



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 18 February 2014

Session 4

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**Tuesday 18 February 2014**

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**JUSTICE COMMITTEE**  
**6<sup>th</sup> Meeting 2014, 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)
- \*Roderick Campbell (North East Fife) (SNP)
- \*John Finnie (Highlands and Islands) (Ind)
- \*Alison McInnes (North East Scotland) (LD)
- \*Margaret Mitchell (Central Scotland) (Con)
- \*John Pentland (Motherwell and Wishaw) (Lab)
- \*Sandra White (Glasgow Kelvin) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Shelagh McCall (Scottish Human Rights Commission)  
Professor Alan Miller (Scottish Human Rights Commission)

**CLERK TO THE COMMITTEE**

Irene Fleming

**LOCATION**

Committee Room 2



## Scottish Parliament

### Justice Committee

*Tuesday 18 February 2014*

[The Convener *opened the meeting at 10:45*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** I welcome everyone to the Justice Committee's sixth meeting in 2014. I ask everyone to switch off mobile phones and other electronic devices completely, as they interfere with the broadcasting system even when switched to silent. No apologies have been received.

Under agenda item 1, does the committee agree to take in private item 5, which is consideration of our approach to stage 1 scrutiny of the Courts Reform (Scotland) Bill?

**Members** *indicated agreement.*

## Subordinate Legislation

### Discontinuance of Aberdeen and Peterhead Prisons (Scotland) Order 2014 (SSI 2014/13)

10:46

**The Convener:** Item 2 is consideration of two negative instruments.

The first instrument formally discontinues the prisons at Aberdeen and Peterhead. The Delegated Powers and Law Reform Committee had no concerns about the order. As members have no comments, are we content to make no recommendation on the order?

**Members** *indicated agreement.*

### Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment) 2014 (SSI 2014/14)

**The Convener:** The second negative instrument provides that all monetary values in ordinary causes are expressed as a multiple or fraction of the new rate of £156 per hour—I do not know what that means, but there we are. Do members know what that means? Roderick Campbell does.

**Roderick Campbell (North East Fife) (SNP):** I know what it means.

**The Convener:** The DPLR Committee had no comments on the instrument. Do members have any comments?

**Members:** No.

**The Convener:** Thank you.

## “Scotland’s National Action Plan for Human Rights 2013-2017”

10:47

**The Convener:** Item 3 is an evidence session with the Scottish Human Rights Commission on “Scotland’s National Action Plan for Human Rights 2013-2017”. I welcome Professor Alan Miller, chair, and Shelagh McCall, commissioner. Good morning to you both.

I understand that Professor Miller wants to make a short opening statement—feel free to do so. We will then have questions from members.

**Professor Alan Miller (Scottish Human Rights Commission):** Thank you, convener, and all committee members. I very much welcome the opportunity to open up a dialogue between the committee and the Scotland’s national action plan process as it unfolds over the months and years that are ahead of us. I hope that this is just the first piece of engagement that we will have in that context.

Thank you for giving me the opening few minutes to highlight areas that it would be worth exploring today and going forward. There are questions such as: what is SNAP, as it has become known? Why does Scotland need it? What will it do? What does it mean for the committee?

The inspiration that has driven Scotland’s national action plan to where we are at the current stage of its development comes from the words of Eleanor Roosevelt, of which some members might already be aware. She was the co-architect of the Universal Declaration of Human Rights in 1948, which is the foundation of all human rights law and values as we know them today. She said:

“Where, after all, do universal human rights begin? In small places, close to home—so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighbourhood he lives in; the school or college he attends; the factory, farm or office where he works ... Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.”

That encapsulates the ambition of SNAP, combined with pragmatism about how we can best and most effectively get there.

The Scottish Human Rights Commission has led the process, but it no longer belongs to the commission—it is now a shared responsibility, because it is Scotland’s national action plan and it belongs as much to you as it does to the commission and the rest of the country.

What is SNAP? Its vision is very straightforward: Scotland should become a country

“where everyone is able to live with human dignity”.

Its purpose is to be a practical road map for the progressive realisation of internationally agreed human rights, to enable all of us to live with human dignity. It was launched on 10 December 2013—international human rights day—and some of you might recall that on that day there was a debate in the chamber in which cross-party support was evident. Present on the day of the launch representing the Scottish Government was the Deputy First Minister and representing the Council of Europe was its human rights commissioner, Nils Muižnieks.

SNAP is in its early stage of development but it has already attracted significant international interest. Just next month about 10 other countries will be brought to Strasbourg to learn from the experience of Scotland’s national action plan which, we hope, will give them some guidance on how they might do something similar. The office of the United Nations High Commissioner for Human Rights, in Geneva, is also very supportive and is promoting SNAP to other countries.

It is not a traditional action plan with which all of us might be familiar: a tick list that comes down from on high about what a Government is prepared to do or not do, or an unrealistic wish list that comes up from below and does not have any evidence base or chance of effective implementation. It is a collaborative process: a transformative programme of action to bring about sustainable culture change.

The action plan meets international best practice for three reasons. It is evidence based, which I will come to in a second. It was inclusively developed by a drafting group that consisted of a wide range of public bodies from the Government, the national health service and the Convention of Scottish Local Authorities, through to the Scottish Trades Union Congress, the Scottish Council for Voluntary Organisations, the Health and Social Care Alliance and Amnesty International. Its implementation will be independently monitored. Indicators will be developed, and the process will be overseen by the former Auditor General for Scotland, Bob Black.

Why does Scotland need an action plan? For the first time in Scotland, the Scottish Human Rights Commission mapped over four years where human rights are in Scotland and to what extent they are realised, particularly by the most marginalised in our community. We published and shared the findings of that mapping, which led to a process of participation to determine whether they were accurate. The findings were largely affirmed in public interaction.

The conclusion of that mapping was that Scotland has made progress since devolution but could do better. If we look at the progress using a traffic-light system, the structure of Scotland's governance and legislative process—in other words, you, to a large extent—has mainly green lights. Because of the Scotland Act 1998 and the Human Rights Act 1998, almost all legislation was in compliance in the human rights context. However, when it came to process—that is, implementing legislation into policy or strategies—the results were mixed: green turned to amber more often than we wanted. When it came to outcomes—the actual lived experiences—amber turned to red. The good intentions of Parliament's legislation were not consistently turned into good practice.

Where a human rights-based approach had been used—that is, where people were empowered to really understand their rights—and where public authorities understood how to meet their duties and implement them, the outcomes for people were better. A human rights-based approach is therefore seen as the agent of change for the realisation of SNAP.

How will SNAP be implemented? We come closer to the Justice Committee in that regard. Three outcomes were agreed: that Scotland should strive to achieve a better culture, better lives and a better world. Nine priority areas were also agreed, including justice and safety. Common issues of interest to you would be policing, corroboration, victims' rights and violence against women.

In order to identify concrete actions in all those areas, human rights action groups are being put together—again, representing the breadth of public life and civic society. Innovation forums will be held to examine best practice in Scotland and beyond, and the whole process of implementation will be overseen by a leadership panel, which will report annually to the Scottish Parliament in order that progress against objective indicators can be measured and debated in the Parliament.

What does SNAP mean for the committee and the Parliament as a whole? First, it would very much help the process if the Justice Committee were to take an interest in facilitating the Parliament's having an annual debate when the annual report is presented. The first report will come out towards the end of the year just prior to international human rights day on 10 December.

Secondly, because of the commonality of various issues with which the Justice Committee is concerned and which SNAP will undoubtedly be seeking to progress, I suggest that the committee consider establishing a rapporteur to have an ongoing dialogue with the SNAP process and to ensure the exchange and free flow of information.

Finally, it might help the Scottish Parliament as a whole meet its responsibility of monitoring Scotland's implementation of international human rights legal obligations if it considers what has happened over the past couple of years with regard to the three Cs—Cadder, Carloway and corroboration. Indeed, there is probably no better example of the need for that responsibility to be met.

That process, painful as it has been for many of us, would not have been necessary if more attention had been paid and more respect had been given to recommendations made by international human rights bodies 10 or 15 years ago, which pointed out that issues had to be addressed. The committee, the Parliament and Scotland as a whole would do well to have a more proactive engagement with improving the monitoring of international human rights recommendations.

Thank you very much, convener. I do not want to take up any more time with my remarks because I would welcome having as much dialogue as possible. I simply hope that this is the beginning of the relationship between the Justice Committee and SNAP.

**The Convener:** Do members have any questions?

**Elaine Murray (Dumfriesshire) (Lab):** At the end of your remarks, Professor Miller, you mentioned some of the issues that the committee has recently been trying to make its way through in the Criminal Justice (Scotland) Bill. In such issues, there seems to be a conflict between the human rights of different groups. For example, there seems to be a conflict between the human rights of victims, who might want their day in court, and the human rights of the accused. How might the approach that you are advocating have assisted in what has been a very difficult process? After all, whatever decision is made, someone is going to feel that their human rights have been disregarded.

**Professor Miller:** I will ask my colleague Shelagh McCall to respond to that question.

**Shelagh McCall (Scottish Human Rights Commission):** There are two ways of looking at this issue.

First, on your question of how this approach would have helped the committee with its own process, we are seeking through SNAP to put human rights at the heart of the development of law, policy and strategy and their implementation on the ground. The process seeks to build consensus among those who have to deliver services and those who will receive the services at the other end—in other words, those whose human rights are directly affected.

An understanding of all the international human rights obligations informs that process from the outset and allows the Parliament, policy makers and so on to be proactive, rather than reactive as happened with Cadder and Carloway. It increases their knowledge of international human rights and allows them to make the connection with the domestic policy situation.

Secondly, one of the steps that has been agreed as a part of the action plan is that the Scottish Government along with others, including the commission, will monitor the human rights impact of the criminal justice reforms that follow from Carloway and so on. As a result, there will be an opportunity for scrutiny after the legislation in question has been passed to find out whether it has had the intended impact on the ground or whether any problems have arisen that need to be sorted. I think, therefore, that the SNAP process assists at both ends.

**Elaine Murray:** But surely if we are reviewing what has happened and seeing whether any problems have arisen, we will still be reacting to problems rather than foreseeing them.

Have you been invited to take part in Lord Bonomy's review group?

**Shelagh McCall:** Not as yet, but I understand that an invitation might be coming.

**Elaine Murray:** So it might be in the post. That is good.

You have made important points about victims' rights and have referred to the Scottish Government's review on violence against women, but are there any particular issues that we should be aware of with regard to victims' rights not being respected in the court process? Can you give us any advice on such issues?

I should add that I am thinking not so much about the Victims and Witnesses (Scotland) Bill as about future strategies, particularly with regard to victims of domestic and sexual abuse. Are there any human rights approaches that we should want to see demonstrated in that respect?

11:00

**Shelagh McCall:** The United Nations Committee on the Elimination of Discrimination against Women has recommended that the strategy that the Scottish Government is developing on violence against women be complemented with an action plan and concrete steps identified so that everyone can see the actions that are going to be taken and what will achieve the outcomes that are sought. The Government and others can then be held to account against that action plan rather than against the broader strategy.

One element of SNAP priority 6, which is the justice and safety priority in the better lives outcome, is the development of that strategy and the action plan. The human rights action group in that area will convene and bring parties to the table to identify the steps that should be taken to address the issues that you have highlighted.

**Christian Allard (North East Scotland) (SNP):** Good morning and thank you for coming along. I have a personal question about the international interest in what is being done. You have said that, since devolution, Scotland has made great progress in this area. I found that quite interesting, but then you mentioned what is happening beyond Scotland. Are we in the vanguard or breaking new ground with this approach? Is SNAP recognised across the world as something new?

**Professor Miller:** Perhaps I should put all this in context.

Twenty years ago, the UN called on all countries to develop national action plans. Four years later, the European convention on human rights was incorporated into United Kingdom and Scottish law and then a national human rights institution was established. The next step is for that institution to lead the development of Scotland's action plan to join about 30 other countries around the world—although Scotland is, I should point out, the first country in the UK to do so.

International best practice on how that might be done has been developed. First, there should be an evidence base and, in that respect, the commission has spent four years working on the mapping. Secondly, the plan should be inclusively developed, and a distinctive feature in Scotland has been the bringing together of Government and public bodies such as the NHS and the Care Inspectorate, non-governmental organisations and civil society around the same table to identify what needs to be done and how best it can be done. Thirdly, there needs to be independent monitoring, with someone like the former Auditor General overseeing the development of objective indicators to measure progress so that we and the rest of the world can gauge the impact of the plan.

Even though that process is still at a very early stage, it has attracted a lot of interest. Next month, for example, the Council of Europe is convening a round-table session in Strasbourg to look at what is happening in Scotland as well as Finland and one or two other European countries, and the UN has promoted the process as an example that other countries can learn from.

Finally, the Scottish Human Rights Commission is one of more than 100 national human rights institutions around the world and, next month in Geneva, all of them will be looking at how



Scotland has progressed to this stage and what lessons can be learned for their countries.

**Christian Allard:** I am new to the committee, but when we considered the Cadder case and Lord Carloway's recommendations we looked at a lot of international examples. My view is that it is easy to compare pieces of legislation but difficult to compare judicial systems and even more difficult to make comparisons between the ways in which legislation is being implemented. How can we make international comparisons with regard to culture change? I have to say that I find that concept a bit difficult. How are we going to monitor and come to an understanding of how much the culture in Scotland is changing compared with the culture change that has taken place in other countries?

**Professor Miller:** That challenge is being faced and addressed. The innovation forums that SNAP will develop will look at that, as well as at many other questions in order to learn, to contribute to the development of best practice with regard to the objective indicators for measuring economic, social, cultural, civil and political progress and the implementation of internationally recognised rights, and to find means of capturing not just statistics but the living experience of real people, particularly those who have the smallest voice in their communities, who live in the most remote areas or who have disadvantages. Capturing that human element along with the objective indicators, learning from others and increasing the ability of us all in the world to sharpen what is a necessary tool are very much what is on the table as far as SNAP is concerned.

**The Convener:** We will move on.

**Sandra White (Glasgow Kelvin) (SNP):** Good morning. I am delighted with the publication of the action plan; indeed, I remember hearing a number of years ago how one of the ambitions of the commission and indeed Professor Miller was not necessarily to look at issues that were being highlighted in the newspapers—slopping out, for example—but to address the fact that the people in those situations could not get justice. As Professor Miller has just said, we are dealing with people's real life experiences.

Having read the action plan, I have some questions about outcomes. Outcome 2 has three action groups, one of which is looking at justice and safety—issues that are obviously pertinent to our committee. The Scottish Human Rights Commission will oversee the finalisation and publication of an action plan for victims of historic child abuse. With regard to violence against women, the action group in question will ensure that it deals with real life experiences. My question for Professor Miller—and perhaps for Ms McCall—is whether any areas in the justice and safety

element of outcome 2 should be prioritised over others. Moreover, could the Justice Committee play a role with regard to any responses that might be received or any evidence that could be taken?

**Professor Miller:** I will kick off with a response and then Shelagh McCall can come in.

You mentioned one particular example that has a compelling dimension. I know that many members will have received in their mailbag correspondence from constituents about victims of historic child abuse. Something has to be done about that issue as a matter of urgency. The survivors have shown remarkable dignity over the years but that cannot be the only positive thing that can be said about how the issue of historic child abuse has been addressed in Scotland.

This is a good example of how the process of bringing to the table people with those real and sharp life experiences and people with the responsibility to do something about the matter can work. The commission has facilitated an interaction process in that area and for the first time has brought to the table victims, nuns, Government ministers and local authority representatives to agree a way forward to deliver justice to those victims. We are on the cusp of the Government's response to that draft action plan—we will receive it literally within the next month or two—and it will be a very early indicator within the SNAP process of what progress, if any, is going to be made.

Margaret Mitchell is working on a member's bill for an apology law, which is very much part of the draft action plan and which everyone around the table has agreed is something that really needs to be explored. It is very good that she is doing a lot of the heavy lifting on the issue, but the Government also has the responsibility to ensure that the matter is progressed and to give it support. That early test—an early outcome, if you will—will be measured and reported to Parliament towards the end of the year.

**Shelagh McCall:** Following on from Alan Miller's comments about historic abuse remedies, I should point out that there are a number of pieces of legislation that might end up before the committee for scrutiny or on which the committee might be interested in taking evidence. Professor Miller has mentioned the apology law proposal, but there are also issues of prescription and limitation that need to be dealt with to enable survivors of historic abuse to access civil justice. The rapporteur system that Alan Miller described earlier, in which someone would liaise between the committee and the SNAP process, might also have benefits in that respect.

Such a system could help in another way. In the Victims and Witnesses (Scotland) Bill, which the

committee scrutinised to an extent, the Government proposed forming a national confidential forum for survivors of historic abuse. That part of the bill found itself with the Health and Sport Committee. The danger in such a situation is that that committee would not scrutinise such a proposal from the perspective of the impact on human rights. The Justice Committee might wish to take an interest from that perspective, to ensure that the human rights implications do not fall between the cracks. That would be a benefit of the rapporteur system that we are talking about.

Ms White asked about prioritisation. In the justice and safety section, the action plan sets out agreed actions for 2014. The process involves short, medium and long-term goals, so actions will continue to be developed and prioritised by the relevant human rights action group.

I will give an example of a mechanism that the committee already has in place to assist in the process. Police Scotland has committed in 2014 to “identify opportunities to further embed human rights within the structures and culture of policing”,

which includes looking at training issues and so on. I am aware that the committee is hearing evidence about the implementation of the Police and Fire Reform (Scotland) Act 2012. That is an opportunity to question the police about the steps that they are taking in that respect and the commitments that they are prepared to make, and to monitor progress on that. That is an example of how the committee can engage with the SNAP process within its existing agenda.

**Sandra White:** I was going to ask about other committees, but Ms McCall has mentioned how they could work with this committee, so she has answered my question.

**The Convener:** The bill is now an act of Parliament, anyway.

**Sandra White:** I am talking not just about that act but about how human rights can be considered in all committees, not just this committee. Ms McCall gave us an example of that, so I am happy with that.

I am sure that John Finnie will pick up on the police issue—I know that he is next to speak.

**The Convener:** You are taking over as convener as well now; it is another Margaret Mitchell moment. I call John Finnie, to be followed by Margaret Mitchell.

**John Finnie (Highlands and Islands) (Ind):** I know that the commission awaits its invite from Lord Bonyon's group, with the purpose of monitoring reforms. We value the input that we get from you when we are scrutinising bills. Before that stage, do you engage with officials on the

compilation of proposed legislation? If so, is any conflict associated with that for your further involvement with legislation as it develops?

**Professor Miller:** No. I am pleased to say that, in recent times, there has been more engagement between bill teams and the commission so that, as Shelagh McCall said, human rights are on the table at an early stage when policies and legislation are being developed, rather than at the end, when positions can become more entrenched and it is more difficult to be persuasive and open minds to the need to ensure that measures comply with human rights. That engagement is taking place and is welcome.

In the mapping of how human rights are realised in Scotland, there are other issues that relate to the Parliament, such as whether the Parliament might want to consider whether it can do more to increase awareness, understanding and know-how about implementing international human rights standards in practice. More analysis could be done when it is said that a bill is human rights compliant. The Parliament could ask what the reasons for saying that are, which could produce a more informed and measured debate. As a shared responsibility, all of us can improve how we engage with human rights in a number of ways. The earlier we do that, the better.

**John Finnie:** In the equal marriage debate, the phrase “hierarchy of rights” was much used. Does such a hierarchy exist? In these times of economic restraint, should one set of rights be prioritised ahead of t'other?

11:15

**Professor Miller:** Human rights are not a fair-weather friend. They do not leave the table in times of austerity and come back only when things are better. In fact, you could argue that there are more compelling reasons why human rights should remain on the table in times of austerity. There is frustration, however. There is a lot of very good international best practice on how to take tough and very pragmatic decisions in times of austerity in a way that both respects the human dignity of all those who can be impacted and ensures not only that the measures taken are the minimum necessary and do not impact disproportionately on those who are least resilient to them, but that the maximum available resources in a budget are allocated to meeting people's needs in living a life of dignity.

There can be a temptation just to put human rights to the side when the going gets tough, but that is certainly not what human dignity and the international human rights legal system require. The question whether there is a hierarchy of human rights represents a slippery slope that we

should not go down. The experience of the SNAP process in identifying what needs to be done is that it is a question of finding the means of reconciling what can be competing interests, claims and sets of rights in a way in which consensus can be achieved. The human rights principles of proportionality can be the mechanism for achieving that.

Human rights therefore have a lot more potential than people perhaps realise for reconciling differences that on the surface would appear to be mutually exclusive. The question of corroboration is one example of how the rights of victims of domestic abuse and so on and the right to a fair trial can be reconciled if the broader human rights context is applied.

**John Finnie:** I stand to be corrected, but I understand the National Assembly for Wales embedded the rights of the child in legislation. Can you say what the benefits of that are? People want to know that doing that is ultimately meaningful rather than just an academic exercise, if you like. What is the resulting difference for the children of Wales?

**Professor Miller:** What you say about Wales is true. It was a lost opportunity for Scotland not to replicate at least, if not go beyond, what has been done in Wales. The United Nations Children's Fund recently produced a broader study that looked at how the United Nations Convention on the Rights of the Child is implemented in a wide variety of countries in a wide variety of ways. It found that where there was incorporation of the UNCRC in domestic law, in the same way in which the European convention on human rights has been incorporated in our domestic law through the Human Rights Act 1998, the outcomes were much better. It also found that there was a much deeper understanding among children, families, the public, policy makers, decision makers and law makers as to what the convention actually meant. It was more than people just thinking, "We should do it when we think it's appropriate or when it can be done." The experience internationally is that incorporation of treaties such as the UNCRC leads to better outcomes for children.

**John Finnie:** My final question is on the police. Officers who join Police Scotland swear an oath that includes a reference to human rights. I do not know whether Police Scotland has had any engagement with you—or you with it—on what that actually means and how it should be delivered in training. Has there been such engagement? If not, would you be prepared to engage in that respect?

**Professor Miller:** There has been very constructive engagement between the SNAP process and Police Scotland, which, as the publication notes, committed itself to a programme

of further embedding human rights in the culture and accountability of the police. There is a specific commitment to develop human rights training for police officers to put flesh on the bones of the oath that, as you said, is now being taken. As Shelagh McCall said, that will be one of the early and easily measurable indicators of progress. It will show whether or how the training is implemented and what difference it is making to the culture that we want to see and which Police Scotland has said it is committed to developing through SNAP. There has therefore been very constructive engagement to date and, as I said, that will be one of the early and measurable indicators of progress for SNAP.

**John Finnie:** Thank you very much.

**Margaret Mitchell (Central Scotland) (Con):** Good morning. There was quite an emphasis in your opening remarks, Professor Miller, on collaborative work and the evidence base. However, what legal status does SNAP have? How can it ensure that public bodies are actually adhering to it?

**Professor Miller:** Those are searching questions. The legal status is there, but it is not as full as it should be. There is a legal duty on all public authorities to comply with the Human Rights Act 1998 and the Scotland Act 1998, and Parliament is one of those bodies. However, SNAP is introducing not just the rights in the European convention but the broader rights that we all need in order to live a life of dignity, such as the right to an adequate standard of living, adequate housing and the highest attainable standard of health, and the rights of children, disabled people and women. Those make up the set of international human rights that the UK has recognised, although it has not given all of them the status that has been given to the rights in the European convention.

One of the innovation forums that will be held later this year will examine and take stock of what Scotland and the UK have done in incorporating that broader range of duties. It will consider what would be the benefits of incorporating further treaties that are seen internationally as being necessary and are recommended by the UN, the experience of other countries that have done that or are thinking of doing it, and therefore the best way to proceed in Scotland, no matter the outcome of the referendum. That will be one of the early innovation forums. It will begin to look more broadly at giving the proper status to all internationally recognised human rights, which would lead to better outcomes and benefit for people, especially the most marginalised.

**Margaret Mitchell:** You mentioned the Scottish Parliament. How can the Parliament ensure that, with a majority, the Government is accountable for

legislation? In particular, how can we ensure that we achieve priority 6, which is to

“Enhance respect, protection and fulfilment of human rights to achieve justice and safety for all”?

You emphasised that we are falling down badly on outcomes. How can issues such as court closures, police counter closures, corroboration and the introduction of criminal legal aid contributions be looked at in a human rights forum?

**The Convener:** To clarify, in the first eight years of the Parliament, there was also a majority Government under a coalition, and there was a period of only four years when we had minority government. Unfortunately—or fortunately, as the case may be—we have had about 10 years of majority government. I want to put that on the record, because people forget that we had majority government for eight years previously.

**Margaret Mitchell:** The point is that we have majority government with no checks and balances. To an extent, coalition provided a check or balance.

**The Convener:** With respect, I was here for those eight years and I remember practically never getting a single amendment through. In fairness to whoever is in power, that was the position historically.

**Sandra White:** Convener, can I—

**The Convener:** I want to move on, because I have made the point that we had eight years of majority government previously.

**Sandra White:** I think that I have raised this point before, when Jenny Marra was a member of the committee. No matter what party members are in, we all believe in human rights. I am not here to talk about just the Government’s position. There is a cross-party approach. I do not accept those comments from a member of a party that introduced the bedroom tax and benefit cuts.

**The Convener:** Now, now. Jackets off. You see what you have done, Professor Miller. I do not know how to get a balance of human rights in here.

Please proceed, Professor.

**Professor Miller:** To pick up on the point that Margaret Mitchell made, at the outset, the public wanted the Parliament to be as big as it could be and to be above partisanship and look towards the public interest and benefit. As we have said, part of that is about looking at the broad international human rights duties that are placed on Parliaments and Governments through treaties that have been signed internationally. As Sandra White says, if that bigger set of values is given more prominence in the deliberations of Parliament and Government, it is more likely that

those values will be applied in legislation and policy. Human rights play a part in the Parliament accepting its bigger responsibility to the public and to improve outcomes.

As for Margaret Mitchell’s interesting and lively point about majorities and minorities, the commission was very pleased with the Justice Committee’s majority view on the issue of corroboration in the Criminal Justice (Scotland) Bill. It certainly set an example. Whether you agree or disagree with its decision, the committee took a lot of evidence and came to a view that did not reflect the parliamentary majority. That in itself showed that the committee was considering bigger responsibilities, and that was welcome.

**Margaret Mitchell:** I will go back to John Finnie’s comment about a hierarchy of human rights. Can you say something not about the hierarchy of rights but about competition between rights—for example, the right to private and family life, the right to access to justice and the right to an effective remedy? We might be straying a bit into reserved matters, and this could perhaps be considered under SNAP, but how might you judge and tackle huge live problems—for example, when a married person who has committed an horrendous crime and is up for extradition claims the right to family life?

**Shelagh McCall:** I agree with Alan Miller that it is not right to think about a hierarchy of rights. I will confine us for the moment to convention rights, such as the ones to which Margaret Mitchell referred. I suspect that the committee well knows that some of those rights are absolute rights that have to be respected, while others are what are described as qualified rights. In other words, they might be rights but the state can interfere with them in certain circumstances. Under article 6 of the ECHR, access to justice with a fair hearing and a fair trial is an absolute right—there is no equivocation about that.

On the other hand, the right to private and family life is a qualified right, which means that the state is permitted to interfere with that right provided that such interference is necessary, seeks to address a pressing social need and is done proportionately. We are talking about the smallest measure that is necessary in order to achieve a legitimate purpose. In the example that Margaret Mitchell highlighted and the sorts of extradition cases that she described, that legitimate purpose would be the investigation and prevention of crime.

When qualified rights compete with each other—going back to the equal marriage debate, one thinks of the right to private and family life and the right to freedom of expression—Parliament must strive to fulfil everyone’s rights. However, where a balance needs to be struck, it needs to

apply the test of necessity and proportionality and to think about the purpose of what it is doing in order to strike that balance. Such questions are not easy.

**Margaret Mitchell:** That was very helpful. I certainly hope that my proposed apologies (Scotland) bill can be progressed a little further because I think that it has huge potential in terms of the human rights of survivors of historic abuse, and other people.

**The Convener:** I prefer to think of a balance, rather than a hierarchy, of human rights—apart, of course, from the absolute rights under ECHR that have been mentioned.

Before the meeting, we had an interesting discussion about the Regulation of Investigatory Powers (Scotland) Act 2000, which contains provisions on intrusive and covert surveillance. The committee might well be interested in pursuing what is a quite cloudy area in which individual rights of freedom of expression, freedom of movement and so on are balanced against the interests of the state. However, it is quite difficult for parliamentarians to get underneath all that to find out how that balance is operating and whether, in fact, the balance is right. I wanted to let you know that we had that discussion and that the entire committee is interested in looking at the matter—subject, of course, to the other items on our work programme.

Roderick Campbell has not asked a question yet.

**Roderick Campbell:** Towards the end of his introductory remarks, Professor Miller mentioned monitoring international human rights recommendations. Can you add a bit of flesh to that and tell us what we as a Parliament can do to be more aware of what is going on in the international environment?

11:30

**Professor Miller:** Two years ago, a conference agreed the Belgrade principles on Parliaments and national human rights institutions, and human rights more generally. It made it clear that a Parliament has a shared responsibility in promotion and protection of human rights. That is partly about holding its Government to account for how it executes the judgments of courts, such as the European Court of Human Rights, and for how it responds to recommendations from United Nations treaty committees that are considering how treaty obligations are being implemented in countries around the world.

Parliament, in and of itself, also has a responsibility to ensure, when it considers legislation or considers introducing legislation, that

the legislation is compliant with the international framework. It must also hold the Government to account for how it is implementing its obligations under international human rights law. Parliament and the national human rights institution are the natural partners in raising the standard of scrutiny of implementation of international human rights recommendations.

Later this year, under the universal periodic review—the UN looks every four years at all the treaties comprehensively—Scotland and the UK will take stock mid-term of how the recommendations are being applied. In 2016, a full report on that must be given to the UN. SNAP will be very important to Scotland's ability to report on progress and to be held to account constructively internationally for what progress it is making and whether it is enough.

**Roderick Campbell:** What do you foresee as being the likely outcome of the mid-term universal period review this year?

**Professor Miller:** From Scotland's point of view, there is a real opportunity to demonstrate its commitment through implementing the national action plan, which is based on the recommendations that came out of the previous universal periodic review. If Scotland seriously implements the plan, it will put itself in a very good position and will be able to hold its head up high in the UK and internationally, and to show that it is seriously engaging and has set the right direction of travel for implementing its international responsibilities.

**Roderick Campbell:** Will there be any negatives from the review, as far as Scotland is concerned?

**Professor Miller:** That will depend on what is done. The areas that will be looked at will include the age of criminal responsibility, which has attracted attention previously. More broadly, the UK—and therefore Scotland—will again be held to account for not implementing and incorporating international human rights obligations. That is a historical request that has been made of the UK, which will continue to be made until a change is made. The innovation forum—in which Scotland could look at the merits, benefits and mechanics of doing that—would be a very significant step forward and would be well received by the UN.

**Alison McInnes (North East Scotland) (LD):** I will follow on from Roderick Campbell's question. You said that we need to get better at listening to international voices and that Cadder happened because we were stone deaf to what was being said to us. What is the next Cadder? Is it justifiable assault? Have we been deaf to comments on that until now and is it something on which we need to take urgent action?

**Shelagh McCall:** As Alan Miller said, the existence of a justifiable assault defence in relation to violence against children has historically been mentioned repeatedly by international bodies, including the committee that looks at the UN Convention on the Rights of the Child. It would be wise to pay attention to issues that recur—sometimes across a number of treaty bodies in the UN—and to start to tackle them rather than to be reactive, as happened with Cadder.

**Alison McInnes:** As Parliament starts to mature—Parliament is going through a reform process—what sort of mechanisms should we set up so that we can look actively at such matters? Does Parliament need to develop a formal process?

**Professor Miller:** Parliament can engage more constructively with the international human rights system simply through becoming more aware of how it works and of its share of the responsibilities. That can best be done through a relationship between the national human rights institution and Parliament. You established the national human rights institution to be the bridge between the international human rights system and the domestic situation.

We will make reports—as we do—to the UN about how Scotland is or is not implementing its obligations. The UN will respond to that, listen to what the UK Government and the Scottish Government say, then make recommendations. Parliament might then charge itself with looking at those recommendations and might decide that there are learnings. If it does that and asks what Parliament's share is of the responsibility, what we expect our Government to do, and how we can work with the national human rights institution to measure progress and set the direction of travel, everyone will have a part to play. If we accept that, it will be much less likely that cases such as Cadder will happen in the future.

**Alison McInnes:** That is helpful. You explained that the development of the national action plan was quite a long process and you were at pains to tell us how inclusive it was. You engaged with Police Scotland and you said that Police Scotland said that it will take steps to embed human rights further. Given its involvement and the growing awareness of human rights, does it surprise you that stop and search was being rolled out across Scotland at the same time, which has raised questions about legality and proportionality? It seems that two opposing things are happening.

**Professor Miller:** Yes—and I do not think that the two are unrelated. One would expect Police Scotland to embed human rights and accountability in its culture while at the same time training its officers on how to discharge the extensive powers that we quite rightly give them—

albeit with expectations that those powers will be discharged in compliance with the rights of the people whom they are policing.

Shelagh McCall and I have talked quite a bit about proportionality. That is not just a necessary tool for policy makers or lawmakers to try to reconcile competing rights; it is also a tool for police officers, who have a very difficult job. On the one hand, we want them to take away people's rights when that is necessary, but on the other, we want them to respect human rights. I am not minimising the challenge that police officers have in protecting and promoting human rights; it is what they have to do. The greater the operational understanding of proportionality, the more one would expect that stop and search would reflect increased understanding of proportionality. Is it proportionate to stop someone in the street when there are no reasonable grounds to suspect that a crime has been committed, and to seek their consent—perhaps the person may not be in a position to give consent—for their being searched? It is one of the areas in which there is no wall between improving the police's—and all public bodies'—operational understanding of human rights and the commitments to SNAP, and measuring what the outcomes might be.

**Alison McInnes:** My final question is about the action group. What level of buy-in do you have to the action group and how empowered are the people in it to go back to their local authorities or public bodies and make that best practice happen? There are a lot of groups around and a lot of talking shops. How do you make the group work as an action group, rather than a discussion group?

**Professor Miller:** That is the challenge; you, we and everyone else will judge progress. SNAP is trying to be different from other traditional action plans, which are often anticlimactic.

The human rights action groups and the leadership panel will ensure that the people whom we call rights holders—the people who are most disadvantaged and marginalised—are at the table, and that they constantly bring to the attention of decision and policy makers their living experience and ask why the rights that they know that they have are not being respected and fulfilled. Let us act together to ensure that we all understand how that can best be done. We are the test of effectiveness.

Instead of having a process that separates those who make laws and policies from people out in the communities, those people are being brought into the process of constructive accountability and independent monitoring. A measure of SNAP's success so far is the fact that we have been able to agree an action plan on

historic child abuse through that process. We want SNAP to write that large.

**John Finnie:** The convener mentioned the Regulation of Investigatory Powers (Scotland) Act 2000. There is to be a Scottish Government consultation on the revised codes of practice under RIPSAs. My question is twofold. Will you be responding to the consultation? Before the meeting, we had a private briefing in which we learned some interesting facts. For example, we heard about the term “collateral intrusion”. Is there such a thing as community rights? I hope that, as the convener said, the topic is one on which we can follow through, because it involves a range of issues. It will be challenging for us to pick up on all the agencies—particularly the UK agencies that deal with reserved matters—that might be using or abusing the powers. Will you comment on community rights, if there is such a thing?

**Shelagh McCall:** On the first question, we are aware of the consultation and the draft codes of practice that have been circulated. We will submit a response in due course but—as John Finnie and the convener have identified—we are talking about a highly complex area of interrelated rights and responsibilities.

The phrase “collateral intrusion” is familiar to people who operate in the RIPSAs system and to those who encounter it. I am not sure that thinking about the issue from the point of view of community rights is the only way to contemplate it, because collateral intrusion refers to people who are caught in surveillance but who are not the target of it. All those people have individual rights to privacy and so on. Although one might think generically of the community—that is an interesting way to think about the issue—underlying the community is a group of individuals with individual rights that must be respected. That is another way of looking at the matter.

**John Finnie:** Thank you very much.

**The Convener:** We have concluded our questions. Thank you very much for your evidence.

We will break until 11.50, when we will move to the next item.

11:43

*Meeting suspended.*

11:49

*On resuming—*

## Petitions

### Fatal Accident Inquiries (PE1280)

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

**The Convener:** Right. Thank you very much, everyone. You have had your little break.

Agenda item 4 is consideration of seven open petitions. I will go through each in turn as they appear in committee paper 3.

We have previously agreed to await primary legislation in respect of PE1280, on fatal accident inquiries, and PE1427, on multiparty actions. The Cabinet Secretary for Justice has said that he will bring forward legislation on fatal accident inquiries in this parliamentary session, and the Scottish Government intends to address multiparty actions in its response to the Taylor review.

Are members content to note the current status of the two petitions and keep them open?

**Elaine Murray:** I note that the committee last considered the petitions on 25 September 2012. Have we had any indication from the Scottish Government of timescales for the legislation?

**The Convener:** I seem to recall that we asked the cabinet secretary about that during proceedings on a bill. The Government has said that there will be legislation in this session, so obviously it will have to be done within a timescale that will allow the legislation to be enacted, which would be about 18 months at the most.

**Roderick Campbell:** That is not necessarily the case in relation to PE1427, because we do not have a Scottish Government response to the Taylor review.

**The Convener:** Right. Do we wish just to ask the Scottish Government to note our continuing interest in the petitions and to give us an update?

**Elaine Murray:** Yes.

**The Convener:** Does everybody agree?

**Members** *indicated agreement.*

### Victims of Crime (Support and Assistance) (PE1403)

**The Convener:** We previously agreed to consider PE1403, on support and assistance for victims of crime, as part of our consideration of the Victims and Witnesses (Scotland) Bill. Of course,

the bill has now been enacted. Are members therefore content to close PE1403?

**Members indicated agreement.**

### **Corroboration (PE1436)**

**The Convener:** Again, we agreed to consider PE1436, on retrospective abolition of the requirement for corroboration, as part of our consideration of the Criminal Justice (Scotland) Bill. In our stage 1 report on the bill, which is now published, we agreed that if the corroboration requirement is abolished, it should not apply retrospectively. Given that both the Government and the committee have taken a position on the matter, are members content to close PE1436?

**Members indicated agreement.**

### **Administrative Justice (PE1449)**

**The Convener:** PE1449 is on a Scottish council for administrative justice. The Scottish Government has established an interim advisory committee on administrative justice and will assess how it works over the next two years. We have received further correspondence from the petitioners, which is at annex C of paper 3, expressing concerns about the composition of the advisory committee and broader concerns about administrative justice. Can I have members' comments on whether they wish to keep the petition open to see how things work out with the advisory committee or want to close it on the basis that the Scottish Government is assessing the matter?

**Roderick Campbell:** I would keep it open for the time being. We still seem to be accumulating information on what is happening and the Tribunals (Scotland) Bill is still making its way through Parliament, so in my view the issue in the petition is still live.

**The Convener:** Does anyone dissent from that view? Is it agreed that we keep the petition open?

**Members indicated agreement.**

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

**The Convener:** PE1479 relates to the time bar for submitting complaints about solicitors. The Scottish Legal Complaints Commission has indicated that it intends to undertake a consultation on all its rules, including the time bar, early this year and has offered to consult the petitioner and any other groups suggested by the committee as part of that. Can I have members' comments on whether they want to keep the petition open or would be happy to close it on the basis that the petitioners could be directly consulted as part of the SLCC consultation?

I could see you revving up there, Alison.

**Alison McInnes:** I would prefer that we keep the petition open. I do not think that we have thoroughly addressed the issues that have been raised. I note that the SLCC says that it will consult, but I would prefer that we keep the petition open until we are absolutely sure that it has properly taken on board the concerns that are expressed in the petition. I would be keen to encourage the SLCC to consult more widely than just with those that it has said it will draw into its consultation.

**Margaret Mitchell:** I concur with Alison McInnes's view. I think that it is worth keeping an eye on the issue, so we should keep the petition open.

**The Convener:** I have no issue with that; I think that it is perfectly reasonable.

So, do we agree to keep the petition open?

**Members indicated agreement.**

### **Justice for Megrahi (PE1370)**

**The Convener:** PE1370 calls for an inquiry into the Megrahi conviction. As members know, the Scottish Government has no plans to undertake an inquiry into that conviction. Since our last consideration of the petition, we have received further correspondence from the petitioners and from Police Scotland. Members also now have a copy of a letter from Police Scotland to Mr Robert Forrester, dated this Monday.

Can I have your comments on how we take the petition forward and on whether you wish to close it? John Finnie is first, but I would like to come in on the issue later as well.

**John Finnie:** As you have rightly said, convener, paragraph 31 in the papers available for public consumption makes it clear that the Scottish Government has no plans to instigate an inquiry. I would find it unfortunate if that remained the position, not least because it pre-empts some of the other matters that I am going to allude to.

I should say that the Justice for Megrahi committee has very generously given our committee some credit for the Scottish Government finally admitting that it actually had powers and a remit under the Inquiries Act 2005, after saying for 18 months that it did not. There is certainly a wide range of issues to examine around that particular aspect.

On the nine allegations that the Justice for Megrahi committee has subsequently made, I point out that they are allegations of serious criminality in what was a mass murder case. We know from the paper that has been circulated the various stages that the allegations have gone



through. Three of the issues are frozen, and it is a matter of considerable concern that the Justice for Megrahi committee received no update from Dumfries and Galloway Constabulary, which continues as the Dumfries and Galloway division of Police Scotland. We know—because, convener, you were directly involved in writing the letter—that Deputy Chief Constable Pat Shearer undertook to get back to us in a matter of weeks. We were told that in, I think, September 2013, but the same gentleman retired in October. Key to all of this is the role of the senior investigating officer—indeed, they play a pivotal role in any criminal inquiry—and Mr Shearer was the senior investigating officer in this case.

Convener, the letter that you have alluded to, which was sent by Detective Superintendent Johnstone to Mr Forrester and which, with incredible timing, arrived the day before this committee meeting, intimates that “from this point forward”—the letter is dated 17 February—Mr Johnstone is to be the senior investigating officer. That raises some very legitimate questions. Who, for instance, was the senior investigating officer between Mr Shearer’s departure and Mr Johnstone’s announcement yesterday of his own appointment to the role? Indeed, was anyone acting in that role? In some respects, we could be very reassured by Mr Johnstone’s comment in the letter that the matters

“will be resolved before the end of March”,

but it is strange that he is unable to say how many officers are employed on the inquiry.

All of this adds up to an extremely dismissive approach by the authorities to the Justice for Megrahi committee—and by default, I would suggest, to our committee, which plays an important oversight role. The timing of the letter is entirely cynical. What we have seen is procrastination and obstruction, and whose interests are served by that? We know that Police Scotland undertakes criminal inquiries at the behest of the Crown Office and Procurator Fiscal Service, and I have to say that, given the nature of the matters under discussion, I cannot see it injecting any urgency into this inquiry.

It is questionable whose interests are being served here. In any case, our obligation is to ensure that the public interest is served, and I have to say that some young man under a breach of the peace charge might well wonder what sort of treatment he would receive from both authorities if such a high-profile mass murder case can result in this kind of response to the legitimate concerns that have been raised—reluctantly, in the case of the criminal ones. We must ensure that there is confidence in the criminal justice system—from those charged with investigating crimes to those charged with prosecuting them.

The issue demands political oversight and I think that this body should be carrying that out. For those reasons—and I await Mr Johnstone’s update with great interest—we should keep the petition open.

**The Convener:** I am very cross about this. Mr Finnie calls it procrastination and obstruction; I call it kicking it into the long grass. If there is any strategy with regard to the whole Megrahi issue, it seems to be to kick things into the long grass, wear people out and hope that those who are pursuing the issue fall off their perches and that the matter goes away.

I am angry on behalf of the committee because, as Mr Finnie has pointed out, I said on 24 September that according to a letter from Police Scotland it would be a matter of weeks before we would be able to confirm that the investigation had commenced fully.

On 4 November, we got a letter—which John Finnie mentioned—in which I was told that Deputy Chief Constable Shearer had retired from Police Scotland, but that the matters would not take a long time to resolve and that the timeframe

“is assessed as still being in weeks rather than months.”

As I say, that letter was written in November.

Such is the urgency with which the matter is being dealt that Mr Forrester received a letter only on Monday—it has just arrived on our desks today—telling him that there have been

“recent developments in the live investigation”

and that we are now into March.

12:00

On top of that—this is extraordinary—the letter says:

“With regards to your requests to know how many officers are currently working on the enquiry and to know what stage the enquiry is. I am unable to provide you with definitive update in relation to these questions as they are currently being reviewed by myself”.

How long does it take to find out how many officers are working on an inquiry and the stage that that inquiry is at? That should not take until the end of March, unless Detective Superintendent Stuart Johnstone has a very busy workload.

I agree with John Finnie—I see obfuscation here. We should just write directly to the chief constable and ask him how many people are working on the inquiry and what the position is with regard to the other inquiry, and we should say that we require an answer in seven or 10 days or whatever deadline the committee wants to name. It is time that we went to the top of the tree. The situation is nonsense.

I do not know whether other committee members—whether or not they are sympathetic to the Megrahi petition—feel the same way. I see the clerk waving at me. The situation is contemptuous of the committee. We are told that the matter will take weeks, then months, which then becomes, “I dinnae ken, I’ve just got on the job.” It is not good enough.

**Sandra White:** I declare an interest in that I was on the Public Petitions Committee when we referred the petition to the Justice Committee. I have a great deal of sympathy with the situation. I, too, want an update and clarification. The petition urges the Scottish Government to instigate an inquiry into Mr al-Megrahi’s conviction. We seem to have moved away from that and more on to an investigation of how the police in Dumfries and Galloway are dealing with the matter. I am a wee bit concerned about that and I want an update—

**The Convener:** The committee has agreed to write the letters.

**Sandra White:** I just want a wee bit of clarification. We are moving away from the petition’s original terms. I also was not too happy with the petitioners’ submission. It says:

“We are most disappointed in the apparently dismissive approach being adopted by D&G”—

I assume that that refers to Dumfries and Galloway—

“to our allegations and, by dint of the last consideration of PE1370, the Justice Committee itself.”

What do the petitioners mean by that? I have declared my support for getting something done with the petition.

In addition, it was mentioned that the family of Mr Abdel Basset Ali al-Megrahi is looking to take the matter to the Scottish Criminal Cases Review Commission. Is that true or is that just speculation from the press? Can we have an update on the position? Those are the questions that I want to ask.

**The Convener:** First, I cannot answer them; I am not giving evidence.

**Sandra White:** I am sure that the clerks could look into that.

**The Convener:** I appreciate your point that the petition called for an inquiry. However, we wrote letters asking for clarification. I am concerned that—

**Sandra White:** How is that helping to progress the petition?

**The Convener:** Bear with me for a minute. When the Justice Committee writes to request an answer, it is told that the matter will be resolved in weeks. We then get back a letter saying that the

police need to push the matter a wee bit further, but that that will still take only a matter of weeks. However, we end up, on the day that the committee is sitting, with a letter telling us that the issue will be resolved in March. I am concerned that if the Justice Committee is being treated in that rather off-hand fashion by Dumfries and Galloway, goodness knows what is happening elsewhere.

I see John Finnie frowning at me.

**John Finnie:** There is no such entity as Dumfries and Galloway.

**The Convener:** It was once called the Dumfries and Galloway Constabulary.

**John Finnie:** On 1 April last year, things moved on, and the matter should have been picked up.

To pick up on Sandra White’s point, I used the term “pre-empt” because the petition is an opportunity to look beyond what has been examined to date. One would almost understand if there were an enthusiasm on the part of the Crown Office and Procurator Fiscal Service or Police Scotland to thoroughly examine the accusations that have been made of serious criminality and to put the issue to bed, but they are not even doing that. It is in that way that we are being treated with contempt.

Of course, were any of those accusations to be founded, that would most certainly be a matter of grave concern to the Scottish Government. That is why I say that the Government is pre-empting the inquiry issue, and why we should keep the petition live.

**Roderick Campbell:** My recollection of the history of the petition in the Justice Committee is that concerns were expressed—certainly by me and, as I recall, by others—that we should not take a definitive view on the petition while there is the possibility of a further review of Mr Megrahi’s conviction. Obviously, Mr Megrahi has died and, as Sandra White referred to, we have media speculation about whether his immediate family plan a further reference to the Scottish Criminal Cases Review Commission. I would have thought that we could make inquiries rather than rely on such speculation. We should leave it to the Scottish Criminal Cases Review Commission to determine whether it is prepared to provide us with that information. That is one relevant factor.

The other relevant factor that came in later in the day was the question of further inquiries into allegations of criminality by what was Dumfries and Galloway Constabulary and is now Police Scotland. That remains the position. I do not disagree with what the convener and John Finnie have said about Police Scotland’s attitude, as demonstrated by the correspondence, but we

need to put the issue in perspective and consider it in the round.

**The Convener:** What would your position be, therefore?

**Roderick Campbell:** I certainly think that we should make inquiries of the Scottish Criminal Cases Review Commission to keep the petition open for the time being, and obviously to express what discontent we can about the manner in which Police Scotland has dealt with the issue.

**The Convener:** Should we do that to the chief constable?

**Roderick Campbell:** If you want to write to the chief constable, I do not have a problem with that.

**Sandra White:** I declared my interest, and I do not want to stymie anything, but we seem to have gone off track. I agree with Rod Campbell that we should try to find out what is happening.

**The Convener:** That is one part, but the second part is the way that the committee has been treated. We had correspondence to try to find out what is happening with the other inquiry. We were told that it would take weeks, then months and we now find that it is five and a half months. We have received a letter on the day that we are meeting. In fact, we have received it only because we are meeting. It is no accident that Justice for Megrahi received the letter in time for today's meeting.

**Margaret Mitchell:** To clarify, the petition asks the Parliament to urge the Scottish Government to instigate an inquiry into Mr Megrahi's conviction. My understanding is that the Scottish Government has indicated that it has no plans to do so and has in fact suggested that it would be better if a review of the conviction was carried out in the appeal court. Whether the family chooses to begin that process is a different issue. I share Sandra White's view that we seem to be going off track in considering how Dumfries and Galloway Constabulary or Police Scotland has replied to the committee. Might that particular aspect be referred to the Justice Sub-Committee on Policing? We could then close the petition today, because the Scottish Government has said categorically that it has no plans for a review.

**The Convener:** I do not think that it would be competent to send the issue to the sub-committee, because its remit is to deal with the operation of police provisions in the Police and Fire Reform (Scotland) Act 2012.

**Margaret Mitchell:** Is the issue of how the police handle complaints not relevant to the sub-committee?

**The Convener:** That would be a general issue, but we are dealing with a specific issue.

**Margaret Mitchell:** We could use the issue as an example.

**The Convener:** I do not think that the committee would be happy for the issue to go to the sub-committee, and I do not think that it would be competent to do that.

**John Finnie:** My understanding is that Justice for Megrahi does not see any role for itself in the appeal to the Scottish Criminal Cases Review Commission.

I will say again why I think that we should keep the petition open. Regardless of what members think of the individual merits of the petition, since it was introduced significant criminal allegations have been made. If any of them prove to be founded, they would add weight to the petition and would result in people in Scotland and, I think, the international community calling for the matter to be looked at. So, regardless of what members think of the merits of the petition, it seems completely inappropriate to sist proceedings when there is an on-going criminal inquiry.

**Christian Allard:** I concur with the convener about the sub-committee—I am not keen for the issue to go to it. I want to know what has happened and I want to have the answer from Police Scotland. I am quite happy to keep the petition open, but perhaps we should not try to second-guess what will happen.

**The Convener:** I suggest that one of the first things that we must do—this is for the committee to consider—is to write to a member of the family to ask them to clarify once and for all whether they intend to make further application to the SCCRC—I see that John Finnie disagrees. Why should we not do that?

**John Finnie:** Where is the locus for the Justice Committee in that? It clouds the issue—

**The Convener:** It would clarify and get that point out of the way. One of the questions that has been asked is why the family is not doing that.

**John Finnie:** I am not sure how that relates to the petition.

**The Convener:** It would park any inquiry, because if an application is made to the SCCRC there is a prospect of the case returning to the appeal court and the whole thing being opened up again. I was asked what the position of the family is, which is why I made the suggestion.

**Roderick Campbell:** The Scottish Government's position, as I understand it, is that a review of the conviction would be best undertaken through an application to appeal in the courts. In effect, only Megrahi's family can pursue that.

**The Convener:** So why do we not write and find out, once and for all?

**Roderick Campbell:** I am quite happy—we should try to avoid media speculation and see whether the Scottish Criminal Cases Review Commission will say whether it has received an application.

**The Convener:** Do you want me to write to the SCCRC to ask whether it has received an application or any inquiry about an application? We can make it as broad as that.

**Members** *indicated agreement.*

**The Convener:** Right. That is the first thing. Secondly, on the correspondence with Police Scotland, do you want me to write a rather stern letter to the chief constable about the time that it took to provide information—and not even to us—that we were told would be provided in a matter of weeks? We have not had that information. I can see that Alison McInnes is shaking her head in agreement, but Sandra White is not—

**Sandra White:** I am not shaking my head in any way at all. Yes, okay, we can write. The point that I wanted to make is that we have gone off the whole issue of the petition—

**The Convener:** Yes, we have done, but as the Government keeps telling us, we are where we are, and given that we wrote and asked for information, I think that we are entitled to ask for a straight answer within a proper timescale, instead of having the issue constantly pushed to one side. A response would be published and the petitioners would know about it, and the matter would be closed.

**Elaine Murray:** I do not disagree with the suggestion that we write to Police Scotland, but we should maybe make it clear that Pat Shearer got involved once he stopped being chief constable of Dumfries and Galloway Constabulary and transferred to Police Scotland, so it is not D and G Constabulary—

**The Convener:** I understand that; that was a slip.

**Elaine Murray:** The other point is that Sandra White and Margaret Mitchell are right about the terms of the petition. The petition calls on us to persuade the Scottish Government to conduct an inquiry, and the Scottish Government has said that it does not think that that is appropriate. We might want to do other things, but Sandra is right about the petition.

**The Convener:** I am being told that it is entirely up to us whether to be flexible on a petition or to keep to its narrow remit.

For the time being, we want to clarify whether an application or inquiry about an application to the SCCRC for appeal has been made by any member of the Megrahi family or anyone with an

interest—in legal terms. Secondly, we will write to the chief constable to express our anger—I am angry; members might be cross rather than angry—that we did not even get a response and that the response went to Justice for Megrahi, despite our being told that we would hear within weeks or months. These are clarifications of fact. Are members content?

**Margaret Mitchell:** Is the purpose of writing to the Megrahi family that if they are not pursuing an appeal we would come back and ask the Government—

**The Convener:** We are not writing to them; we are writing to the SCCRC, and it would not just be—

**Margaret Mitchell:** We have moved some considerable way off the petition. Notwithstanding your very deep interest in the matter, convener, which I understand, we have a huge workload and this is the second time that we have looked at the issue. What you are suggesting does not meet the terms of the petition. I am inclined to say that we should close the petition today, because we are going off at a tangent.

**The Convener:** Margaret Mitchell wants to close the petition. Who else wants to close it?

**Sandra White:** We should look at the recommendation that we write to the SCCRC. After that—

**The Convener:** So the committee does not want to close the petition. I am proposing that we find out two facts. Is any application or intimation of an application being made to the SCCRC? How many policemen are working on the issue and what is its status? Those are just facts.

**Margaret Mitchell:** Is not that relevant only if we think that the Government is going to change its mind?

**The Convener:** As I said, it is entirely up to the committee whether we want to keep within the strict limits of a petition to the Parliament or to expand our consideration. Quite often, petitioners bring a petition and do not realise that they are fencing themselves in. I am not taking a view on that; this is not because I have a personal interest—what I am talking about can happen in any event.

Can we settle on writing to the SCCRC and the chief constable? I thought that we had agreed to do that.

12:15

**John Finnie:** I certainly agree with both proposals. On Margaret Mitchell's point, I ask whose interests would be served by our closing the petition. At best, there has been very loose

administration of the process—a process that would inform the position of this committee and the Scottish Government with regard to an inquiry, on the back of nine serious criminal accusations.

Let us go back to my laddie who is charged with breach of the peace. In as high profile a case as this one, if we cannot be seen to be ensuring that the authorities act appropriately and, at the very least, with basic courtesy, by getting back to people, what does that say for the prospects of other people, particularly against the background of the potential removal of the requirement for corroboration?

**The Convener:** If I may, let us move on. I do not want to have a discussion about closing the petition, because, with the exception of one person, committee members have not said that they want to close it. The petition is still open. We have agreed to write to the SCCRC and Police Scotland's chief constable. Can we stop at that, or are there other issues? Those are the two factual things that we are going to find out.

**Christian Allard:** I agree with Margaret Mitchell that once we have received answers from the two bodies—

**The Convener:** That will be a discussion for another time.

**Christian Allard:** We will then discuss whether to close the petition.

**Roderick Campbell:** I am basically happy with that. I am not speaking for the Government, but I think that its position is that if there is the possibility of any kind of criminal appeal proceeding it would be inappropriate for an inquiry to take place.

**The Convener:** Of course it would; we know that. We have decided to find out two factual things and to keep further discussion for another day. We do not need a discussion about the whole thing now.

We move into private session for agenda item 5.

12:16

*Meeting continued in private until 12:41.*



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