



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 3 February 2015

Session 4

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**Tuesday 3 February 2015**

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**JUSTICE COMMITTEE**  
**5<sup>th</sup> Meeting 2015, Session 4**

**CONVENER**

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

**DEPUTY CONVENER**

Elaine Murray (Dumfriesshire) (Lab)

**COMMITTEE MEMBERS**

\*Christian Allard (North East Scotland) (SNP)

\*Jayne Baxter (Mid Scotland and Fife) (Lab)

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

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

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

\*Margaret Mitchell (Central Scotland) (Con)

\*Gil Paterson (Clydebank and Milngavie) (SNP)

\*attended

**CLERK TO THE COMMITTEE**

Joanne Clinton

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

Tuesday 3 February 2015

*[The Convener opened the meeting at 10:00]*

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Welcome, everyone, to the fifth meeting of the Justice Committee in 2015. I ask everyone to switch off mobile phones and other electronic devices.

We have received no apologies, but a couple of members have been delayed due to the weather.

Under item 1, the committee is invited to agree to consider in private item 4, on European Union engagement, and item 5, on an issues paper on the Prisoners (Control of Release) (Scotland) Bill. Are we agreed?

**Members** *indicated agreement.*

## Petitions

10:01

**The Convener:** For item 2, paper 1 sets out the current position of each of our on-going petitions. I will seek members' views on each petition in turn.

### Fatal Accident Inquiries (PE1280)

**The Convener:** The committee has already agreed to consider PE1280, on fatal accident inquiries into deaths that occur abroad, in the context of the forthcoming fatal accident inquiry legislation. We have received correspondence from the Minister for Community Safety and Legal Affairs setting out more detail of that legislation. Do members have any comments to make on the petition or on the minister's correspondence, which is in annex F of our papers? Are members content simply to note the letter?

I am looking around for some inspiration. Perhaps I have gone too fast and am ahead of members. You are very slow today, gentlemen and ladies. We are on PE1280.

**John Finnie (Highlands and Islands) (Ind):** I suggest that we note the minister's correspondence.

**The Convener:** Are we agreed?

**Members** *indicated agreement.*

### Justice for Megrahi (PE1370)

**The Convener:** PE1370 is on an independent inquiry into the Megrahi conviction. The committee has received the record of the latest meeting between the Justice for Megrahi campaign and Police Scotland and correspondence from JFM highlighting recent comments by the Lord Advocate on the Megrahi investigation. Do members have any comments to make on the material that we have received, or are we content simply to note the updates and the developments with the Scottish Criminal Cases Review Commission application that are referred to in the paper? I should say that the application to the court will be sub judice—that is a little cautionary line for you. Are members content to continue the petition until we see the outcome of the other matters that are on-going?

**John Finnie:** I think that the committee is content to do so and I am pleased about that. However, it is important to pick up on some of the comments that were made by the Justice for Megrahi people, not least those on the role of the Lord Advocate in the broadest sense and not relating specifically to any on-going matter.

In September and December 2012 and, more recently, in December last year, the Lord Advocate compromised—to my mind—the potential for him to be viewed as an honest broker when it comes to receiving the report from Police Scotland. Although I am delighted that Police Scotland gets a ringing endorsement from the Justice for Megrahi committee for the diligent work that it is doing, there are challenges ahead that will relate not only to the delivery of the reports to the Crown Office and Procurator Fiscal Service and that we might have some regard to in the future.

**Gil Paterson (Clydebank and Milngavie) (SNP):** My point is similar but I go in the opposite direction, so I would need to get advice on this at some point. Setting aside the case in question and talking about the generality of people who have been convicted, I think that the Crown Office automatically assumes that they are guilty and will defend that position except when new evidence is brought forward for it to consider, perhaps for an appeal. My understanding has always been that, no matter what crime has been committed, the Crown Office cannot take a “mebbes aye, mebbes naw” attitude but must be clear that, if somebody has been convicted, that is how it is. My view is that the Crown Office will defend that position until new evidence comes forward, but I would need some advice on that.

**The Convener:** I think that it is appropriate that, if somebody has been convicted, they are considered guilty—otherwise we would have turmoil within the justice system. However, I take your point and I have some comments to make on that myself.

**Roderick Campbell (North East Fife) (SNP):** I highlight the fact that, as Deputy Chief Constable Livingstone says in the note that the committee has received,

“an independent QC”

was appointed to provide

“the police investigation with an appropriate level of scrutiny prior to reporting the findings to Crown Office, which was clearly not the normal procedure.”

There is an acceptance that it is an unusual situation. I think that Mr Finnie’s comments should be tempered with that point.

**The Convener:** “Tempered” was the word that I was thinking about. Another issue—however we get to the nub of it—is who investigates the Crown Office. The Crown Office cannot investigate itself. I think that that is where you are going with your comments, John, is it not?

**John Finnie:** Yes, indeed, and we looked at that area before. I should say that Mr Finnie always seeks to temper his comments and,

believe you me, these are extremely tempered comments given what I would like to say.

There is an obligation on the committee to consider the issue when respected citizens are called “conspiracy theorists” and accusations that they make in good faith are described as deliberately false and misleading. That does not suggest that an open posture is being adopted by the COPFS.

**The Convener:** Do you think that we are conspiracy theorists, John, as members of JFM?

**John Finnie:** I do not consider myself to be a conspiracy theorist.

**The Convener:** Neither do I.

**Margaret Mitchell (Central Scotland) (Con):** I think that the point to consider today is that we are awaiting a judgment by Lady Dorrian on 27 March regarding evidence from Megrahi’s family supporting their involvement in the application.

**The Convener:** You can mention that, but that is as far as we can go because, as I said, the matter is sub judice.

**Margaret Mitchell:** Absolutely.

**The Convener:** It is a connected point. We have the police matter and we have the issue of whether there will be a further appeal. With all those things in the air, it is appropriate to continue the petition.

**Margaret Mitchell:** Yes. It makes sense to continue it.

**The Convener:** The issues that have been raised will, no doubt, come out if the appeal procedure goes any further, so we will continue the petition.

**Gil Paterson:** That is good. I agree with that.

### **Access to Justice (Non-corporate Multi-party Actions) (PE1427)**

**The Convener:** The committee previously wrote to the Scottish Government on PE1427, on multi-party actions, inviting it to include the petitioner in its consultation on matters to be taken forward by primary legislation following recommendations of the Taylor review and to respond to the petitioner’s concerns regarding private companies withholding documents. The Scottish Government has been invited to respond by 3 April 2015. Are members content to keep the petition open pending a response from the Scottish Government? That makes sense.

**Members indicated agreement.**

**Roderick Campbell:** I think that a further consultation on aspects of the Taylor review was

announced by the Government at the tail-end of last week.

**The Convener:** The petitioner can be included in that consultation. Thank you for that additional information. We will continue the petition.

### **Solicitors (Complaints) (PE1479)**

**The Convener:** The committee previously agreed to keep PE1479 open pending the outcome of the Scottish Legal Complaints Commission's consultation on increasing the legal aid time bar from one year to three years. The consultation closed on 17 November 2014.

The new time bar was due to become operational from 1 January 2015. However, the SLCC has decided that the time bar provisions will now be altered in July 2015 to coincide with an alternative dispute resolution directive coming into force and with the start of a new operating year for the SLCC. We do not have any further information on what those time bar alterations will be, but something is in the air again.

Do members want to keep the petition open until after the SLCC rules change has taken effect?

**Members** *indicated agreement.*

### **Self-inflicted and Accidental Deaths (Public Inquiries) (PE1501)**

**The Convener:** PE1501 is on public inquiries into self-inflicted and accidental deaths following suspicious death investigations. The committee previously wrote to the Crown Office and Procurator Fiscal Service to ascertain the level of investigation that has been carried out into the 4,000 deaths that have been classified as self-inflicted in the past five years. The committee also agreed to consider the petition in the context of the forthcoming fatal accident inquiry legislation.

We have received a response from the COPFS and a letter from the Minister for Community Safety and Legal Affairs about the petition. The petitioner has indicated that the forthcoming FAI legislation is unlikely to directly address the issues that are raised in his petition, and the minister has restated the Scottish Government's position that it has no plans to introduce proposals along the lines of those that have been requested by the petitioner.

After the meeting papers were published, the petitioner contacted the clerks to advise us that he would like the opportunity to respond to the points that are raised in the COPFS letter. Are members content to invite the petitioner to respond to the COPFS letter and to consider the response?

**Members** *indicated agreement.*

**The Convener:** Thank you. We will continue the petition.

### **Emergency and Non-emergency Services Call Centres (PE1510)**

#### **Inverness Fire Service Control Room (PE1511)**

**The Convener:** PE1510 and PE1511 are on police and fire control rooms. The committee last considered the petitions in the context of an evidence session with the police and fire inspectors. Audit Scotland is due to publish a report on the Scottish Fire and Rescue Service in the spring and, as part of our on-going monitoring of fire service reform, we may hold an evidence session with the SFRS in autumn 2015.

Are members content to close the petitions, or would you prefer to consider them during our next evidence session with the SFRS?

Is there life out there? I look in vain. Has the drop in the temperature frozen the brain cells?

**Roderick Campbell:** In so far as decisions have been made and the new arrangements are operational, it is a bit after the event. However, I do not want to stifle petitioners.

**The Convener:** If members are not going to say anything, I will say that my feeling is that Audit Scotland is due to publish a report and, once we have it, we can have an evidence session on the issue. We certainly do not want to leave the issue undone. That gives us the chance to go back and see the impact. Will we do that?

**Members** *indicated agreement.*

**The Convener:** So, the petitions are closed but we will undertake an evidence session.

**Margaret Mitchell:** They are still open.

**The Convener:** They are closed, because we are going to have an evidence session. Sorry—am I moving too fast? What do you want to do? Shall we keep the petitions open and have the evidence session? I am easy either way.

**Margaret Mitchell:** We should keep them open.

**The Convener:** Okay. We will keep the petitions open and have an evidence session after the Audit Scotland report is published.

**Margaret Mitchell:** We can see where we want to go with them after that.

**The Convener:** We can then decide what to do.

Christian Allard has come alive.

**Christian Allard (North East Scotland) (SNP):** We should keep the petitions open and then decide what we want to do.

**The Convener:** Correct—that is where we are.

## **Subordinate Legislation**

### **Victims and Witnesses (Scotland) Act 2014 (Prescribed Relatives) Order 2014 (SSI 2014/360)**

10:10

**The Convener:** Item 3 is subordinate legislation. We have two negative instruments to consider.

Scottish statutory instrument 2014/360 defines those relatives of victims to whom measures that are introduced by certain sections of the Victims and Witnesses (Scotland) Act 2014 apply. As members have no comments to make on the order, are we content to make no recommendation on it? I need to have a sound out of you for the *Official Report*.

**Members:** Yes.

### **Civil Jurisdiction and Judgments (Amendment) (Scotland) Regulations 2015 (SSI 2015/1)**

**The Convener:** The regulations make provision to further facilitate the application in Scotland of European Union regulation 1215/2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Do members have any comments to make on the regulations?

**Gil Paterson:** No comments.

**The Convener:** Thank you very much, Mr Paterson.

Are members content to make no recommendation in relation to the regulations?

**Members** *indicated agreement*.

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

10:11

*Meeting continued in private until 10:36.*



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