



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 3 November 2009

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JUSTICE COMMITTEE
1st 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)

*Paul Martin (Glasgow Springburn) (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

CLERK TO THE COMMITTEE

Andrew Mylne

SENIOR ASSISTANT CLERK

Anne Peat

ASSISTANT CLERK

Andrew Proudfoot

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Tuesday 3 November 2009

[The Convener *opened the meeting in private at 09:40*]

11:02

Meeting continued in public.

Inquiry into Decision on Abdelbaset al-Megrahi

The Convener (Bill Aitken): I ask those who have joined us for the public part of the meeting to ensure that their mobile phones are switched off, to avoid interrupting proceedings. We have no apologies from committee members because we have a full turnout.

Agenda item 1 was taken in private. For item 2, I refer members to paper J/S3/09/29/2, which concerns our inquiry into the decision on Abdelbaset al-Megrahi. As the inquiry remit says, the process that has been agreed is that the committee will first examine the relevant documentation and then take oral evidence from the Cabinet Secretary for Justice and officials. The purpose of item 2 is to enable the committee to identify any further documentation or information that it requires.

Each member has been given a hard-copy set of papers that contains all the Scottish Government-published documents that relate to the decision to release al-Megrahi. If any further documents and information are asked for, we will write to the cabinet secretary after the meeting to request them. Depending on what is asked for and the Scottish Government's estimate of how long it will take to provide the information, the committee will then be able to announce when the cabinet secretary will give oral evidence.

I refer members to the fairly voluminous folder that contains the appropriate documents. Do members seek further documents or information?

Robert Brown (Glasgow) (LD): The documents deal fairly comprehensively with the background to the decision-making process. As I have said, some issues remain open for further exploration following the abandonment of the appeal. Might we ask the cabinet secretary for the Government's official view on the options in that connection, if the committee or people in the public domain more generally want to examine such matters further?

Various statements are coming out into the public domain about the view of Mr al-Megrahi and others on the evidence and the court of criminal appeal's position. That is entirely untested and adds considerable confusion, rather than clarity. The abandonment of the appeal means that we cannot test such issues. I ask for the Government to be applied to for its view on the appropriate methods—if any exist—for examining such evidence satisfactorily, without opening up the whole issue in the way that a public inquiry would, for example.

The Convener: I hear what you say. It has some relevance and is arguable but is manifestly outwith the inquiry's remit. I suggest to you that, if that information is sought, it would have to be sought in another way.

Robert Brown: I bow to your ruling on that, convener, but I respectfully suggest that it is not outwith the remit. We are certainly forbidden from considering the circumstances surrounding the appeal but we are not forbidden from examining the procedures under which the circumstances might be further examined, were that to be desired. That is a subtle but crucial distinction.

The Convener: Again, I hear what you say, but I am not persuaded.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): Do we have the information that the cabinet secretary considered as an alternative to release to an address in Libya?

The Convener: That question can be pursued with the cabinet secretary when he gives evidence.

Cathie Craigie: It is just that I do not see it in the folder.

The Convener: Nor do I, and I have been through the folder several times. However, it would be reasonable to pursue the question with the cabinet secretary.

Nigel Don (North East Scotland) (SNP): Exhibit 2b is a rehearsal of the cabinet secretary's comments about the United States Government's understanding of the issue of prisoner transfer. As I understand it, the cabinet secretary did not seem to be clear about the understanding that the Americans had with the United Kingdom Government. The implication is that he had no documentary evidence of it and was unable to get any. Would it be appropriate to ask elsewhere for documentary evidence of the Americans' understanding of their discussions with the UK Government? I am not sure whether that is within the remit—that is for you to judge, convener.

The Convener: In the correspondence that we have, the cabinet secretary has expressed the view that he was not aware of the US

Government's understanding. Again, that matter would be best pursued with him. I do not know whether it would be competent of us to ask a question directly of the United States Government, although, if it was the committee's view that we should do so, we should certainly write to it.

Nigel Don: That is what I am asking. A piece of information is clearly missing and it is clear to me that the cabinet secretary does not have it. We can ask him for it, but he will say that he does not have it, because that is precisely what the note tells us. Whether we write to the US or British Government—it is difficult to envisage who else we might write to—there is an opportunity to fill in that absent piece of information.

Robert Brown: I am not entirely sure where that point is going. The cabinet secretary made much play of it but, at the end of the day, such matters are surely determined by the terms of international treaties—not least the one under which Mr al-Megrahi was sent to the Netherlands in the first place—rather than people's understanding of them. If there is nothing about the matter in the agreed international domain, the explanation that the agreement was all for the purpose of getting Mr al-Megrahi to the Netherlands rather than what happened at the other end of his sentence seems to me to be reasonably understandable and conclusive. I am not quite sure what anybody can tell us beyond what is in the international documents of which we have some modest knowledge.

Angela Constance (Livingston) (SNP): That may well be the answer that we get, but we should not pre-empt or prejudge the answer; we should simply ask.

Cathie Craigie: We are looking into the compassionate release decision. Would the question whether any Government had agreed or not agreed where the prisoner was going to serve out his sentence have had any bearing on the cabinet secretary's decision? I look for direction on that.

Stewart Maxwell (West of Scotland) (SNP): That is not strictly true. The remit has two points to it: one concerns compassionate release, and the second concerns

"the application by the Libyan Government for the transfer of Mr al-Megrahi under the UK-Libya prisoner transfer agreement."

That is clearly within the inquiry remit, which is about not only the grounds for compassionate release, but the transfer. Therefore, it is correct to ask the question, as Nigel Don said.

The Convener: I refer members to paper 2, which details the remit. Applying to ask the US and UK Governments about understandings that arose would not be inconsistent with the remit.

Whether anything of value will emerge from that remains to be seen, but we should at least try.

Members have no other issues to raise. We have identified one heading under which we will seek further information from the UK and US Governments.

11:11

Meeting continued in private until 16:09.

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