



OFFICIAL REPORT
AITHISG OIFIGEIL

DRAFT

Justice Committee

Tuesday 27 March 2018

Session 5



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Tuesday 27 March 2018

CONTENTS

	Col.
DECISION ON TAKING BUSINESS IN PRIVATE	1
REMAND	2
PETITIONS	28
Justice for Megrahi (PE1370)	28
Inverness Fire Service Control Room (PE1511)	35
Private Criminal Prosecutions (PE1633)	36

JUSTICE COMMITTEE
11th Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

*George Adam (Paisley) (SNP)
*Maurice Corry (West Scotland) (Con)
*John Finnie (Highlands and Islands) (Green)
*Mairi Gougeon (Angus North and Mearns) (SNP)
*Daniel Johnson (Edinburgh Southern) (Lab)
*Liam Kerr (North East Scotland) (Con)
*Fulton MacGregor (Coatbridge and Chryston) (SNP)
*Ben Macpherson (Edinburgh Northern and Leith) (SNP)
*Liam McArthur (Orkney Islands) (LD)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Kirstin Abercrombie (Turning Point Scotland)
Kathryn Baker (Tayside Council on Alcohol)
Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)
Rhona Hunter (Circle Scotland)
Fiona Mackinnon (Shine Women's Mentoring Service)
Alan Staff (Apex Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 27 March 2018

[The Convener opened the meeting at 10:02]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the 11th meeting in 2018 of the Justice Committee. We have received no apologies. Agenda item 1 is a decision on taking in private item 4, which is consideration of our forward work programme. Are we agreed to take item 4 in private?

Members *indicated agreement.*

Remand

10:03

The Convener: Agenda item 2 is an evidence session on remand, which is our fifth of this year. The main focus today is on the role of the third sector in providing and supporting alternatives to remand; the availability and benefits of alternatives to remand; and existing examples of good practice. I refer members to paper 1, which is a note by the clerk, and to paper 2, which is a private paper.

I welcome Alan Staff, the chief executive of Apex Scotland; Rhona Hunter, the chief executive of Circle Scotland; Fiona Mackinnon, the partnership manager of the shine women's mentoring service; Kathryn Baker, the chief executive of Tayside Council on Alcohol; and Kirstin Abercrombie, the service manager for Glasgow women's supported bail service at Turning Point Scotland. I thank you all for attending, and I thank particularly Turning Point Scotland for providing a written submission, which the committee always finds very helpful.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, panel. During previous evidence sessions, we have heard concerns about services that are aimed at supporting the use of supervised bail not being available consistently throughout Scotland. Do you share those concerns and can you suggest any action that could be taken to alleviate them?

Alan Staff (Apex Scotland): That is certainly a problem in the sector, which is largely to do with the way in which the services are commissioned. Services tend to be commissioned on a relatively short two or three-year phase, but funding is often annualised, so there is no security to that funding. As a result, the services come and go and people's confidence in them dies off. However good the services might be, people are never sure whether they will still be there next week.

There is a systemic problem in how third sector services are commissioned across Scotland.

Rona Mackay: Did you refer to annual funding?

Alan Staff: Yes. With annualised funding, often we do not know from one year to the next whether the service will be there the following year.

Kirstin Abercrombie (Turning Point Scotland): Even when a service is available, it is not used a lot; that is another issue.

In Glasgow, supervised bail and supported bail are provided by statutory organisations. We do not get a lot of supervised bail referrals. My understanding is that supervised bail is not used

frequently as an alternative to remand; it is more likely to be used as an alternative to straight bail.

Rona Mackay: Is that down to lack of awareness, or is there a consistent practice of not referring and people being stuck in their ways?

Kirstin Abercrombie: It might be. Lack of awareness was certainly one of the issues with supported bail that we had to tackle early on to make sure that sheriffs are aware that there are alternatives. That is a difficult task. The easiest route for us was to go through defence lawyers rather than to go straight to the sheriffs.

Although the provision of supervised bail is patchy from local authority to local authority, it is worth noting that there is a difference in what that service looks like in those authorities. Some have an element of support, which makes them look more like the bail supervision-plus model that Elish Angiolini mentioned in her report, rather than just expecting someone to turn up several times a week to check in with a social worker.

Kathryn Baker (Tayside Council on Alcohol): I cannot comment on the national situation, because my organisation covers the Tayside region. We deliver mentoring services, some of which are used to support bail supervision. In Dundee, we have a court officer. We have a really good relationship with that officer and our sheriffs, which builds confidence in the service.

I completely agree with Alan Staff's point about funding. From year to year, we do not know what our allocation might be from local authorities. We have been lucky, because we have dedicated staff who hang in there with us, but the funding model is an issue when we are trying to retain good-quality, experienced staff and to maintain service continuity.

Fiona Mackinnon (Shine Women's Mentoring Service): In my previous role in a local authority, I was involved in bail supervision; more recently, I have been involved in that area through my role in the shine women's mentoring service for Sacro.

A challenge with short-term funding, which I have heard about from both sides of the fence, is that when a service develops well, we engage with the defence solicitors who are critical in persuading sheriffs that it is a good idea for their client to have bail supervision, we engage with the sheriffs and then the funding goes. Those people lose confidence in us. If the funding continues, they wonder whether they should consider using the service again because they do not know how long it might last for.

Over the past couple of years, my particular interest has been in working with women in the criminal justice system. Women are extremely hard to engage with. Lots of the women whom we

work with consider that they have been let down time and again. If a service exists and then disappears, we will have let them down again; sometimes it is really hard to engage women in the service because they do not see the point of engaging if the service is just going to close down.

With short-term funding, it can feel as though we are fighting lots of different battles. We are battling to keep people on board when things are tough and to continue the referral process. That is a great deal of hard work, and sometimes it feels like hitting your head off a brick wall.

Rhona Hunter (Circle Scotland): I reiterate what my colleagues have said about short-term funding. An established service is needed to build relationships, because establishing relationships with sheriffs and other professionals takes time. There is no opportunity for that to happen with short-term funding. People refer to services that they trust, but that does not always happen with short-term funding because it takes time to build trust.

Rona Mackay: That was very interesting; thank you.

Daniel Johnson (Edinburgh Southern) (Lab): We have a high level of use of remand; if there are alternatives, I am interested in why they might not be used. Kirstin Abercrombie's point was that alternatives are not always used even when they are in place. Is that particular to one area or is that approach more widespread throughout Scotland? We have heard about funding, but if a lack of awareness of the alternatives is the other reason, why might that be the case?

Kathryn Baker: It is important that the alternative to remand is not just bail but a whole strong support package. I do not have a national perspective, but I know that local sheriffs and community justice social workers may use mentoring alongside a bail supervision order to provide support and a link to other services that might be needed to address issues that underlie offending. The women and men in those processes often know that they need to access other community support services but they may have barriers, such as a lack of confidence in getting to appointments or chaotic lives. The folk that we engage with might want to make changes but might not have the wherewithal or capacity to get there. Our mentors in support packages build relationships, engage with people and keep track of their appointments to make sure that people get to where they need to be. The mentors make sure that people remember their appointments—they often have lots of appointments to get to, and keeping track of them can be a difficult challenge.

Fiona Mackinnon: Women who appear in court might be their own barrier to accepting bail

supervision. The reasons are mixed; when I was in court in my previous job, the sheriffs told me that women have asked to go to prison because they feel so hopeless. They feel that there is nothing for them in the community, so sheriffs can feel that there is no alternative to a sentence or to them being remanded in custody. We have a big job in trying to persuade those women that alternatives are available to them.

The issue is also one of resources, so that people are available to try to persuade the women at the times when they are in crisis, which is often when they are in police custody or waiting to appear in court. Persuading women that we can sort out their housing or their health and benefit issues can be a challenge. If we start to work alongside women to do those things, that can make a difference to their lives.

Alan Staff: One issue is why remand is being used in the first place. A lot of the evidence suggests that, for a large majority, the reason is administrative rather than legal. Remand puts people into a nice simple model; if they are in custody, there is confidence that they will return and be back in court when they are supposed to be. The sector has the issue of multiple projects—I have a problem with that—and sentencers may not be confident that they know about the trustworthiness of individual services. The default position, albeit that it is expensive, is to remand.

10:15

Kirstin Abercrombie: We are looking at how we deal with that population in remand who are otherwise likely not to turn up to court for their trial. At the minute, it seems that we are overusing remand and using it as a fail-safe means of getting people to turn up to court. However, there are many other ways in which we can help people to turn up to court.

It is about being more creative in our approach, rather than going straight to remand. That is something that our service does. Even general practice and dental practice surgeries send a text message to remind people before their appointments, so we can start with simple things like that. Giving everyone a taxi to court would be a hell of a lot cheaper than sending everyone to remand.

We are talking about people who have multiple and complex needs, so it is realistic to think that they might struggle to get to court, but that does not mean that we should not help them to get there. We use a sort of proactive and assertive outreach model that encourages the women whom we work with to engage with us in the community in an environment in which they are comfortable. That builds trust, and from there we can look not

only to get them to their court date but to deal with the underlying issues that brought them to court in the first place.

Daniel Johnson: Is the lack of trust fundamentally because of a lack of understanding by sheriffs about how the services work? If so, what can be done about that? Are you aware of any work that is being done on alternative ways of making sure that people show up at court, such as giving them a phone call or sending a text?

Alan Staff: There is a lack of trust, but more commonly it is a lack of knowledge about the particular projects that are around at the time. Things keep changing and the sentencer has to keep in touch with everything that is going on, all the time, which is not easy. It is a matter not just of trust, but of consistency.

Fiona Mackinnon: I do not know whether committee members are aware of the fact—forgive me if you are—that when a person appears in court and they are to return to court, they are just told the date. They are not given a letter and there is no further reminder, unless their defence solicitor reminds them. Often, when women—people—appear in court their lives can be really chaotic; they are anxious, and it is a real challenge for them to hear and memorise the information that they are due back in court on, say, 10 January. Often it is not a conscious choice not to appear in court—they just do not remember. In a previous job, at Kilmarnock sheriff court, we set up a system—I understand that it is still happening—in which the staff would text the women to say, “Remember you have court tomorrow. If you have any problems turning up, let me know.” At the time that I was involved, that simple measure was having real success in getting people to turn up at court.

At shine, when we are working with a woman who is due to appear at court, the mentor will, where possible, be at court when that woman is appearing. The sheriffs appreciate knowing that there is an individual there who is working with a woman who is appearing in front of them, because it means that that woman is engaged in a service. That can be of assistance in helping the sheriff to make a decision that allows the woman to remain in the community and continue to work with shine, as well as any other services. Again, there is a resource issue. At shine, we can do that most of the time for women whom we are engaged with, but not for people we do not know about. We always make it a priority to be in court when a woman we know is appearing there.

Rhona Hunter: I want to talk about the broader issue of imprisoning parents. The impact on children is a huge issue. Children who have four or more adverse childhood experiences are likely to have poorer outcomes, either generally or in their

health and wellbeing. Parental imprisonment is one of those adverse experiences, and in the bigger picture of looking after our children in our society, we need to think about what we do with parents and ask whether remand is the answer. I would question whether it is.

The Convener: Are children's rights and wellbeing impact assessments presented when those decisions are made? That issue was behind the passing of the legislation that covered those assessments.

Rhona Hunter: I am not aware of that happening.

Kathryn Baker: A lot of the women whom our services are involved with do not have children residing with them, because they are with kinship carers. An important part of our work is to think systemically about family systems and families in communities and think outside of the box about their interplay and relationships. Some of our work to support women who are on community-based disposals or bail supervision is to re-engage and build bridges with families and the children. That work is really important, but we cannot do it if the women are remanded or given custodial sentences, as that breaks those relationships. The children are sometimes less visible because they are with foster carers or, quite commonly, are in a kinship-care arrangement in the extended family.

The Convener: Therefore, if a child's impact assessment is presented, it may not cover scenarios in which although a child is in kinship care or foster care, the parent has connections and is trying to establish a relationship.

Kathryn Baker: I cannot comment categorically about children's impact assessments, but children have an absolute need to know their family origin—where they come from and their story. For the women to be able to retain that connection—whether or not their children are going to go back to live with them permanently—is crucially important to the future of those children, the women and the extended family.

Fiona Mackinnon: If a child's impact statement is provided, it is likely that it will be after the person had been in remand, not before. It will be provided when the criminal justice social worker is doing their report and assessment.

The Convener: The next question is from John Finnie.

John Finnie (Highlands and Islands) (Green): Has Community Justice Scotland's coming into being had any impact on your work?

The Convener: I will stop you there. I have jumped the gun, as we have supplementaries from Mairi Gougeon and Liam Kerr that are probably

worth carrying on with. I apologise that I did not notice you.

Mairi Gougeon (Angus North and Mearns) (SNP): Thank you, convener. The new cross-party group on ACEs has quite a few members from the committee, and feeding the justice element into that group is really important. We all have a big interest in it.

You made points about the wider impact on the family, and we have heard them in previous evidence sessions. My question is about the impact on the lives of young people who are placed on remand and put into a prison environment. Have any of the panellists an idea of the scale or the numbers of young people on remand at the moment? That impact is concerning when those people might not go on to receive a custodial sentence or be convicted.

Fiona Mackinnon: I do not know the numbers, but there has been a massive reduction in the number of young people who are remanded and sentenced. The work with young people and the criminal justice system is a big success story. In the main, they are being kept away from the services of the Scottish Prison Service. A massive amount of work has been done in the community, along with a lot of resources to allow that. There are many lessons to learn from the work with young people and the justice system, some of which can be transferred to work with adults in the justice system.

Alan Staff: I will back that up. It is absolutely a success story. We were concerned that young people in Polmont generally reported that admission to the young offenders institution was a rite of passage and something to put on their CV, as it were, so anything that can be done to keep young people out of the justice system—or, at least, out of the prison system—must be a good thing.

Kathryn Baker: One of the things that we have noticed in the work that we do with young men aged 16 to 21 is the high level of bereavement that they have experienced in their lives.

We are talking about systemic approaches, and there has been a whole-system approach in youth justice. There is an awful lot that we can learn from that approach.

Liam Kerr (North East Scotland) (Con): I will direct my question to Alan Staff, although all the witnesses should feel free to answer if they wish.

Is there any evidence that bail is being refused because of a lack of availability of your services—the short-term funding issue on which you touched earlier—or because the judge decides that bail is unsuitable for the individual or that the service is not suitable?

Alan Staff: It would be difficult to obtain the evidence for that. Most of what we have to work with tends to be anecdotes or what the sheriffs themselves say. Because the availability of, and variation in, services is so great around Scotland, the situation will vary enormously from place to place. There is a huge postcode lottery in what people can and cannot get in Scotland. If we couple that with the variance between the sheriffs themselves and the local systems, it becomes difficult. The short answer is that I am not aware of what the evidence that you are talking about would be.

Liam Kerr: If an area has many alternatives to bail refusal, are significantly fewer people held on remand in that area?

Alan Staff: Yes.

The Convener: John, do you mind asking your question again?

John Finnie: I asked whether there had been any changes following the advent of Community Justice Scotland.

Fiona Mackinnon: It is too early to say. When the chief executive speaks about the ideas that she wants to take forward, she brings a strong message of hope for the future, but it is too early to say whether any significant changes will come with Community Justice Scotland.

Kathryn Baker: I agree.

Rhona Hunter: Part of the issue, as Karyn McCluskey would say herself, is that Community Justice Scotland does not have any teeth. It can make recommendations about what it would like to happen but does not have the legislative powers to ensure that that happens. As Fiona Mackinnon said, it will take time to bed in.

Kirstin Abercrombie: As well as not having teeth, Community Justice Scotland does not have a budget to commission services, which might also be an issue. I agree with Fiona Mackinnon that it is far too early to see an impact from the organisation at this stage.

John Finnie: If it is too early to say whether Committee Justice Scotland will bring about any change, what about its predecessors, the community justice authorities? Was there a significant change when they went out of existence?

Kirstin Abercrombie: There has been a reduction in third sector involvement in structures across the local authorities. The legislation only suggests that they should include the third sector in their decision making and strategic plans. Most do that to some extent, but we are the distant cousin and the influence that we had in the old structures does not exist to the same extent. That

might be because Community Justice Scotland is still in its infancy. We hope that, going forward, we will have the same kind of capacity that we used to have.

10:30

Alan Staff: It has been quite difficult because there is an underlying tension between the strategy and the localism agenda. Somehow, CJS sits in the middle of that, in a rather difficult position. The CJAs certainly used to have exactly the same issue; they did not feel that they had the teeth to implement the strategies. They could advise, but in effect the finances that underpinned those strategies still went through the same process. A vast amount of the money still goes through the local authority filter. We have changed the decorations a little bit, but some systemic things would have to change to make the strategy work, which we have still not addressed. I know that Karyn McCluskey would be the first to agree that that is a huge frustration.

John Finnie: Given that local authorities' budgets were top-sliced to facilitate the money that criminal justice authorities had, perhaps all the local authorities are doing all their criminal justice work in-house now. Is that the case?

Alan Staff: It is increasingly the case.

Kirstin Abercrombie: Yes, it is increasingly the case.

John Finnie: Is that to the detriment of the third sector?

Rhona Hunter: Yes.

Kathryn Baker: I suspect that there is variation across Scotland. I think that we may be fortunate in Tayside; we certainly have a seat at the community justice planning table. There is good third sector representation in each of the three local authority areas, with an on-going relationship. That is the key for me—it is about the trusting relationship that we have developed with our statutory partners with regard to what we do and what we can bring to the table, and not just in terms of our thoughts and ideas on service delivery. As the third sector representative, we can attract external funding from some of our discretionary funders to enhance what we do—to provide the cherry on the top, so to speak—as we work towards long-term sustainable changes for the people in our communities.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I have a question for Rhona Hunter on how the third sector makes a difference. We hosted an event together here in the Scottish Parliament for Circle's women's outreach team project, which includes addiction support and counselling. Do you want to touch on that project,

which has made a difference—I appreciate that we know that anecdotally—as well as on other collaborations around community justice support?

Rhona Hunter: I was going to say a wee bit about our women’s outreach team funding. We have three services to do with community justice, one of which is provided through the shine public social partnership. The other two services are funded through trusts and foundations; they are not funded through any local authority funding.

Our women’s outreach team is funded by the Big Lottery Fund. We have a three-year funded project in Lanarkshire, which is an alternative to imprisonment; it is not an alternative to remand. Women need to have either electronic monitoring or a community payback order in conjunction with our services.

The service that we offer is whole-family support. We work with the whole family—with children, partners and the extended family if we need to. We are also in partnership with Addictions Support & Counselling, which is a counselling service, so we are able to offer the women counselling as well.

We had a parliamentary reception at the end of November last year. At that point, we had worked with 38 women, none of whom had returned to prison. That was because we very much take a solution-focused approach. We put the women at the centre and our approach is about building on their strengths rather than focusing on what is not working well. It is very much about relationship building with those women.

We hear a lot from the women whom we have worked with about how they do not feel listened to. It is crucial to the work that we do that we listen to what the women want and that we take account of the broader parts of their lives.

We had a parent at that event who talked about her partner having an alcohol issue and how, because we were working with the whole family, we were able to get him support for that issue, while working to support the woman and her children. We find that taking that broad approach is really effective.

As I said, the project is an alternative to imprisonment, but it could easily be rolled out to incorporate remand or diversion from prosecution.

The Convener: That is helpful. I know that people have used Circle and said, “Maybe I’ve messed up somewhere”, but are still there. With some other services, if someone messes up, that is it—they are in trouble, and people walk away. It is that continued support that has had such great results.

Given that it is working so well and you have 38 women who have been supported and who have

not been in trouble again, do you collect data on the current level of services supporting bail? The lack of data and the ability to analyse and assess what is working well is a thread that runs through the committee’s work. Can you tell us whether you collect such data and how current use compares to that in previous years?

Fiona Mackinnon: Can you clarify whether you are specifically talking about women who are on bail?

The Convener: I am talking about services supporting bail. If you can expand on that by telling us about any other data that you have, we would be very interested to hear that it exists.

Fiona Mackinnon: Although some of the women that the shine service works with might be on bail, the majority of them have served a short-term prison sentence, have a community payback order or are on remand and are supported when they come out of prison.

We use a needs assessment tool called the outcomes star, which considers a series of measurements that are important not just in the lives of the women whom we work with, but in all our lives. It covers things such as accommodation, relationships with others, health, finances and so on. The woman sits with the mentor and plots where she sees herself in the star around specific needs, such as housing or health.

It is a joint tool. Every six to eight weeks, the woman and her mentor look at it again, which gives her a visual opportunity to see where things are improving, where she is struggling a bit and what areas it is important to concentrate on. Those measurements give shine the opportunity to see where the service is working well overall and where the bigger challenges are. The primary focus of the tool is the woman and her mentor, but we also collect that information globally.

The Convener: How does it work?

Fiona Mackinnon: I wish I had brought one with me. It looks like a nine-pointed star. The points are graded zero to 10. The mentee and the mentor consider the descriptions for, say, housing. Between grades 1 to 3, someone is potentially homeless, and a score of 10 would be permanent accommodation. The mentor asks where the woman would see herself on that star. It visually represents where the woman sees herself, in agreement with her mentor, around the issues that she says that she has. Then they look to see which ones they will work on. They will not necessarily start with the hardest ones, but might start with the ones that are easier and a bit more achievable, to build up the woman’s confidence. It is a really visual tool and the woman can take a copy away with her if she wants.

We would be happy to provide the committee with further information if that would be helpful.

The Convener: That would be very useful.

Fiona Mackinnon: The mentors really feel that it is a good tool that allows them to work alongside the woman, which is what mentoring is. Mentoring is not about going in and doing things for people, but about being alongside someone and supporting that individual to do what they want in the areas that they want to work on. Mentoring is about walking that path alongside the individual.

Kirstin Abercrombie: Turning Point Scotland uses a similar tool to the justice star—we use a recovery outcomes web, which is a Scottish Government tool that is used across addiction, homelessness and criminal justice services. It is a visual tool that has 10 points, and we use it to measure short, medium and long-term outcomes that the women achieve through engaging with our service.

As a result of being co-located in criminal justice social work offices, our services have learned that the third sector is in many respects ahead of the curve in terms of recording outcomes and being able to produce evidence, compared to some of the statutory organisations that we work alongside. The information is really useful. We have a quarterly report for our residential turnaround service in Paisley, which amounts to 150 pages of evidence and data, so we gather an awful lot of it.

The Convener: Is that information passed on?

Kirstin Abercrombie: Yes. We return it to our funders, to commissioners and to the Scottish Government.

The Convener: Is it graded to show what is working well and what is not? Do you go into further analysis?

Kirstin Abercrombie: Yes, and we also look at feedback from the people whom we work with, in terms of attribution. We ask where the change has come from. Is it because of our input or because of people's own motivation, family support or social work input? We look for feedback on that sort of thing from all our partner organisations.

Kathryn Baker: We have just come to the end of the first year of supporting women on bail in Dundee with our mentoring service. The mentoring service grew out of the reducing re-offending agenda and, up to now, it has been funded through Scottish Government money. We developed our outcome template to measure outcomes in partnership with the Robertson Trust and the Scottish Government. Unfortunately, because we have just got to the end of our first year, I do not have a year to compare with, but engagement with the individual customer is the first step. We have a DNA—did not attend—rate of

only 9 per cent for the women whom we have worked with on bail supervision, so our engagement levels are really high.

We are seeing good outcomes in a number of fields. We are preparing people to change and to take a step in the right direction, and giving them a belief in their ability to desist, because a lot of people have had negative experiences that have reinforced a sense that they are useless and no good and that there is no point in trying, because they are just a waste of space. Some individuals have been told that from a young age, through nursery, primary and secondary school, so developing a belief in themselves and in their ability to change and to create a different life is really important, and we measure that using similar tools.

Key to the work that we do is identifying the holistic needs of the individual and their wider family network, and ensuring that they can engage with services. We do not make a referral to services. We will say, "Do you want to phone up to make an appointment? Here's the phone number. Is that too hard for you? That's okay—we'll phone up and make that appointment. Do you think you can get there by yourself on the bus?" Sometimes, it could be a simple bus journey, but people do not have the bus fare, or they do not have the confidence to get on the bus, or they have been down to that service before and not had a positive experience because they have been labelled as an offender or a drug user.

Our mentors talk about there being a real difference when they go into some organisations, such as GP surgeries and benefits agencies, with their mentee. Initially, the GP or the benefits adviser may not realise that the mentor is not just a friend. As soon as they say, "Actually, I'm this person's mentor," there is a switch to a different attitude and a different way of treating the client. We collect information about all of that. I have a brief report on that, which has been sent to the Scottish Government. I would be happy to provide that to the committee if it would be useful.

The Convener: That would be helpful.

10:45

Alan Staff: As has already been said, the sector is already pretty far ahead of the curve on how we do data collection. We have learned the value of the so-called soft outcome. When we work with an individual, there are stages in development that cannot necessarily be measured by what the person has done. We need to start thinking about measuring who the person thinks they are. What is their attitude? What are their aspirations? What do they believe that they can achieve? Those are the

more important stages and milestones, and the other things can be added on.

Apex provides skills training and work-related environments, and it gets people into jobs. All those things are good and practical, but none of them makes a difference unless we begin to change how a person thinks about themselves. We can and do record that change, and we can demonstrate it. Apex and the whole sector do that well. We have really got under the skin of what this is all about, which is changing a person and their potential. It is not about achieving solid and definite milestones in relation to whether they have reoffended. Those are markers and indicators, but they are not why we do the job.

The Convener: It is about an evaluation of self-worth and how that has gone up.

Rhona Hunter: We have commissioned an external evaluation of Circle's women's outreach team service, which will be completed this summer. It is a qualitative and an economic evaluation. The immediate feedback that we have received is that the service works and that it is cheaper. We are certainly happy to pass on that evaluation when it has been completed.

The Convener: I suppose that that is an example of preventative spend.

Rhona Hunter: Yes.

The Convener: We are always looking for that, and here we have it.

Liam McArthur (Orkney Islands) (LD): Good morning. Earlier, all the witnesses talked quite a lot about the anecdotal evidence that has built up that supports a movement away from remand, where possible. In your responses, you have all pointed to a body of tangible evidence on outcomes. Are your concerns about the short-term nature of the funding linked to local authorities and the Scottish Government focusing on the wrong indicators or outcomes? They might not be valuing what Mr Staff said about the journey, the attitudinal shift and the sense of self-awareness that is absolutely fundamental to embedding change.

What is being looked at is whether people reoffend, which suggests that the interventions have not worked. I am trying to understand whether a lack of acknowledgment of that body of evidence has led to short-term funding, or whether that funding is a result of the financial environment in which everybody operates hand to mouth. It seems to me that all of you are able to point to key performance indicators—to use the jargon—that are impressive and which reinforce the message about the benefits of support being available that we have heard from witnesses throughout our inquiry.

Kathryn Baker: Short-term funding is a problem in terms of some of the outcomes or outputs that we are expected to achieve. The people who need a support package and who cannot get on and manage, either under their own steam or with the support of their extended family network, are women who have had disruptive childhoods, women who have experienced historical or current trauma, women who have substance-misuse problems, or mental health and housing issues, women who experience stigma, and women who have poor adult relationships with their families, including parents, or with their partners. Domestic violence and coercive control are also features.

Sometimes, the trauma, substance misuse and mental health issues impact on their developmental journey. The women are sometimes a bit stuck in adolescence, in that they are unable to appreciate fully the consequences of their actions and to make the links. They also have poor self-esteem and little belief in their ability to change.

We have already talked to an extent about the fact that a key feature among the young men with whom we work is their lack of aspiration: they think that they will not get a job and will just be signing on, like members of their family, or will end up in Polmont, which, as Rhona Hunter said, they view as a sort of rite of passage. There is a sense of inevitability about their journey. If that is where you have come from, you will not stop offending, get a job and turn your life around in six months or a year; it is a long journey.

Liam McArthur: Absolutely.

You suggested that the partnership arrangement across the three local authorities is very strong. From what you said, it appears that if there is a postcode lottery, you are in the right area, because it is recognised there that you are dealing with individuals who present with a range of challenging conditions. That means that there must be recognition that addressing the issues will take more than a year or two. However, you are still concerned about short-term funding. Why, even in that fairly positive relationship that you have described and that we want throughout the country, is there still lack of recognition that you need longer-term confidence and support? It cannot be because people do not accept as positive the outcomes that you are achieving and the progress that you are making with individuals.

Kathryn Baker: Locally, we have such a relationship and understanding, but that is not the case throughout the country, which has a national impact.

Liam McArthur: Does that also impact at local level?

Kathryn Baker: Yes.

Kirstin Abercrombie: It is not that there is a lack of evidence on the outcomes, or even a lack of acknowledgement that positive outcomes are being achieved: it comes down to financial priorities and decisions. As we have said, we are still working year to year. We will come to the end of the current financial year at the end of this week, but my service does not know whether we will start again on Monday: it is all left to the very last minute, which makes long-term planning of support and service delivery extremely difficult.

Evidence tells us that it takes in the region of 18 months to achieve successful outcomes in a mentoring relationship, particularly when we are working with women who are entrenched in historical traumas and difficult behaviours.

Rhona Hunter: As we have just been saying, it comes down to finance. We can present evidence to our local authority statutory partners, who say, "That's fantastic, you're doing a great job", but they then have to ask how they can find the money to commission the service, when there is only so much money in the pot. That is why local authorities are bringing such things in-house. In my experience, it is very difficult for local authorities to take money from services that they provide and give it to the third sector.

Alan Staff: It is very easy to point the finger at local authorities, but if you look at the bigger picture, there is a problem in that strategic commissioning is non-existent. Commissioning is done on the basis that the public sector has to be maintained first and foremost, and there is no obvious strategy for what the third sector brings. It appears that the third sector exists outside the strategic framework and is there to fill in the gaps.

Liam McArthur: Where would such commissioning take place? As the member who represents Orkney, I will not make the case that the range of services that are available in Glasgow or Tayside should be available in Orkney, but I would hope for enough of a range to provide opportunities. Is the strategic commissioning required at local authority level?

Alan Staff: This is about knowing what should be provided. How it should be provided is probably a local decision, but there is a case to make that everyone should have a broad set of best-practice guidance on what they should be providing, and part of that should be active third sector provision, because the third sector provides different services. The third sector is an alternative to what the public sector can provide and although there will be overlaps, from the user's viewpoint, the third sector brings something that the public sector cannot. I am not saying that it is something better: it is different and we need that difference. If we just go down a fairly blinkered route on which the local authorities say, "We'll provide the service and

that's all you've got", we will miss out on the potential that the third sector offers.

The other thing that we are missing is acknowledgement that, in financial terms, the third sector provides about a third of all community justice services. We cannot just have that operating outside the system as a sort of fallback that is used as and when it is needed. There must be a clear vision for how the resource that the third sector represents is utilised.

Maurice Corry (West Scotland) (Con): What does supervised bail involve in practice and what are the main benefits?

Fiona Mackinnon: The Scottish Government set out guidance for supervised bail some time ago. However, it is only guidance. It suggests that the individual who is on supervised bail should have three contacts per week and that at least one of those should be in the person's home, to check that that is where they live. What the rest of it looks like is down to the service deliverer, so that will differ across the country, depending on the resources.

When Sacro used to deliver bail supervision, some support for the individual was built into that. Primarily, it had to be very robust, because the sheriffs needed to trust that if they imposed supervised bail, the person who had appeared in court would be strictly monitored. It was critical that we persuaded the sheriffs that that monitoring was being done. If the individual was homeless and clearly had an addiction issue that they were ready to begin to address, the service provider would ensure that the person was linked to the relevant services and was attending them to the best of their ability. That was because the service provided a report to the sheriff to say that the individual did X, Y and Z and had engaged really well, which helped the sheriff to decide on the disposal for that person. That was the carrot, but there was also a stick, because the person was told that if they did not engage, things would be really bad for them when they went back to court.

What the supervised service looks like is a lottery, because the guidance is there as guidance only.

Maurice Corry: You talked about local authority support. Is it a postcode lottery because some local authorities are giving you support and therefore it is better in some places than in others?

Fiona Mackinnon: I am sure that it is.

Maurice Corry: Is that the general feeling of the panel? I see the witnesses nodding.

Kirstin Abercrombie: I would be wary of seeing bail supervision as a panacea to reduce the remand population because of the variation in the service across the country. When we are

dealing with people whom we expect will not turn up at one court appointment, it is unrealistic to expect them to turn up to three appointments in one week. When we are dealing with that level of chaos and uncertainty in someone's life, the support element is crucial. That is where the third sector and statutory provision can work very well together because their doing so uses a carrot and a stick.

The third sector sits in a unique position—we do not have any power over anyone and we cannot return someone's order to court. Our service works on a voluntary basis, which means that we can develop a much more therapeutic and helping relationship, which goes alongside the supervising social work. The sectors work well when they work in partnership.

Maurice Corry: Their having a chaotic lifestyle is a real problem in terms of how onerous things are for a person, so there cannot be a one-size-fits-all approach.

11:00

George Adam (Paisley) (SNP): Good morning. I have a follow-up question. There are third sector projects all over the country. In Paisley, there is the turnaround service, which Kirstin Abercrombie mentioned earlier. That is a classic example of a third sector project. The provider, Turning Point Scotland, does not have a statutory role and is not seen as one of the bad guys: it is seen as trying to help. I met many young men on the turnaround project who might have ended up on remand, because they were stuck in a cycle. Is that project an example of what the third sector has given the whole process?

Kirstin Abercrombie: Yes, it is. The turnaround project provides a disposal that we can look at, in addition to remand, bail supervision, bail support and electronic monitoring. The turnaround service provides an alternative to custody. It gives men who are on community orders and who have drug and alcohol issues the option of a six-week residential stay that enables them to address their underlying drug and alcohol issues. At the end of that, they can return to the community, although if they fail to comply or to complete their stay, the court decision can be reconsidered.

Women in Glasgow can use the 218 service in a similar way. Instead of women being sent to prison or put on remand, we can address the underlying causes of their offending behaviour.

George Adam: What success figures do such programmes have in preventing reoffending? I am led to believe that the figures for the Paisley project are quite good, but I am not sure about the Glasgow service.

Kirstin Abercrombie: The success rates for both services are very high. That comes from partnership working. We have social care staff, and we work alongside medical staff, including visiting medical officers and nursing staff, which means that a host of wider issues are dealt with, rather than just the offending being dealt with.

George Adam: Is that an example of what Alan Staff talked about—a more strategic approach that involves the third sector being part of the solution rather than just being seen as a last-minute cheaper option in an area where local authorities or the public sector cannot provide a service?

Alan Staff: Yes. Sadly, the turnaround project is an all-too-rare example.

Rona Mackay: It has been suggested that use of supervised bail does not automatically lead to a reduction in the use of remand, because it tends to be used in cases in which bail would probably have been granted anyway. Notwithstanding everything that you have said about support, which I entirely agree with, what are your views on that? Do you think that, in the long term, use of supervised bail will lead to a reduction in use of remand?

Fiona Mackinnon: If supervised bail is appropriately targeted, it can lead to a reduction in use of remand. When Sacro set up a bail supervision service in north Strathclyde, sheriffs in the area quickly made use of it, especially in Paisley and Inverclyde. The sheriffs made it clear that they would make that decision only when remand was being considered for the women in question. Within six months, we had reached the numbers that had been contractually agreed at the outset for the whole year, so take-up was rapid.

We were able to measure the results of that service. Unfortunately, it did not last long, as the funding disappeared, but the service was taken up quickly and was delivered promptly, and there was a very close working relationship between criminal justice social work and the third sector. It makes a fantastic difference when people work together in a spirit of mutual support and mutual trust. The sheriffs were on board—we met the sheriffs—as were defence solicitors. Take-up was rapid.

All that we can go by is what the sheriffs told us. They asked for a bail supervision assessment to be carried out for women whom they were considering for remand, based on which they made a decision. In all but one case, they took up our recommendation. The service worked extremely well for the short time for which it was funded. Confidence has now been lost, because the service has gone.

Rona Mackay: So, things can slip back once certainty has gone.

Fiona Mackinnon: Than can happen. Even if more funding comes on board, credibility has to be built up. The feeling is, “How long will this last?” It is extremely challenging. Some projects have been very successful, and we can provide evidence for that.

Kathryn Baker: Anecdotally, I can say that that has been our experience in Dundee, although we have targeted bail only over the past year.

Maurice Corry: In Edinburgh, there has been a lack of bail accommodation, and the possibility of people being refused bail because they do not have accommodation. Is that a systemic issue throughout Scotland?

Kirstin Abercrombie: As far as I am aware, bail accommodation does not really exist any more. The old bail beds that we used to have are taken up by people who are released on long-term licences post-sentence, for example. One thing that we do to get round that is work that we do in partnership with Ypeople, which offers temporary furnished accommodation within the city, as well as tenancy sustainment support, so that we can address issues when a person is homeless. We can get them fast access to accommodation or we can support them through the homelessness system in order to accommodate them.

Maurice Corry: If I remember rightly, Sacro used to be involved with bail beds. Is that right?

Fiona Mackinnon: Yes, Sacro was involved, way back.

Maurice Corry: That is no longer the case.

Fiona Mackinnon: No, it is not.

Maurice Corry: Would anybody else like to comment on how we might resolve that issue?

Fiona Mackinnon: I have, in court, experienced a sheriff sending a worker to the housing office because he really wanted to grant the person bail, but was unable to do so. I have experienced times when they have used a solicitor’s office to be able to grant bail, which is a real challenge. I think that that is also questionable when we think about what will happen to the woman.

I am talking about my experience of working in Ayrshire, where the situation is a lot better than it is in a city, but there are still challenges, and hours and hours could be spent in the housing office until a person is provided with accommodation, so it continues to be an issue. However, there have been improvements. Nationally, committees are more focused on what the issues are around housing support—there is recognition that it is an issue and there is the opportunity to make improvements.

Maurice Corry: Again, the situation varies around the country.

Alan Staff: Yes—the situation varies enormously. There is quite a lot of concern about whether the concept of the old bail hostel—the idea of grouping people together in that kind of unstable scenario—is a good thing. There is a lot of evidence that supporting people in separate accommodation and focusing on their individual needs is a better model than forcing people together in a way that is similar to how those old systems used to work.

Maurice Corry: I have a side question. Are you aware of any armed forces veterans who are in such a position? Are they a significant percentage?

Kirstin Abercrombie: No—not really.

Maurice Corry: That is interesting.

Alan Staff: This is slightly controversial, but what constitutes a veteran? Many of the armed forces charities consider a person to be a veteran only if they have completed their term and have then accessed the support services that are available to them, which are extensive. However, they distance themselves from people who have been dishonourably discharged or who have just decided that one tour was quite enough and have left.

We have a lot of young men, in particular, who are going through the justice system or are involved in a range of support services that we offer who have deliberately hidden their forces backgrounds because they feel that they will be discriminated against if they reveal that they were dishonourably discharged or they left. It is a huge problem.

There are a lot of services working in that area. I would say that there are, in a way, almost too many. However, the bigger problem is identification of those people so that we can establish the sort of numbers that we are talking about. People hide in the system and many of the systems that are set up to keep track of them are not picking them up because they almost do not exist any more.

Maurice Corry: Thank you very much. That is very interesting.

Liam Kerr: Electronic monitoring as an alternative to remand is not currently available. Should it be, and, if so, in what circumstances?

Alan Staff: Yes.

Liam Kerr: In what circumstances?

Fiona Mackinnon: It should be available as long as there is support alongside it. It cannot work on its own. Many years ago, electronic monitoring was piloted in Ayrshire. At that point Sacro was delivering bail supervision and it was involved in the pilot. Criminal justice social work

and Sacro felt that it was a successful pilot, but it was not continued and it was deemed to be expensive. What its expensiveness was compared to I am not sure.

At that point, a number of years ago, we felt that it was a positive model to electronically monitor people and provide support as part of that. That support is critical; if it is not there, I fear what will happen to people. My personal view is that it will catapult people into the prison service.

Liam Kerr: Before I move on, could I press you on that? You say that it was expensive, or that it was felt to be expensive. The obvious question is, do you have any oversight of what the cost of that pilot was as compared to the cost of putting someone in prison on remand?

Fiona Mackinnon: It was far cheaper.

Liam Kerr: It was far cheaper to have someone on electronic monitoring and in receipt of support services.

Fiona Mackinnon: Yes. It depends on how you want to cost something. It depends on what you want the outcome to be.

Liam Kerr: Right. That is a fair answer.

Alan Staff: I would say that that is true, but not in every case, by any means. If there is a need for a little bit more security and confidence, electronic monitoring can be really helpful. As has already been said, it is not particularly helpful on its own. The opportunity that it affords, if it is keeping people out of a remand setting, is that it allows you to do the work. It allows a period of time, up to sentencing, in which we can be constructive, as opposed to the current situation, which is not only expensive but destructive to the individual. It is a time out of their life, and when you start disrupting people's lives like that it is difficult for them to get back on track. Jobs can go, tenancies can go, and all sorts of things can happen during that time when you have pulled them out of their world. I am sure that all of us around the table would say that it is better to be working with people in that period, and if monitoring allows them to be safely managed in that situation then it must be a better option.

Rhona Hunter: I was talking earlier about our women's outreach team. The women have to be sentenced to either electronic monitoring or a community payback order, so some of the women whom we work with are on electronic monitoring. It is very successful, because alongside it there is a good package of support in terms of intensive outreach, counselling and family support. As I said, up to the end of November last year, 38 of those women had not gone back to prison, and for me that is a sign of success.

Kathryn Baker: I completely agree with what my colleagues have said. We are currently looking at a support package with electronic monitoring for people on a restriction of liberty order in Dundee, but there is no reason why that cannot also be used for bail, and I would see that as the next logical step.

I agree with Alan Staff's comments. Electronic monitoring is not necessarily understood in terms of the flexibility that it can provide in preventing a matter from having to be brought back to court. There could be variations. We do not want to prevent people from starting jobs or doing evening classes, or whatever it is that might be beneficial to enhance their support package. We need to understand that it can be a flexible resource.

Liam Kerr: Thank you for those answers. Let me flip the situation slightly. In previous evidence to this committee, we heard from a defence lawyer who gave an example of a particular client who had been granted bail multiple times but just kept reoffending. One of the things that she said was:

"She is not a danger to the public, but her behaviour can be a real nuisance and a disruption for the public."—
[*Official Report, Justice Committee, 13 March 2018; c 24.*]

Do you have a view on what should be done in cases where such situations arise, both in relation to bail applications and in general?

11:15

Fiona Mackinnon: One of the important things about electronic monitoring is that there is an assessment of the individual before they are subject to it. I think it would be really helpful to the sheriff if they were provided with that information, which would include not just the flexibility but the suitability. We do not want to be culpable in supporting people's journey into prison being, perhaps, quicker than it would have been because of electronic monitoring.

At shine, we have had referred to us some really challenging women who have worked with various services and have been seen as having failed because they have ended up in prison again, they have not complied or they are just too difficult to work with. We are working with several women in that category. The important thing for those women is that we encourage the relevant agencies to sit down and plan what services can be provided to them. Lots of women whom we work with have mental health issues as well as addiction issues, and have suffered years and years of trauma, from childhood right through into adulthood. Just to expect them to work with somebody is unrealistic, so it is really important that people plan what that is going to look like.

If the woman whom you described was referred to shine, that is what I would suggest. We would

need to look and see what would work best with the individual to try to support her in the community, as well as recognise the issues that she was presenting in the community. That takes time and patience, and the change is not going to be effected in prison. We need to work with people in the community, and it needs to be with the right people. It is also important to recognise that it is not going to happen overnight.

Alan Staff: This is almost an inevitable problem. If we return someone to where they were before and their offending behaviour is almost their job or their activity—it is what they do—it will keep happening unless something different is put in place.

I will give you a quick example. In our Inverness service, we have a group of women who were referred through from the national health service. They are habitual offenders—it has been going on for a long time in their lives. They began to do voluntary work at a local horse sanctuary. They go there early in the morning and they come back late at night too tired to do anything other than go home, have a bath and sleep. The difference in the attitude of the women is astonishing. They are contributing, they are feeling a sense of teamwork and they are feeling satisfied.

If a person is doing the same old things and is bored, we will get the same old behaviour. We have to change that. Whatever we do, it has to be more than just an administrative thing—more than just monitoring the person so that we know where they are. Something has to change in the person's life, and the only way we are going to effect that is by investing in it.

Kirstin Abercrombie: You asked what we do with somebody who repeatedly breaches their bail conditions. I would ask what work is being done while they are on bail. If that is not working, we need to change our approach. Do we want to send people to prison because they are a danger or because they are a nuisance? As we have said with regard to electronic monitoring, an element of support is required in order to effect behavioural change. It is not just about monitoring where somebody is and whether they turn up on time.

As we have said, these women and men are dealing with drug and alcohol addictions, which are relapsing conditions, so they will fail time and time again. We have to persist—certainly in the third sector, we are very good at that—and give people that extra chance in order that they can achieve long-term outcomes.

Liam Kerr: I am grateful. Thank you.

Liam McArthur: Earlier in our inquiry, we took evidence from Social Work Scotland, which was positive about the potential benefits of electronic monitoring, with all the caveats that you have

rightly reinforced. However, it raised as a potential issue the risk of what it called up-tariffing.

Let me read from the *Official Report*:

“Following the original pilots, we have had bail supervision for many years and its use has grown, but the use of remand has grown exponentially alongside that. Our concern is about more punitive and restrictive measures being added to bail supervision with no corresponding reduction in the use of remand.”—[*Official Report, Justice Committee*, 6 February 2018; c 44.]

By the nodding of heads, I detect a degree of agreement with that thought. How can we avoid that as electronic monitoring is taken forward?

Fiona Mackinnon: Earlier, I said that we have to provide an assessment as part of the service. In my view, before a sheriff decides on electronic monitoring, we should provide them with the information that would allow them to make that decision. That is being cognisant of the fact that we do not want to up-tariff people.

As I mentioned, bail supervision ran in Ayrshire for 13 years, and I was determined that women would be a target for bail supervision because they were not getting it in the two courts in Ayrshire. I worked really hard with the sheriffs to encourage them to consider women for bail supervision. When they did, the increase was fantastic, but when I checked the remands, I saw that they were also increasing. That meant that we needed to pull back and ask how we could focus the service to ensure that the right women were getting bail supervision and that we did not end up increasing the number of women on remand. We did that thorough bit of work and found that it was about ensuring that the sheriffs were given the right information about the alternatives to bail supervision—for example, the first thing that the sheriff can consider is bail. Jumping from nothing to bail supervision is pretty risky, because the next step is prison. Similarly, with electronic monitoring, we need to start with a tariff that is low enough.

Our fear is that if we do not give sheriffs the options, they will jump to the higher tariff, because that is seen as something that will potentially stop a person offending. However, if the sheriff does not have the information that is relevant, that approach can be high risk for the individual concerned.

Liam McArthur: That reflects a concern not to be seen to be going down that route as a soft option, so it has to be robust, which means that sheriffs try to make it robust by layering on additional components. Is that what you mean?

Fiona Mackinnon: Yes. Our concern is that the sheriffs will be well content with that idea and think that it is very positive. However, we need to think about whether we are at the stage where the woman or man has to have that level of order and

whether they should start at a lower level. Whoever we are, we have a responsibility to support the sheriffs to help them to consider the lower options first of all.

The Convener: I thank all the panel members for attending the committee and for your offers of providing additional information and data, which will be much appreciated. Your comments will obviously influence our report.

11:23

Meeting suspended.

11:29

On resuming—

Petitions

Justice for Megrahi (PE1370)

The Convener: The next item on our agenda is consideration of three public petitions. I welcome Christine Grahame, who is here to speak to petition PE1370. We will have comments from committee members, then I will bring in Christine Grahame, and we can take it from there.

I refer members to paper 3, which is a note by the clerk. The committee is asked to consider and agree what action, if any, it wishes to take in relation to each petition. Possible outcomes are outlined in paragraph 5 of paper 3. If a member wishes to keep a petition open, they should indicate how they would like the committee to take the matter forward, and if they want to close a petition, they should give reasons why we should do so.

We will consider the petitions in order, starting with PE1370, which calls for an independent inquiry into the Megrahi conviction. The petition is discussed on the second page of the clerk's paper. We have received a submission from the petitioners, which was circulated to members and published on the committee's web page on Monday.

Before we commence our formal consideration of the petition, I must convey the sad news that one of the petitioners, Robert Forrester, died last week. I am sure that the committee would wish me to express our condolences to the family.

I invite comments on the petition from members.

John Finnie: Convener, you will be familiar with how we explain what is happening with petitions on the Scottish Parliament website. It shows that PE1370 was lodged on 1 November 2010 and, at that time, the Scottish Parliament information centre produced an accompanying briefing. Thereafter, there is a lengthy list of interventions, some of which took place recently, including in April—there is a note about consideration of the appointment of an independent prosecutor. The committee has written to the Lord Advocate seeking clarification of the status of independent counsel working with Police Scotland, and we have spoken about operation Sandwood and sought updates on that.

I am keen that we keep the petition open. To me, it is not about personalities; it is entirely about the process and this committee explaining itself. None of us is beyond explanation—I include in that some of the people mentioned in the petition

and most certainly the Crown Office and Procurator Fiscal Service.

We know that the whole affair has many unique features. It saw a trial on a Dutch airbase. The justice system's initial response to the serious accusations made by the Justice for Megrahi committee was woeful, but they have since been picked up and taken seriously. I understand that the justice system now enjoys the confidence of the Justice for Megrahi committee. However, that is four years into the process.

An independent Queen's counsel was appointed to support the police in relation to the matter, but then what? Ultimately, the report has to go to the Crown Office. On previous occasions, I have spoken about the process whereby a citizen who is concerned about the conduct of the prosecuting authorities can have confidence that they understand the system. It may be me—I stand to be corrected by any of the members round the table—but I certainly do not believe that we have yet reached the point of understanding that process. The present arrangements are going along, but what preceded them was clearly not robust enough, or we would not be where we are.

I would like us to be in a position to produce a more detailed response at some point in the future in order to explain ourselves. A first step towards that would be to ask for an update of the SPICe briefing. I understand that it is a standard procedure. SPICe would produce a short briefing on the proposal. We have moved beyond the proposal, but we cannot ignore the vehicle that has taken us to where we are. We have had the interests in the different factors concerning the avenues that we have to address.

I am keen that we keep the petition open and ask for an update to the briefing to incorporate all the information. That, in turn, will be posted on the Parliament website and will provide further explanation to citizens who maintain a keen interest in the matter.

The Convener: It might be helpful if I read the petition to ensure that we are clear about what we are considering today. The petition calls on the Scottish Parliament

“to urge the Scottish Government to open an independent inquiry into the 2001 Kamp van Zeist conviction of Abdelbaset Ali Mohamed al-Megrahi for the bombing of Pan Am flight 103 in December 1988.”

Liam Kerr: The committee will appreciate that I have been here for only two years, so I am not quite sure how these things happen, but I am looking at a 2010 petition that was lodged on a very narrow remit. Convener, you have just read out what the petition calls on us, or on the Scottish Parliament, to do. I listened to John Finnie, and I do not necessarily disagree with anything that he

said, but I think he would admit that we have moved beyond the narrow scope of the petition, which was lodged seven or eight years ago. It is almost like mission creep, and the submissions that we looked at before today's meeting seemed to be going off on other tangents.

If the narrow question that is being asked is what we should do with the petition, my immediate response, having listened to John Finnie and to the convener's summary, is that the petition has been superseded. I fairly quickly get to a point where I have to say that the best course of action is actually not to keep it open, but to close it down. Perhaps the petitioners would want to look at something different going forward, but as to the narrow question of whether the petition is the right one and whether we should take it forward, I think that, on balance, I would say no.

Rona Mackay: I support John Finnie's stance on the petition. It may be a narrow question, but it is an enormously wide issue and it encompasses so much that a briefing now to say where we are and pull everything together would be a way forward that would allow us to make a decision on which way to go. Liam Kerr is right to say that things have moved and that, in some sense, the petition has been overtaken by events, but we need something to say where we are now, because a lot of us are new members of the committee. That would be helpful, so I support John Finnie's proposal.

Ben Macpherson: Likewise, I absolutely support keeping the petition open. We need to obtain the briefing, as John Finnie has suggested, in order to apprise ourselves of the scenario as things stand, and consideration must also be given to operation Sandwood and to what steps the committee might want to take thereafter. As things stand, I am absolutely for keeping the petition open.

The Convener: I refer members to the submission that we have received from the petitioners. They state:

“It is our sincere belief that such a political intervention is long overdue. It is not good enough for the committee to decide to defer these matters until Crown Office has considered the Operation Sandwood report or the SCCRC has made a decision re the Megrahi family submission for a further appeal”.

whether that happens or not. The petitioners are telling us that to defer the petition for Sandwood, as Ben Macpherson suggests, is not the way forward. That is one of the reasons, but he also wants the SPICe briefing that John Finnie has called for. Is that correct?

Ben Macpherson: I said that consideration should be given to Sandwood, but I support John Finnie's proposition to obtain a briefing. I also

point out that my reading of the submission is that the petitioners are not asking for the petition to be closed.

The Convener: I want to be clear about exactly what you want the SPICe briefing to include, given that the previous cabinet secretary's response was:

"Any conclusions reached by an inquiry would not have any effect on either upholding or overturning the conviction as it is appropriately a court of law that has this power."

What are we seeking to achieve here?

John Finnie: I go back to my earlier point about the obligations on the committee. Ultimately, I think that our decision on what to do with the petition should be informed by all the information that we have. As has been said, we have some new members on the committee. There is an extensive list, and I highlighted just some of the items on it.

There is also a wider position, and I have to explain to the people that I am answerable to what happens in these circumstances and how we deal with the serious allegations that have been made, which relate to issues such as perjury and corrupt practices on the part of the Crown. Everything about the particular case is exceptional, but are we going to have a new policy? If a decision was taken to bin the petition, those issues would not go away. My obligation would still be to try to explain to people, and this is the committee where we would do it. This is the Justice Committee, which must have interests in the prosecution of crime and the citizen's right of redress when they feel that something has gone wrong.

The Convener: Is the operation Sandwood report impinging on what you are now asking the committee to look at?

John Finnie: No. I think that the update would include the circumstances in which it started off and was set up. As you know, there was obstruction under the previous system. It was only Police Scotland that pulled the thing together, and it got its leadership at that point. That is a factor. We need to understand what would happen in such circumstances now. There is also the role that the prosecution played in that.

Throughout all my interventions, I have purposely never talked about personalities or many of the issues that we have in front of us, which the public can read about on the website. To me, it is not about personalities. We all have to answer for ourselves, from senior politicians to this committee. It is about understanding the process.

Daniel Johnson: I broadly agree with the comments that have been made by John Finnie, Ben Macpherson and Rona Mackay, but I acknowledge what Liam Kerr said. I note that the

petition is of long standing, and throughout its course associated issues have been looked at, but I think that that lends weight to John Finnie's proposal. For those reasons, if we are considering what happens next, we need to look at the matter well and truly in the round, so a SPICe briefing that looks at where we are now and pulls the issues together would be useful. Also, critically, it needs to set out precisely what our options are, and the implications for parliamentary process. That is key as well.

In making a decision, I want to understand the interactions between whatever steps we take and other on-going processes. I understand that the petitioners would like us to take steps and not wait for the other processes to conclude, but I want to understand what the potential consequences and interactions might be before we make any particular decision.

Liam McArthur: I think that a blend of what John Finnie said and what Daniel Johnson has just added would capture my view. The petition has been before the committee a number of times in the current session, and on each occasion we have agreed to defer it pending the outcome of operation Sandwood. It would be strange were we to deviate from that at this stage, but I agree with Daniel Johnson that it would be helpful to have some clarity about the interaction between what we are doing and other processes.

It would also be helpful to clarify the position in relation to operation Sandwood and what information will be made available to the committee. It is all very well to be seen to be kicking the can down the road if there is some prospect of information being shared with us in due course. However, if that is not the case, that is a concern for the committee, and it is something that we should be pursuing.

George Adam: I support John Finnie in what he has asked for. He makes the valid point that there has been quite a turnaround in the committee—I am a perfect example of that. Mr Finnie has been here since 2010 and before that as well, so he has sat through the whole process. I think that I need that information before I go any further.

I also take on board John Finnie's point that things have moved on but that the petition has been the vehicle of travel. It has been the thing that has kept pushing the issue forward. We need to get the information. I would like to keep the petition open so that we can make a more informed decision further down the line.

The Convener: Do any other members wish to comment?

Fulton MacGregor (Coatbridge and Chryston) (SNP): I do not have a lot to add to what George Adam and others have said. I would

be content to leave the petition open and get a SPICe briefing. Since I have been on the committee, the petition has come up regularly and I know that the petitioners dutifully come in every time to hear what is being said. It is obviously a matter that is of great importance to people. I would feel more comfortable keeping it on the agenda and getting more information.

11:45

The Convener: Are there any other comments from members?

Maurice Corry: I agree with that and I understand where John Finnie is coming from. I, too, am a relatively new member of the committee, although I have been in touch with the issue slightly, having been a member of the Public Petitions Committee. I would be more comfortable if we could keep the petition open and ask for an updated SPICe briefing.

Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP): I thank the committee for giving me the opportunity to contribute to the discussion. I declare an interest as a longstanding member of the Justice for Megrahi campaign, although I must also make it plain that I speak for myself.

I am pleased to hear what members have said about an update from SPICe. I looked at the website and it appeared that the briefing was last updated in 2012—although I may have that wrong.

I say to Liam Kerr that, although I agree that time has moved on since the petition was lodged, that is the case for many petitions. There is a certain elasticity in petitions lodged by the public—they are not court pleadings in which people must be held responsible for such things.

I have a few points to make, particularly for new members and younger members. Come December, it will be 30 years since the Lockerbie atrocity, and as the years pass, the security of the conviction of Abdelbaset al-Megrahi has frayed at the edges. I am looking at some members of the committee and I would go so far as to say that some of them would have been children or teenagers when the atrocity occurred, although I recall it clearly.

This might be like a SPICe update. Megrahi abandoned his second appeal to secure compassionate release. Abandoning the appeal was not a prerequisite for that, although prison transfer was, but it was a belt-and-braces approach because Megrahi wanted to go home. The grounds of the second appeal to the Scottish Criminal Cases Review Commission have never been tested in court. The SCCRC currently has a third application by Megrahi's family. I wrote to the

commission in September 2017 to ask it not to consider the third application until operation Sandwood had reached a conclusion. The report on that operation has been lodged.

I am happy to provide the committee with a copy of the reply to that letter, which I will quote so as not to distort what the commission's chief executive said. The reply refers to operation Sandwood and says:

"It is certainly conceivable that the Board may consider that it requires a copy of the report prior to making any decision on referral, but there are too many imponderable factors at this stage to assess the probability of that outcome."

There have been delays in operation Sandwood—the police inquiry into possible criminality in the case. I remind the committee that the operation was launched in February 2014, which is four years ago, and in March 2016, the Justice Committee was told by Deputy Chief Constable Iain Livingstone that the operation was "in its final stage". Yesterday, I was advised by the committee clerks that one year on, Police Scotland, by telephone, yet again stated that operation Sandwood was in its final stage.

The Justice for Megrahi campaign and I appreciate that there are complexities in the inquiry, which may have caused the delay. However, I suggest that the committee should formally ask Police Scotland to provide some detail on the number of officer hours that have been spent on operation Sandwood since the committee was told in March 2016 that it was in its final stage and also to provide an end date.

I put on record that I am not making a criticism of Police Scotland, given that officer man hours will have to be taken from somewhere else in order to deal with operation Sandwood. However, the committee can apply pressure in order to get that information in a way that others cannot.

I also ask the committee to consider writing to the SCCRC to ask whether it has proceeded to stage 2 of its consideration process and if not, why not. In particular, I suggest that the committee ask whether the conclusion and report of operation Sandwood, which must also be referred thereafter to the Crown Office, is delaying matters.

I appreciate—as do many others—that the Justice Committee has kept the petition open and can keep the pressure up in respect of what is now a decades-old matter. Victims' families and others, including Robert Forrester, are dying without knowing the truth about Lockerbie, whatever that may turn out to be. I understand that the committee is not a court of appeal, but it is able to bring pressure to bear on agencies to ensure that, one way or another—perhaps there is a referral from the SCCRC and it goes to appeal—

we can at last draw a line under that atrocity, 30 years on.

My plea to the committee is that you more than continue the petition. I ask you to put your foot down on the accelerator and say to the agencies that, given that the committee has been told more than once that operation Sandwood is in its final stages and that that appears to be a blockage to further referral to the SCCRC, you need to have more information so that the matter can be brought to a conclusion.

The Convener: There is without doubt a real frustration at the length of time that operation Sandwood has taken. If the committee is agreed, we will write and seek further information. Christine Grahame has also requested that we approach the SCCRC and see whether it is now at stage 2, which we are happy to do. Is it the committee's agreed position that we should get a briefing from SPICe, which will take in all the things that Christine Grahame has said and all the points that we have mentioned around the table today, and that we should keep the petition open and determine how to move forward once we have considered the SPICe briefing?

Members *indicated agreement.*

Christine Grahame: Do you want the copies of my letters to the SCCRC and the responses?

The Convener: That would be helpful. Thank you.

Christine Grahame: I am grateful to the committee.

Inverness Fire Service Control Room (PE1511)

The Convener: The next petition is PE1511, on the Inverness fire service control room. The petition is discussed on page 3 of the clerk's paper. Do members have any views?

Liam McArthur: Given how often we have returned to the petition, it would be helpful to clarify the detail of the response to the freedom of information request that seems to be the focus of the latest correspondence from the petitioner. What has changed since the last time we considered it is that we have agreed to undertake post-legislative scrutiny of some of the issues surrounding the petition, as part of our work programme, and it may well be that we are able to capture some of that in our on-going work. I would certainly find it helpful to get further information, probably from the clerks rather than anybody else, about what has been provided under FOI, as that seems to be the principal focus of the latest correspondence.

Liam Kerr: I have a lot of sympathy with what Liam McArthur has said. It seems to me that a lot of what the petitioner wants us to do is about to be picked up anyway, and a lot of the issues that the petitioner seems to want reviewed and addressed are historical. We are where we are, and the review that Liam McArthur is talking about will pick up on those issues, so I question the value of keeping the petition open.

Rona Mackay: I agree with Liam McArthur and Liam Kerr.

The Convener: It seems that we have gone as far as we can, and that the fire service has no further answers. If there are FOI issues to be considered, perhaps a complaint could be made to the Scottish Information Commissioner. On that basis, I suggest that we close the petition, although we should note that there may be issues raised in it, such as general principles relating to control rooms, that may be covered in work undertaken under our future work programme.

John Finnie: It is appropriate that post-legislative scrutiny provides an opportunity to look at aspects of the petition. I just wonder whether that would be shared with the petitioner.

The Convener: We can make a point of doing that.

John Finnie: Thank you.

The Convener: Are members content to move forward on that basis?

Members *indicated agreement.*

Private Criminal Prosecutions (PE1633)

The Convener: The final petition is PE1633, on private criminal prosecutions in Scotland, which is discussed on page 3 of the clerk's paper. There were a lot of submissions for this. Do members have any comments?

Rona Mackay: I should probably declare an interest, as the petitioner is constituent of mine. As you say, convener, we have received a lot of submissions, which made for very interesting reading. It is a big issue and a serious and important one. I suggest that we should ask the Scottish Government for its opinion. I do not think that that has been asked for yet. I would also like to invite the petitioner and some of the people who responded to come and give oral evidence.

Liam Kerr: Rona Mackay makes a good point. One major concern for me was that one of the submissions seemed to suggest that the proposal would be outside legislative competence, and I want to understand whether that is the case.

The Convener: Is it the committee's view, then, that we should keep the petition open and seek

legal advice on that point, and that in the meantime we should send the submissions to the Scottish Government to get a response? After that, we can see more clearly where to go. Are we agreed that we should keep it open pending those actions?

Members *indicated agreement.*

The Convener: That concludes the public part of the meeting. Our next meeting will be after the Easter recess.

11:56

Meeting continued in private until 12:43.

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