

# **JUSTICE 1 COMMITTEE**

Tuesday 5 October 2004

Session 2

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## **JUSTICE 1 COMMITTEE**

**31<sup>st</sup> Meeting 2004, Session 2**

### **CONVENER**

\*Pauline McNeill (Glasgow Kelvin) (Lab)

### **DEPUTY CONVENER**

\*Stewart Stevenson (Banff and Buchan) (SNP)

### **COMMITTEE MEMBERS**

\*Bill Butler (Glasgow Anniesland) (Lab)

\*Marlyn Glen (North East Scotland) (Lab)

\*Mr Bruce McFee (West of Scotland) (SNP)

Margaret Mitchell (Central Scotland) (Con)

\*Margaret Smith (Edinburgh West) (LD)

\*attended

### **COMMITTEE SUBSTITUTES**

Roseanna Cunningham (Perth) (SNP)

Helen Eadie (Dunfermline East) (Lab)

Miss Annabel Goldie (West of Scotland) (Con)

Mike Pringle (Edinburgh South) (LD)

### **CLERK TO THE COMMITTEE**

Alison Walker

### **SENIOR ASSISTANT CLERK**

Douglas Wands

### **ASSISTANT CLERK**

Douglas Thornton

### **LOCATION**

Committee Room 4



## Scottish Parliament

### Justice 1 Committee

*Tuesday 5 October 2004*

[THE CONVENER *opened the meeting at 15:06*]

### Interests

**The Convener (Pauline McNeill):** Good afternoon and welcome to the 31<sup>st</sup> meeting of the Justice 1 Committee in 2004. Unusually, we are meeting on a Tuesday afternoon because something very important is happening at the weekend. It would be helpful if members would do the usual and switch off their mobile phones and pages.

I have received one set of apologies from Margaret Mitchell.

I welcome Bruce McFee to the Justice 1 Committee and invite him to declare any relevant interests.

**Mr Bruce McFee (West of Scotland) (SNP):** It is very uninteresting—I have nothing to declare.

## Item in Private

15:07

**The Convener:** Item 2 is to invite the committee to consider discussing in private item 5, on the committee's approach to stage 2 of the Emergency Workers (Scotland) Bill. For the record, the committee's report states that the committee wishes to take evidence at stage 2 to deal with some of the issues in the report. I ask for the committee's agreement to do so when we come to item 5.

**Members** *indicated agreement.*

## Petitions

**The Convener:** I propose to swap items 3 and 4 so that we can deal with petition PE763 by the Consumers Association first, primarily because item 3 is PE477 from the Miscarriages of Justice Organisation and Bill Butler is currently with the minister talking about the petition. It would be good to have Bill Butler present for the item. Is that agreeable to the committee?

**Members indicated agreement.**

### Legal Profession (Regulation) (PE763)

**The Convener:** I refer members to the note that has been prepared by the clerks, which sets out the background to PE763. The petition calls on the Scottish Parliament to urge the Scottish Executive to implement urgently the findings of the Parliament's Justice 1 Committee inquiry into the regulation of the legal profession. I should emphasise that when I say "the Justice 1 Committee" I mean the previous session's committee. The current committee adopted the inquiry to ensure that the recommendations are pursued.

I invite the committee to consider the contents of the paper and what action to take in respect of the petition.

**Mr McFee:** I am the new one here, so clearly I have to catch up on several issues. However, I have some difficulty with the action that is proposed in the paper. The proposal is to kick the matter into the long grass, if not to let it disappear into the ether. Clearly the issue has been considered before and the former Justice 1 Committee made a particular decision.

Concerns have been raised again in relation to there being a single gateway for people who have a complaint to make about their lawyer or about associated services. I am particularly unhappy about, for example, the police investigating complaints against the police and the Law Society of Scotland investigating complaints against lawyers. I have a personal difficulty with that because there can be conflicts of interest.

I am not entirely sure what the way ahead is; however, rather than take the matter off the agenda, we should consider it further. I do not know whether another report on the subject to show where we are at would be appropriate. Although there was a move in June to address some of the issues, it is pretty clear that some fairly substantial issues are outstanding. I would not be happy for us to dismiss the matter at this point.

**Stewart Stevenson (Banff and Buchan) (SNP):** In the discussion that the Public Petitions Committee had on Wednesday 15 September

2004, Jackie Baillie made some useful comments about the response to the petition being a two-stage process and about the need for primary legislation. She recommended that the petition be passed to the Justice 1 Committee

"to monitor progress and ensure that its recommendations are implemented".—[*Official Report, Public Petitions Committee*, 15 September 2004; c 990.]

That is a proper role for the committee to fulfil. To do that and to respond to what Jackie Baillie said in the Public Petitions Committee, we should not take the recommended action of closing the petition but should keep it open for a period to see what progress can be made.

At this stage, I do not have any specific period in mind before we would start to jildi up people to take the actions required. I would be uncomfortable—as Jackie Baillie would be—in closing the petition at this time, when issues that it raises still require to be addressed. It is expected that those issues should be and will be addressed; I would like to keep the petition on the books until they are.

**Margaret Smith (Edinburgh West) (LD):** I understood that we had agreed previously to keep the petition on the books and to continue to monitor progress generally anyway. I understood that we were writing to the Executive, the Law Society and others about the matter because we were monitoring progress on it. I do not think that the proposed action—it sounds as if it is to do nothing about the petition—reflects what the previous committee agreed to do. Perhaps you can clarify that for me, convener.

**The Convener:** I shall do so now. The committee has agreed to pursue the recommendations in the former Justice 1 Committee's report as part of its work programme. The committee will come back to that.

The second issue is the current committee's work in examining the transparency of legal fees, which is not addressed specifically in the former Justice 1 Committee's report. That issue arose in correspondence that we received from Margo MacDonald about a constituent, and I thought that it was a matter that the committee would want to pursue. We agreed that, when we have time, we will ask the Scottish legal services ombudsman to appear before the committee so that we can pursue that issue with a view to deciding whether the ombudsman requires more powers to deal with the issue. Margaret Smith is right to suggest that the committee's work on that is on-going.

As far as I know, the Consumers Association, which lodged the petition, did not make a submission to the previous committee's inquiry. The petition has appeared quite late in the day; nevertheless, I agree with Stewart Stevenson's

proposal. There would be no difficulty in our keeping the petition open as long as it is understood that we are already undertaking work on the matter and that it would have been helpful if some of the issues that we have been asked to consider had been raised with the former Justice 1 Committee. I hope that that provides the clarification that Margaret Smith sought.

15:15

**Mr McFee:** I want to be clear about the situation. I read the *Official Report* of the Public Petitions Committee's consideration of the petition, in which reference is made to the fact that the Consumers Association did not give evidence or make any representations to the inquiry that our predecessor committee carried out. However, I seek assurance that the points that the petition raises will be addressed in the course of action and monitoring that this committee has said that it will undertake. There may be a difference between what the petition seeks to do and what our predecessor committee agreed to do—some issues might fall between two stools. My concern is that, if we simply note the petition and say that we are monitoring the situation, we might never get the chance to explore some of those issues.

**The Convener:** That is a matter for the committee. I was simply pointing out for the record that, as far as we are aware, the views of the Consumers Association were not submitted to the previous Justice 1 Committee for its consideration in the first place. To be fair to that committee's report, we must acknowledge that.

Bruce McFee is right that the petition raises matters that the report did not address, one of which is the proposal that the ombudsman be granted powers to investigate decisions, but we are pursuing that matter. My proposal is that we should not close our consideration of the petition, because there might be some residual issues that are not covered by the report or by our work. As part of the work programme, we could compile a briefing about the report's recommendations, what we said we would do and which issues in the petition have not been covered. That will allow members to identify the issues that they want to pursue further. We will leave open our consideration of the petition so that we can pick up any outstanding issues.

**Margaret Smith:** I would be happy with that. It would also be useful to have a general update on where we are with the components of our predecessor committee's original recommendations.

**The Convener:** I think that I am right in saying that we are still waiting for a detailed response

from the Executive to the previous Justice 1 Committee's report. [*Interruption.*]

We now have that response, which the committee will get to see when we have more time to devote to it. For today's purposes, we need to materialise our quarterly review of petitions in our work programme. Does the committee agree to do that?

*Members indicated agreement.*

### **Miscarriages of Justice (Aftercare) (PE477)**

**The Convener:** I had hoped that Bill Butler would be present for our consideration of petition PE477, which is about the Miscarriages of Justice Organisation. I will kick off proceedings by reporting to the committee on some of the work that I have done. Bill Butler might appear at some point.

Today is not the first time that petition PE477 has appeared on the agenda. A background note has been prepared for members. The petition asks the committee to consider the services that should be available to people who are acquitted on appeal and to assess whether a retreat facility could be provided to meet their needs. Bill Butler and I had a separate interest in the subject before the petition was submitted, which is why we sought a meeting with the minister to discuss the issues that arise from the petition. It just so happened that the meeting that we managed to secure was at 2 o'clock today. I left the meeting early, leaving Bill Butler up there—the meeting will finish shortly. We were interested in discussing miscarriages of justice directly with the minister. Another big issue is the funding of MOJO; it receives no funding whatever and raises money for everything it does by benefits and so on.

I do not see any problem with the committee doing whatever it wants to do with this petition concurrently with the work that Bill Butler and I are doing; I think that that would be beneficial. I now want to open up the meeting to allow members to consider their approach to the petition. If I can answer any questions, I will do so.

**Stewart Stevenson:** I come to the issue relatively cold and I do not have any constituency interests that help to inform me. The clerks offer us two ways of proceeding and I am minded to keep this petition—like the previous one—on our books for our own information and to allow us to monitor the issue. I think that that is important, whatever further discussions we might have. Other than expressing that general view, I do not have anything useful to add. I would have to hear from Bill Butler on the outcome of his discussion with the minister before I could be persuaded that the petition had run its course. I expect that Bill will tell

us that it has not run its course, although we can only hope that it has.

**Margaret Smith:** There was unanimous support for the petition in committee. People felt strongly that it was bad that people had been put in prison for things that they had not done, and that when they come out of prison the system is unfair to them yet again because no services exist specifically for them. They are still treated as if they were offenders even though it had been found that they were the victims of miscarriages of justice.

I welcome the minister's letter. There are developments—not only because of the meeting that you have told us about, convener, but because of the work that the minister is doing with Citizens Advice Scotland on a potential new service for victims of miscarriages of justice. We should continue with the petition, but we should attach a timeframe so that the petition can come back on to our agenda in perhaps a month's time; we should not consider it only quarterly. We can guess that there will be developments in the short term rather than the medium term, so I would like the petition to be back on our agenda sooner rather than later. We can hear from our colleague Bill Butler about the meeting with the minister, but we can also ensure that further information comes from the minister on the proposals that she heard from Citizens Advice Scotland last month.

**Mr McFee:** I agree with that. Like Stewart Stevenson, I come to this issue relatively cold. I reviewed the notes that we were given and saw a clear need for an organisation to deal with people who are released from prison having been found to be not guilty of an offence for which they were improperly convicted. That organisation should be separate from the present set-up, which deals primarily with people who are released from prison after serving sentences for crimes of which they were guilty.

There should be a timeframe so that we can see how things are proceeding and consider how we intend to proceed. If Bill Butler gains any further evidence as a result of today's meeting or any future meetings, we should obviously hear that information as soon as possible.

**The Convener:** It will be extremely helpful if the committee agrees to keep this matter open.

Margaret Smith will be aware of the committee's belief that we have forced a subtle change in Executive policy on the matter. It now seems to be recognised that a group of individuals who have been wrongly incarcerated need a different service from those who served a sentence on a guilty conviction. What we are hearing from MOJO—as it is called for short—is that some fundamentally different services are needed by such individuals.

We have heard from Paddy Hill, who is well known for his work on miscarriages of justice. He says that, although services exist, it is easier to get access to them if one is a convicted offender—there are probation officers and social work services and so on. However, such services are not open to people who have been acquitted because they are meant to be treated as innocent. A person's mental state can in many cases be affected by having served maybe 15 to 20 years in prison, yet such people come out of prison with virtually no support. Families in particular do not really realise what is ahead of them; they need support too.

There is a range of services that should be more specialist. MOJO argues that those services should be in a permanent base, in the form of a retreat. I imagine that Bill Butler will report to us that the Executive is sympathetic to that; however, the cost of providing a retreat is estimated at about £0.25 million. I am sympathetic to that too, but the organisation needs to be funded first because it is surviving on what it can raise through benefits.

As individual MSPs, we should do what we can to support the organisation to find its way through the funding streams—we all know how difficult that can be. It is important for the committee to keep up the pressure and to keep the issue live. If we had 45 minutes to spare—I will not look at the clerks when I say that because we probably do not—we could hear from MOJO directly; alternatively, we could arrange a private briefing. I agree that it would be worth while to take the petition further.

**Mr McFee:** I am happy with that recommendation; it would be appropriate for us to hear directly from MOJO, as you suggest.

**Margaret Smith:** I suggest that we put the petition back on the agenda and revisit it in a month. If, in a month, we are content with what the Executive is doing, we can leave it at that. However, if we are still in the position that we are in at the moment we should ask MOJO and the minister to come and talk to us. That would give us a month in which the minister can act in the positive fashion that she has indicated. If we do not need to have that meeting, that will be all well and good, and it will free up the time. We need to focus the minister's mind on the fact that we want action sooner rather than later.

**Stewart Stevenson:** I agree with everything Margaret Smith said, except that we should pin the matter down to a month. I get the impression that the minister wants to respond, so we should not put an unduly prescriptive timetable on what we do. If we do not see substantive progress this year we should raise the subject. I would be prepared to wait for a view to be expressed to the committee—perhaps by Bill Butler and by you,



convener—at an appropriate meeting. Indeed, I would be perfectly happy to leave the timetabling with you because you have a personal interest in the matter and will take account of what Bill Butler says. I take Margaret Smith's point, but I do not want to have a meeting in a month when we may not have made progress that would justify spending time on the matter then.

**The Convener:** Margaret Smith is nodding in agreement—I think that we have a consensus. We will probably have to write formally to the minister to say that we intend to pursue the matters in the petition; that way, the committee will express its interest and we will get a formal response from the minister. We will say that we want to be kept in touch with progress. We can combine Margaret Smith's suggestion with what Stewart Stevenson has said and consider a time by which we would hope to hear that progress has been made. If we are not satisfied with that, we can pick up the petition in a slot in our work programme. The committee can then decide who it wishes to hear from and whether it we should have a public meeting to do that. If we do not have the time, we can decide whether to hear directly from MOJO about its progress. If there are no further comments on the petition, that is what we will agree to do.

We agreed to deal with item 5, on the Emergency Workers (Scotland) Bill, in private.

15:31

*Meeting continued in private until 16:53.*



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