to judicial review. We have discussed in this committee on a variety of occasions the issue of not having protection, and we introduced the Somerville legislation to protect us from matters of which Mr Tony Kelly is well aware. We had to act in such a way that we would not be the subject of litigation.

Having heard every other party, it seemed to us that we had to hear from Mr al-Megrahi. You seem to be suggesting that I should have asked him to make his representations by a written note.

However, given that everyone else who was asked whether they wished to make representations had been entitled to do so face to face, either directly or by videoconference, it would have been perverse and subject to judicial review not to have offered the same right to the individual concerned, certainly with regard to the application for compassionate release.

The Convener: Going back a little, I am with you on the issue of the logistics. Clearly, it was much preferable that Mr al-Megrahi be seen in Greenock prison than be brought to Edinburgh. I do not have any difficulty with that, nor do I have any difficulty with his right to make verbal representations as opposed to representations in writing. Where I am at odds with what you have said is that nowhere—in the terms of the legislation or in the prisoner transfer agreement—have I seen any mention that the Cabinet Secretary for Justice must see Mr al-Megrahi personally. This is a matter that could quite competently have been dealt with by, for example, Mr Burgess. He could have given you a report on his discussions with Mr al-Megrahi and, on that basis, you could have formulated a decision.

Kenny MacAskill: That is true. However, we had offered a courtesy to the relatives and to the Governments of Libya and the United States, and we would have left ourselves open to judicial review if we had not offered the same rights to the individual who was the applicant here. It is a matter for you, convener, but it may be that you are suggesting that Dr Burgess should have met or had videolinks with the relatives. That was not done. I met the relatives personally because I felt that the matter was of such significance and importance that that was how we should proceed.

It may be that my predecessors dealt with previous applications without oral evidence. We decided that, given the significance and highly unusual nature of the matter, as well as the global interest in it, oral evidence was appropriate and that it would be inappropriate for anyone other than me to deal with it. Indeed, it would have been inappropriate for me to have dealt with it simply by asking Mr al-Megrahi or, even worse, the relatives to give me a wee note of what they thought. It was courteous to offer the US Attorney General, the US Secretary of State, the Libyan representatives, and victims' families, whether in Lockerbie, elsewhere in the UK or in the US, the opportunity to give oral evidence. Natural justice dictated that, having done that, I was obliged to offer the same opportunity to the individual as a right.

The Convener: Again, I am with you in part. It was entirely appropriate that you speak to various parties involved, especially given the sensitivity of the issue to the relatives of the deceased. However, I have difficulty in equating their rights

and your actions with them with the fact that you went on to see the perpetrator of the deed that created all that grief. You seemed to be treating him equally to those who had been grievously wronged.

Kenny MacAskill: Mr al-Megrahi was treated in the same manner as everyone else. We have to do that in order to weigh on the scales of justice. He was given the opportunity to make representations, as were others. Those representations commenced with the US Attorney General, followed by the UK families of victims, the Libyan Government, the sister of the Spanish cabin crew member, the US families of victims, and families from the town of Lockerbie.

I offered to Mr al-Megrahi what I believed was necessary to show parity. I could not prejudge the decision, and I could not decide that one side had greater rights than another did. I was very conscious of the sensitivities and the tragedy that had befallen the families, which is why I decided that I, rather than Dr Burgess or Robert Gordon, would meet them. I met the families personally to show the significance that we attached to the situation but, having done that for one side, I was obliged to do it for all; otherwise we would have run the risk of an application for judicial review.

The Convener: I recognise that there were sensitivities and that you went out of your way to accommodate them in so far as the relatives were concerned, but I do not believe that you have justified taking a parity of stance towards both the victims and the perpetrator of the crime.

George Burgess: It is perhaps worth remembering that, in fact, Mr al-Megrahi was the only person who had the right to make representations. As was dealt with in my advice of May, there was no requirement on the Government to take representations from anyone other than Mr al-Megrahi. As the cabinet secretary has explained, he decided to embark on a process that allowed representations from a range of interested parties and, in keeping with that, Mr al-Megrahi was given the opportunity to make representations on the same basis as the others. Had the cabinet secretary decided not to take representations from any other party, Mr al-Megrahi would have had more right than the families of victims to make representations.

The Convener: I can understand, up to a point, the actions that were taken. I must be fair. I think that the cabinet secretary was entirely measured in his approach to the various diplomatic representations that were received and in taking the time and trouble to contact and interview the families of the Scottish and American victims. However, I do not believe that there should have been such parity between the biggest mass

murderer that Scotland has ever seen and the families of his victims.

Kenny MacAskill: Nobody disputes the conviction and the opprobrium that rests with Mr al-Megrahi, but we live in a world in which legal procedures are subject to scrutiny, such as by this committee or by a challenge in court. Indeed, Mr al-Megrahi had a legal team and was represented in Greenock prison by Mr Tony Kelly, his solicitor, at his request. The scales of justice must be balanced, and it was important to ensure that we were not seen to prejudge. As a former justice of the peace, you will be aware that there would be something perverse if, having heard from the Crown, you then declined to hear from the defence, or if you said that, having led the Crown witnesses and heard oral evidence, you were prepared to accept only written submissions on behalf of the defence. That would be challenged in the High Court. Indeed, I do not think that you would have even considered doing that.

We had to deal with the matter sympathetically because of the great trauma and devastation. As we had given the Governments and families the opportunity to be heard, it would not have been tenable—and it would have risked a challenge from Mr al-Megrahi's legal representatives—if we had not been prepared to meet him, too. If the committee wants to specify what we should have done, I will listen with interest. If the suggestion is that we should have asked for a written affidavit, the question that arises is why we would have not asked for that from others. We have to be open and even-handed. Nobody disputes Mr al-Megrahi's history and the trauma that he has wreaked on people, but we were dealing with legal matters and we had to ensure that we acted impartially to avoid any challenge.

The Convener: The situation that you referred to is not analogous. If I had done what you described, I would have been subject to appeal—and rightly so—but this case is somewhat different. In this case, al-Megrahi had been convicted and had an appeal refused by a Scottish court of criminal appeal. You were not dealing with an innocent man. Surely that would have been reflected—

Kenny MacAskill: We were dealing with an application—

The Convener: Hear me out for a second. That would have been reflected in any application for a judicial review.

10:45

Kenny MacAskill: I think that you would be asking me to prejudge things. I had to consider two matters: first, the application for prisoner transfer that was made by the Government of

Libya; and, secondly, the application for compassionate release. As you will be aware from the papers, compassionate release is considered not on the basis of the severity of the sentence or the nature of the offence but on the criteria that are specified in the Prisoners and Criminal Proceedings (Scotland) Act 1993. You would be asking me to prejudge the matter and come to a position that the man was of such evil intent that we could not possibly consider him.

I believe, and the advice that I had stated, that I had to treat all parties equally. I am conscious that Mr al-Megrahi was given a minimum of 27 years to serve for his actions, but I had to consider his applications. Otherwise, I would have been open to challenge in the court, because I would have prejudged the position. I had to go ahead and consider the applications without considering diplomatic, economic or political circumstances. I was required to accept the applications because of the deal that was signed by the UK Government and the Government of Libya, and because of his legitimate right, which applies to every prisoner in Scotland, to make an application for compassionate release.

The Convener: If we took that to its logical conclusion, and we had a situation where Peter Tobin, Angus Sinclair or another such person developed terminal cancer and put in a similar application, would you go and see them?

Kenny MacAskill: I treat each and every application that comes before me on its merits. As you know, 33 applications for compassionate release have been made since devolution. Seven of those did not get to the justice secretary and the other 26 did. Each of those 26 applications was granted—first by Jim Wallace, secondly by Cathy Jamieson, and thirdly by me—once it got through the appropriate system.

The Convener: We will come to that presently. In the meantime, I introduce Stewart Maxwell to the proceedings.

Stewart Maxwell (West of Scotland) (SNP): Thank you, convener. I want to clarify a point on which we have been going round the houses, about the rights of various parties to make representations to the cabinet secretary.

Cabinet secretary, for absolute clarity, if you had stuck to what appeared to be the letter of the rules, would it have been the case that the only person who was allowed to make representations to you was the perpetrator of the crime, Mr al-Megrahi, and the families of the victims and others would not have been entitled to make such representations?

Kenny MacAskill: Yes. I assume that in many such cases—probably in most of them—that is what happens. However, as the convener said,

this is no ordinary case. It seemed to me that, because of the sensitivities of the case—because of the trauma and loss to the families, who still grieve—we were obliged and necessitated to do what we did. Equally, because of the international significance, it would have been discourteous, to put it mildly, not to have listened to the views of the US Attorney General or indeed the Secretary of State.

Stewart Maxwell: I hear what you say, and I absolutely agree. I was trying to go to the logical conclusion of the argument and clarify the rules. In effect, you gave Mr al-Megrahi what was his entitlement, but you gave all the others—all the families of the victims—something that they were not entitled to. You went over and above what had previously been the position for the families of victims of released prisoners.

Kenny MacAskill: Yes. I felt that, in the circumstances, that was appropriate.

Stewart Maxwell: Thank you.

The Convener: You felt that, in the circumstances, that was appropriate. That was a perfectly honest decision and I have no difficulty with your making it, but you were not required to make it.

Kenny MacAskill: I was not required to, but I have no regrets about meeting the families, taking the call from Eric Holder, the US Attorney General, or indeed taking the call from Hillary Clinton, the Secretary of State. To do otherwise would have been disrespectful and, with regard to the victims, hurtful.

The Convener: Indeed, it would. However, I am still troubled by the inconsistency of approach. Although it may be consistent that you saw everyone, I do not think that the victims are in the same category as the perpetrator. We will have to agree to differ on that point and move on.

Cathie Craigie: Cabinet secretary, you exceeded the requirements in meeting the families and in meeting Mr al-Megrahi in Greenock prison. Did you consider having a videoconference with Mr al-Megrahi, as you had with some of the relatives?

Kenny MacAskill: No. The reason for the videolink was that the relatives were in Washington and New York and it was easier to converse with them in that way. Scotland is a small country and, although we have videolinks in some prisons, frankly, it was simpler to meet Mr al-Megrahi in Greenock prison.

Cathie Craigie: I refer you to the letter from the Libyan Government dated 5 May. Why did you not write back to the Libyan Government at that time, ruling that the application for prisoner transfer was incompetent because of the outstanding Crown

appeal on the sentence? That would have saved all the visits, the videoconferences, the telephone calls and the other work that you had to do. It was an incompetent application.

Kenny MacAskill: It was not an incompetent application; it was a perfectly competent application, but it could not have been granted by me, once I had considered it, until such time as matters had been concluded. As Mr Tony Kelly, Mr al-Megrahi's agent, was keen to make clear—it was referred to in Greenock prison, but I do not have my notes from that meeting—those matters could have been, to use legal terminology, homologated. As I say, I was obliged to give the application proper consideration and, once I had come to a conclusion on it, if all the criteria had not been met, I was duty bound to refuse it. I did refuse but, as I said to Mr James Kelly, I did so because of the position of the US Government and the victims' relatives, who I felt had been entitled to believe that Mr al-Megrahi would serve his sentence in Scotland.

Robert Brown: Let us be clear about this. Understandably, the Scottish Government and the justice department had a handling strategy for the particular issue, as a part of which you decided to meet, be interviewed by and communicate with the various relatives. Following that communication, you decided that it was necessary to meet Mr al-Megrahi. However, do you not accept that, when the thing began, you had an open book and could have dealt with it in accordance with all the precedents in such matters, by written representations from the prisoner, Mr al-Megrahi? You did not have to go through the whole business of meeting and communicating with everybody in sight about it.

Kenny MacAskill: I could have dealt with it in that way, by simply taking a written note from Mr al-Megrahi, but I do not think that it would have been appropriate for me thereafter to refuse to have a discussion with the US Attorney General. Given the nature of the case, that would have been inflammatory to say the least, not to mention hugely disrespectful to a country that is a friend and ally. Equally, I was conscious of the feelings of the witnesses. As Mr Maxwell said, we gave others significantly more than they would ever have had the right to receive in a strict interpretation of the requirements. Having done that, we had to recognise the right that Mr al-Megrahi had from the outset.

Robert Brown: What possible ground could you have for refusing any future applicant, under either the prisoner transfer agreement or compassionate release, the right to meet the Cabinet Secretary for Justice of the day? Has a precedent not been set for other cases, and should you not have been

clear about that at the time when you made the decision?

Kenny MacAskill: No, I do not believe that a precedent has been set. The case is exceptional and is accepted as being exceptional by almost everyone on the planet. We have not had such a case before in our nation's jurisdictional history, and everyone in Scotland hopes and prays that we never have another. In future, it will be possible for me or for any other cabinet secretary to deal with matters through the normal procedures. Mr Brown may be aware that there has been a recent case—I think that it was noted in the papers—of someone being granted compassionate release by me. That was done without any hearing; it was signed off on the basis of the evidence that I received. The person concerned did not seek any meeting with me and neither did anybody else.

Robert Brown: My final question is about the ultimate decision. Notwithstanding a clear statement from the UK Government that it was not bound by any international agreements or anything of that sort, you went out of your way to disagree with the UK Government and to accept representations made by the US Government, which has also hidden behind diplomatic privilege in not revealing its correspondence on the subject, and you chose not to make your decision, as you were well entitled to do, on the basis that the outstanding Crown appeal prevented the application from being granted. Why did you go out of your way to make such a big issue of the dispute between the UK and US Governments, which many people might see as irrelevant to the decision that you were required to make on quasi-judicial grounds?

Kenny MacAskill: I did not do that. If you read the transcripts of my meetings with the relatives, you will see that what concerned them was what concerned the US Attorney General and the US relatives—that they had been led to believe that Mr al-Megrahi would serve his sentence in the UK. They did not say to me, "You must refuse his application on the basis of an outstanding Crown appeal." They said that they felt there had been clear assurances at the time of the agreement for the trial at Camp Zeist that the sentence would be served in the jurisdiction of Scotland. That was the basis on which they made representations to me.

I did not refuse to meet the UK Government; indeed, I expressed regret that it refused my offer to make representations. It was offered the same chance to make representations that the Government of Libya took, and the US Government took through its Attorney General and—

Robert Brown: If I may interrupt, there was a very clear statement from the UK Government as to what it understood the position to be. I fail to

understand why on earth you want to put that Government in the position of making representations. You knew what the position was and there was no need to take the matter further.

Kenny MacAskill: That is not the case. I asked the UK Government to make representations. I mentioned earlier Eric Holder, the US Attorney General, who was Janet Reno's deputy at the time of the negotiations. He and the relatives made it clear to me that they felt there had been an agreement that Mr al-Megrahi would serve his sentence in Scotland and that no prisoner transfer agreement would be entered into. I asked the UK Government to comment on that and it simply said that the agreement had been political. I am unsure about what is meant by a "political" agreement as opposed to a contractual agreement. I asked the UK Government to comment on that, but it declined to do so.

I refused the prisoner transfer application because the US Government and the US relatives of the victims of Pan Am flight 103 felt deeply aggrieved because they felt that they had been given an assurance that Mr al-Megrahi would serve his sentence in the jurisdiction of Scotland, which seemed to me a fair and legitimate point. I made my decision on that basis, without considering the second and subsidiary point that an appeal was extant, pursued either by Mr al-Megrahi or the Crown, and I rejected the application for a prisoner transfer.

Robert Brown: Just for clarity, because we seem to be getting into rather muddied waters, you will be aware of Mr Ivan Lewis's letter to you. In his correspondence, he made it clear that

"The FCO does not consider that either the joint UK-US letter, UN Security Council Resolution 1192 (1998),

whose terms are clear anyway,

"or the accompanying discussions ... as set out in the joint letter, present an international law bar to such a transfer under the Prisoner Transfer Agreement where it is consistent with Scots law'. This remains the considered assessment of the UK Government shared with you under the terms of the Concordat."

That seems pretty clear to me.

Kenny MacAskill: The United States clearly disagreed. I asked the UK Government to comment so that we could clarify matters. What Ivan Lewis was saying in that letter was juxtaposed with what the US Attorney General said. The Attorney General had the courtesy of a call from me; Mr Lewis, Mr Jack Straw, Gordon Brown or anybody else could have had the courtesy of a meeting. If they had agreed to that, we could have had the transcript of such a meeting before us. They declined to do so. Although I do not know why, I can say that what was in Mr Ivan Lewis's letter was not the US

Government's interpretation of the position that was entered into a decade or so ago. Therefore, it was legitimate for me to ask—

Robert Brown: Were you offered—

Kenny MacAskill: Let me finish the answer. It was legitimate for me to ask the UK Government to clarify matters. As you will see from my statement, which is publicly available, I simply said that it was a matter of regret that the UK Government would not expand on or clarify its position and would not accept the offer to make representations to me, which was taken up by the US Secretary of State and Attorney General and by the Government of Libya. Regrettably, that offer was not taken up by the Government in London.

11:00

Robert Brown: I want us to be completely clear. Did the US Government offer you any documents in support of its position?

George Burgess: Yes, we received documents from the US Government that supported its position, but we are not at liberty to publish them. It is on that basis that we had conflicting views, one of which was supported by the documentation provided by the US Government and the other of which simply took the form of a letter from the UK Government, without any supporting documentation. That is why, as you will see, we made two attempts to elicit from the UK Government anything to back up its assertions. As the committee knows, the US Government has not given permission for the material that it provided to us to be released—it was supplied to us in confidence and we need to respect that confidence.

The Convener: It is a little unfortunate that that documentation has not been released, as it would have clarified quite a number of points. However, I accept that the Scottish Government is not responsible for that.

As members have no more questions under that heading, we will move on to the subject of medical evidence. Why has the medical evidence not been released?

Kenny MacAskill: It has been. We have released the medical evidence from Dr Andrew Fraser, who is the director of health and social care at the Scottish Prison Service. That is the document that was given to me and on which, along with the other documentation—namely, the reports from the governor of Greenock prison and from the Parole Board for Scotland—I based my decision.

The Convener: Yes, but we require some reassurance that the medical evidence that was taken was as robust as it could have been. I know

that it is difficult to estimate the life expectancy of someone with the illness in question. A life expectancy of three months is the normal criterion that needs to be met for compassionate release to be granted. Megrahi has now survived beyond that; we do not know what his current condition is. What we need from you is supporting evidence that, in all the circumstances, it was appropriate to assume that the prognosis of three months was accurate.

Kenny MacAskill: I acted on the report that was provided to me by Dr Fraser, the director of health and social care at the Scottish Prison Service, on 10 August, which has been made available to the committee and is in the public domain. It is clear that he considered the relevant medical reports that were available to him from urology and oncology clinicians. Dr Fraser is the adviser to whom I look on such matters and his report was quite clear about his view. It is not an exact science, but the prognosis was that Mr al-Megrahi's life expectancy fell within the three-month timescale. Thereafter, I concluded that Mr al-Megrahi qualified for consideration for compassionate release. That position was supported by the prison governor and the Parole Board. As I said, 26 applications for compassionate release have been made to justice secretaries since 1999 and all 26 have been granted. In every case in which the criteria are met, compassionate release is implemented. I have no reason to dispute the reports that were put before me.

The Convener: As you will be aware, the identities of the other medical practitioners who were involved have been redacted from the papers that you supplied. To some extent, you have justified the reasoning for that, but can you confirm that all those medical opinions were provided independently of the Scottish Government?

Kenny MacAskill: They were provided by the doctors who treated Mr al-Megrahi in the health service in Scotland, who are not directed in any way by the Scottish Government. They were provided by the clinical staff who treated Mr al-Megrahi in the same way that anyone else would be treated.

The Convener: It is not clear from the papers that there was a unanimity of view among the doctors. I appreciate that such matters are difficult and that, for the best of reasons, doctors sometimes have different clinical opinions based on different observations. Was there a firm consensus that the three-month prognosis was accurate?

Kenny MacAskill: Dr Fraser's report is quite clear about the deterioration that had been seen in Mr al-Megrahi's condition. In the third paragraph of

the penultimate page of the medical report, he states:

"In the opinion of his Primary Care Physician who has dealt with him prior to, during and following the diagnosis of metastatic prostate cancer, and having seen him during each of these stages, his clinical condition has declined significantly over the last week (period 26 July-3 August). The clinical assessment, therefore, is that a 3 month prognosis is now a reasonable estimate for this patient."

That was his advice, which I took just as my predecessors had doubtless done previously.

The Convener: Is it your position that you adhered to the requirements as laid down in the Scottish Prison Service circular "Early Release on Licence on Compassionate Grounds", dated 6 June 2005? The circular states:

"It is therefore essential to obtain a medical opinion that is as clear as possible as to the current level of incapacity and likely life expectancy."

Is it your position that that was done in so far as it reasonably could be?

Kenny MacAskill: Yes.

The Convener: If members have no further questions on the medical evidence, we will move on.

Did you consider any other options in respect of Mr al-Megrahi, apart from his repatriation to Libya?

Kenny MacAskill: We took the advice of the police—the note of a transcript of a telephone call has been lodged—who made it clear that 48 officers would have been required to protect matters in Newton Mearns where he would have resided. Significantly greater requirements would have been involved if he had been required to be taken to hospital for treatment, whether as an in-patient or as an out-patient. There would also have been significant additional requirements relating to the provision of firearms for the relevant police. In those circumstances, it seemed to me entirely inappropriate that a residential housing estate in Newton Mearns should have to deal with that international circus. Equally, to have inflicted that upon a hospital where he would obtain treatment—or, even more absurd, to have inflicted it on a hospice for the dying—would have been entirely inappropriate.

The Convener: As I recollect, Mr al-Megrahi's family lived in Newton Mearns for quite some time prior to his release. Was that the case?

Kenny MacAskill: That was the case, although I think that the family had returned to Libya and the property was probably empty.

As I said, the clear advice from a senior officer was that to secure that residence would have required 48 officers and an increase in firearms capacity and capability. Moreover, for Mr al-

Megrahi's treatment in hospital—it should be remembered that he was undergoing chemotherapy, which, unless such matters are done differently in Libya, usually takes place in a hospital—we would have required not only 48 officers to secure the locus in Newton Mearns, but additional officers to secure his transportation to hospital and the protection of him and others while he was there. In addition to the security situation, we had to consider the international media circus that would have followed him. In my view, hospices in Scotland provide for the death with dignity of those who have been afflicted. If we had imposed Mr al-Megrahi on a hospice, we would have imposed a media circus and armed police officers. That would have been inappropriate—and, indeed, downright disrespectful—to our own people who were seeking treatment or dying.

The Convener: As far as the police were concerned, was there any difficulty in the period during which the family was resident in Newton Mearns?

Kenny MacAskill: Not that I am aware of. However, it is clear that circumstances would have changed if Mr al-Megrahi had been released there.

Mr al-Megrahi's release from Greenock prison and journey to Glasgow airport required the Scottish Prison Service to acquire a bomb-proof vehicle in order to avoid roadside devices; such a vehicle is not within our current portfolio of preferred vehicles. As some tabloid newspapers said, it required the Reliance officers to wear body armour and receive enhanced danger pay. It also required Mr al-Megrahi to be dressed in a shell suit to hide the body armour that he was wearing. That was all required simply to transport Mr al-Megrahi on the short journey from HM Prison Greenock to Glasgow airport. To do that on each and every day that he required treatment—at the Beatson or Inverclyde royal hospital, or if we had put him in St Columba's or another hospice—would have been preposterous and I was not prepared to do it.

The Convener: There is precedent for such a course of action, is there not? You will recall vividly the events of 1 July two years ago, when the terrorist outrage occurred at Glasgow airport. One of the perpetrators was seriously burned and was detained for many weeks in Glasgow royal infirmary. Were any problems attached to that?

Kenny MacAskill: Doubtless it meant logistical problems for the police, and you are quite correct to say that that was a matter of some significance. However, Mr al-Megrahi travelling to the Beatson oncology centre, Inverclyde royal hospital or Glasgow royal infirmary would have meant significantly greater problems. We had information from the police that 48 officers would have been required to secure the residence in Newton

Mearns. The police indicated that additional resources would have been required to move Mr al-Megrahi every day, and I have indicated the difficulties that we had in transporting him on the short journey between Greenock prison and Glasgow airport. The requirement to do that regularly would have added to the 48 additional officers, never mind the additional resources that would have been required to go with them. Given that Mr al-Megrahi had been undergoing chemotherapy, which, in my experience, usually requires the patient to be an in-patient, imposing those requirements on a hospital or hospice in Scotland would have been unacceptable.

The Convener: But they had been imposed on a hospital in Scotland. That was not your fault, or my fault; it happened because of the terrorist who blew himself up at Glasgow airport and who was in Glasgow royal infirmary for weeks. As you said, there would have been logistical problems, but the problems did not seem to be insurmountable to Strathclyde Police in that case, did they?

Kenny MacAskill: No. To be fair, Strathclyde Police did not say that the problems caused by Mr al-Megrahi would be insurmountable, and I have no doubt that the police would have risen to the challenge if I had imposed it on them. Strathclyde Police, as is the case with every police force in Scotland, does what is necessary to ensure public safety. However, 48 officers would have been required for one house; additional vehicles would have had to be brought in to enable us to protect Mr al-Megrahi from an attack; and police officers, Reliance officers, SPS staff and perhaps even medical staff would have had to consider wearing body armour or whatever else. That would not have been appropriate.

Those were only the security implications. We know about the media circus that followed Mr al-Megrahi—the Sky News vans and other news vehicles that would have been outside the Beatson, or wherever else, might have resulted in wards having to be shifted and people having to be moved around. It seemed to me that those who were being treated in the Beatson, or who were dying in other places in Scotland, deserved to be treated with dignity in their final few days. My experience of meeting relatives and friends of people who are in hospices is that they would not expect or want to be inconvenienced, or to see armed police officers and a media scrum, when seeing their relative in their final moments.

The Convener: Indeed not, and heaven forbid that that should ever happen. Someone who was visiting a relative in the burns unit of Glasgow royal infirmary would not expect to see that either, but they would have seen it when the Glasgow airport terrorist was detained there until his death, would they not?

Kenny MacAskill: There was a difference in that although the Glasgow airport terrorist was not quite a cadaver—life was still extant—the security implications were much less because he was not conscious. He was just waiting to die, which he did. Mr al-Megrahi's position was significantly different, because he would have been living in Newton Mearns and moving to various treatment centres. On some occasions, he would have been resident in treatment centres. That is a vastly different situation from that of someone who is simply waiting to take their final breath.

11:15

The Convener: But the solution could have been to detain Megrahi in prison until the final stages of his terminal illness—although, clearly, what we have seen since his release creates some difficulty in the minds of many people over when he is likely to die. One does not wish to be a ghoul in this respect, but in the latter stages of his illness it would have been possible to get a prognosis that he basically had two weeks left. If he had been released for that period to the house in Newton Mearns, neither the cost factor nor the other, logistical difficulties that you outlined would have been significant.

Kenny MacAskill: Two points arise. First, your suggestion assumes that, were he resident in HM Prison Greenock, Mr al-Megrahi would not have required any on-going medical treatment at a hospital or a hospice. However, the fact is that he would have required such treatment. We saw the consequences of simply transporting him from Greenock prison to Glasgow airport: the media scrum, the armed police officers, the outriders and the vehicles transporting officers, never mind the body armour. All that would have had to be replicated elsewhere and would have been imposed not simply on the police and the prison service, but on the national health service. To me, that was unacceptable.

On the suggestion that we should have waited for a two-week prognosis, we have already accepted that it is not an exact science but a prognosis. He met the three-months criterion, which came before me from Dr Fraser. Having met that, he ticked the relevant boxes. As Cabinet Secretary for Justice, I acted as each and every one of my predecessors did in similar situations, and authorised his release.

The Convener: Mr al-Megrahi's record would suggest that he is somewhat more of a threat than one who is threatened. Did the police indicate from which direction any potential threat might come?

Kenny MacAskill: Those are operational matters that I leave with the police, but I am aware that that is why the police took security

precautions. I do not impinge on that. No doubt the threat could have come from a variety of sources.

The Convener: But your natural curiosity in such matters did not lead you to inquire of the police what the threat might be.

Kenny MacAskill: I left that to the police. I had other important matters with which to deal with regard to Mr al-Megrahi. It was for the police to advise on security. A little bit of knowledge, Mr Aitken, can be a dangerous thing. I leave policing matters to the police.

The Convener: But a lack of knowledge under certain directions can be much more dangerous. Had I been in your position, I would have made those inquiries in case they had some significance on a wider basis.

Kenny MacAskill: We lodged a full note in the public domain of a telephone call with a senior officer in Strathclyde Police narrating the police's view. That was their view; I stand by it because I have the utmost respect for them. I do not seek to second-guess that view or, indeed, to subvert it.

The Convener: This all seems to be just a little bit casual. I do not underestimate how difficult the decision was—I accept that it was difficult. However, you were 95 per cent of the way down this particular road and you dealt with it by way of a phone call to Strathclyde Police; you did not have someone come to see you, and you did not go to see them. Are you sure that your researches into the matter were as thorough as they should have been?

Kenny MacAskill: I believe so. I think that the phone call was perfectly capable of giving us the necessary information. Indeed, a phone call was taken a few days later from the US Secretary of State, Hillary Clinton. In the modern world in which we live, we are perfectly capable of getting information in that way. We required information from those who would be charged with providing security and safety in Scotland: our police. The police gave the issue due thought and came back with a well-thought-out, reasoned position, which has been lodged in the public domain. As I said, I remain a great supporter of our police, who serve us remarkably well.

Cathie Craigie: I find this whole part of the story really sad. It does not stack up and, like the convener, I find it hard to believe. The decision on whether to send the prisoner home to live out the rest of his life in Libya was really important. I do not accept the points that the cabinet secretary has made, nor, I think, will many members of the public who might be listening to him today. Given the information that we have received this morning and which is before us today, are you telling us that only the police were consulted on whether there could be an alternative place of safety for Mr

al-Megrahi, in which he could live and receive his treatment?

Kenny MacAskill: We received information from medical officials on his current prognosis and the treatment that he was receiving. I do not get a second opinion on security implications from Group 4 Security or Brink's-Mat—I ask the police in Scotland for their view on the matter. It was appropriate that they should judge the security implications, on which they were asked to comment. I did not go to security at the Inverclyde royal infirmary or the Beatson because, at the end of the day, security at those places is dealt with by Strathclyde Police. That is why—regrettably, because of misbehaviour by individuals—there are police officers at Glasgow royal infirmary and elsewhere.

The people from whom I take advice on security in Scotland are the police. We have a full one-page note from Strathclyde Police describing the difficulties that it would have faced. I accept that they would have risen to the challenge and would have been able to deal with matters. However, there would have been significant security implications for the police, residents of Newton Mearns, those being treated in hospitals and those dying in hospices if we had dropped Mr al-Megrahi on them. I took my decision after weighing up the advice that I had received from senior police officers.

Cathie Craigie: You asked only how the house in Newton Mearns could be kept secure.

Kenny MacAskill: No.

Cathie Craigie: You just said that. You did not suggest the use of our open prison estate, which has a much more liberal regime and includes houses that Mr al-Megrahi could have used. Are you telling us that the house in Newton Mearns was the only place to which you considered he could be released and for which the police carried out an assessment of needs?

Kenny MacAskill: I am not aware of any other place to which he could have gone.

Cathie Craigie: Did you ask whether there were any such places?

The Convener: Let the cabinet secretary finish.

Kenny MacAskill: The police note refers to 48 officers but makes clear that a significant number of additional officers would have been required for movement to a hospice or hospital. Everyone saw the media circus that watched the cavalcade heading from HM Prison Greenock to Glasgow airport. We were required to get an additional vehicle to provide protection against nefarious activity and to employ Reliance Security officers, who had to be paid at an enhanced rate—albeit a modest amount—and to wear body armour. Mr al-

Megrahi also wore body armour. All of those measures were thought to be necessary by the police, who were dealing with the transportation.

Such measures would have been required on a regular basis to take Mr al-Megrahi to the Beatson, Inverclyde royal hospital, Glasgow royal infirmary or any other place. I did not consider sending him to Noranside or Castle Huntly, as that would have been ludicrous and preposterous. His residence would have been in Newton Mearns or Greenock prison. The complication was his treatment, which needed to be on-going. On that basis, and given that he qualified, I took the view that the sensible decision was to send him home to die.

Cathie Craigie: You mentioned again the media circus, to which you have already referred in response to a question from the convener. I agree that it was a circus, not only on the day of the release but in the run-up to it. It was clear that there had been a leak—in your department, the Scottish Prison Service or the Parole Board for Scotland—as people in the media knew about what was happening long before members of the Parliament knew about it. I am not surprised that there was such—

Kenny MacAskill: The media have reported twice that Mr al-Megrahi has died—perhaps that leak came from me, too. There was considerable speculation in the media about when and to where he would be released. Since he went back to Libya, I have twice been told—and seen it emblazoned on Sky News—that Mr al-Megrahi has died. I assure you that I did not put that information into the public domain. I do not know where it came from. I cannot comment on the speculation, but I can say that we should take with a pinch of salt the idea that somebody seems to be leaking information. The speculation around the case has been outstanding since the beginning.

Cathie Craigie: The speculation in the days leading up to your announcement certainly proved to be correct, cabinet secretary.

Kenny MacAskill: And some was proved to be wrong—some people said that Mr al-Megrahi was not going to be released.

Cathie Craigie: I would have thought that you would have wanted to follow that up. Are you saying that, if Mr al-Megrahi had been transferred from his home or some other place for treatment in Glasgow or elsewhere we would have seen the same media frenzy every day?

Kenny MacAskill: I think that we would have. I was simply not prepared to impose armed officers and the media circus that there would have been on those who work in such places, those who are there to spend their dying moments or their loved ones who want to visit them there. That is not what hospitals and hospices are for. You may disagree,

but I stand by my decision not to put Mr al-Megrahi in a hospice. That would have foisted all those problems on those who were there to spend their final days, and I was not prepared to do that to those Scots who were afflicted and dying.

Cathie Craigie: I have never suggested that you should do that. Did Mr al-Megrahi have to travel to hospital at any time when he was a prisoner in Greenock prison?

Kenny MacAskill: Yes.

Cathie Craigie: Did we see that on Sky News? You seem to like that channel.

Kenny MacAskill: No, because the issue was not of the same significance at that stage. Nevertheless, I assure you that steps were taken by Strathclyde Police to ensure that appropriate security was in place. Once the issue became known about, it moved into a different orbit and, whether I liked it or not, preventing Sky News from filming outside Greenock prison when I went in or out was outwith my control. Similarly, I could not prevent snappers from standing outside St Andrew's house when I went there to announce my decision; nor could I prevent there being helicopters in the sky, taking photographs of the cavalcade as it left Greenock prison and departed for Glasgow airport. By that time, it had become a global news story that would have continued wherever Mr al-Megrahi had been placed. I felt that it would be inappropriate to make that a residential housing estate in Renfrewshire. Equally, I felt that it would be utterly appalling to impose that on a hospital or hospice.

Cathie Craigie: So, prior to Mr al-Megrahi's release, he had been transferred from Greenock prison to hospital. Can you tell us on how many occasions that happened?

Kenny MacAskill: No, I cannot, but we could find out that information for you, if you wish. That would have depended on the clinical treatment that was necessary and it would have involved a variety of venues including the Beatson Institute for Cancer Research, Inverclyde hospital and, probably, Glasgow royal infirmary. I am sure that, if you want that information, we can inquire about it.

Cathie Craigie: Okay, but that was done discreetly and compassionately, without a media frenzy.

Kenny MacAskill: It would have been done discreetly but with appropriate levels of security by Strathclyde Police. Although there was not the same media frenzy at that time, steps were taken to provide privacy for both Mr al-Megrahi and, especially, those who were in the institution that he was attending.

The Convener: It would not be appropriate for us to ask you to provide that information for us today, cabinet secretary. I understand why it is not readily available. However, it might be useful if you could write to the committee, telling us how many times Mr al-Megrahi went to hospital from Greenock prison.

Robert Brown: I have a slightly different question on compassionate release.

The Convener: We will come back to that. Stewart Maxwell has a question under the same heading.

Stewart Maxwell: It is on the same issue and follows on from Cathie Craigie's comments. Can you tell us of any other cases in which prisoners have been released to another prison, open or otherwise?

Kenny MacAskill: No. My understanding—Robert Gordon or George Burgess may correct me if I am wrong—is that prisoners are either released to go back to their homes or they die in the hospital or hospice that they are in.

11:30

Stewart Maxwell: So, in all previous cases they have gone home, wherever that home might be, or, as you say, they have been in a hospital or hospice, where they have died.

Given that I am the only member here who represents the West of Scotland and given that I am a local resident in East Renfrewshire, I can say, probably without fear of contradiction, that I, my friends, my neighbours and the residents and constituents of East Renfrewshire did not wish you to impose a mass-murdering terrorist on them and did not wish to have a media circus, the inconvenience or the fear of such a thing being put among them. I think that the decision was quite right.

Angela Constance (Livingston) (SNP): Cabinet secretary, since Mr Megrahi's release I have heard much talk of the alternatives and, in particular, of secure hospitals and hospices. As we heard earlier, there is no such thing as a secure hospice. Unless I am wrong—you might wish to correct me—I am aware of only one secure hospital in Scotland, but people are detained there only on grounds of a mental disorder under either civil or criminal proceedings. Is it not the case that, with the best will in the world, even our secure hospital and, in particular, our prisons, which have medical facilities within them, cannot provide care to terminally ill cancer patients? Is it not the reality that no facility in Scotland would have provided both a place of safety to Mr Megrahi and the public and treatment for his terminal illness?

Kenny MacAskill: Yes, that is the case. Mr al-Megrahi would have had to go to an NHS institution or some other voluntary hospice. The only place that he could have received the treatment would have been outwith the prison. The nurses in Greenock prison, like the nurses in every other prison in Scotland, do a good job, but prison is a limited place—it is not a hospital. Nurses can carry out a variety of minor matters and can treat a variety of even major ailments but, once somebody has something such as terminal cancer, the ultimate treatment is to go where anybody else would go, whether they were a convicted prisoner or just an ordinary citizen. In this instance, that would have been the Beatson oncology centre, Inverclyde royal hospital or the Glasgow royal infirmary.

Cathie Craigie: Many people who have terminal cancer of the type that Mr Megrahi has die in their own home supported by their family and by medical professionals who come to their home. It is false to say that somebody who has such a condition would have to be hospitalised: that is not how life is out there.

Stewart Maxwell: So he should have been put in Newton Mearns among my neighbours.

Cathie Craigie: No. I would have looked at alternatives.

The Convener: This is not a debate; we are questioning the cabinet secretary. Mr MacAskill, will you respond to Ms Craigie's point?

Kenny MacAskill: I defer to Ms Craigie's superior medical knowledge, but I have to say that the evidence before me and the information that we had was that Mr al-Megrahi would require ongoing medical treatment such as chemotherapy, which is not available within the prison estate as it requires consultant oncologists and urologists, who are not resident staff within Gateside prison in Greenock or elsewhere.

Some people are treated at home, but usually that is part of a treatment care plan, which is worked out with the medical professions and can involve their sometimes going into hospital and sometimes coming out. Indeed, I understand that that is what is happening to Mr Megrahi at present. Had he remained in Scotland, that would have been the case: he would have been shuttling back and forth between Newton Mearns or Greenock and the relevant institutions. Unless Ms Craigie's medical knowledge surpasses that which was provided to me, I understand that he would have required to go for treatment, which would not simply have been to go in and out for an hour; there would have been a requirement for overnight residential care.

I return to the point that I was not prepared to foist al-Megrahi upon a Scottish hospital or

hospice. He went home to die, and he was not going to interfere with the treatment and dignified last few days of the dying in Scotland.

The Convener: I put it to you, cabinet secretary, that you and Ms Craigie are both correct in this respect. When palliative care has to kick in for someone who is terminally ill, it can be carried out at home and it frequently is. Indeed, it is your Government's policy, which is supported by all parties, that we encourage that.

George Burgess: It would have been perfectly possible for Mr Megrahi to receive no chemotherapy at all—that would have been entirely his choice. However, taking the palliative chemotherapy was the recommended course of action, and I know that the Scottish Prison Service looked at length at opportunities to do that at, for example, Greenock or another prison medical centre. The conclusion was that the only place where Mr Megrahi could have received the treatment that he required was in a hospital environment, not in prison.

James Kelly: I share other members' concerns that it was not until Friday 14 August that alternative options in the community were discussed with the police. Indeed, by that date, the media were already reporting that Mr al-Megrahi was going to be released. Did you conduct that discussion, cabinet secretary, or was it one of your officials?

Kenny MacAskill: It was George Burgess.

George Burgess: It was indeed an official who had the 14 August discussion as recorded. However, it is wrong to suggest that that was the first time that the possibility of Mr Megrahi's going to the house in Newton Mearns had been considered.

James Kelly: That discussion is recorded in note 4a. However, I wonder whether you can clarify what seems to be an inconsistency in the note, which says that searching and sealing the house would take

"30 officers ... to complete"

but that maintaining

"The integrity of the area would not require 30 officers."

Kenny MacAskill: I think that the note goes on to say that 48 officers would be needed. Thirty officers would have been required to search and seal the house, but 48 officers would have been required to surround the house, which is in a residential area, to ensure that access was granted only through various streets and so on.

Given my limited knowledge, I prefer to leave such operational matters to those who deal with them, but 48 officers would have been required simply to secure Mr Megrahi in that dwelling

house. In fact, additional officers would also have been required; I need only remind members of the media circus, helicopters and so on that watched all the motorcycle outriders, police Range Rovers and armed prison service vehicles going down the short strip of motorway from Greenock to just outside Glasgow.

James Kelly: Given your limited knowledge in these areas, did you seek a breakdown of the £100,000 per week costs?

Kenny MacAskill: No, I did not.

James Kelly: Given the importance of these matters, did you not think that it would have been robust to get a breakdown of those costs and to ask your officials to investigate possibilities of reducing them?

Kenny MacAskill: Given that we had been prepared to spend millions on Mr Megrahi in conducting this case, I would rather have spent that £100,000 on other things, especially in the face of £500 million of London Government cuts. Every £100,000 matters.

My primary reason for not choosing this option, Mr Kelly, was that I was not prepared to foist Mr Megrahi on a hospital or hospice. Even if he could have been detained in his home or elsewhere, he would have required medical treatment at some juncture as part of his palliative care. The option seemed to be entirely inappropriate.

It would also have taken 48 officers simply to seal and control the area. That figure does not take into account the additional officers, the motorcycle outriders and the armed response vehicles that would have had to have been pulled out of elsewhere in Strathclyde—perhaps even Rutherglen—to escort the vehicle carrying Mr Megrahi to the Beatson centre or Inverclyde royal hospital.

If you want us to drill down into that £100,000 or ask Strathclyde Police to clarify something about the figure, we can do so, but frankly that seemed the least of the important reasons on which I based my decision. The more significant factors were the need to protect and to respect the dignity of the dying in Scotland, the preservation of the sanctity of the various institutions and hospitals, and the fact that 48 officers, at minimum, would have been taken out of protecting our streets.

The Convener: As members have no further questions on release alternatives, we move on to the decision to release Mr Megrahi on compassionate grounds. In the course of this questioning, we will probably compare and contrast the decision with decisions on previous applications.

Robert Brown: Most of us have great sympathy with the complexities of the decision-making

process that the cabinet secretary had to go through, but I want to be clear about exactly what that was with regard to compassionate release. I direct my questions initially to Mr Burgess.

As I understand it, section 3 of the Prisoners and Criminal Proceedings (Scotland) Act 1993 is the ruling section. Oddly, however, we also have the document that the Scottish Prison Service issued on 6 June 2005, which is in section 8 of the papers that are before us today. The SPS document details the terms of early release on compassionate grounds. Paragraph 4, under "General Principles", states:

"The detailed criteria for early release on compassionate grounds are set out in Annex 1."

Annex 1 mentions a number of issues. The stuff about terminal illness and so on is perfectly understandable, but then it states:

"The following factors always require to be considered: Type of offence and prisoners supervision level ... The length of the sentence outstanding, the effect on the overall sentence if early release is granted and any comments that the trial judge made on sentencing which may have a bearing on the question of early release".

There are a number of other factors, but those are the key ones.

What is the status and standing of the SPS document? It is not subordinate legislation, yet it is documentation that was referred to in the guidance as the sort of consideration that the cabinet secretary had to take into account. Is that right?

George Burgess: The document is Scottish Prison Service guidance, and it is principally for the Scottish Prison Service. The 2005 document replaced an earlier document, but I do not think that the criteria or the process changed to any great extent.

You quoted the annex to the circular, which contains the detailed criteria. That is principally guidance for the Scottish Prison Service to use in following the process. When an application comes in, it is considered by the Scottish Prison Service and a set of reports is prepared—the medical report, the report by the prison governor, and the report by the prison social work service. The document that you have is principally guidance for them. The material then comes to St Andrew's house, and advice is put to the cabinet secretary on that basis.

As you know, in the al-Megrahi case, the step was also taken of referring to the Parole Board for Scotland for its advice, which was then included in the material that I provided to the cabinet secretary.

Robert Brown: I am not clear how the type of offence, the supervision level and the length of the

sentence outstanding are matters on which the prison governor, as opposed to the cabinet secretary, could have a relevant view.

George Burgess: I will explain why the length of the sentence outstanding is a factor. In some other cases in recent years, the prisoner was found to be terminally ill but was due to be released in three or four weeks' time. They were therefore not released on compassionate grounds but simply released when they would have been released anyway. That is the way in which the Scottish Prison Service takes such information into account.

The nature of the offence plays into the question of the risk that the prisoner might present. You will see that that is considered principally in the prison governor's report.

Robert Brown: It is fair to say that there are two levels. There are the more technical aspects such as risk and the other things that you mentioned, and then there are the broader issues, which also include the factors that the cabinet secretary told us about earlier, such as international opinion, the relatives' views and the options that might exist—in general, all the circumstances of the case. Is that fair? The cabinet secretary has a broader role than the prison governor, who gives him advice on those matters.

George Burgess: Those in the Scottish Prison Service prepare their advice using the guidance that is set out in the SPS circular—in fact, they use a template that is provided with it. When that advice came to us, the other factors needed to be considered, and those are the ones that are principally dealt with in my advice of 14 August. In that advice, I pick out the things that are principally for the cabinet secretary to consider at that stage, which means that I do not go into every factor that is mentioned anywhere in any bit of guidance.

Similarly, the advice that I offered on the same date on the prisoner transfer agreement does not go through the factors blow by blow. It does not elucidate that Mr al-Megrahi is a Libyan, or other such factors that are involved in the PTA but did not need to be considered at length.

11:45

Robert Brown: I understand that, but I refer to your advice, in note 3c. It is notable that that advice contains no reference to the annex to the Scottish Prison Service document, which mentions criteria such as the

"Type of offence and prisoners supervision level ... The length of the sentence outstanding"

and

"the effect on the overall sentence if early release is granted."

If I recall correctly, we are dealing with a 27-year minimum term. Why is that not mentioned in your guidance, Mr Burgess?

George Burgess: You will see that in paragraph 5 I refer to the Scottish Prison Service guidance and the factors that that guidance deals with in terms of the circumstances in which compassionate release can be given.

Robert Brown: The annex to the SPS guidance mentions the factors that

“always require to be considered”.

Are you saying that those things are not germane to the cabinet secretary’s decision-making process?

George Burgess: As I said, that is SPS guidance, so it is principally for SPS. It informs the governor, the medical staff and the others in the SPS in framing their recommendations to the cabinet secretary. It is a perfectly normal process, which every other application for compassionate release will have gone through.

Robert Brown: Is it fair to say that there is an element of balance—I think that most of us understand it to be present—between the compassionate desire to allow someone to die at home, and the broader issues of the horribleness of the crime that was committed, the effects on the victims and other such matters? In your view, were those factors relevant considerations for the cabinet secretary? I am talking about your advice to him.

George Burgess: On the issue of the heinousness of the offence, for example, it would have been possible for me to have included in the submission of 14 August on compassionate release advice to the effect that there is nothing in the operation of the 1993 act, nor in the guidance, that seeks to exclude any particular class of offender. That issue is dealt with in a similar way in the other advice that I provided—on the prisoner transfer agreement—in which the question of heinousness of offence was a significant issue. In a sense, those two pieces of advice run in parallel. I did not see any need to deal with the issue of heinousness again in the advice on compassionate release.

Robert Brown: If I may say so, with respect, I find that staggering. We are dealing with two separate decisions, one of which has appeals as the background to it and one of which does not. Different considerations and pieces of legislation apply to the decisions, and yet you did not put into the advice on the second decision—on compassionate release—the references to the heinousness of the offence and so on, which are at the heart of the matter. From the advice that you gave, would the cabinet secretary have been

justified in understanding that compassionate release was dealt with only in relation to the welfare of the prisoner and other such issues, and that the issues to do with the victims were irrelevant?

George Burgess: No, I do not think that that is right at all.

Robert Brown: So why was that not in the advice?

George Burgess: It did not need to be in the advice; it was in the material that was issued by the Scottish Prison Service, which dealt with the issues of risk.

Robert Brown: The Scottish Prison Service is instructed that certain factors always require to be taken into account: the type of offence, the length of the sentence outstanding, the effect on the overall sentence and so on. It is clear that those matters have a much greater relationship to the victim end of the matter, if I can put it that way, than to the welfare of the prisoner. They are irrelevant to the welfare of the prisoner, are they not?

George Burgess: The advice that I offered followed the same process as all other previously tendered advice on compassionate release. The question of the length of the sentence was not particularly relevant in this case because we were not dealing with circumstances in which Mr al-Megrahi was on the point of being released anyway, which is the sort of example—

Robert Brown: I am sorry to intrude, but that is not what the guidance says. The guidance states that factors that always require to be considered include

“The length of the sentence outstanding”.

You have given an example of circumstances in which the length of the sentence should be considered, but the requirement is not restricted to that.

George Burgess: It is not restricted in that way, but that is how the issue has been dealt with in previous cases.

Robert Brown: That might have been what happened in certain aspects of previous cases.

We all understand that an application for compassionate release by a prisoner who will die within a couple of weeks is slightly different from that of a prisoner who has a more uncertain lifespan and might live for longer. That is perfectly understandable, but we are talking about a provision in the guidance that requires that examination be made of

“The length of the sentence outstanding”,

which, in this instance, was substantial. Indeed, the sentence was at the far end of the spectrum and was for a very serious offence—probably the most serious offence that the Scottish courts have dealt with in many generations—so I find it staggering that that aspect was not referred to in officials' advice to the cabinet secretary about the decision-making process for compassionate release. In a sense, whether the issue is referred to in other documents is incidental.

George Burgess: I am not clear what you are suggesting my advice on that matter could or should have been. As I mentioned—

Robert Brown: I am asking you to say whether it was appropriate that, in the advice from officials to the cabinet secretary, account was not taken of the need to balance the interests of the victims with the issue of compassion, which relates to the prisoner.

George Burgess: I suggest that my advice was considerably longer than most other previous advice to ministers on compassionate release. My advice covered a great range of factors that were drawn to the cabinet secretary's attention.

Robert Brown: I struggle to find in your advice any reference to the balancing exercise that most of us understood lay behind the issue. Can you point me to anything in your advice that relates to that?

George Burgess: I think that it is a matter of judgment—a judgment that I had to take—on which matters I covered in my advice. I consider that the matters on which I put forward advice were appropriate.

Robert Brown: Let me drag my attention to the cabinet secretary. Mr MacAskill, were you aware of the annex to the Scottish Prison Service guidance at the time when you made the decision?

Kenny MacAskill: Yes.

Robert Brown: Did you know about the requirement to consider

“The length of the sentence outstanding”

and all of that?

Kenny MacAskill: Yes. However, the clear evidence was that the practice of my predecessors—which I followed—was to look at the individual more than at the offence. That practice is why early release on compassionate grounds had been granted to people of whom many had committed heinous offences. I fully accept that Mr al-Megrahi committed probably the most heinous offence ever inflicted upon Scotland, but there is no threshold: there is no offence too small to qualify and there is no offence too big to negate the possibility of qualification. That is why

the then Minister for Justice, Mr Jim Wallace, who was a member of Robert Brown's party, released a prisoner who had upon conviction received a life sentence for child murder.

Robert Brown: I am not challenging your right to release people: I am asking about the exercise that you went through. In your consideration, was any attention given to the interests of the victims who wanted Mr al-Megrahi to serve out his sentence and to see justice being done in that sense? Did you think that you had to conduct a balancing exercise between their interests on the one hand and the compassion issue on the other?

Kenny MacAskill: As per today, I applied considerable thought in considering the prisoner transfer application. The grounds for that application were clearly given consideration. I made known my view that the evidence suggested that the American Government and families had been given reason to believe that Mr al-Megrahi would serve his sentence in Scotland. Having made a decision on the prisoner transfer application—as I narrated in my statement both in Parliament and at St Andrew's house—I went on to consider the application for compassionate release.

Members can assume that I was well aware of the backdrop to the matter, which was fairly all-consuming in my life at that time: I was well aware of the nature of the offence. I also understood the legislation. We followed the rules and regulations that are set down under the Prisoners and Criminal Proceedings (Scotland) Act 1993, which was passed by a Conservative Government in Westminster, and we followed the terms of the SPS guidance, which was issued by the then Liberal-Labour Scottish Executive. In coming to my decision, I was well aware of that backdrop. I could hardly be otherwise, given that the issue was consuming a great deal of my life at the time.

Robert Brown: I understand that, but with great respect—I am not trying to be difficult—my question is quite basic. I want to understand whether in your decision-making process, you felt that you were entitled to take account of the heinousness of the offence. If so, what weight did you attach to that in your overall consideration of the application?

Kenny MacAskill: My interpretation of the situation is that we do not set a minimum or a maximum sentence level for qualification for consideration for compassionate release. That is why people who have murdered children, for example, have been released on compassionate grounds.

I was well aware of the significance of the offence and of the nature of the conviction, which formed the backdrop to my decision. When I made

my public statement, I made it quite clear that it was a heinous offence and that we could not expect the victims to forgive or the pain to heal. I made my decision on the basis of how I see the values that we seek to uphold in Scotland, which are about forgiving those who trespass against us. We do not set a maximum or a minimum threshold in that regard—no such threshold is contained in the SPS guidance, in the holy Bible or in any other document of beliefs or values that I know of. I was conscious of the backdrop to my decision, but I made it on the basis that Mr al-Megrahi was dying of terminal prostate cancer.

Robert Brown: I want to approach matters from a slightly different direction. Many of us look to the precedent that has been set to see how such matters will be handled in the future. Much play has been made of past compassionate release decisions by previous justice ministers, but it is fair to say that almost all the cases in question, bar three or four, related not to murders but to offences that are less serious in the overall scheme of things. One can obviously make judgments about the seriousness of those that related to murders. It is difficult to do that on the basis of the summary of information that we have been provided with, but none of them appears to be of remotely parallel seriousness with the Lockerbie bombing. Can you envisage future circumstances in which you or your successors in office could refuse an application for compassionate release or would feel it appropriate to balance the compassionate aspect with consideration of the interests of the victim and the nature of the offence, given that that has not been done in the case of the Lockerbie bomber?

Kenny MacAskill: I cannot bind my successor or speculate on what he or she may or may not do; that will be a matter for him or her. My decision was predicated on the fact that just as there is no minimum threshold—there is no crime that is too trivial to forgive—there must be no crime that is too severe to forgive. We must be prepared to forgive, even though we fully understand the backdrop, as we did in this case.

On the bases that Mr al-Megrahi had been punished, but that in this country we temper our punishment with mercy, I granted him compassionate release. I assure the committee that I view every application on its own merits. I repeat that since 1999, 26 applications have been appropriately made to Jim Wallace, Cathy Jamieson and me, and all 26 have been granted—nine by Jim Wallace, nine by Cathy Jamieson and the balance by me.

The Convener: I do not want you to misdirect yourself. I think that it would be fair to say that other applications for compassionate release have been made that have been refused.

Kenny MacAskill: Those that do not meet the criteria do not come before the Cabinet Secretary for Justice. Applications that have not met, or will not meet, the criteria do not reach me. They did not reach my predecessors and they will not reach my successors. All valid applications that have been properly submitted and have met the criteria have been granted. Applications that do not meet the appropriate criteria do not come before the justice secretary for a decision.

The Convener: Such applications have been made.

Kenny MacAskill: Yes.

Robert Brown: I want to pursue the issue of the process that you followed. As you have said, you decided to meet, or to communicate with, various relatives and other people who had interests in the case. What was the point of that if the impact on the victims is not really relevant to your consideration of whether compassionate release should be granted, which I think is what you are telling us?

12:00

Kenny MacAskill: The impact on the victims was of course made quite clear in my original statement on the matter, Mr Brown. It may be best for me simply to refer to what I said on the question of compassionate release, which was:

“Having met the criteria, it therefore falls to me to decide whether Mr Al-Megrahi should be released on compassionate grounds. I am conscious that there are deeply held feelings, and that many will disagree whatever my decision. However a decision has to be made.”

That was a fact, because an application had been made. I continued:

“Scotland will forever remember the crime that has been perpetrated against our people and those from many other lands. The pain and suffering will remain forever. Some hurt can never heal. Some scars can never fade. Those who have been bereaved cannot be expected to forget, let alone forgive. Their pain runs deep and the wounds remain.”

That was all made clear and it was in my consciousness as I made my decision. I then went on in my statement to narrate why I made that decision. I can put that on the public record again, but the transcript of the statement is already on the public record.

Robert Brown: Nevertheless, in the approach that you took, you ostensibly met most of the relatives specifically and only on prisoner transfer and not on compassionate release. Is that correct? Is not that stated in the minutes of most of the meetings?

Kenny MacAskill: Yes—although it is fair to say that the relatives were aware of the possibility of compassionate release, and their views on it were

made quite clear. I did not feel it necessary to go and hear their views on that, given that they had expressed their position quite clearly. The formal application for prisoner release came in on 24 July. It is fair to say that it was noted in the meetings with the relatives that compassionate release was a possibility that was on the horizon. I therefore took account of the relatives' views on that.

Robert Brown: Is not it slightly odd that the minutes note specifically that you said that you cannot discuss compassionate release? For example, the minutes of the meeting with the UK families—document 2c—state in paragraph 4:

“Mr MacAskill confirmed that the meeting was to consider the application for prisoner transfer and he would not be able to discuss compassionate release or matters relating to the trial appeal.”

That point is echoed in most of, but not all, the other minutes. I appreciate the timescale that was involved, but is not there an imbalance in that you did not discuss compassionate release with most of the people from whom you had representations?

Kenny MacAskill: No. I think that I heard their views. Their views were taken on the question of prisoner transfer, but their views were fairly succinct, so I knew where they were coming from. The Americans were quite clear that they did not wish Mr al-Megrahi to be released, full stop. The question of release on compassionate grounds was therefore a secondary issue, in a sense. The United Kingdom relatives were divided; clearly, Dr Swire has a different view from others. I met them collectively, and they are a lovely set of people. However, it is fair to say that they made it quite clear that there were differences in their views. Equally, the families from Lockerbie—I remember that part of my comments on forgiveness came from them—made it quite clear that they could never forgive, given the devastation that happened to their families. However, they understood that times move on.

Robert Brown: Is there not an on-going echo in all this of the issue of the balance of the meetings about which we are talking? In that context, can you comment on the letter that was addressed to the chargé d'affaires of the Libyan Government from Mr Salmond, the First Minister, dated 25 October 2008, in the documents at exhibit 2d? He stated:

“Given the decision making role played by Ministers under our systems of compassionate release and prisoner transfer, it would not be appropriate for Scottish Ministers to meet directly to discuss the details of any specific case.”

That is, to say the least, starkly at odds with what took place later when you arranged meetings with everybody in sight on the matter. Can you give me any understanding as to why there is such a stark

difference between the initial view of Mr Salmond in October 2008, which I presume was taken on official advice, and the view that you took later?

Kenny MacAskill: The answer is quite simple, and was made quite clear in further evidence. Once the applications were submitted, I was sitting in an almost quasi-judicial capacity. Back in October 2008, there was neither an application for prisoner transfer nor an application for compassionate release. Once the trigger was hit, on 5 May, with the application for prisoner transfer, it was made clear that the decision would be made by me alone. I then started working out the procedures, which takes us back to points that were made earlier. In October 2008, when there were no applications before us, when the Scottish Government was involved in discussions—if we can put it in that way—with the United Kingdom Government over whether there should be a prisoner transfer agreement, it was inappropriate for us to enter into bilateral discussions. However, when the trigger was hit on 5 May, I started to deal with matters in a quasi-judicial capacity and it was made clear by the First Minister then—as it has always been made clear—that the decision would be made by me alone, as it was. I had the advice and support of staff, but the decision was mine.

Robert Brown: I am grateful for the confirmation, but that is not what the First Minister's letter says. He talks about the procedure under our system of compassionate release. In particular, he refers forward to what may happen should there be an application of that kind. We will leave that correspondence and the cabinet secretary's evidence to speak for themselves.

Cathie Craigie: The Westminster Justice Committee considered the al-Megrahi affair at a recent meeting; Jack Straw was asked whether he had influenced your decision in any way. Members of that committee felt that some pressure might have been brought to bear on you. Was there any outside pressure on you?

Kenny MacAskill: No. There was no outside pressure: it was my decision alone. It was narrated by me and echoed by the First Minister. My decision was made following due process—the rules, laws and guidance that we have in Scotland—and without taking into account political, economic or diplomatic considerations. I cannot speculate about what others may have done, but I was not pressured into a decision. I made the decision myself, following the rules, on the basis of my understanding of the beliefs and values that we hold as a people.

James Kelly: Some of the points that have been borne out in recent exchanges perhaps get to some of the concerns about the issue of compassionate release. The cabinet secretary has outlined that no minimum or maximum sentence

should be a factor in considering whether a person meets the criteria. Does he accept that the logical conclusion of that is that there is no differentiation, in considering the criteria, between someone who is guilty of fraud and someone who is guilty of the murder of 270 people?

Kenny MacAskill: According to the law, Tony Kelly would be entitled to seek judicial review if I or any other justice minister would not consider an application because the crime was X. In Scotland, all applications must be considered. So far, the experience under a Liberal Democrat justice minister, a Labour justice minister and me has been that 26 applications have been made and 26 releases have been granted. I authorised the release of Mr al-Megrahi on the grounds that I have fully explained. It would be for Jim Wallace or Cathy Jamieson to justify why they released other individuals. It is public knowledge that the killer of a child was released by Mr Jim Wallace.

James Kelly: That is fine. That confirms my view that the way in which you have looked at it did not differentiate between someone who was convicted of fraud and someone who was convicted of the murder of 270 people.

Kenny MacAskill: No—that is not true. One must consider the backdrop to such matters, and the first consideration is whether release is precluded by the rules or regulations because of the nature of the offence. In Mr al-Megrahi's case, the answer was that it was not. As you are probably aware, Tony Kelly or any other lawyer would seek a judicial review if we refused to consider an application for compassionate release on the basis that the crime was too heinous or too minimal. Each application must be considered.

Am I conscious of the situation relating to Mr al-Megrahi? You can be assured that I am very conscious of that situation. My life has changed significantly as a consequence of it. I said at the time that it was my decision and my decision alone, and I said that I would stand by it and live with the consequences. It is for each minister to make such decisions. However, I come back to the fact that every application that has so far been allowed to go through has been allowed without being repudiated on the basis of the characteristic of the offence, as per the current legislation. If the committee wishes to change that, it might wish to make that recommendation in its report. However, I think that we would have been judicially reviewed if we had said that we could not consider the application because the crime was too heinous. That has never been the position of my predecessors. I made the decision. It was a decision that I had to make and I stand by it.

James Kelly: You quoted from the conclusion to your statement of 20 August. In the first part of that statement, especially in the section on

compassionate release, you set out the process that you went through, but I see no indication in the statement that there was any consideration of representations from the families of victims, apart from in relation to the prisoner transfer application.

Kenny MacAskill: I said in my statement:

“Scotland will forever remember the crime that has been perpetrated against our people and those from many other lands. The pain and suffering will remain forever. Some hurt can never heal. Some scars can never fade. Those who have been bereaved cannot be expected to forget, let alone forgive. Their pain runs deep and the wounds remain.”

I went on to say:

“Mr Al-Megrahi did not show his victims any comfort or compassion. They were not allowed to return to the bosom of their families to see out their lives, let alone their dying days. No compassion was shown by him to them.”

I repeat what I said then, which is that

“that alone is not a reason for us to deny compassion to him and his family in his final days.”

In the penultimate paragraph, I summed up by saying:

“Our justice system demands that judgment be imposed but compassion be available. Our beliefs dictate that justice be served, but mercy be shown. Compassion and mercy are about upholding the beliefs that we seek to live by, remaining true to our values as a people. No matter the severity of the provocation or the atrocity perpetrated.”

I knew well what Mr al-Megrahi had done. I knew the pain that it had inflicted, but I believe that it is important that we do not lower ourselves to the standards of others. We believe that it is important that we treat others as we wish to be treated, even if others do not show us that compassion. That was the basis for my decision. That was made public on 20 August. I repeated it in Parliament and I stand by it today.

James Kelly: It does not matter how many times you read out the statement, the families of victims have still had no formal input into the consideration for compassionate release. Indeed, the Parole Board for Scotland said that it

“noted that no victim representations had been presented for consideration.”

Surely at that point there should have been some facility for the families of victims to feed their views in to the Parole Board.

George Burgess: What the Parole Board was reflecting there is the state of the current law on victim representations. Under legislation that has been around for a couple of years, there are circumstances in which victims have a formal right to make representations. That does not include compassionate release. That is the basis for the Parole Board's statement.

In paragraphs 14 and 15 of my advice of 14 August on compassionate release, as the cabinet secretary has mentioned, you will find reference to the views of the families of victims on the issue of compassionate release as had been gathered through the process. Those issues were taken into account in the cabinet secretary's decision making.

12:15

James Kelly: Looking closely at the 20 August statement, I see no indication of consideration of the length of sentence served or the severity of the crime or any formal input with regard to the consideration of victims.

Kenny MacAskill: I followed due process, criticism of which might emerge in the committee's inquiry. I point out, though, that I inherited the process from my predecessors.

In discussions with Mr al-Megrahi, Mr Tony Kelly—who is not unknown to you, Mr Kelly—did not in any circumstances seek to indicate that he opposed the way we were doing things or to suggest in any shape or form that the matter would be challengeable or, indeed, debased if we did not take information from elsewhere. It appeared to me that I was aware of the views of victims' families—indeed, I had heard from them personally. I took a call from US Secretary of State, Hillary Clinton, and received other representations made directly and indirectly on behalf of victims. I made my decision following the laws, rules and guidance that we have in Scotland and based on the values that I believe that we have as a people.

James Kelly: On a final point, it was clearly a matter of concern that when Mr al-Megrahi arrived in Libya he was greeted by a crowd of people waving saltires. What action did you take, either in setting licence conditions or in discussions with the Libyan Government, to try to prohibit that? I know that you were concerned about that issue. For example, according to paper 2c, which is the note of the meeting on 6 July 2009, you raised the issue directly with the Libyan Government, saying—and these were your words—that you did not want Mr Megrahi to

“be greeted by some ‘fan fare’”

on his return to Libya. In response, Mr Alobidi said that if Mr Megrahi were transferred, all the conditions of the prisoner transfer agreement would be upheld. Obviously, that discussion pertained to the prisoner transfer application. With regard to compassionate release, what assurances did you seek on the way in which Mr Megrahi would be received in Libya?

Kenny MacAskill: The assurances with regard to compassionate release were the same as those for prisoner transfer. The Libyans gave us undertakings that Mr al-Megrahi would not return in a triumphalist manner or to some sort of fanfare. As the First Minister and I have made clear in the chamber, it is a matter of regret that the Libyans did not uphold the assurances that they had given us. The same assurances had been sought by the UK and US Governments. As I have said, we made it quite clear that we were seeking assurances on the matter, we were given those assurances and we bitterly regret that they were not adhered to.

James Kelly: Were the assurances verbal or written?

Kenny MacAskill: They were verbal and were recorded in the notes of our meetings. As I say, we—and, indeed, the UK Government through the Foreign and Commonwealth Office—sought those assurances, and we had no reason to believe that they would be reneged on. It is a matter of considerable regret that the Libyans did not adhere to the assurances that they gave us and others.

James Kelly: Given the seriousness of the matter, do you think, on reflection, that you should have got those assurances in writing?

Kenny MacAskill: I am not aware of any treaty that would have been entered into by the Government of Scotland and the Government of Libya in that respect. In any case, if Mr Kelly checks the Scotland Act 1998, he will find that we are precluded from entering into such matters. When I deal with international issues, I tend to take people at face value, no matter whether I am talking to the US Attorney General, the Secretary of State, Jack Straw, or anyone else, and I bitterly regret that the Libyans did not adhere to their assurances.

If you are suggesting that the Government erred because I did not get the Libyans to sign a piece of paper when they were in my office, I might very well be guilty; frankly, I think that it is ludicrous to suggest that a written note would have been any more binding than an assurance. We had assurances from senior Libyan officials; they did not adhere to them. They breached the trust and faith that we had placed in them and, indeed, the assurances and faith that the UK Government and United States Government had placed in them.

The Convener: So, you would agree that a disgraceful and deplorable situation arose.

Kenny MacAskill: We have made it clear—the First Minister spoke out immediately—that it was a matter of great regret.

Cathie Craigie: As I am sure that you are only too well aware, it is difficult to separate the decisions on prisoner transfer and compassionate release.

In considering a prisoner transfer you were not obliged to take evidence from or to speak to the families of Mr al-Megrahi's victims or Mr al-Megrahi, but you did. James Kelly pointed out that the Parole Board for Scotland said in its response:

"The Board noted that no victim representations had been presented for consideration."

That suggests that the board receives victim representations from time to time. George Burgess said that the law did not oblige you to do what you did. The law did not oblige you to speak to the families of victims or to Mr al-Megrahi in one instance, but you did. Why did you not also do that in the other instance?

Kenny MacAskill: If we had gone out and spoken to victims' families about compassionate release, Tony Kelly may well have had something to say on the matter. That is not what is done in those situations. The backdrop is that we obtained information. We also listened to victims' families and heard their views, specifically on prisoner transfer, although they made their views known on a variety of subjects, even when we made it clear that those subjects—court matters and compassionate release—were not under discussion.

In the 26 compassionate release cases post-devolution, or those pre-devolution, the Parole Board for Scotland did not—to my knowledge—go out and take victim statements. As a Government, we have brought in victim statements that go before the court at sentencing. I have not dealt with any compassionate release case where a victim statement was obtained. The situation was exactly the same when your colleague Cathy Jamieson was in office, as it was under the term of Mr Brown's party colleague Jim Wallace. George Burgess may want to comment on that.

George Burgess: Essentially, that is the position. As I said in my answer, the Parole Board for Scotland's comment reflects the position in law that, in dealing with compassionate release, there is neither an entitlement for victim impact statements to be provided to the board nor does it take into account those issues as a matter of practice.

Cathie Craigie: There was no requirement by law and agreement for you to visit Mr al-Megrahi in prison, cabinet secretary. You have made it clear this morning that, by law and agreement, there was no requirement for you to speak to victims' relatives or other Governments, but you did that. The law did not prevent you from speaking to

victims' relatives or taking account of evidence that you had on file—

Kenny MacAskill: But I did speak to victims' families. Indeed, very late on, I took a call from the United States Government Secretary of State, Ms Hillary Clinton, in which she expressed the views of her Government. Also, without giving anything away, Hillary Clinton had particular issues to raise as a former New York senator.

The views of victims' families were taken into account. I return to Mr Maxwell's point. We did not require to take evidence. Given the significant nature of the case, it was felt appropriate to listen to the views of Governments and victims' families. We did that. Having done that necessitated that parity was shown to Mr al-Megrahi. I assure you that I gave considerable thought to and listened sympathetically to the American victims' families, who had considerable tales. Indeed, it was difficult for me and for officials to listen to those tales. It brought tears to one's eyes to hear about the people who lost their twin sons—there is something fundamentally appalling about that. We listened sympathetically as a Government and we acted according to the rules, laws and values of Scotland.

Cathie Craigie: I understand that and I imagine that those conversations were difficult. I understand that you took careful account of the views and feelings of the victims' families when you were considering your decision on the prisoner transfer application. You told us that the families thought that Mr al-Megrahi should serve his sentence in Scotland and I think that you said that that was one of the reasons for turning down the prisoner transfer application.

Given what you said when Robert Brown asked about the Scottish Prison Service guidance on compassionate early release, given the length of the sentence that remained outstanding—I presume that that gives an indication of the severity of the crime for which a person has been imprisoned—and given what the judges said when they passed sentence, was that considered along with the views of the victims' families? Was any reason looked at other than your apparent fear that the lawyer, Tony Kelly, whom you have mentioned quite a lot during the meeting, might seek a judicial review? Why was that not taken into consideration?

Kenny MacAskill: I am sorry. I found it difficult to follow the train of thought in your question, which you started two minutes ago. Will you summarise your question?

Cathie Craigie: You said that the reason for turning down the prisoner transfer request was that the victims' families thought that al-Megrahi

should serve the remainder of his sentence in Scotland—

Kenny MacAskill: Can I respond to that?

Cathie Craigie: However, it seems that when you agreed to the request for release on compassionate grounds, the opinion of the victims' families was not given the weight that it deserved.

Kenny MacAskill: I am happy to respond to that. First, I rejected the prisoner transfer application on the basis that it seemed to me that there was considerable evidence that an agreement had been entered into whereby Mr al-Megrahi, if he was brought to Scotland and sentenced, would serve his sentence in Scotland. That seemed to me to override the prisoner transfer agreement that was entered into by the Government of the United Kingdom and the Government of Libya, whatever the backdrop of that might have been—I do not speculate. There had been clear information and there was reason to believe that the United States Attorney General, the US Government and the US families believed that Mr al-Megrahi would serve his sentence in Scotland, so I refused the prisoner transfer application.

However, as a serving Scottish prisoner, Mr al-Megrahi was entitled to apply for compassionate release. That applies to people whether they are Scottish nationals or are from south of the border or, indeed, Libya. It applies whether a person has been convicted of fraud or the murder of children or whatever. I was required to consider that. On that basis, I followed the rules and guidance—the 1993 act and the SPS regulations from 2005 or whenever—and, bearing in mind my interpretation of how we view ourselves as a people, I granted compassionate release. Indeed, 25 other people have been granted compassionate release since 1999. All applications for compassionate release have been granted when they met the relevant criteria.

Cathie Craigie: I imagine that applications for compassionate release must stand on their own merits, so we cannot truly compare the al-Megrahi case with the other 25 cases. However, I would expect the Cabinet Secretary for Justice to follow the guidelines on compassionate release, which state:

“The following factors always require to be considered:

The length of sentence outstanding, the effect on the overall sentence if early release is granted and any comments that the trial judge made on sentencing which may have a bearing on the question of early release”.

Were those factors fully considered?

12:30

Kenny MacAskill: Yes. Robert Gordon will comment.

Robert Gordon: I will comment in the absence of Dr Burgess. The point that we are getting stuck on is that the length of sentence is essentially how little is left. The issue is about compassion being shown to someone who has a very limited time to live. The absolute length of the sentence outstanding is relevant in relation to its shortness rather than its extended length. The comments of the trial judge are relevant in relation to the risk assessment that needs to be undertaken against the possibility that the person released, even on compassionate grounds near the end of his or her life, would present a risk to the community into which he or she was released.

The Convener: Right. This has been a lengthy process this morning. Are there any further points?

Robert Brown: One of the difficult consequences of the decision-making process has been the abandonment of the appeal by Mr al-Megrahi, which presumably he thought he was required to do under the terms of the prisoner transfer agreement. As we know, for the prisoner transfer application to be granted, the appeal had to be got rid of. However, that was not the case for compassionate release, which was a different sort of issue. The consequence, of course, is that the relatives in particular have been denied the testing of the evidence that might have taken place.

What consideration did the cabinet secretary give to separating out the compassionate release decision and the prisoner transfer application? The appeal sort of got fouled up in the middle of all that. It might have been a good idea, particularly given the timescales, if the prisoner transfer application had been got shot of first—perhaps for the reasons that the cabinet secretary has given—without the defence team having to decide on the appeal, so that it would have been possible for the compassionate release to be taken forward without the appeal being a relevant factor.

Kenny MacAskill: The appeal was a separate factor. In each and every meeting that I had I made it quite clear that that was a matter for Mr al-Megrahi, his lawyers and the courts; it was not an issue that we would enter into, apart from when the final conclusion on the prisoner transfer application was reached.

It goes back to what I said in the initial statement. I did not seek to make this decision, Mr Brown. As I said, I am deeply privileged to serve as the Cabinet Secretary for Justice. It has been speculated that the decision is probably the hardest decision that I or any other minister has had to take in the annals of the brief duration of the Scottish Parliament, but I had to take it. That is

what goes with the privilege of having the job; you have to take responsibility for that.

One application—for prisoner transfer—came in on 5 May, which we kicked in. Another application came in on 24 July. It seemed to me that, given that I was going to make a decision, I should simply make a decision once and for all. Matters then proceeded, with information becoming available on 10 August. Dr Fraser made his decision and the papers came to me on 14 August. I could have sub-divided the decision. I could have made a statement on 20 August and thereafter delayed matters. I should recall that Tavish Scott—a man who is not unknown to Mr Brown—pressed for a fairly immediate parliamentary statement. I may have been in some difficulties had I made a statement on one application and not on the other.

I made a balanced decision that it was appropriate, once both applications came in, to deal with them in parallel, albeit that I had to address them separately, because the bases for looking at them were separate. One was the prisoner transfer application, which has its rules and regulations, and the other was the application for compassionate release, which has its grounds. There was good reason to deal with the applications in parallel. There were outside pressures. It may be that Robert Brown took a different view from Tavish Scott about how urgently I should make a statement. It seems to me that I took the appropriate time, once the medical evidence came in and once I had the papers on the evening of 14 August, to consider matters and ensure that I made the decision on 19 August, which I made public on 20 August.

Robert Brown: It is astonishing how roundabout the cabinet secretary's answer was—in fact, he did not answer the question at all. My question was about the appeal issue, which was highlighted at almost every meeting with the Libyan Government. The minutes of the meeting at Greenock prison say:

"Mr MacAskill stated it was necessary to highlight that when he makes his decision on prisoner transfer, he can only grant a transfer if there are no court proceedings ongoing."

That point was stressed by the Scottish Government at every stage of the proceedings. One might be justified in raising the question of whether there is a link between it and the abandonment of the appeal on 18 August, immediately prior to the cabinet secretary's decision. I return to the question again: how high up in the Scottish Government's mind was abandonment of the appeal and would it not have been sensible to separate the issues of compassionate release and prisoner transfer?

Kenny MacAskill: Not at all. The statement to Mr al-Megrahi, the Libyan Government and everyone else was a matter of fact. We said that although we could consider a prisoner transfer application, we could not grant it if court proceedings were outstanding. That was a matter of fact. I say to Mr Brown that we always added the caveat that the decision about whether to appeal was a matter for Mr al-Megrahi and his solicitors; we would not interfere in any shape or form. I do not know why he made the decision that he did; others round the table might be closer to knowing than I am.

The Convener: Bearing in mind the committee's remit, that is as far as we can go on that point.

I will make one or two points to tidy up our questioning. With reference to James Kelly's question about licence conditions, a note from the cabinet secretary that is in our papers—do not trouble to look it up—says that you did not want any special conditions to apply. Is that correct?

Kenny MacAskill: That is the case. Given where Mr al-Megrahi was going, any special conditions that would normally be imposed in Scotland would have been of little relevance.

The Convener: That could be accepted. You are therefore saying that the normal standard conditions apply. Have they been enforced?

Kenny MacAskill: That is a matter for the supervising social worker, but no adverse report has been made to me.

The Convener: Fine. I have one or two final points to which you might be able to answer "yes" or "no" so that it is on record. You made the decision on your own without any interference from the UK Government.

Kenny MacAskill: Yes.

The Convener: You made the decision independently, despite the fact that the Libyan Government brought out all the big guns firing.

Kenny MacAskill: So did the Americans, but yes, it was me.

The Convener: You did not in any way prevail on or influence Mr al-Megrahi to withdraw his appeal.

Kenny MacAskill: No.

The Convener: The statements made by Christine Grahame are wrong.

Kenny MacAskill: I have no knowledge of whether they are right or wrong. They are not known to me.

The Convener: Did you carry out any inquiries in that respect?

Kenny MacAskill: I have not been shown anything. Inquiries into what—an e-mail that I have never seen and about which I do not know? What inquiries do you wish us to carry out?

The Convener: You might have asked officials to look into her statements.

Kenny MacAskill: No. I was not aware of any such matter. Such statements are not within the Government's knowledge and I have never seen them. Whatever reason Ms Grahame had for saying what she said is a matter for her on which I cannot comment. I am not aware of any such matter.

The Convener: Right. You are happy with the answers that you have given. You have been given every opportunity to expand on them if necessary.

Kenny MacAskill: Yes. As I said, I did not wish to make the decision, but it fell to me. I stand by my decision and I live with the consequences. I believe that it was the right decision for the right reasons and that I followed the right process.

The Convener: I thank the cabinet secretary, Dr Burgess and Mr Gordon for their attendance this morning.

12:39

Meeting suspended.

12:44

On resuming—

Subordinate Legislation

Diligence against Earnings (Variation) (No 2) (Scotland) Regulations 2009 (SSI 2009/395)

The Convener: The committee will reconvene to consider two negative instruments, the first of which is the Diligence against Earnings (Variation) (No 2) (Scotland) Regulations 2009. I draw members' attention to the regulations and the cover note. The Subordinate Legislation Committee has not brought any matters to the Parliament's attention in relation to the regulations. Are members content to note the regulations?

Members *indicated agreement.*

Diligence (Scotland) Amendment Regulations 2009 (SSI 2009/396)

The Convener: The second instrument is the Diligence (Scotland) Amendment Regulations 2009. Again, I refer members to the accompanying paper. The Subordinate Legislation Committee has not brought any matters to the Parliament's attention in relation to the regulations. Are members content to note the regulations?

Members *indicated agreement.*

The Convener: The committee will now move into private session, in accordance with its earlier decision.

12:45

Meeting continued in private until 13:10.

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