



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### JUSTICE COMMITTEE

Tuesday 19 February 2013

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**JUSTICE COMMITTEE**  
**5<sup>th</sup> Meeting 2013, Session 4**

**CONVENER**

\*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

**DEPUTY CONVENER**

\*Jenny Marra (North East Scotland) (Lab)

**COMMITTEE MEMBERS**

\*Roderick Campbell (North East Fife) (SNP)

\*John Finnie (Highlands and Islands) (Ind)

\*Colin Keir (Edinburgh Western) (SNP)

\*Alison McInnes (North East Scotland) (LD)

David McLetchie (Lothian) (Con)

\*Graeme Pearson (South Scotland) (Lab)

\*Sandra White (Glasgow Kelvin) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Irene Fleming

**LOCATION**

Committee Room 6



# Scottish Parliament

## Justice Committee

*Tuesday 19 February 2013*

[The Convener *opened the meeting at 10:46*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Welcome to the fifth meeting of the Justice Committee in 2013. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when they are switched to silent. We have received no apologies.

Our first item of business is to decide whether to take in private items 3, 4 and 5. Do members agree?

**Jenny Marra (North East Scotland) (Lab):** No.

**The Convener:** Right. Let us hear why you do not agree.

**Jenny Marra:** As you know convener, I have raised several times the issue of the committee taking business in private, but it is particularly concerning this morning, because it is proposed that we take four items of business in private and only one in public. The items that might be considered in private include the arrangements for future scrutiny of policing, which I think should be conducted in public in the public interest and in the interests of transparency, accountability and open democracy.

I also see no reason why agenda item 4, which is on a legislative consent memorandum, should be considered in private. It is not clear what item 5 is about; it has been labelled "Work programme" to facilitate our considering it in private, but it is not clear why it should be considered in private.

I said in the chamber a couple of weeks ago that there is in Parliament an increasing culture of business being done in private. I see that as Scottish National Party secrecy over open justice. This is a very serious point, and we should take it seriously this morning.

**Sandra White (Glasgow Kelvin) (SNP):** Can I come in, convener?

**The Convener:** Yes. Can we have moderation in the contributions and not party politics, please? I am not interested in party politics in the committee; I am interested in substantive reasons.

**Sandra White:** We take the issue seriously, which is why, as I have said previously, I am pretty much appalled by Jenny Marra's behaviour.

**The Convener:** Now, now.

**Sandra White:** That is all I will say on that.

Can I say—

**The Convener:** I say to everybody that I want a proper discussion without the little interchange of adjectives. Control the adjectives.

**Sandra White:** This is the Justice Committee, so I think that I am entitled to defend my party.

**The Convener:** My mother used to call it "tit for tat". Let us not have tit for tat.

**Sandra White:** Item 2, on policing, is fine. Under item 3, we are to consider arrangements, and I believe that it is normal practice to consider such items in private. I do not have a problem with not taking item 4 in private. On item 5, I reiterate Jenny Marra's point that we do not know what it is. However, I do not see how we can discuss it in public if we do not know what it is yet. I am happy to take item 4 in public, but we should take items 3 and 5 in private.

**John Finnie (Highlands and Islands) (Ind):** I, too, have concerns. I understand the committee's process of publishing an agenda and that, if an item is not on the agenda, it cannot be considered. That said, given the profile of the issues around the Scottish police service, it is reasonable for the public to expect to understand what role we are playing in that. The public will not understand that if we consider those matters in private.

There have been benefits to open discussion in private, particularly when individuals have been named. We know the individuals who are connected with the Scottish police service, and that parliamentarians have to have an important role, as does local scrutiny. We need to know. The date is coming ever closer and there is still widespread public concern about processes, engagement and so on.

I am delighted to see the work programme on the agenda, and that we will take evidence from the Crown Office. The issue, which was originally covered by the justice for Megrahi campaign, is about how an individual citizen makes a complaint—

**The Convener:** No. We cannot go into the substance of the issue just now because to do so would mean doing it in public. We are talking about the principles behind doing what we do in private or in public.

**John Finnie:** It is for that reason that I would like us to do these items in public.

**The Convener:** May I say something about the work programme, because I seem to have stopped you in your tracks? We usually discuss our work programme in private because it allows the clerks to address us and give us updates or timetables and to talk about issues that are being dealt with through correspondence. They would not be able to do that if we were to discuss the work programme in public. It is just a bit of housekeeping and there is nothing duplicitous. It allows our clerks to speak to us.

**John Finnie:** I am not suggesting that there is anything inappropriate but, for the reasons that I have outlined, the public expect to hear our views. I wonder whether the procedure allows that it is perfectly competent to hear elements of an item. I am sure that it has happened elsewhere. We could discuss those elements and then go into private session to hear something that the clerks wish to tell us about those elements.

**The Convener:** We would have to make those separate items on the agenda. That would be a way of doing it and there is no problem with that. However, work programme discussions often go into other issues, and discussion in private allows the clerks to speak. I do not want to go into the substance of it, but that is why the work programme is done in that way.

If we want to discuss something in public, I have no problem with putting it on the agenda. Graeme Pearson did that just before we went into recess when he wanted a debate about the correspondence from the Scottish Police Authority. It was not on the agenda then but it is now and it will be done in public. That is how we manage our business.

**John Finnie:** Convener, I think that the item should be taken in public. I see no reason for it not to be.

**The Convener:** I will come to that.

**Graeme Pearson (South Scotland) (Lab):** John Finnie has stolen my thunder to some extent by asking why we should not separate out some of the agenda items so that we can discuss the substance in public and, if there are sensitivities around advice that we need to receive from the clerks, we can agree to go into private session.

I found it difficult to understand why items 3, 4 and 5 on today's agenda were going to be conducted in private from the outset. It would make it difficult for the public to see an overview of what we are doing here, and to understand our business and what we do. Policing is an issue that generates a great deal of public interest and the public would like to know what is going on with democratic accountability.

I am at a complete loss to understand why item 4 should be discussed in private. I had to read it three times.

**The Convener:** I do not have a problem with that.

**Jenny Marra:** Why was it proposed that it should be in private in the first place?

**The Convener:** It was not proposed; the suggestion has been put to the committee for consideration, and I did not say what I wanted. I am not unhappy with item 4 being discussed in public, so let us discount item 4.

**Graeme Pearson:** But it is in the papers. I read it three times and thought that I was missing something. I discovered that I was not missing anything. The item should be discussed in public.

**The Convener:** It is because it was proposed by the clerks as a general approach to the legislation. That is the usual principle, but I have no issues about item 4 being discussed in public. I will come to the others later.

**Jenny Marra:** Convener, did you approve the agenda?

**The Convener:** Yes. The agenda comes—

**Jenny Marra:** So—you approved those items being considered in private.

**The Convener:** No. I do not make decisions about what the committee does. Heaven forbid! That is obvious. If a member wants to discuss something in public, the committee debates it and we decide whether to debate it in public or private. In this case the proposal follows principles that have operated in this Parliament for 13 years. I weary of this. Perhaps it should not always be the case, but it has been the case that it is proposed that certain items—including committees' work programmes, the general approach to a piece of work, consideration of whether to have witnesses or not in relation to a bill, as is the case in agenda item 6, and general bits of housekeeping—be dealt with in private. There is no change here to anything that has been happening for the past 13 years—during eight of which, I might add, other parties were in power and the procedure was never an issue. I do not know, to be frank, why it is an issue now. However, on we go. I am listening.

**Graeme Pearson:** I suggest that, in the past decade, there has been a change of culture, and there is an interest among the general public in the work that we do here. A change in the way in which we manage these things might be appropriate.

**Roderick Campbell (North East Fife) (SNP):** For the record, I agree that item 4 should be in public. I see no reason for it to be otherwise.

Item 2 will be discussed in public. I agree with the comments that have been made about item 5—we need clarification of what exactly is intended before we can take a final view. My only comment on item 3 is that we have discussed arrangements for future scrutiny in previous meetings. Was that in private or in public?

**The Convener:** We have had those discussions twice before, both times in private. That is my point. This is nothing different.

I have no problem with holding items 2 and 4 in public. The previous times when we have discussed the matter that is to be dealt with under item 3, we have done so in private. As you can see in the paper, we are also possibly going to mention the names of MSPs in the discussion of who might be on the sub-committee and who might not be. In order to have a free discussion on that matter, during which we can name people and discuss the balance of the committee, it is appropriate that we hold the discussion in private.

We can subdivide the matters that are dealt with under agenda item 6; we can discuss the general approach in public, but when it comes to naming people and discussing who could be invited to be witnesses and so on, I suggest that that part has to be in private.

**Jenny Marra:** On that point—

**The Convener:** I will let you back in, as you raised the issue, but I will let Graeme ask a question. I am sorry—I mean Colin.

**Colin Keir (Edinburgh Western) (SNP):** I thought that the convener was giving you another shot, Graeme.

I am in agreement with some of what has been said, and with my colleagues who are looking for agenda item 4 to be dealt with in public.

**The Convener:** Before you go on, I have just been reminded that we agreed at a previous meeting to take item 6 in private, so that is what we will do. We have agreed to hold item 4 in public. We are talking about 3 and 5.

**Colin Keir:** Having sat on the Public Audit Committee for the past couple of years and having attended a couple of European and External Relations Committee meetings, I can say that those committees have no problem with dealing with their general work programme stuff and so on in private because they know that, eventually, they will come to substantive debates on the matters, which will be held in public. I also have a bit of experience in local government, where meetings are held in private for the same general reasons that the convener outlined about naming people and deciding who to invite to attend future meetings. All of that is housekeeping, and substantive debates are held in public.

Some of the comments that we have heard are quite simply off the wall.

**Alison McInnes (North East Scotland) (LD):** The onus is on the committee to always be as open and transparent as we can be, and it should be by exception only that we take business in private. I agree with everyone else that item 4 ought to be in public.

The work programme is just a general discussion about a way forward for the committee, and whatever we discuss will eventually appear on the committee's agenda at some point. Therefore, I am content that it is acceptable for that to be dealt with in private. That would be consistent, as that is how we have worked in the past.

We have already publicised the fact that we want to set up a sub-committee, so I think that it is legitimate that item 3 be taken in public.

**The Convener:** Do you have any concerns about going through the names of MSPs in public? That is what concerns me.

**Jenny Marra:** Can I speak on that point?

**The Convener:** You can in a minute. I am asking Alison McInnes what she thinks about that issue.

11:00

**Alison McInnes:** We might need to speak about it in a slightly different way. Some of the discussion about who will be on the sub-committee is for business managers and political groups to have. However, it has surely now been publicised that we wish to proceed with the sub-committee.

**Jenny Marra:** We should not draw a comparison between naming people who might come to the committee as witnesses and naming MSPs in relation to our discussion on police scrutiny. MSPs are elected to carry out a public accountability function, and I do not see it as a problem if their names are discussed in public. The public have a right to know which MSPs will be sitting on the sub-committee. As I said, we cannot draw a comparison between naming potential witnesses to come to the committee and naming MSPs, because this is our job. I understand that we have probably had such discussions in private before, but there is a majority on the committee to push through the discussions you want to have in private, and concerns have previously been raised that this matter should not be discussed in private.

**The Convener:** I appreciate that, but if we are going to discuss item 3 in public, I do not want MSPs' names to be mentioned. It is not up to the committee to select the members of the proposed

sub-committee; it is up to the Parliamentary Bureau. It would be invidious for us to propose in public names that the Parliamentary Bureau would not necessarily select. It would be indiscreet. If you are content not to talk about the substance of the sub-committee, and not to mention MSPs' names, that could be a compromise. My concern is that we are talking about individuals—as we might also talk about witnesses. How do you feel about that? I do not want to take it to a division.

**John Finnie:** I am relaxed about that. I would like some clarification on the procedures, however. I am deeply frustrated about the issue of the Crown Office, and several weeks have elapsed—

**The Convener:** We are going to discuss that—

**John Finnie:** Can I pose a question, please? Can a member of the committee request that an item be placed on the agenda?

**The Convener:** Yes.

**John Finnie:** If so, can we place the item of the complaints procedure—

**The Convener:** You did. That is why it is on the agenda.

**John Finnie:** Yes, but I did so in order that people could see that we are discussing it, not so that people could see that it is on the agenda but we cannot discuss it in public.

**The Convener:** I do not want to talk in public about what we have done, but the communications have not involved correspondence from the committee to the Crown Office; they have been communications between the clerks and the Crown Office. I have had to make discussion of the issue private so that the clerks can tell us about it, and we can then make up our minds what the committee should do. It is on the agenda because you asked for it to be on the agenda and the reason why it is not in public is so that the clerks can speak. It is as simple as that. Otherwise, the clerks cannot tell us what has been going on. We can put it on to the public agenda next week. I would be the last person to suppress the Megrahi stuff, by the way.

**John Finnie:** I am grateful that it is on the agenda when it was not going to be, but I would be more grateful if you could advise me whether I can ask for an item to be placed on the agenda for discussion in open forum.

**The Convener:** Yes—but in this instance the communications have been between the clerks and the Crown Office, so the clerks have to speak. I do not know how often I have to say it: they cannot speak in public. We can have something on the agenda next week, when we might have put something in writing and done various things that would allow us then to have an open

discussion on the matter. It is simply that I cannot let the clerks tell the committee in public about their communications.

**John Finnie:** Could we have an item next week discussing complaints procedures for public authorities? If there is any useful information that the Crown Office, for instance, might wish to impart in relation to that agenda item, that would be helpful.

**The Convener:** We should discuss that in relation to the work programme and what you want to put on the agenda.

**John Finnie:** It is a catch-22 situation.

**The Convener:** No, it is not.

Does the committee agree to take item 3 in public, but to refrain from naming individual MSPs? We can talk about the parties and the balance, but not about individuals.

**Sandra White:** I ask for clarification first. If we take item 3 in public, we cannot mention annex B of paper 2. The paper also mentions political parties. Two of the political parties have only one member each on the committee, so it would not take the Brain of Britain to understand who the two members of the sub-committee will be. Whether we name them or not, they will be known. They are members of this committee and there is only one from each party. That is mentioned in the paper.

**The Convener:** No, we do not have to name them. The paper suggests that the sub-committee should have four members from the Justice Committee and two from other committees, but it does not have to have that balance. We can keep the discussion about that fairly discreet.

I want to operate on the principle that we do not name people. We do not name individuals when discussing possible witnesses and we do not name individuals—

**Jenny Marra:** Convener, do you take my point that MSPs are different and that there is no problem with naming or discussing representatives in public?

**The Convener:** Jenny, bear with me. We are only making a recommendation. If we were to recommend people and the Parliamentary Bureau did not accept that recommendation, that would cause a stramash that need not happen. That would not be fair to those individuals, whoever they are. It has nothing to do with their parties.

The same would happen with witnesses. If we were discussing which witnesses to have or not to have, the people who were not going to give evidence would be somewhat discombobulated or upset and wonder why they were not being called.



Therefore, it is not appropriate to take discussions about individuals and witnesses in public.

**Graeme Pearson:** Could you help me? Forgive my ignorance. Is it feasible that the clerks allow us to discuss part of the item—about the general principles and so forth—in public and that we then step into private session to allow us to have the discussion that you suggest, convener?

**The Convener:** Bear with me for a minute; I will check.

Yes—we could do that. We could slip it into the work programme. “Slip it in” is probably the wrong expression in this discussion, because it sounds like subterfuge, but that would allow us to have a free discussion about the individuals. We could then make our recommendation about the structure of the sub-committee.

If we do that, we will also be able to make a recommendation about the individuals. Of course, at the end of the day, it is only a recommendation. The membership is still up to the Parliamentary Bureau.

Would members be content with that? I am just not happy about MSPs being named in public.

**Sandra White:** Convener, will you clarify that, just for me?

**The Convener:** My proposal for the item on the future scrutiny of policing is that we discuss in public the format of scrutiny and, perhaps, the political balance on the sub-committee, the numbers of members and even recommendations for which committees they should come from, but we will not name individual members. Then, having taken a view on the structure, we can consider under our work programme our recommendations for membership. However, it may be that committee members have still to talk to their parties about who may or may not be available. People may not want to take part, to be frank; we know that the Finance Committee has no one available.

Is that agreeable to members?

**Members** *indicated agreement.*

**The Convener:** I say to John Finnie that I would prefer to hold the discussion about the Crown Office under the work programme in private simply so that the clerks can give us an update. Once we get that, we can go on from there and, if appropriate, put something in public on the agenda. However, I need them to tell you what has been going on.

**John Finnie:** Thank you.

**The Convener:** There are two parts to the discussion on the Victims and Witnesses

(Scotland) Bill. I am going to have the first part, which is on the approach—*[Interruption.]* Members have got me all confused. Item 6 is fine.

Okay, let us take a deep breath. That discussion is over and we have now decided which items we are taking in public, which we are taking in private and which we are doing partly in public and partly in private.

## Policing (Correspondence)

11:08

**The Convener:** Item 2 on the agenda is correspondence from the Scottish Police Authority. Members have that before them. The first piece of correspondence is a response to our request for sight of the codicil referred to by the SPA chair in earlier correspondence regarding responsibility for human resources and finance; the second relates to staffing of the SPA's interim project team.

I suggest that, when in the future we write requesting information on policing, we agree to a deadline for a response, with the expectation that the matter can be included on the agenda of the next meeting, so that there is no get-out clause. It was probably a slip on our part, but I do not think that we did that this time.

I would like to hear members' views on the invitation in the first letter to meet members of the SPA board to discuss, among other things, plans for engagement.

**Graeme Pearson:** Is that the letter from John McCroskie?

**The Convener:** It is the one from Vic Emery.

**Graeme Pearson:** The letter dated 4 February does not supply to us the codicil on which we received information from Vic Emery. As I understand it, a codicil is a document that amends but does not replace previous arrangements. We have a letter dated the day on which the clerks requested the update and which quotes two sentences, but I want to see the original evidence to which Vic Emery referred. I still think that we need to receive that evidence.

**The Convener:** I will take a point from Graeme. I am sorry—Colin Keir. I keep calling you "Graeme". I need to change my glasses.

**Colin Keir:** I do not think that the round table is a terribly grand idea.

**The Convener:** We are on to that bit.

**Colin Keir:** The board members are going to report to the sub-committee, and the round table suggests that they are looking almost for parity at this time. That should not be the case; they should be here to answer questions on the grounds that the sub-committee is there to examine.

**The Convener:** Yes. "Codicil" is a special word; a codicil is an addition to a will. I think that we should pursue that. It is not emails; the word has been chosen specially—it is not casual.

**Graeme Pearson:** In the minutes of the SPA board, the chief constable makes reference to a similar piece of correspondence as a "codicil".

There must be something specific meant, which we are entitled to read for ourselves rather than having an excerpt presented to us.

**The Convener:** We should say that we are not content, that the word "codicil" has a very particular meaning—it has a legal status—and that we would like clarification that this is all that there is and that there is nothing else. We should say something as straightforward as that.

**Roderick Campbell:** I agree with what Graeme Pearson and you have said on that point, convener. We need clarity.

I am a bit concerned about the general format of the round-table discussion. I do not know who is going to be on the new parliamentary sub-committee. There is to be an early meeting to get it up and running, but I am not sure that it is the right way forward to go in with a large number of board members.

**John Finnie:** To pick up on your earlier comment, convener, there is a danger that if we just ask them to confirm they will just confirm, whereas we want to see the actual correspondence. That may be contained in a letter with other unrelated matters, but we want to see the particular reference topped and tailed from source.

**The Convener:** I am content with that. It is not what one would call a "codicil".

I am not sure whether

"Board members would like to invite the Committee to consider an early round table discussion"

refers to the sub-committee or to this committee.

**Roderick Campbell:** It refers to this committee.

**The Convener:** My view is that we should say no. No other board gets to give us an informal briefing. Any board is entitled to approach individual members of the committee and to brief them or whatever, but I think that that would be inappropriate because we do not have the Scottish Legal Aid Board, for example, coming to brief us. It might look as though we were making a special case and that something was being done in private inappropriately, so my feeling is that we should not do that. What is the committee's feeling?

**Graeme Pearson:** I agree.

**Alison McInnes:** I agree very strongly.

**The Convener:** Thank you very much. I am content for Graeme Pearson—if Jenny Marra does not mind, as he has got his teeth into this—to see the letter in order to see whether he is happy with the terms of it before it goes out. You both have the background to this. Is that all right?

**Jenny Marra:** Yes.

**The Convener:** You can have a wee look at it before it goes out to see whether we have nailed the matter firmly enough.

We now move on to the second letter. What are members' comments on the second letter? It is an update on interim staffing and so on, which we had asked for. Let us start with John Finnie and then Colin Keir—I have got your name right at last.

**John Finnie:** Given all the talk about senior appointments and, not least, the concentration on human resources, it is ironic that someone who is styled the head of public affairs felt the need to communicate with us.

**The Convener:** You have stolen Colin Keir's thunder.

11:15

**Roderick Campbell:** It is the interim head of public affairs.

**John Finnie:** That issue in itself is worth a few questions.

**The Convener:** Actually, we did not ask for that letter—it was just sent to us.

**Graeme Pearson:** I was going to make that point. It seems that the SPA has sent us the letter of its own accord. John Finnie is right to say that an interim head of public affairs is an unusual source for such information; a chief executive would be a normal source for such a document. The situation reflects the concerns that we are rehearsing week on week about what is going on.

**Colin Keir:** The situation takes me back to what we said about a round-table discussion. Downgrading the person who writes to us is—I will choose my words as carefully as I can—almost disrespectful to the committee and the parliamentary function. I take some degree of offence at somebody in such a position writing to us, when Vic Emery should have communicated with us.

**The Convener:** The letter was unsolicited—it is not as if we wrote and got this chap replying to us.

**Colin Keir:** Yes, but the letter has come from somewhere.

**Alison McInnes:** I understand that we have received the letter in response to the discussion in the public domain about the appointments. I turn to the substance of the letter rather than who sent it. There is concern about the lack of transparency over the appointments, which is exactly why it is important to get the sub-committee up and running as quickly as possible. There are concerns about how the board is developing and the informal way in which it is being built up.

**The Convener:** Even if we accept that things are somewhat accelerated, and I think that we agree on the need for that, the letter—I might even call it a codicil—seems like a bit of a public relations exercise.

We are content that we will write back to the SPA, but we will not write about the second letter, will we? We do not want to do anything about that. We will just note it.

**Alison McInnes:** The policing sub-committee might wish to consider the letter.

**Jenny Marra:** I would like to note the concern that external consultants are being brought in on what I understand is an inflated daily rate of £750 when major cuts are being made to the service and a lot of back-office staff are in danger of losing their jobs.

**The Convener:** That matter is not before the committee at the moment. I note that you have an email about the issue, but we are not taking evidence. You have got that on the record, which will do for those involved. I have no doubt that they are following what we are saying. We note your concerns, which you have put on the record.

We will move on; the main thing is to deal with the codicil, which has not been produced in form.

## Policing (Scrutiny)

11:18

**The Convener:** Item 3 is about the proposed policing sub-committee—we know what we are doing with this now. Members will see from paper 2 that we have received responses from the Finance Committee, the Local Government and Regeneration Committee and the Equal Opportunities Committee on their involvement in the sub-committee. The Local Government and Regeneration Committee and the Equal Opportunities Committee have agreed in principle to participate, but the Finance Committee cannot spare the time.

We have a couple of issues to firm up today before we write to the Presiding Officer, as chair of the Parliamentary Bureau, with our proposal. I make it plain that that is just a proposal—whether it will be implemented is up to the bureau.

Given that the Finance Committee will not participate, are members still content to propose a membership of six for the sub-committee, as set out in paper 2? That would involve two Scottish National Party members. The proposal—subject to members' agreement—is that I would convene the sub-committee, so there would be only one SNP member in effect, because the convener is somewhat trammelled, although the sub-committee would not have votes and so on. The other political parties and the independents who are represented on the bureau would have one member each, to give the sub-committee a cross-party flavour. What are members' views?

**Graeme Pearson:** This is probably the first time we have discussed the proposal in public in any detail. The creation of a sub-committee is probably the lowest level of response that the Parliament can offer for oversight, and I would like it to be recorded that a more significant body should be worked on for the future, particularly given our discussions earlier and given general concerns.

As we said at the outset, when Alison McInnes was part of the discussion, I would like to think that the sub-committee would have a genuinely apolitical approach.

**The Convener:** Absolutely.

**Graeme Pearson:** It needs to reflect the interests of the Parliament, not the Government's or any political party's view. I would like to think that the business managers will be able to determine the membership of the sub-committee to reflect that accordingly, rather than having us trammel ourselves with the need to have a certain balance of numbers from each party.

Members might recall our very first discussions on the matter. It would be useful for the committee to choose its own convener, in order that that convener can report to this committee, rather than presupposing the convenership at the outset. That would allow the members of the sub-committee the freedom to decide the way forward. That is nothing to do with your particular involvement with it; it is about setting a template for the future with regard to the independence of that group of members and how it reports.

**The Convener:** First, these would only be proposals from the committee. Even when the Parliamentary Bureau makes a determination, it is still up to the sub-committee to select its convener.

**Graeme Pearson:** I am only making the point at this stage.

**The Convener:** I take your point. The second point that I wish to address concerns perception, which is so important in politics, as you know. I hope that an apolitical approach will be taken, and I expect that it will be—when we are addressing policing, the SPA and so on, it ought to be. By having an equal membership from each of the parties, perhaps with me as convener—being convener really takes you out of the politics of the matter—the sub-committee will be perceived to be politically balanced. If it was any other way, it would look like something else, even if it was not. It would be good to have one member representing each political party, and I would hope to be convener and to withdraw a bit from the politics.

It is certainly my view that the sub-committee will not be doing party-political stuff—its job will be to watch what is going on in what is a unique development. The three of us who had informal discussions on the matter discussed that point. We considered the matter in that way, with representation as we have been discussing. In any event, even if I were to chair the sub-committee—I make no presumption about that—and there was another SNP member, there would be only two SNP members and four others. I emphasise the perception that there would be one member from each of the parties.

Alison McInnes may speak next, as she was part of those discussions.

**Alison McInnes:** I am pleased that the committee has agreed that we need the special vehicle of a sub-committee to focus in on the matter properly. To an extent, I disagree with Graeme Pearson that it is a lower form of representation. We are saying that the matter is so important that we are going to set some time aside to consider and monitor the situation. It is unprecedented in the Parliament's history to do such a thing. Let us give the proposal the credit

that it deserves so that the sub-committee can start off on the right foot, if it is agreed to by the bureau.

I agree that we need a broad representation on the sub-committee. That is how we would set up any committee. It needs to have representatives of all the parties on it. I agree that we need a membership of six. You were asking us our view on that. We should accept that six members is sufficient.

**The Convener:** I am sorry if I have missed what you have said on this, but what about the political balance? Do you feel that the proposal is appropriate?

**Alison McInnes:** Yes—I think that we need a political balance.

**John Finnie:** Like Graeme Pearson, and as I said in private, I would have supported having a stand-alone committee. It is important that the sub-committee is not viewed as a lesser beast, and its relationship with the parent committee is important. For that reason, and referring to Graeme's comments about chairing the committee, I do not know whether it is beneficial to have the same convener for the sub-committee and the committee or whether there is an opportunity to feed in in a different way. I am open minded about that.

What causes me more frustration is the timeframe. Ironically, this is the important bit, not what happens after the start of April. I have to say—I use the words quite intentionally—that a lot of significant reputational damage has already been done, which was unnecessary. Had there been more active and direct involvement from the committee, that might have been different. It is crucial that the sub-committee be apolitical. We cannot express concerns about ministerial interference and the like while allowing the discussion to be party political in any way.

We will have to look at the relationship with local policing boards. Again, if we have a scrutiny role—

**The Convener:** I will come to the remit, but can we go back to the first point that I made? Are you content that the sub-committee should have six members?

**John Finnie:** Yes.

**The Convener:** The sub-committee will have six members. There will be two from the SNP, and one from each of the other parties, if the SNP convenes the sub-committee.

**John Finnie:** I have no view to express other than saying that everyone who is represented on the Parliamentary Bureau should be represented on the sub-committee. I do not wish to comment on the make-up of the sub-committee any further.

If the sub-committee is apolitical, its make-up does not matter. It is more important that it should be made up of people who are able and willing to scrutinise.

**The Convener:** I hear what you are saying. Let us move on. Do you want four members from the Justice Committee and one each from the Local Government and Regeneration Committee and the Equal Opportunities Committee, which are the two committees that responded?

**Roderick Campbell:** It would be inappropriate to start preferring the Local Government and Regeneration Committee over the Equal Opportunities Committee. The best way forward would be to have four members from the Justice Committee.

**The Convener:** And one from the Local Government and Regeneration Committee and one from the Equal Opportunities Committee.

**Roderick Campbell:** Yes.

**The Convener:** That is what I am trying to get to. We need a kind of structure. Are we agreed?

*Members indicated agreement.*

**The Convener:** There will be four members from the Justice Committee and two others from the Local Government and Regeneration Committee and the Equal Opportunities Committee. We also need to agree that the proposed membership, however it works out, has at least one member of each party. That means that five places are gone. Are we agreed?

*Members indicated agreement.*

**The Convener:** We have to talk about the problem of the convener. I hate doing this because I am the convener of the committee and it is awkward for me to talk about the convenership of the sub-committee. However, I will chip in on this one.

I am talking not about my politics but about the convenership of the sub-committee. There are a couple of reasons why it is appropriate for the sub-committee to be convened by the convener of the Justice Committee, whoever they are. We are talking about a sub-committee of the Justice Committee. The sub-committee will not usurp the Justice Committee in any way by what it does. It will also ensure that the members of the Justice Committee are fully involved in the sub-committee, with the help of the added expertise of members of the Local Government and Regeneration Committee and the Equal Opportunities Committee. As convener of the main committee, I think that it will be difficult for someone else to convene a substantial sub-committee. The sub-committee will have to come back and report to

the main committee, and it will make for an awkward working relationship.

John Finnie seems to disagree, but I do not quite know how to operate otherwise.

**John Finnie:** There is ample precedent. Indeed, the police boards are precedent for that. To me, this is not about personalities but about opportunities.

**The Convener:** I am not talking about personalities. I am talking about convenerships and being a convener. It has nothing to do with the party or with me. It is about the main committee having a substantial sub-committee and the convener of the main committee being a member of the sub-committee and then having to come back and convene issues discussed by the sub-committee. That is a very awkward position for a convener to be in. It also breaks the link, which is why we are doing this. It does not give the convener more power. It just seems to me to be appropriate for the convener of the main committee to convene the sub-committee. If the Health and Sport Committee was setting up a substantial sub-committee, I would expect the convener to convene the sub-committee. That would be my understanding of any other committee in the Parliament.

Yes?

11:30

**Colin Keir:** You never called me Graeme this time.

**The Convener:** No—I just pointed because I could not remember your name.

**Colin Keir:** I whole-heartedly agree with your comments, convener. The only thing that I have as a reference from local authorities is that I chaired a quasi-judicial committee in the City of Edinburgh Council, which had a sub-committee that did more of the work than the substantive committee. It would have been completely impractical to have run the two together with a different convener taking the information in and heading back to report, so I am in full agreement. With that experience behind me, albeit at a local government level, I thoroughly agree with the comments that the convener has made.

**Sandra White:** Now that we have established that there is going to be a sub-committee and we are going to talk about it in private—

**The Convener:** In public.

**Sandra White:** Sorry. I hope that I am not overstepping the mark but, as a member of the committee, I do not intend to put my name forward for membership of the sub-committee. We have agreed that there are going to be six members of

the sub-committee, and only two other committees have said that they will come forward—the Equal Opportunities Committee and the Local Government and Regeneration Committee—so we do not have much choice in the size of the sub-committee. We have all agreed that it is going to have six members.

I cannot imagine the convener of the Public Audit Committee giving over the convenership of a sub-committee of that committee to some other member of the Public Audit Committee. I am not talking politics; I am just talking sense. It is a Parliament that we have here, and we must run the committee and the sub-committee absolutely properly. I would say that the only person who could be the convener of the sub-committee is the convener of the Justice Committee. That just happens to be Christine Grahame, but it could have been someone else. It is not about personalities or political parties; it is just the sensible thing to do.

**Roderick Campbell:** It is important that the sub-committee works closely and in parallel with the Justice Committee on this important issue. From that point of view, continuity of the convenership would help.

**Jenny Marra:** The first part of what Rod Campbell said is right—it is important that we work together. However, I see it as strength of scrutiny to delegate and perhaps have the sub-committee led by someone else. It shows confidence in the scrutiny process if the sub-committee is not convened by the person who convenes the Justice Committee. There could be a public perception that the sub-committee is merely an arm's-length committee of the Justice Committee, and given that a lot of committee members had a preference for a completely separate committee we want to make it as independent as possible.

**Graeme Pearson:** In case there is any doubt in members' minds, this is nothing to do with the current convenership. As I commented earlier, I understand that, under the current arrangements, when a Parliament begins its life this committee is normally convened by someone from the majority party—is that not the case?

**Alison McInnes:** It is under d'Hondt.

**The Convener:** No, we have had a Conservative convener. Bill Aitken was the convener at one point—I am trying to think of who else has done the job. It is designated under the d'Hondt system.

**Graeme Pearson:** So, it can be almost a lottery in a way.

**The Convener:** Yes, it depends. I think that the party in government gets first pick of convenerships. When that was Labour and the

Liberals, they picked first. It depends on a party's number of seats, but the committee has been convened by Conservatives previously.

**Graeme Pearson:** Given the responsibilities that, as convener, you have for this committee and the pressures that exist, do you feel that being the convener of both the sub-committee and this committee would work? You can make that decision on the basis of your experience and the advice that you would give to the committee otherwise.

**The Convener:** I do not want to make the issue personal, as it is not that.

**Graeme Pearson:** No, not at all.

**The Convener:** At Conveners Group meetings, conveners speak in very much the same way, protecting the position of convenership and its independence in trying fairly to let people have their say and so on.

I have mentioned other committees. If a Health and Sport Committee convener happened to be of a different political hue from me and a special sub-committee was to be set up on unified health boards or something, I would expect that convener to chair the sub-committee. Jenny Marra made the point that the sub-committee could be seen just as an arm of the Justice Committee. Four sub-committee members will be Justice Committee members, so it pretty well is an arm of the Justice Committee.

It is regrettable that the Finance Committee cannot participate, but we want to bring in another dimension. During the passage of the Police and Fire Reform (Scotland) Bill, Alison McInnes rightly voiced concern about localism and the delivery of local policing. It is important for the Local Government and Regeneration Committee to be represented and, equally, for the Equal Opportunities Committee to be represented, for similar reasons. Some issues might get lost in a national police force, but we want to ensure that they continue to be dealt with. The Finance Committee's participation would have been an advantage, and I regret that none of its members will have the time to come along.

I hope that the Justice Committee will recommend that, whoever its convener is over the coming years, they will be the sub-committee's convener. As we have agreed, the sub-committee will comprise six people—the five others will be from each of the other parties that are represented. That would mean that the perception was of an even representation. As meetings are in public, people would soon find out whether the convenership was appropriate.

I will deal with the question now. The proposal is, that the committee recommends that the

convener of the Justice Committee should also convene the sub-committee. Are we agreed?

**Members:** No.

**The Convener:** There will be a division.

#### **For**

Campbell, Roderick (North East Fife) (SNP)  
Keir, Colin (Edinburgh Western) (SNP)  
McInnes, Alison (North East Scotland) (LD)  
White, Sandra (Glasgow Kelvin) (SNP)

#### **Against**

Marra, Jenny (North East Scotland) (Lab)  
Pearson, Graeme (South Scotland) (Lab)

#### **Abstentions**

Finnie, John (Highlands and Islands) (Ind)

**The Convener:** The result of the division is: For 4, Against 2, Abstentions 1.

The recommendation, on which the majority of the committee agrees, is that the convener of the Justice Committee should also convene the sub-committee.

We will talk about the remit, then we will discuss in private whom we might recommend as members of the sub-committee. What do members think about the remit? Two remits have been proposed—one is kind of wordy and the other is shorter.

Paper 2 is not public, so I will read out the remits. The first remit is:

"To consider and report on the arrangements for implementation and management of the Police Service of Scotland, the relationships and structures in place to deliver the responsibilities and functions attached to the Scottish Police Authority, the Chief Constable of the Police Service of Scotland and the parts of the Scottish Government with responsibility for policing, and the operation of arrangements for policing in Scotland."

That is the long title. The other remit is:

"To consider and report on the operation of the Police and Fire Reform (Scotland) Act 2012 as it relates to policing."

I ask for members' comments, please.

**John Finnie:** I prefer the second remit, which is simpler and probably will not lead anyone to go out and get a legal opinion at public expense about what it means, unlike the longer remit.

**The Convener:** Does anybody disagree? I think that the second remit is better by far.

Are members content that the sub-committee will last until the end of the parliamentary session, bearing in mind that all committees last just until then?

**Members indicated agreement.**

**The Convener:** I will write to the Presiding Officer and copy in business managers to outline

our proposal, which I hope the bureau will consider next week. It might take a second week to consider the proposal, but the sub-committee will be up and running before the amalgamation—before the single police force and the SPA are in operation.

**John Finnie:** Will you discuss the paragraph that is headed “Working practices”?

**The Convener:** It will be for the sub-committee, once it is established, to decide what its working practices will be, such as how often it meets—it is expected to meet quarterly—and whether it wishes to operate in a non-partisan way and by consensus. We have had today’s discussion in public and our intentions are clear, but working practices will be up to the sub-committee.

**John Finnie:** I certainly hope that whoever the sub-committee’s members are decide to meet more than quarterly, because the need to address the issue is pressing.

**The Convener:** We can reflect that in our letter; you have put that on the record.

**Sandra White:** Can we discuss paragraph 11, which is on the relationship with the Justice Committee?

**The Convener:** We can discuss it now.

**Sandra White:** What that paragraph says is very welcome. It mentions the fact that, although we will have the sub-committee, we will also have the parent committee and if any issues are raised that the sub-committee cannot deal with, I would hope that the Justice Committee will be able to hear them.

**The Convener:** Yes. Issues can arise that we might want to discuss within the week and there might—very rarely—need to be a special meeting of the committee. The sub-committee will not in any way usurp the role of the Justice Committee.

**Sandra White:** Thank you.

**The Convener:** Does anyone else want to comment on working practices?

**Alison McInnes:** I do not want to comment on working practices, but I would like you to ask the Parliamentary Bureau to implement the sub-committee as soon as practicably possible when you write to it. As John Finnie says, there are pressing matters to be considered.

**The Convener:** I am being advised that if the matter is not dealt with at one meeting of the bureau, it will be done at the following one, and the sub-committee will be up and running before 1 April.

## Crime and Courts Bill

11:41

**The Convener:** We will now discuss the Crime and Courts Bill legislative consent memorandum, which we will discuss in public. By the way, I will pay more attention to the agenda next time, because the issue of whether this item should be in private passed me by. I see no reason why it should ever have been in private. Blame it on recess.

The LCM was lodged in response to the United Kingdom Government laying some late amendments to the bill to reverse the recent decision of the UK Supreme Court, which has implications for part 5 of the Proceeds of Crime Act 2002, which allowed for the recovery of assets held overseas. As the UK Government amendments and the LCM therefore seek to restore the existing policy position, it is not suggested that we take evidence on the LCM. However, if members wish to explore the issue with the cabinet secretary, we can do so at next week’s meeting.

Are there any comments?

**Roderick Campbell:** It would be better to go for the simpler option.

**Graeme Pearson:** Definitely.

**The Convener:** Are members therefore content to recommend to the Parliament that the legislative consent memorandum be agreed, and to delegate authority to me to sign off our report?

**Members indicated agreement.**

**The Convener:** We now move into private session.

11:42

*Meeting continued in private until 12:16.*



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e-format first available  
ISBN 978-1-78307-395-5

Revised e-format available  
ISBN 978-1-78307-411-2

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Printed in Scotland by APS Group Scotland

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