



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

# JUSTICE COMMITTEE

Tuesday 12 August 2014

Session 4

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**Tuesday 12 August 2014**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	4809
<b>BRAIN INJURY AND THE CRIMINAL JUSTICE SYSTEM.....</b>	4810
<b>ENVIRONMENTAL CRIME (CONNECTIONS TO SERIOUS ORGANISED CRIME AND MONEY LAUNDERING).....</b>	4832

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**JUSTICE COMMITTEE**  
**22<sup>nd</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:**

Dr Oliver Aldridge (Howard League Scotland)  
Superintendent Andrew Allan (Police Scotland)  
Dr Alan Carson (Scottish Acquired Brain Injury Network)  
Catriona Dalrymple (Crown Office and Procurator Fiscal Service)  
Graeme Dey (Angus South) (SNP)  
Stephen Freeland (Scottish Environmental Services Association)  
Douglas Gentleman (NHS Tayside)  
Calum MacDonald (Scottish Environment Protection Agency)  
Dr Jean McFarlane (British Psychological Society)  
Professor Tom McMillan (University of Glasgow)  
Detective Chief Inspector Garry Mitchell (Police Scotland)  
John Mundell (Society of Local Authority Chief Executives and Senior Managers Scotland)  
Assistant Chief Constable Ruairaidh Nicolson (Police Scotland)  
Dr Brian O'Neill (Brain Injury Rehabilitation Trust )  
Linda Ovens (Chartered Institution of Wastes Management)  
Ruth Parker (Scottish Prison Service)  
Professor Huw Williams (University of Exeter)  
William Wilson (Scottish Environment Protection Agency)

**CLERK TO THE COMMITTEE**

Irene Fleming

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

*Tuesday 12 August 2014*

[The Convener *opened the meeting at 10:01*]

### Decision on Taking Business in Private

**The Convener (Christine Grahame):** Good morning, and welcome to the 22nd meeting of the Justice Committee in 2014. I ask everyone to switch off mobile phones and other electronic devices, because even when they are switched to silent they interfere with the microphones. No apologies have been received.

Under item 1 we are invited to consider in private item 4, which will be a review of the evidence heard during our round-table sessions this morning. Is that agreed?

**Members** *indicated agreement.*

## Brain Injury and the Criminal Justice System

10:01

**The Convener:** The next item of business is a one-off round-table evidence session on brain injury and the criminal justice system. I welcome participants to the meeting. This might be the first time that some of you have given evidence to a committee. The method is that you are the people who will be speaking and for once—you will love this—the politicians will be restrained and will, as far as they can, be silent. I really want the witnesses to interact with one another, but please indicate to me if you want to speak and I will call your name. I will let you know that I have got your name and I will let you know when you are to be the next person to speak. I hope that your microphone will come on automatically—the microphone operator will be on their toes—just as mine has. A red light will appear when it comes on—you do not need to press any buttons.

I am so glad that you have given up your time to be here. There are so many professors here that I am a bit inhibited—and it takes a bit to inhibit me. We have copies of the written submissions; thank you very much for those. They have been circulated, complete with an amended figure from Professor Williams.

I know that you will have been introduced to the people sitting next to you, but the best way to start is to invite each member and each participant to introduce themselves. It says in my brief that I should start with me. Well, I know who I am; the clerk does not need to keep reminding me. I am all right so far. I am Christine Grahame and I convene the committee.

**Elaine Murray (Dumfriesshire) (Lab):** I am the deputy convener of the committee.

**Dr Brian O'Neill (Brain Injury Rehabilitation Trust):** I am from the Brain Injury Rehabilitation Trust.

**Margaret Mitchell (Central Scotland) (Con):** I am a member of the Justice Committee.

**Dr Oliver Aldridge (Howard League Scotland):** I am from the Howard League society for penal reform in Scotland.

**Roderick Campbell (North East Fife) (SNP):** I am the MSP for North East Fife and a member of the Justice Committee.

**Dr Jean McFarlane (British Psychological Society):** I am a clinical neuropsychologist working in the national health service and am part of the division of neuropsychology.

**Christian Allard (North East Scotland) (SNP):** Good morning. I am a member of the committee.

**John Finnie (Highlands and Islands) (Ind):** Good morning. I am an MSP for Highlands and Islands.

**The Convener:** I knew that you would say, "Highlands and Islands", John. Great—you never let me down. Next please.

**Superintendent Andrew Allan (Police Scotland):** I am from Police Scotland's criminal justice division.

**Douglas Gentleman (NHS Tayside):** I am a consultant in neurorehabilitation in NHS Tayside.

**Sandra White (Glasgow Kelvin) (SNP):** I am MSP for Glasgow Kelvin and a member of the committee.

**Dr Alan Carson (Scottish Acquired Brain Injury Network):** I am a consultant in neuropsychiatry in Edinburgh at the national brain injury unit. I am here as the lead clinician of the Scottish Acquired Brain Injury Network.

**Ruth Parker (Scottish Prison Service):** I am assistant director for health and care for the Scottish Prison Service.

**Alison McInnes (North East Scotland) (LD):** I am an MSP for North East Scotland and member of the Justice Committee.

**Professor Huw Williams (University of Exeter):** I am a clinical neuropsychologist and deputy chair of the policy unit of the division of neuropsychology.

**John Pentland (Motherwell and Wishaw) (Lab):** I am MSP for Motherwell and Wishaw and a member of the Justice Committee.

**Professor Tom McMillan (University of Glasgow):** I am professor of clinical neuropsychology at the University of Glasgow.

**The Convener:** Thank you. As I said, the committee asks you to bring issues to our attention. We have an hour and a bit for the case to be made to the committee about the importance of the connections between brain injury and the criminal justice system, and how the system is letting people down, as we have seen.

So the first questions are: why are you here and why should we listen to you? Who wants to start?

**Professor Williams:** I would be happy to go first.

**The Convener:** Thank you, Professor Williams. You go for it.

**Professor Williams:** The main point to be made is that there are a lot of neurodisabilities, or general brain injuries of various kinds, in people

who end up in the prison system. Traumatic brain injuries that have been caused by falls, assaults or accidents tend to be a big factor, and there seems to be a high prevalence of brain injury in the numbers of people in prison systems. The trends in studies that we have conducted internationally indicate that the presence of brain injury is associated with problems in rehabilitation, so it tends to be associated with greater degrees of reoffending, greater problems in mental health, and more difficulties in engaging with treatments around mental health and resettlement. It is likely that addressing brain injury issues as a chronic health condition in that population might be beneficial in terms of reducing long-term costs by reducing crime and by reducing the number of victims of crime.

**The Convener:** Does anyone else want to come in? I do not see anyone indicating that they do. Is the system letting people down?

**Dr Aldridge:** My main clinical experience is in addictions medicine. I work in a court-mandated community-based drug treatment programme. In that context, I see a number of people and in that population, the statistics show that if you ask our clients, "Have you ever been hit hard enough on the head to be knocked out?" about 70-odd per cent will give a positive response.

However, there is a subset of those people who, when we quiz them further, turn out to have had significant levels of head injury. Some of them have had neurosurgical treatment. Some started off with some level of follow-up treatment and then dropped out, and some have never had any follow-up at all. Those folk do not seem to have been identified in the criminal justice system, but their injuries seem to impact on their ability to engage with rehabilitation and so on.

It is very difficult to get such people to a point at which they can be treated. For a start, one has to stabilise their drug use, which one can usually do to a fairly significant extent. However, even when we try to set up a referral pathway into a rehabilitation service to get people to that first appointment, and even if we get them to the first appointment where they can be assessed as needing further work, they tend not to go back. We see the same thing with blood-borne virus treatment. People present to the service, but as soon as we have to refer them outside that service, attendance rates plummet. We get people into blood-borne virus treatment by bringing that treatment into the clinic.

There is a pool of unmet need in people who have very significant head injuries whom we could serve better if we could use an outreach service that goes into criminal justice facilities.

**Superintendent Allan:** I also highlight the link between brain injury, mental health and suicide rates. Although this is a discussion about criminal justice, the police often come into contact with suicidal individuals earlier than some of the other services. The point has been made about subsequent referral to services that can help individuals and thereby reduce the considerable longer-term cost to society.

**The Convener:** If the committee members want to ask something, they can come in. Obviously the witnesses have priority, but if there is a silence, the politicians can step in. They know that.

**Professor Williams:** I have a point to make in response to Dr Aldridge and Superintendent Allan. The big issue is that people who have the significant brain injuries that might be present in two or three in 10 will have cognitive problems. They do not remember things, they are impulsive, they lack foresight and so on, so they do not plan ahead well. They also lack insight into their problems and are not very aware of them. That is why, as Superintendent Allan pointed out, brain injury in the mix is a big risk factor when it comes to suicidality. We know that suicide is, unfortunately, a common occurrence after a brain injury.

**Professor McMillan:** We carried out a preliminary audit study in three prisons in the Glasgow area, linking medical records to the current prison population, and found that 23 per cent of the prisoners had at some point in their lives been admitted to hospital with a head injury. We looked at records going back to the 1980s and carried out the study in April. What was interesting was that a significant proportion had intracranial injuries, which suggests that they had had a severe head injury. About 50 per cent of those who had had a head injury had had a severe head injury. Normally, the epidemiology of head injuries is that 90 per cent would have been mild head injury and 10 per cent would have been severe. So, it looked at first sight as though a significant number of prisoners had had a severe head injury.

The other finding of note is that the epidemiology of head injury shows that there are peaks in children and young adults. In the group of older adults who were prisoners, a very high proportion of those with a severe head injury had their head injury before the age of 15; they had received the injury when their brain was continuing to form. The social brain continues to develop until about the age of 25, so they had a head injury relatively early in life.

**John Finnie:** I want to pick up on the point that Professor McMillan just made. In the papers that were helpfully circulated in advance, there was a lot of reference to childhood injuries. I wonder whether, given the philosophy of getting it right for

every child, there is an issue about how that information is shared early on. Clearly, if a high percentage of people with criminal behaviour have had childhood head injuries, there is a percentage who have not. There is also a stigmatisation issue about a person's having sustained an injury. I wonder whether there are opportunities to head the problem off in childhood before Superintendent Allan's colleagues in the criminal justice system come to be involved.

**Professor Williams:** If I can speak to that—

**The Convener:** Before you do that, I say to Sandra White that she should not fret, because she is on my list after Elaine Murray. However, I also have Mr Gentleman on it and I will take him next, then let in the members on my list. You are on my pink list, Sandra, and you are on my yellow list, Professor Williams, just so you know that you are not being missed. Please just go ahead, Mr Gentleman.

**Douglas Gentleman:** I want to make two points that may not necessarily be obvious to everyone round the table. The first is that delivering services for brain-injured people, whether they are anything to do with the criminal justice system or not, requires quite a lot of individuals and agencies. Ideally, it should be done in a seamless way, but the reality is that it is very often not done in a seamless way, which is a challenge.

There is also a challenge when something happens—it might be another illness or admission to the prison system—that cuts the thread of continuity. It is then very often difficult for the individual to re-access services.

The other thing that is not particularly, or necessarily, obvious is that nine tenths of people who have had a significant brain injury—as Huw Williams said, it could affect their ability to think, reason, judge and so on—look entirely normal on the outside. They do not have a plaster on, use a wheelchair or have a badge of disability. At one level that is a very good thing for them, but at another level it is not. Often, the information that would allow professionals and other people who are involved in their care to deal with them in a different and perhaps better way does not flow with them. It is important to put that problem on the table, because head injury is an invisible disabling condition.

**The Convener:** Does any other witness wish to come in on the continuity issue and how we might resolve it?

**Dr Aldridge:** I definitely second what Douglas Gentleman said. Where assessments have been done, it has been seen that there is a problem with the flow of information. Even within the criminal justice system, we do not get information from any prison health assessments. We pass on the

information that we gather to people's general practitioners, but people frequently move around from one practice to another. Continuity of care is definitely an issue but it is not something that people tend to flag up unless we ask them specifically about their history; they often do not see the significance of it until we start to question them.

10:15

**Professor McMillan:** One issue is that young people who are admitted to hospital are often keen to return home, so even if services are offered, they do not always take them up. It can sometimes therefore be difficult to identify people and it can be difficult for them to take up services, even if they are available. There is also an issue about preventing people from developing an offending profile. There is a population in prisons who have not had support or intervention, and one of the biggest risk factors for having a head injury is already having had a head injury, which means that that population is potentially at risk of making the situation worse when they leave prison, including by further head injury.

**Elaine Murray:** My interest is similar to that which was expressed by John Finnie. I have the impression that head injury among children and young people might result in problems further down the line. I wonder whether more could be done on recording when young people have had a head injury and to raise awareness among teachers and others so that, when behaviours start to show later on, the link can be made before the behaviour gets as serious as offending or suicide, or before more severe mental health issues arise. Is there a problem regarding general awareness that could, if it were addressed, lead to problems for young people being picked up earlier?

**Professor Williams:** That is an excellent point. Studies in New Zealand have shown that children who have a head injury around age five or six, even a relatively mild injury, tend to start to have problems in school within two or three years, because their attention and concentration are not so good. Within four or five years, they start to get excluded from schools for misbehaviour. They are twice as likely to end up drifting out of school and into crime. By the time they are 14 or 15, they start to get involved in impulsive kinds of crimes. We can track the problems and show that brain injuries in the young tend to lead to their falling out of school and into bad company. Such people are often used by gangs because they are suggestible.

The critical issue is to ensure that there are links between accident and emergency departments, general practitioners, schools and the people who have oversight of the management of kids going

back into schools, in order to ensure that those kids get support to stay there and to enable them to learn in that environment rather than end up in the criminal justice system. One of our prison studies showed that adults with head injuries tended to be in prison from, on average, age 16, compared to age 21 among non-head-injured people. People who have a brain injury tend to be in prison from a much younger age, for longer and, increasingly, for more violent crimes.

I take on board John Finnie's point that we want to stay away from stigmatising people because they have a brain injury. If people start to associate brain injury too much with necessarily ending up being involved in crime, the problem might be that people would not report it. We want people to be able to report a head injury and get help and support, which can lead to positive changes and allow people to reclaim their lives. We need to steer clearly away from stigmatising people, but the problem is that historically in society we have tended not to see head injury. As Mr Gentleman said, it is very often an invisible disability. The problem is that, in that darkness, people have not really seen the true issue.

**Sandra White:** I will touch on an issue that John Finnie and Elaine Murray mentioned, but I want to go back to an earlier stage. Some of the submissions talk about pre-birth and birth trauma. Can forceps birth and breech birth lead to brain injury? Have any studies been done on that and can it have an effect on people's actions as they go through life?

**Professor Williams:** There is the general idea of neurodisabilities, which can come from various sources—any form of impairment to the brain—and there is some work that refers to a markedly increased chance of pretty much every form of neurodisability among the offending population, particularly brain injury. The incidence of foetal alcohol syndrome, attention deficit hyperactivity disorder and other conditions would also be higher, so it is not just traumatic brain injury. Typically, there are comorbidities—other issues—but brain injury seems to have the biggest prevalence.

**Professor McMillan:** There is monitoring of newborns and in the early years of life so, if the injury happened before or around birth, there would normally be at least some safeguards to ensure that a neurodevelopmental problem is discovered. I suspect that the danger is more with children who are a bit older, where the follow-up is brief and the difficulty is more likely to go undetected.

**Douglas Gentleman:** The picture that is emerging of birth injury—as we have tended to call it down the years—is that a difficult labour is often a marker of some form of developmental problem

even before birth. There has been a tendency to identify the birth itself as the initiating event in explaining why there is disability in the child subsequently, but the picture seems to be more complex than that.

**Dr Carson:** That is a very important point. One of the issues that I want to highlight from an epidemiological point of view is what is called reverse causality.

The example was given of the New Zealand school study. Brain injury does not happen randomly in the population; it often happens to people who have risk factors. Therefore, if a child has behavioural problems, they are more likely to have a brain injury.

In the New Zealand cohorts that were worked up, the strong likelihood was that the brain injuries were not necessarily relevant but the other factors in the lives of the children that led to the brain injuries also led to the other problems.

Brain injury may be a marker of a problem, but examination of the vast majority of mild brain injuries has found that they do not necessarily cause adverse consequences for the brain but happen to people who already have things going wrong with them, such as substance misuse, alcohol misuse, behavioural problems and risk-taking behaviours, all of which strongly associate with criminality. We must be cautious that, among the mild injury cases, which are the vast majority, we do not attribute everything to brain injury but realise that there is a much more complex social problem.

Separately, in the much smaller number of severe injuries, I would fully agree with all that has been said, but we need to separate those two aspects of the discussion out. To think of them all as one group is highly misleading in respect of where the problems come from.

**The Convener:** I understand that. Thank you for that distinction.

I will let Sandra White finish her questioning—same line, though, Sandra; keep on the same issues.

**Sandra White:** Yes, it is on the same line. Dr Carson touched on my next question, which is about the severity of the injury. If the prisons have medical records and are working in partnership with the NHS, would screening of prisoners for head injuries come into force?

**The Convener:** I will take Ms Parker on that one because it is linked to her remit.

**Ruth Parker:** HMP Grampian is working in partnership with NHS Grampian staff to test a model of care to identify and diagnose traumatic brain injury on admission. A clinical

neuropsychologist will provide inreach support and transition into the community. The information that is gathered through the health assessment will further inform any offending behaviour programmes, and healthcare records will be shared.

We will look at the feasibility of delivering either one-to-one or group support to address offending behaviour, and the results of the pilot will further inform the agenda. I understand that there has been difficulty with recruiting, but it looks as if that model of care will be tested in September in an environment in which people are coming into prison and being diagnosed or assessed.

**The Convener:** Where are the police in this? People who come out may just go out and reoffend. Is any connection made between the SPS and Police Scotland?

**Superintendent Allan:** Yes, but there is also a good connection between the police and NHS records in our custody environment. You will now see NHS nurses working in police custody facilities, and many of them now have access to the NHS computer records within the police custody suite. When a person is asked a series of medical questions about their physical and mental health on arrival or they present in a way that gives us concerns, we can raise that with the nurses. They can then check what information is on the health system and their care can be looked at. That information is then introduced to the system either for assessment prior to release or for use by the court systems.

**The Convener:** I will let Dr Aldridge come in if his comments are on this topic. Otherwise, I will take Dr Carson on the business of continuity from prison to police. Are your comments on this topic, Dr Aldridge?

**Dr Aldridge:** They are more about causation.

**The Convener:** We will leave that for now.

**Dr Carson:** My comments are specifically on records.

**The Convener:** Yes—I want to hear about that.

**Dr Carson:** We know from a lot of research—particularly stuff from Professor McMillan's group—that in NHS Scotland, and indeed in the UK in general, medical records on whether somebody has had a brain injury are poor. Although the information is there, which is certainly better than our not having it, we know that, for a large proportion of people who have had a significant brain injury, it is not well recorded in their medical records. We also know about the reverse—for a large group of people who have not had a significant brain injury, what started out as a mild bump in the head, over the years gets inflated

in the medical records to be a severe, traumatic brain injury.

The Scottish acquired brain injury network is putting together a set of proposals, which will go to NHS National Services Scotland, on making a dramatic change to how we record brain injuries and starting to have a national programme for the proper recording of such injuries from the point of diagnosis in A and E onwards. When we see someone 10 years down the line, making a diagnosis is not a facile process. Doing it in retrospect is complex, so SABIN is excited about promoting the programme. It is in its infancy, but it might be of benefit.

**The Convener:** Dr O'Neill and Dr McFarlane want to come in. I want to stay on the subject of recording and sharing information. Are your comments on that?

**Dr O'Neill:** I was going to speak about screening.

**Dr McFarlane:** My comments are also on screening.

**The Convener:** That is fine. We will stay on that, and we will come back to Professor Williams on records.

Dr Aldridge, you wanted to speak about causation. Does it relate to the current theme? I do not want to park you if it does.

**Dr Aldridge:** There is an element of that. I was going to say that a useful concept is a web of causation, where we look at a large number of factors that, among the group that we are discussing, tend to be rooted in deprivation, trauma and a lack of social resilience. For some people, the consequences of a head injury start to become a predominant theme in their presentation. The difficulty is that, when we look at it from a clinical perspective, some people have had obvious, severe head injuries and have had treatment, while other people, unfortunately, have been victims of physical abuse and there were active attempts at concealment when they were children. It is difficult to piece records together, so continuity of information is definitely an issue.

**The Convener:** I have a list of others who want to come in: Dr O'Neill, followed by Dr McFarlane, followed by you, Professor Williams. I will then take Roddy Campbell, who has been waiting for a while.

10:30

**Dr O'Neill:** In line with the idea of a web of causation, health services in prisons are becoming increasingly good at identifying mental health problems, substance misuse and potential learning disabilities. We propose that screening for

brain injury is added to that mix, so that we have a fuller understanding of the needs of the prison population. Screening is the first step. There are reliable measures to identify the problem, such as the comprehensive health assessment tool. That would lead us to be able to look more closely at the kinds of difficulties that this group have, such as whether they have behavioural discontrol problems or emotional dysregulation problems, which would predispose them to further offending.

**Dr McFarlane:** I just wanted to add a little bit more about screening. I know that my colleagues in Grampian are bringing in a pilot programme. That will be about prisoners who obviously have a brain injury; there will still be a hidden population that the prison is serving well, given the routine and structure within it. As Dr O'Neill said, screening for all prisoners would be of use.

**Professor Williams:** Dr O'Neill and Dr McFarlane mentioned CHAT—the comprehensive health assessment tool screening measure, which is now in use across the youth secure estate in England. It consists of just a few questions. We do not want to end up with too many screening tools, but we need to know what the relevant factors in offending are, so brain injury and other neurodevelopmental problems are now being screened for.

It is really important to link records up, as Dr Carson said. Unfortunately, often medical records are not full and have been written up in a hurry, so they are often not a reliable resource—although they are at least a resource. When people come into the criminal justice system is a good opportunity to screen for common neurodevelopmental disabilities, particularly brain injury.

I am thinking especially about young people. To return to a point that was made earlier about the developing brain, the critical issue that people need to understand is that, given the plasticity of developing brains, we will not know the consequences of an injury to a developing brain until years down the line. Very often, that brain will not develop in a normal way. A bang on the head when someone is young can have much more devastating effects on the brain than a bang on the head when someone is older. We need to bear that in mind.

**The Convener:** I will take Ms Parker and then Roddy Campbell, because this is on the whole issue of records and screening.

**Ruth Parker:** The Justice Committee is aware that health boards are now responsible for the provision of healthcare services in Scottish prisons. A memorandum of understanding and an information-sharing agreement are in place. The new director for health and justice at the Scottish

Government, Andreana Adamson, in her capacity as chair of the national prison health network, is currently in discussion about setting up a workstream on brain injury among prisoners. I know that she is interested and that she has invited some of the people who are here today giving evidence to participate in that workstream. That would be an opportunity to look at some of the issues that have been raised today, such as information sharing, records and the transfer of information. Andreana was unable to come today because she is on annual leave—

**The Convener:** She is allowed that. People are allowed it. Sometimes people say, “Why?”, but we support her being on annual leave.

**Ruth Parker:** She has proposed setting up a workstream in the autumn, on her return. That would be an opportunity to take forward work in some of these areas, looking particularly at Scottish prisons. Andreana also chairs a group on the transfer of healthcare into police custody suites. There is an opportunity to join some of that up.

**The Convener:** If people do not want to do it this way, I am happy, but Roddy Campbell, Margaret Mitchell and Alison McInnes have been waiting for a while. If they want to put their questions out there, that will let them be dealt with. Roddy, what do you want to ask about?

**Roderick Campbell:** I was initially going to raise the issue of the comprehensive health assessment tool in England, but Professor Williams touched on that and said that it did not amount to more than a few questions.

What I am really interested in from the justice point of view is what we could learn from other justice systems. In what way are other justice systems more advanced in this area than we are? Bearing in mind what Ruth Parker said, we could take account of all that in moving forward.

**The Convener:** I am going to leave that question out there.

**Margaret Mitchell:** There has been a lot of concentration on people with brain injuries in prison, but how do we identify such people if an alternative disposal to custody is given? There is some progress with those on remand. Would the comprehensive health assessment tool help with those people, or what else could be done?

**Alison McInnes:** There has been lots of discussion about early intervention. Professor Williams talked about help and support, and Ms Parker spoke about offender programmes. How successful would cognitive rehabilitation be and where is it at the moment? If we did all the screening, would it be possible to make a significant difference?

**The Convener:** Thank you. Let us start with what we can learn from other justice systems.

**Professor Williams:** The comprehensive health assessment tool has different parts, from the risk assessment of suicidality and so on early on through to the assessment of neurodisabilities, and it is used in England in the youth offending institutions. It is going to be moved into the community side as well over the next year or so. It has been quite helpful so far, as it has been shown to be very sensitive in picking up the issues and—incredibly importantly—assessing whether an issue is relatively mild and does not require too much in the way of intensive intervention or whether some education is needed around when someone’s thinking has been affected to some extent or when their memory might be affected but not to a severe degree. There is a sort of triage system to identify the ones who really do need more intensive interventions.

In pilot projects that I am involved in through the Disabilities Trust, we have put brain injury link workers into two major young offender institutions, one in Leeds and one in Manchester. We are finding it incredibly helpful to have those brain injury link workers there to help the prison staff to identify and manage young people with brain injury. In the past, there may have been an indication that there was a problem but the staff were not aware of the true extent and effect of the problem, and the CHAT is a useful system for identification.

In terms of intervention, the link worker projects seem to be—

**The Convener:** Let us leave that just now. I want to keep to the one topic, and there are other justice systems to discuss. We will then move on to the other members’ questions. Dr Carson wants to talk about what we can learn from other justice systems.

**Dr Carson:** I want to make a small point about screening tools such as the CHAT and other measures. They tend to be very sensitive—the chances are that they will pick up all people who have had a brain injury—but they tend not to be very specific. In other words, they also pick up a lot of other people who have not had a brain injury.

**The Convener:** We accept that. What about other justice systems? Can you narrow your comments?

**Dr Carson:** I just wanted to make that point about screening. Proper diagnosis is quite labour intensive and if, as your colleague mentioned, you are thinking about custodial diversion as opposed to programmes within a custodial setting, that becomes quite a big issue.

**The Convener:** We understand the complexity. One size does not fit all, and there is no one reason for a person's behaviour—there are complex environmental and family reasons and it depends on what has happened to them.

Can we go back to other justice systems? We heard from Professor Williams. Does anyone else have any examples? Is Scotland lagging behind? From what you say, Professor Williams, it sounds as though it is.

**Professor Williams:** We have been involved in recent submissions to the Welsh Assembly along the same lines. In the United States, in New York, a recent initiative in which all the young people who entered the criminal justice system were screened indicated that half of them—male and female—had knockout histories. There are similar programmes in Canada, Australia and New Zealand, where there is an interest in trying to screen more effectively. People seem to be picking up on the screening side of things as something that can be done.

**Dr O'Neill:** Other justice systems have found ways of identifying particular problems that are associated with reoffending. For example, attentional dysfunction is likely after brain injury. One study found that if the population who have attention deficit hyperactivity disorder, which is associated with impulsive behaviours, are identified and appropriately medicated, their chances of offending are reduced by one third. Just by identifying a cognitive domain that is impaired and medicating the person to prevent their engaging in impulsive behaviour, we can reduce the reoffending rate by one third.

**Superintendent Allan:** We also have to give the Scottish justice system some credit for how it deals with people with brain injuries as victims and witnesses. The police have the vulnerable persons database and there is the legislation on vulnerable witnesses and victims, so a considerable amount of work is being done across the justice system that puts us in a strong position compared with many countries.

**The Convener:** We know about that—we did the Victims and Witnesses (Scotland) Bill. However, the issue might be that people conceal—or may not be aware that they have consequences from—some injury that they received at some point in their lives. Perhaps another issue is that people may not be aware that they have had a brain injury and that it is part of the problem. It might not be in their medical records.

**Superintendent Allan:** That relates to the range of causes that are described—the legislation and the database enable us to record vulnerability for a variety of reasons and then

handle the individual without a label, other than vulnerability. That is an important strength.

**The Convener:** I move on to alternatives to custody. I ask Margaret Mitchell to remind me of her question.

**Margaret Mitchell:** It seems that we are talking about routine screening in prison: there is a pilot, which will give some good practice. It would be interesting to see how much that is followed up by NHS boards—and, indeed, how much they have the issue on their radar at all. However, particularly with a non-custodial sentence, where do we start to identify the issue, let alone do something to intervene and treat it?

**Professor McMillan:** Again, in terms of the severity of the injury, we have to distinguish. If the injury is severe and is essentially disabling in terms of the person's daily life, it is very likely that a period of in-patient rehabilitation would be required to effect a change. If the disability is largely cognitive and emotional, the best evidence base for creating a change points to holistic forms of neurobehavioural rehabilitation. If it is a severe injury, that is the route that one would think of going down.

If the injury has had a less disabling effect on the person's lifestyle, we may then be looking at more of an education-based intervention programme. We are looking at piloting a feasibility study in Polmont of more of a generic system that is based on a cognitive behavioural therapy model developed by Professor Chris Williams at the University of Glasgow. The system focuses on changing people's attitudes to their lifestyle but it has a theoretical basis for doing that. It is a group-based programme that, potentially, many people could access, and it does not require clinically trained staff to provide it. We are hoping to do a feasibility study on that.

**The Convener:** Can you give us any dates or a timeline for that?

**Professor McMillan:** I have been to meet the governor, and Professor Williams is going back to Polmont in a couple of weeks to discuss further initiating a feasibility study.

**Margaret Mitchell:** Again, that is in a prison setting. I wonder whether the pilot might concentrate on remand prisoners. When their cases come up, they might be released—they might be given a non-custodial sentence. Could the pilot identify those people? How do you identify people with non-custodial sentences? At what point are they screened?

**Professor McMillan:** Identifying them is an issue. That type of programme has not been developed specifically for prison so, potentially, it would work for people who are not given a

custodial sentence. It would be a matter of having a screening system that could identify people who potentially had a brain injury.

That type of intervention would be suitable not just for people who had a brain injury—as we have said, the picture is complicated—but for people who may abuse drugs or have other issues.

**Margaret Mitchell:** Are we moving to routine testing for traumatic brain injury in the criminal justice system as a matter of course, to identify those people whenever they come in contact with the criminal justice system?

**Professor McMillan:** I think that that would be a good step.

10:45

**Dr Aldridge:** It is very possible and desirable for people on community sentences who have such a condition to be managed. We talk a lot about rehabilitation, but we must not forget that people's functioning is often affected on a global level, and they can become fairly vulnerable. Some of the interventions that we might be looking at are about helping to support people to access and maintain housing and tenancies, benefits and so on. It is not all focused directly on rehabilitation.

**The Convener:** The committee is quite good at that. We understand. We have looked at all these issues, particularly in relation to women offenders. It can be about simple and practical things such as having a roof over your head and your benefits arriving on time. It is about stability.

**Dr Aldridge:** Absolutely. You are right to point that out. A lot of good work is being done in Scotland, and a lot of that work can be done well with a community sentence. We certainly identify people who are on a court-mandated community-based drug treatment programme and who have head injuries. There is absolutely no reason why such screening cannot take place.

**The Convener:** I have Professor Williams and Dr O'Neill. Is it on the same topic?

**Professor Williams:** That is right.

**The Convener:** We will then go back to Alison McInnes's question.

**Professor Williams:** As Superintendent Allan mentioned, the police have a way of understanding when someone is vulnerable. That is excellent. They can flag up across the system that there is an issue when someone comes into the criminal justice system.

We are trying to enable probation staff, magistrates and judges—although it is rather tricky—to pick up on the issue so that they can make decisions about the best placement for

somebody and about that person's ability to change their behaviour. If we had screening tools that were associated with identifying vulnerability and brain injury, they would be able to inform the judicial process about whether someone could really participate in that process and understand what was happening around them and the consequences of the sentence that they had been given, whether it was a community-based sentence or a custodial sentence. It is of paramount importance to put in screening early on and link it with police systems.

**The Convener:** We could have done with hearing from someone from the social work system, as that view is missing from this discussion. They are often on the front line and meet people whose behaviour is challenging for various reasons. [*Interruption.*] The clerk tells me that we asked.

**Dr O'Neill:** If someone's behaviour is identified as problematic and causes an offence, and if a brain injury is associated with it, it is referred to as a neurobehavioural disability. We can identify vulnerable offenders who might have that kind of neurobehavioural disability, and thankfully the provision of the holistic neurobehavioural rehab that Professor McMillan referred to is increasing in Scotland. For many years, we have had Dr Carson's service at the Robert Fergusson unit, and the Brain Injury Rehabilitation Trust also runs a unit in Glasgow that provides holistic, evidence-based intervention.

There have been various studies of the cost effectiveness of such interventions that show that the functional gains in life skills that those people get can mean a lifetime saving of between £1.3 million and £1.8 million in care costs. It is about re-equipping people with the skills that they might have lost as a result of their injury or which they never really developed because of adverse social experiences in early life.

**The Convener:** What does that £1.8 million relate to? Is it per individual? It is a lot of money; I just want to know what it is.

**Dr O'Neill:** The care costs for someone with neurobehavioural disability are very high because they have to be kept safe and the people around them need to be kept safe from their behaviour. If the people who are admitted to those services have their behaviour ameliorated, their lifetime care costs are not so high. We are talking about people who might not have ended up in the criminal justice system and people who might have a previous history of criminal justice service use. Two studies have been carried out: one was by Oddy and Ramos, which I can supply to the committee if you are interested, and the other was by Worthington et al.

**The Convener:** As always, Governments have to consider money. If we spend more to prevent people from going into the criminal justice system or from reoffending and so on, we will save the public purse—that should not be the basic reason for doing that, but it is very helpful. You introduced the figure of £1.8 million, and you can imagine the public's perception that that is a lot of money to save one person. Of course, that is not what you are saying.

**Dr O'Neill:** No. I am saying that those are the likely savings on the lifetime care costs of someone with neurobehavioural disability.

**Douglas Gentleman:** I want to expand on that point.

I agree with Dr O'Neill. There has been a wealth of evidence for around 30 years—a lot of it has come from the United States, admittedly, but increasingly it has come from other countries—that says that if you invest money in rehabilitation services, however those are defined, which would include the social and housing rehabilitation that has been mentioned, you recoup the money within three to five years, because you convert somebody who is dependent into someone who is independent. In the best-case scenario, you convert someone back into a wage-earning taxpayer. The difficulty sometimes is that different pots of money are involved: someone has to spend the money for someone else to recoup the benefit later on. Joined-up thinking would help a good deal to make the economic argument for rehabilitation.

**The Convener:** I think that Government is moving in that direction and looking at the holistic spend rather than the spend in various silos.

**Douglas Gentleman:** I agree.

**The Convener:** Professor Williams is next—I am getting to Alison McInnes's question.

**Professor Williams:** I just wanted to make a point about preventative economics. It seems that reoffending costs about £10 billion a year—

**The Convener:** Which country are you talking about?

**Professor Williams:** I am talking about the UK Government.

**The Convener:** We need the Scottish figures.

**Professor Williams:** I wonder what the Scottish figures are. The figure that came from the Rt Hon Chris Grayling last year was between £7 billion and £13 billion. We then start to think about what a reoffending person looks like, and they look like the people we have been talking about. Although alcohol and drugs issues—the web of risk factors—will be big factors, brain injury seems to be the keystone condition. That is why some

preventative spending on identifying and managing brain injury, particularly early on, may bring some economic benefit down the line.

**Dr Aldridge:** If I go back to my clinic this afternoon and identify someone with that level of problem and I make a referral, it can be several months before they are offered an appointment. If the person happens to miss that appointment, it may be another four months or so before they get an offer of an out-patient assessment. In between, we need to try to stabilise their drug use. The area feels underresourced. If I sit in my clinic this afternoon with someone in that position, it will probably be a year or so before I can get them to their first appointment with neurorehabilitation services, even for their assessment. It just takes that long. It feels underresourced.

**Dr Carson:** I was just going to make that point, with some Scottish figures. As part of its general programme for trying to improve head injury care in Scotland, SABIN is putting forward a comprehensive proposal. On the rehabilitation aspect of that, we estimate that Scotland, which has 120 rehabilitation beds, should have about 400 rehabilitation beds with associated outside services. Some areas are severely underresourced in terms of community service, let alone having an adequate service. There is a huge gap.

However, if one then talks about custodial diversion, there is a separate issue about containment, depending on the severity of the crime. There are currently very few forensic beds in Scotland for brain-injured offenders. My unit is probably the only brain injury unit in Scotland that occasionally takes brain-injured offenders. However, we come across security problems because we are not a secure unit; we are a rehab unit.

The majority of the medium-secure forensic psychiatry facilities do not take people with brain injury as a matter of policy. The state hospital does, but there is a massive gap in provision.

There is also a problem with the compulsory aspect of treatment. Most of the studies that are quoted have been of people who volunteer for treatment and are at least willing to engage, although I fully agree that all the cognitive difficulties can get in the way. However, that is before anyone looks at using the Mental Health (Care and Treatment) (Scotland) Act 2003 or its criminal provisions to divert people. That is complicated; the position is not straightforward.

**The Convener:** I will take Ms Parker, then Alison McInnes can repeat her question. After that, we will wind up the session.

**Ruth Parker:** The SPS's experience of making referrals to health boards for the assessment of

prisoners who are identified as having had a traumatic brain injury shows evidence of waits of up to 12 months. There are huge resource implications across health boards.

**The Convener:** I ask Alison McInnes to remind us of her question, mainly because I cannot read my handwriting any more.

**Alison McInnes:** I was keen to find out how successful cognitive rehabilitation is. Dr Brian O'Neill, Professor Williams and Mr Gentleman have touched on that, but it is clearer that such treatment is seriously underresourced and that we are just talking about cranking it up. That is the main message; I am not sure that more can be added to my initial question.

**The Convener:** The question for us is where the resources would come from—that relates to spending to save.

I will wind up the session. This is not a parlour game, but I would like each person to give us one key point—and I mean one—that they would wish us to consider if we make a recommendation to be taken forward. I know that asking for one thing is unfair, but I am not sitting here to be fair. As the witnesses know, we have a gap—a short time for the discussion. Do they have one thing that they want us to take home? I think that we have begun to get to such things, after the broad discussion.

I will not go round the witnesses in order; they can nominate themselves. They will get only one bite at the cherry.

**Professor McMillan:** I am confident that my colleagues will add other things that would be on my list, but one place where we need to start is with a comprehensive epidemiological study, which would give us good information about head injuries throughout prisons in Scotland and the relationship to offending.

**Dr McFarlane:** An epidemiological study would be key, but teaching and training to increase staff awareness would also help to improve prisoner wellbeing.

**Dr O'Neill:** The identification of brain injury in offenders and the provision of training have been undertaken by the Disabilities Trust, which uses link workers who go into prisons to train and help people to identify vulnerable offenders.

**The Convener:** So you recommend more link workers.

**Dr O'Neill:** Yes—more link workers.

**Ruth Parker:** When we are focusing on prisoners, screening and rehabilitation, I wish for continuity of care, to ensure that we get the community reintegration package right and that we get consistency across Scotland on rehabilitation centres.

**Douglas Gentleman:** Many years of running a brain injury rehabilitation unit as a doctor have taught me that, if only the medical or clinical issues are looked at, a lot of the picture will be missed. I make a plea for more resourcing of the resettlement of offenders in the community, to reduce the risk of reoffending and provide a better quality of life, if possible.

**Dr Carson:** Mr Gentleman's answer was better than the one that I was going to give.

**The Convener:** I will let you think of another answer; I am sure that you can pluck something else out.

**Dr Carson:** I would like us to look at what we can do about secure beds for patients with known severe brain injuries who have committed significant crimes and who are in the criminal justice system. They are currently impossible to place in Scotland.

**The Convener:** All these points are good.

**Superintendent Allan:** My point links very much to the lack of available services. This week's publication by Her Majesty's inspectorate of constabulary for Scotland of a review of police custody highlighted the challenges of providing appropriate mental health service access once people are identified as needing it. As for the potential beneficiary of any increased spend, we—as well as the overall public purse—would probably reap the savings, but I would have to support the need of mental health services to have additional funding.

**Professor Williams:** I am sure that the point has been made about screening—that is incredibly important—so I will not make that point. I would wish for preventative action on childhood brain injuries to pick up on those injuries more effectively by having links between A and E departments, GP practices and schools that would enable better reintegration into school of children who are at risk. That would ensure that, down the line, they were in school rather than prison.

**The Convener:** Has anybody not given me something yet? Has Dr McFarlane contributed?

**Dr McFarlane:** I have.

**Dr Aldridge:** On prevention, what we are talking about feeds into the minimum alcohol pricing agenda, for instance, which tries to reduce availability. Alcohol feeds into the risk factors that are associated with getting a head injury. More resource and awareness should be directed at that.

11:00

**The Convener:** That relates to causation.

**Dr Aldridge:** Yes.

**The Convener:** The witnesses have written our little report for us—we will not need to discuss it afterwards—as we have got all the points. I thought that I would save members time.

I thank the witnesses very much for giving their valuable time. It is always extremely interesting to have round-table discussions and to hear views across the spectrum. The witnesses will find out in due course what we will do, but I do not think that we will stop here.

11:01

*Meeting suspended.*

11:10

*On resuming—*

## **Environmental Crime (Connections to Serious Organised Crime and Money Laundering)**

**The Convener:** Agenda item 3 is another one-off round-table evidence session—this time, on environmental crime and its connections to serious organised crime and money laundering. I welcome everyone to the meeting and thank you all for your written submissions.

For the benefit of those who have not given evidence at a parliamentary round-table meeting, I will first ask everyone to introduce themselves. The session gives us an opportunity to keep the politicians silent; it takes some doing, but we will do it.

I also welcome to the meeting Graeme Dey. I am not saying that you have to be silent all the time, Graeme, but it will make a nice change if you are. Of course, I am only saying that because he is my neighbour in Parliament.

As this is a listen and learn session for politicians, the interaction will take place mainly between witnesses. I have with me two lists: a yellow list for witnesses, who have priority, and a pink B-list, which is, as committee members know, for them.

We will try to get through as much as possible. We have always found such sessions to be extremely useful, as we found the previous session. Finally, I thank everyone for giving up their time.

I will now ask everyone to introduce themselves. I am Christine Grahame, MSP for Midlothian South, Tweeddale and Lauderdale—a bit of a mouthful, but a wonderful place—and I convene the committee.

**Elaine Murray:** I am MSP for Dumfriesshire and the committee's deputy convener.

**Catriona Dalrymple (Crown Office and Procurator Fiscal Service):** Good morning—

**The Convener:** I am sorry, but I should also say that your lights will come on automatically. If you let me know that you want to be called, I will call you and your little red light will come on. When the light is on, you should be discreet and not say anything about your neighbour that you would wish not to be heard in public. Of course, I am thinking about myself when I say that.

**Catriona Dalrymple:** Good morning. I am head of policy for the Crown Office and Procurator Fiscal Service.

**Margaret Mitchell:** I am a member of the Justice Committee and a Central Scotland MSP.

**Stephen Freeland (Scottish Environmental Services Association):** I am from the Scottish Environmental Services Association, which is a trade body for the waste industry.

**Roderick Campbell:** I am MSP for North East Fife and a member of the Justice Committee.

**Linda Ovens (Chartered Institution of Wastes Management):** Good morning. I am chair of the Scottish centre of the Chartered Institution of Wastes Management, which is the professional body for the industry.

**Christian Allard:** Good morning. I am a North East Scotland MSP and member of the Justice Committee.

**John Finnie:** Madainn mhath. I am a Highlands and Islands MSP and member of the committee.

**Graeme Dey (Angus South) (SNP):** I am MSP for Angus South. I am attending today as deputy convener of the Rural Affairs, Climate Change and Environment Committee.

**John Mundell (Society of Local Authority Chief Executives and Senior Managers Scotland):** I am chief executive of Inverclyde Council. I am representing the Society of Local Authority Chief Executives and Senior Managers Scotland, and I am the portfolio lead on the environment, sustainability and waste management.

**Sandra White:** I am MSP for Glasgow Kelvin and a member of the committee.

**Detective Chief Inspector Garry Mitchell (Police Scotland):** Good morning. I am a detective chief inspector in Police Scotland's organised crime and counterterrorism unit.

**Assistant Chief Constable Ruairaidh Nicolson (Police Scotland):** Good morning. I am assistant chief constable in Police Scotland responsible for organised crime, counterterrorism and safer communities.

**Alison McInnes:** I am a North East Scotland MSP and member of the Justice Committee.

**William Wilson (Scottish Environment Protection Agency):** Good morning. I am national operations waste and enforcement manager with the Scottish Environment Protection Agency.

**John Pentland:** I am MSP for Motherwell and Wishaw and a member of the Justice Committee.

**Calum MacDonald (Scottish Environment Protection Agency):** Good morning. I am an executive director of SEPA and chairman of the environmental crime task force, which was established in 2012.

**The Convener:** I am conscious that Mr Dey has come bearing his title of deputy convener of the Rural Affairs, Climate Change and Environment Committee. As we are seeking to explore the links between the environment and crime, we will not, I hope, tread on any toes.

I will start with a general question. Why on earth should one link serious organised crime and crimes involving environmental waste and so on? Would the public not ask, "What's it all about, Alfie?"

Who wants to start? Assistant Chief Constable Nicolson looks like a man who is at the starting gate, ready to go.

**Assistant Chief Constable Nicolson:** I can start, convener. That is no problem at all.

Organised crime is in every facet of Scottish life, and the people in question will be involved in environmental crime as they will be involved in any other kind of criminality. They will try to get involved in legitimate business and to undermine legitimate business, which is a key component of what we are going to talk about today.

11:15

We conduct data sweeps quarterly to give us a real understanding of what organised crime is involved in. We have roughly 220 organised crime groups in Scotland, with about 3,500 members, and their involvement in environmental crime has been growing. We think that it was about 1.3 per cent in 2012 and that it is about 4 per cent in 2014. About 10 organised crime groups are now involved to some degree in environmental crime. They do not adhere to legislation or regulation, which gives them a competitive advantage, because they can undercut legitimate business, and we want ultimately to stop that. We want to put a stop to the difficulties that arise from their dumping toxic waste into landfill sites and doing a wide range of other things that save them finance but cause difficulty for the environment and various parts of the economy.

**The Convener:** I appreciate that, for reasons of prosecution, you cannot name names.

**Assistant Chief Constable Nicolson:** Absolutely.

**Calum MacDonald:** I agree with everything that Ruairaidh Nicolson has just said. There is a very low barrier to entry into the waste industry for organised criminals, and the potential benefits for

them are huge. There is little to dissuade them from becoming involved and there are high rewards.

**Linda Ovens:** The cost of being compliant within our industry is increasing, with taxes and requirements to separate waste. New regulations are coming in that require more people to do more things, which has a cost impact and provides a wider range for such people to operate below.

**William Wilson:** In addition to what Linda Ovens has said, organised criminals operate in a dynamic and flexible way. They are quite adept at putting up a legal façade and giving the impression of compliance, while sitting behind that their underlying motive is to gain money without adhering to the environmental requirements that apply to them. At the same time, they undercut legitimate business and do not allow a level playing field.

**The Convener:** I have no other witnesses on my list. John Finnie wants to ask a question.

**John Finnie:** Thank you, convener. The question is on a point that you started off on.

The witnesses have talked about public awareness. For example, when someone is having repairs or renovations done to their house, it is important that they know that the waste from that work will be properly disposed of. Has there been any campaign or could there be some sort of collective action? I appreciate that, as Mr Wilson said, a business might have a legitimate front and its criminality might not be obvious. However, it is terribly important that there be some raising of public awareness.

**William Wilson:** We are looking into that, and we have sought to engage with the industry and those who are involved in infrastructure, supplying haulage and moving waste to and from various sites. The underlying evidence is that prices are too good to be true. We must get that message out to the industry, and we have sought to do that. There is a duty of care on the industry regarding its movement of waste back and forth, but we now need to reach out to the public. It needs to start somewhere. We will be reaching out to the private sector and the public and local authority sector through the work that we are doing with John Mundell and local authorities, but now is the time to reach out to the public and put that message across.

**Linda Ovens:** Public awareness is increasing. We have just had national litter week and there have been huge litter campaigns. The public is very aware of fly-tipping incidents and the small-scale crime that is going on, but what we are looking at today is a level above that. We are looking at the organisations that—

**The Convener:** We are not on fly-tipping and litter. We are into toxic waste and so on—that is what we want to hear about.

**Linda Ovens:** The public are very aware of the low-level—if you like—criminality, but not about what we are talking about today.

**The Convener:** We are still on publicity and so on. On that issue, I have John Mundell and Mr MacDonald to let back in again. Graeme Dey is on my list.

**John Mundell:** It is invariably the public who identify problems with dumping. They are usually the ones who have witnessed increased volumes of traffic going to particular sites and who report those incidents. However, there have been a number of campaigns to raise awareness, for example the dumb dumpers campaign, which is run by Keep Scotland Beautiful. Some of those campaigns have been on television and so on.

The convener said that she does not want to deal with fly-tipping, which I can understand, but there are varying degrees of fly-tipping, from small incidents—maybe an individual householder—up to building businesses. The latter is a form of crime as far as I am concerned. They may be dumping materials that can include asbestos. It may just be in a field entrance, but the problem of dealing with that is just the same, though perhaps on a smaller scale, as it is with major sites.

**The Convener:** I am not disputing for a moment that it can be just a mattress or a whole lot of waste that has been fly-tipped on farmland. However, we are looking specifically at serious organised crime that is under a blanket—we do not know about it. We want to get publicity for this. How is it publicised to the public and perhaps to other agencies, and to the people who give the contracts, such as local authorities and health boards? What information are they being given so that they know, when they get bids in, who is behind the bid?

Mr Mundell, you have done your bit. I want to talk to Mr MacDonald. Is it along the lines of the large agencies?

**Calum MacDonald:** Yes, absolutely. I would say that public awareness is low. John Mundell is right that it is often members of the public who draw illegal activity to our attention. However, among the public, there is very little awareness that organised crime is involved in the industry.

It is probably also fair to say that awareness among many responsible authorities is pretty low, although it is growing now. The people whom the committee has around the table have been meeting and discussing the issue with a view to working co-operatively. That includes the legitimate end of the industry in the shape of Linda

Ovens and Stephen Freeland, as representatives of the trade body and the professional body.

**The Convener:** Do you want to come in now, Mr Freeland? That is your cue.

**Stephen Freeland:** One of the least well-known victims here is the regulated and legitimate industry. If we do not make greater efforts to clamp down on environmental crime and the serious organised criminals who are involved in this, materials can be diverted away from regulated sites. We have members who are committing to multimillion pound developments or new facilities to meet the zero waste plan objectives. Why would they want to risk all that money if there is no guarantee that they will get a return?

For me, the weakest link in the supply chain is the waste producer—the high-street business—that is now being bombarded with a whole lot of regulations. We fully support the regulatory framework—it is needed to drive improvements and raise standards—but it inevitably comes with an additional cost. If the waste producer is unaware of the regulatory requirements and somebody comes along and is able to offer a cut market price, there is a temptation to use that offer.

The existing duty of care has been there for 20 years; it is an existing requirement that just needs to be strongly enforced, and there needs to be a better understanding of the information that comes through the duty of care.

**The Convener:** I will take Graeme Dey, then Margaret Mitchell and Elaine Murray. I will put Margaret and Elaine's questions together, like last time.

**Graeme Dey:** I was struck by a comment in the written evidence from Mr Mundell's organisation on the constraints of European Union procurement regulations on councils. Given the partnership approach that is being taken to tackling the issue, what needs to be done to put councils in a better place for ensuring that they do not give such organisations contracts?

**John Mundell:** The primary control that a council has in checking suppliers is the tendering process. A council cannot legally disbar a supplier or a tenderer from submitting a tender for works—which might well involve disposing of the domestic waste stream—purely on the basis of intelligence from the police.

Increasingly, the environmental crime task force is sharing hugely helpful intelligence. I feel positive about the task force's work on that, because Her Majesty's Revenue and Customs, the police, SEPA and the border force are all sharing such data. That is hugely helpful, but we are barred

from excluding a tenderer for which no formal criminal convictions have been secured. Convictions could cover anything from bribery and corruption through to common-law offences. If there have been no convictions, it is extremely difficult for us to bar such sophisticated organisations from tendering and not to award tenders to them.

If, during the term of an awarded contract, we come across evidence that proves that a supplier did not declare a criminal conviction before the tender stage or at the time of the award, we can cease the contract immediately, without any recourse to compensation for the supplier. There are rules and regulations; the difficulty is getting the intelligence. The environmental crime task force is improving our information-sharing protocols, which will be hugely helpful, but that is not easy. Achieving effective fast-tracked information sharing is complex.

**The Convener:** Do the criminal convictions have to be relevant to the contract? We are often talking about money laundering, when dirty money—literally—is put into a so-called legit business. Can any criminal conviction be relevant? How do councils get behind the façade of individuals' and companies' legal status? That is difficult technically and legally.

**John Mundell:** That is extremely difficult, and I am certainly no expert on the different forms of legislation. There are common-law powers, which I mentioned. A long list of convictions exists, including cheating HMRC and failing to pay VAT. Such convictions are all relevant and probably exist on a great scale in serious organised crime.

**The Convener:** Perhaps ACC Nicolson can help me. I am trying to get at how convictions of individuals can be linked to a company name that veils a different identity.

**Assistant Chief Constable Nicolson:** That is extremely difficult. Many of the individuals whom we are talking about have no criminal convictions; they keep themselves distant from all that.

We have intelligence that we want to share, but that can become difficult. Even if we share it, there is no confidence that it can be used, because litigation might follow. We need to find ways of sharing intelligence that does not amount to information about a conviction, which is straightforward. We might have intelligence that we cannot legally share because of its source. We need to find ways to change that situation so that councils and other bodies have confidence in refusing to give contracts to the businesses, organisations and individuals that we are talking about.

**The Convener:** We might come back to that.

**William Wilson:** I will broaden out the issue. As an agency, SEPA is constrained by current legislation on issuing licences and permits. We have a fit-and-proper-person test, but we are limited to considering environmental crime convictions, concerns about financial provision and technical competency.

We are looking at legislation on the fit-and-proper-person test under the Regulatory Reform (Scotland) Act 2014, but the problem is in piercing the corporate veil. Despite whatever conditions we set for the fit and proper person, we might still have intelligence that the company is merely a façade. As an agency, we are left asking what we should do. If all the boxes have been ticked, how do we stop such things happening?

11:30

**The Convener:** Ms Dalrymple, I think that this is where the Crown Office comes in.

**Catriona Dalrymple:** As ACC Nicolson identified, the issue is that of converting the intelligence into evidence that can be led in court to obtain a successful conviction. There is quite a lot of case law in the United Kingdom relating to piercing the corporate veil and looking behind a company that is being utilised for sham purposes. We are completely committed to working with all the different agencies to secure convictions when the evidence exists.

Piercing the corporate veil is also relevant when we are looking at assets and the utilisation of the proceeds of crime. That is another tool that we can use to successfully combat serious and organised crime group infiltration. We do everything that we can, working with all the different agencies, to ensure that we identify the benefits and assets that can be restrained and the assets that can be confiscated at a later stage.

**The Convener:** Dealing with companies is a complex process.

**Catriona Dalrymple:** It is complex and it requires a multi-agency approach—that is the key. We have already established very good links, and we have dedicated people working with all the agencies around the table.

**William Wilson:** We would be very interested in learning more and participating in any consultation around the secondary legislation that will come out of the Procurement Reform (Scotland) Act 2014, which gained royal assent in June. That seems to be an area on which we could provide some experience. We could pass on some of the issues that we have and see whether they are relevant to that secondary legislation while it is still in draft form.

**Margaret Mitchell:** I want to concentrate on public awareness of a crime such as fly-tipping. Fly-tipping and other such activities are very lucrative for organised crime. To what extent is the taxpayer aware of the cost to their pocket, and how much could be made of that to make them more aware of any intelligence that they could give? I am thinking of, for example, the cost of cleaning up after various breaches, the cost of the investigation and the cost of prosecution. Also, how do we address the leniency that seems to be shown in sentencing? Does the Crown Office and Procurator Fiscal Service have any particular specialism in environmental crimes that could help? Is the duty of care on businesses enough to make them aware that, if something is cut price and sounds too good to be true, it almost always is and they should be in fear of being prosecuted?

**The Convener:** That was clever—that was three questions. They are too cute for me on this committee. I am going to get a pile of questions and put them out there.

**Elaine Murray:** My interest is also in deterrence. There are two aspects to that. The first is the issue of whether someone who commits a crime will be found out, and you have touched on some of the joint working that is going on around that. I am also interested in the suggestion in SESA's evidence that, as Margaret Mitchell says, sentencing is lenient. Do the punishments that are available fit the crimes or do we need to address that?

**The Convener:** To what extent are the public aware of the overall costs of clean-up and everything that happens that hits their pockets? Do you have figures for that? Is leniency in sentencing part of the punishment not fitting the crime? Are there specialists in environmental crime at the Crown Office? Through the duty of care on businesses, are companies informed that, if they are party to criminal activity, turn a blind eye to it or do not make too much of an inquiry, there will be some come-uppance for them?

Let us start with the overall cost. Does anyone have any figures to give us? It is quite a tough question.

**Stephen Freeland:** As you say, the cost is hard to quantify. Earlier this year, the ESA educational trust produced a report, which you have probably seen, that tried to quantify the cost at a UK level rather than at a Scottish level. The figures were set according to a range of different variables, but they suggested an overall cost of about £570 million a year, of which £157 million was landfill tax evasion. The rest was split between fly-tipping, which accounted for £186 million, and dealing with illegal waste sites.

**The Convener:** Those that you know about and those that you do not know about.

**Stephen Freeland:** Yes.

**The Convener:** Does anyone else want to respond on the cost?

**William Wilson:** In the cases about which we cannot go into detail, for obvious reasons, because they are live, we said in our written evidence that the financial benefit, the vast majority of which—between 80 and 90 per cent—is made up of tax evasion, amounts to £27 million. Since we submitted our evidence the figure has risen to £29 million. Ninety per cent of the current figure for those cases is to do with tax.

Are the public aware of that? No. Should there be more public awareness of it? Definitely. We are talking about theft from the public purse, pure and simple, and the money is not going back into the purse to be used for the operation of the Government.

**The Convener:** Have you included the cost of detection and surveillance in that figure? I take it that that is just the cost of the clean-up. Does anyone have figures for the total cost of the effort?

**William Wilson:** Sorry, convener, I was not talking about the clean-up cost. The figure that I gave is the financial benefit that the individuals and companies themselves get.

The clean-up costs are substantial. I can say without going into detail that the costs in the cases that I have been talking about will run into millions and millions of pounds. The figures in the submission from Northern Ireland are startling. We have to combat the problem and make the Government and the public aware that this is a serious issue.

**The Convener:** No one else wants to comment on the costs, so I will move on to leniency in sentencing. Do the witnesses think that the punishment does not fit the crime? I cannot ask the Crown Office or the police to respond, because you are not allowed to talk about that, but can we hear from local authorities, who bear the burden of doing all the work?

Does no one want to comment? Feel free, be bold, this is your chance! Go for it, Ms Ovens. Everyone seems to be very quiet on the question of leniency in sentencing.

**Linda Ovens:** Thank you, convener.

On the point about awareness, it is not just the general public who do not have much understanding of the costs that are involved. The compliant industry itself is shocked when cases come out and costs running into millions of pounds are made public.

You asked about leniency. Our experience for years has been that fines have been used for specific environmental crimes such as fly-tipping. The fines that are attributed to cases in England in the ESA report that was provided for the meeting are far lower than the costs of the tax evasion and clean-up and all the legal costs.

**The Convener:** Can someone clarify whether statutory fines or common-law penalties are imposed?

**Catriona Dalrymple:** I am not sure about the situation in England and Wales, but certainly in Scotland if the prosecution takes place under statutory legislation there is a statutory fine.

**Calum MacDonald:** I will not criticise the judiciary. The level of fine is entirely a matter for the judiciary—

**The Convener:** If it is a statutory fine, the judiciary is bound by that. That is why I asked the question.

**Calum MacDonald:** Yes. What I will say is that there has been a trend in the right direction in recent years. Let me give you examples of cases that SEPA has brought to the courts. One such case resulted in a fine of £200,000, another resulted in a custodial sentence of six months, and another resulted in a restriction of liberty order. Those are all recent cases, so I think that there is a move in the right direction.

**Catriona Dalrymple:** A conviction last year resulted in the first confiscation order in relation to environmental crime, with seizure of assets of £41,130 from a company.

**The Convener:** The Crown Office has specialisms in fighting wildlife crime, environmental crime and so on. Can you tell us more about that?

**Catriona Dalrymple:** One of the strategic priorities for our organisation covers the prosecution of serious crime and the recovery of assets from those who are involved in criminal activities. The serious and organised crime division, which was created in 2011, is split into seven units. We have the proceeds of crime unit, the economic crime unit, the international co-operation unit, the wildlife and environmental crime unit, the organised crime unit, and the criminal allegations against the police unit; in the course of this year, we will set up a regulatory crime unit. I think that that demonstrates that within those units there are specialists. For example, the proceeds of crime unit has about 19 or 20 members of staff who work exclusively on the seizure of assets in relation to live investigations.

**The Convener:** I will draw in ACC Nicolson on specialisms, because they start to an extent with the police.

**Assistant Chief Constable Nicolson:** Exactly. I am the head of the organised crime, counter-terrorism and safer communities areas, just to add in some other bits and pieces. We adhere to the Scottish Government's strategy in terms of letting our communities flourish and the four Ds: detect, deter, disrupt and—

**Detective Chief Inspector Mitchell:** Divert.

**Assistant Chief Constable Nicolson:** Divert. [Laughter.]

**The Convener:** You did well to get three.

**Assistant Chief Constable Nicolson:** Fairly obviously, leads on each one of those allow us to take them forward. At the end of the day, once we are talking about fines we are probably at the wrong end of what we need to be doing. There are about £9 billion-worth of public service contracts in Scotland, and that is what we ought to be trying to protect. Every single penny of that ought to be going to legitimate business. That must be the outcome of what we try to do here and collectively.

All the agencies that are represented here are working together. Gartcosh brings benefits, in that all the various agencies come together there. Over the next three or four weeks, SEPA will be embedded into Gartcosh. Calum MacDonald and I signed an information-sharing protocol with SEPA in June. Great strides are being made in how matters are taken forward.

I return to what I said earlier on intelligence sharing. We would like to share much more intelligence about what is going on with not only SEPA but local authorities, because we know from our intelligence—although we do not have the level of conviction—that people are involved in serious organised crime and we know whether they are involved in money laundering. At times, we cannot share that level of intelligence with others when they could make decisions about whether to involve other organisations. We need to find ways of making—

**The Convener:** Why can you not share?

**Assistant Chief Constable Nicolson:** It is illegal to share some intelligence that we gather with other organisations. Further, some intelligence is not at the level of corroboration at which councils and others could have confidence that they could take it forward—

**The Convener:** Let us park “corroboration”—we are not allowed to use the C-word in here.

I understand your point about some intelligence not being secure and that if it was shared with local authorities they might think that the

information was dodgy and could not be sustained. However, you said that there are other reasons why you cannot share intelligence. Without giving information about cases, can you say what those other reasons are?

**Assistant Chief Constable Nicolson:** Under part 1 of the Regulation of Investigatory Powers Act 2000, there is certain intelligence that we cannot legally share with anybody else. Such intelligence would give us confidence that organisations are involved in serious organised crime, but we are not in a position where we can share that with other people—

**The Convener:** I am sorry, but I want to pursue that. Give us an example of something that you cannot share under RIPA, because that seems to be the whole problem for you.

**Assistant Chief Constable Nicolson:** It would be intelligence at a very sensitive level that we can gather but which we are not in a position to share with—

**The Convener:** Us.

**Assistant Chief Constable Nicolson:** Exactly.

**The Convener:** Okay.

**Assistant Chief Constable Nicolson:** Under RIPA part 1, we cannot share what we have at the most sensitive level of intelligence gathering. There is other intelligence for which we cannot give the source. Fairly obviously and legitimately, people in councils would want to know what the source of any intelligence was and how much they could rely on it. We can give them the intelligence, but we cannot tell them the source. It is not that the intelligence cannot be relied on—we would suggest that all the intelligence that we would give can be relied on. However, we cannot share its provenance. That causes a difficulty because, when the council goes forward, it gets challenged in the courts through litigation and does not have the confidence in using that intelligence. It cannot go back behind it to understand where it came from. There is a range of issues.

11:45

We have suggested an intelligence and information commissioner—a High Court judge or whoever else—who might examine our intelligence and be able to give some form of certificate. I do not know what that would look like but, nonetheless, the commissioner would be able to say that they had examined the sensitive intelligence and to confirm whether an organisation is involved in serious organised crime or that it definitely is not and gets a clean bill of health. That would give the various organisations the opportunity to deal with the matter and decide

whether an organisation or individual could get the contract that they were trying to procure.

We think that there are ways of moving forward and sharing more readily more of the intelligence that not only we but SEPA and the local authorities hold. As I said originally, this is about the £9 billion of public procurement spending. We are focusing today on environmental crime and I wholly understand that but, as I said at the start, serious organised crime is involved in every facet of Scottish life, whether that is in nurseries or whatever.

**The Convener:** Yes, we know. Care homes, too.

**Assistant Chief Constable Nicolson:** Exactly. My plea is for something broader. It is really important that the public marketing of the matter is all about environmental crime, but it is also important that the public understand the other aspects of what organised criminals are involved in.

We do a lot of marketing. We go to the media and promote success as we see it, but anything that can be done to ensure that the public know, understand and do not buy into organised crime should be done. If something seems too good to be true, it will be too good to be true.

**The Convener:** Margaret Mitchell's question was about the duty of care of the parties issuing the contract. Does anyone want to comment on that? Is there a role for the Crown Office when someone wilfully turns a blind eye? Is there a legal remedy?

**Catriona Dalrymple:** It is more likely to be a civil legal remedy, I suggest, under the tendering of contracts and the procurement process.

**The Convener:** It is a duty of care. Yes, it is civil, but I meant that it might verge on being art and part.

**Catriona Dalrymple:** It would depend entirely on the circumstances and the state of knowledge, for instance. However, we would not be averse to considering the matter if we had good evidence to suggest that that was the case.

**The Convener:** Are there parties to contracts who regularly and easily give them out to the wrong sort of companies, which shows that they are in it together? That is what I am getting at.

**William Wilson:** I think that Calum MacDonald will come in on this.

There is provision for duty of care in a number of environmental acts. The question is whether the responsibilities on the operators under that duty of care are fully understood. The duty has been in effect for a number of years under various guises,

but more needs to be done on enforcement and bringing it back to the industry's attention.

We held and continue to hold discussions with industry and professional bodies. As recently as 2012, we outlined at the launch of SESA's pathway to zero waste that the duty of care lies at the heart of that and that organisations have a joint responsibility to undertake that duty. That has also been reinforced in recent legislation.

**Calum MacDonald:** Stephen Freeland mentioned that the duty of care legislation on waste has been around for 20-plus years. However, the key thing to note about it is that it was designed pretty much as a self-policing mechanism. There are literally millions of transactions a year on the movement of waste materials and it would be impossible to police them proactively. Therefore, when the system was designed 20 years ago, the intention was that it would be self-policing, and that is part of the problem.

**Linda Ovens:** We discuss the duty of care system in industry forums such as SESA. The duty is on the operators and the people who understand what it is and what it needs to do. It comes down to the fact that there is a bunch of new businesses that are required to look for contracts and do all the things that the system requires but, as a householder, would you know that you need a transfer note and that you have to be a regulated carrier to take waste away? You put your bin out and the local authority takes it.

**The Convener:** I am not answering that question on the ground that I may have breached the duty of care.

**Linda Ovens:** As a householder, that is not something that you would think about automatically.

More and more small businesses in particular are not aware that the rules are different for business waste. That is at all scales. Duty of care works for the people who know what it is, but a whole layer of education about those responsibilities is missing at the moment.

**Stephen Freeland:** There are moves to change from a paper-based approach to an electronic approach to the duty of care, which is very welcome and should provide a greater oversight of the movement and transaction of waste. We will then, I hope, be able to pinpoint exactly where the problems lie.

**The Convener:** What do you mean by an electronic approach? Electronic is not a magic word. What does it actually mean?

**Stephen Freeland:** At the moment, when a high-street waste producer contracts with their waste collector, a paper note is produced, which

says, "I've picked up from X location. I've taken X waste and I'm taking it to destination Y." That paper is then stored in a box—

**The Convener:** It is more waste.

**Stephen Freeland:** It is stored by various different parties in the chain. If SEPA is required to do an audit of where that waste has gone and who has been handling it, the paper note should be available. Unfortunately, less scrupulous operators are less inclined to keep hold of the notes.

If we all move to an electronic system rather than a paper-based system, all the information will be transferred on to spreadsheets using hand-held electronic gadgets.

**The Convener:** Where does the information go? Does it just stay with the person who has put it on the database?

**Stephen Freeland:** It can be uploaded to SEPA's systems automatically, which should provide a bit more oversight of the process.

**The Convener:** Thank you. I need these things to be explained to me.

**Linda Ovens:** There has historically been a gap between waste collection information and the site information. It has been quite difficult for SEPA to match where somebody says things are going on the collection systems—on paper systems—with the site information. Pulling the electronic systems together will make the process much more transparent.

**William Wilson:** The electronic duty of care is being introduced, and it is a voluntary system at the minute. Perhaps we could look at making it compulsory at some point, but we are a long distance away from that at the moment. We hope that it will allow for more systematic analysis of the waste flows.

The paper-based system that exists at the moment is open to abuse. If you are an unscrupulous operator, you can falsify, copy and do whatever you want with the paperwork. It is clearly an avenue that criminals will exploit.

On the specialist question, which kicked this whole discussion off, more work needs to be done on financial investigation and analysis of the waste flows to understand where the trends are: where we are seeing movements that do not make sense, and where there are hot spots—where waste that should not be going is going. That analytical work is being done by staff in SEPA, but it is difficult to do using the paper-based model, because there are so many copies of notes and so much paper is in the system.

**The Convener:** You said that the system is voluntary. Can you give us some idea of the percentage of operators that are using it?

**William Wilson:** The electronic duty of care is just being introduced. A number of operators already have electronic systems in their business model. They have duty of care systems in an electronic form, which they use to follow the flow of their own materials, because it is in their commercial interests to do so. There is a natural reluctance to change from one system in which they have invested time and money, and with which they are content, to a centralised system that is effectively in the hands of the regulators.

**Sandra White:** Is this voluntary?

**The Convener:** Yes, it is voluntary, Sandra. That is why I am pursuing this line.

**Sandra White:** Are councils not involved in putting it all together? To me, that is one of the biggest questions. If you are a small business—

**The Convener:** You have jumped the queue, but I will let you in. There is a big queue here on my pink list.

**Sandra White:** I think that I have been pretty patient actually.

**The Convener:** John Pentland will be very cross because he was next.

**Sandra White:** Let John in then. On you go.

**The Convener:** The system is voluntary, and we will come back to that because it is a very important point. In these discussions we often get down to nitty-gritty, and we are doing so today.

I will let Graeme Dey in because he is representing the Rural Affairs, Climate Change and Environment Committee. That is the only reason I am letting you in ahead of the queue, Graeme.

**Graeme Dey:** Thank you for indulging me, convener.

I was struck by an assertion in the written evidence that some sites are operating without any licences at all. That might be small scale, but one question strikes me: if we are talking about duty of care, should there not be a basic requirement—if it is practical—that small companies or whatever are licensed? I presume that local authorities check whether sites are licensed, but should the person who is issuing or tying into the contract be required to check that whoever is taking away their waste has the appropriate licences? Could that be developed?

**Calum MacDonald:** I am happy to take that question. That is the requirement at the moment: the duty of care requires that every person in the chain passes the waste on to someone who is entitled to take it, right through to disposal. However, that has not stopped the increase in the

growth of completely illegal sites that have no licence.

**The Convener:** I am going to take three questions as I did before—John Pentland to be followed by Christian Allard and Sandra White.

**John Pentland:** My question is a follow-up on the duty of care. Linda Ovens said that, when industry groups meet, the duty of care is one of the topical subjects that is brought to the table. My understanding is that most of the crimes are associated with recyclers who have exemption and do not require a licence.

A good example of that is the operator in my constituency who, a couple of months ago, left a situation that cost the public purse nearly £400,000 to clear up. That case also brings up the issue of awareness. The general public who live in and around the area did not think that there was anything wrong. People were of the opinion that, because they were able to dispose of their tyres, that was all right. Should we think about starting to suspend exemptions for recyclers?

My second point has also arisen because of something that happened in my constituency, and it is a question that my constituents have been asking me. Is there no proper auditing for tyre disposal?

**The Convener:** That was two questions—thank you. At least it was just two questions and not the four that Margaret Mitchell asked.

Christian Allard and Sandra White are next. I am going to take Roderick Campbell and Alison McInnes in the next batch. You have not been forgotten.

**Christian Allard:** I wonder whether we are not getting away from the main point, which is about serious and organised crime. What we have been talking about during the past five minutes has been more about regulating normal and legitimate businesses as opposed to serious and organised crime. Those businesses make sure that they have a façade and that they follow up on all the new regulations.

I want to go back to public awareness and particularly what Linda Ovens said about people in this sector. Are we a soft touch? Do we in Scotland see ourselves as being free from the serious and organised crimes that we perhaps see as prevalent in other countries such as Italy? I know that the Camorra was very much involved in the sector in the north-east that I used to work in, but that was seen as incredible; people rejected the idea. Companies working in the sector thought that it was not possible in the UK or in Scotland—that it would not happen.

How can we address that issue? Is part of the problem the fact that we feel that serious and

organised crime does not happen in this country? Does the committee need to hold a private session to talk about it?

**The Convener:** I think that that is something that the committee would discuss at the end of the next item, when we have our wash-up on the subject.

Sandra White is next. I am being very kind in letting you in when you jumped the queue.

**Sandra White:** I apologise for that, but we wandered off in slightly different directions.

**The Convener:** What? This committee wandered off?

12:00

**Sandra White:** We have heard that there are already 10 organised crime groups involved in such crime, so the problem is expanding. The issue is not just in Scotland—there is a cross-border issue. Waste even comes from the rest of Europe, and it is exported from here, too.

From what I have heard so far, we are dealing with two issues. We are considering how we close down illegal sites, and we are talking about the so-called legal sites, which to my mind are where the organised crime is because they are part of money laundering.

What is the problem with the legal sites? Are they not licensed properly or are the licences not followed through? Is there an issue with audit, which has been mentioned? I find it unbelievable. Most members will have constituents with small businesses who have to pay quite a lot up front to dispose of hazardous waste such as asbestos. If somebody comes along and says, "I'll take it off your hands at a cheap price," the business owner might agree to it.

In other areas, there is an audit trail. Where does the problem lie? Does it lie in illegal sites that are opening up for dumping or in the legal sites that known criminal gangs use as a front? I think that Mr MacDonald mentioned the low barrier to entry to the industry. How do we tighten up the legal sites and prevent organised crime from laundering money? We have mentioned all this before, but the answer has to do with licensing, auditing and, basically, looking into it.

**The Convener:** I ask members to tell me if I have your questions wrong—my handwriting is that of a medical practitioner. John Pentland asked about suspending exemptions for recyclers and about audit, which to an extent relates to Sandra White's point about an audit trail. John referred to tyre disposal, but Sandra asked about an audit trail for illegal and legal sites.

**Sandra White:** To my mind, there are two issues. We are talking about illegal sites where waste is dumped and nobody is following up on that, but we are also talking about legal sites. I am not saying that I have evidence for this, but people in my area tell me that there are legal sites that are being run by criminals, as a front for other activity. How do we stop that?

**The Convener:** So you mean the sites themselves. Okay—I hear your question.

**Sandra White:** A site could be council owned but run by criminals.

**The Convener:** Christian Allard said that, in his experience in the north-east, people do not believe that we have a McMafia here—people just do not believe that serious organised crime is happening at such a level. Perhaps the criminals are so clever in Scotland that people do not think that crime is happening at that level. Christian asked how we can make that plain, although of course that is one of the reasons for this meeting.

Sandra White also raised the cross-border issue. Waste is being exported out of Scotland and brought into Scotland.

I will leave all those issues for discussion. The witnesses can start answering the whole lot together, or they can pick and mix.

**William Wilson:** Waste tyre recycling is a significant problem, not just in Scotland but across the UK and beyond. There are companies that operate business models that, frankly, do not stand scrutiny. A number of them are able to run under exemptions, which means that they are not required to have a full waste management licence, as the storage limits are under a certain quota. Obviously, I cannot go into the detail of the site that was referred to—

**The Convener:** No—I think that serious organised criminals might just be listening to this meeting. We are aware of that.

**William Wilson:** We are working closely with the Government to consider the exemptions regime on waste tyres. Obviously, it cannot be changed overnight, but we are working with the Scottish Government's environmental quality division on that.

The problem is not just in North Lanarkshire but beyond that. We are taking a close interest in the issue and monitoring a number of sites across the country. We have a priority list of sites for which we undertake regular and repeated compliance inspections and, if necessary, enforcement activity. That work will continue, but there is no short-term fix, because the legitimate markets for waste tyres in the country are limited, so there is an overflow of that waste product.

That touches on Mr Allard's comment about export materials. Waste tyres can be exported along with other waste streams. Scotland exports significant quantities of waste overseas, especially to west Africa but also to the far east, particularly to China and India.

That is an area with which we are concerned, because we have a duty not only here in this country but beyond that, in relation to trans-frontier illegal waste shipments. The agency is strongly involved in the area, not just here but with European and other partners. We work with law enforcement agencies, such as Interpol and Europol, and with other professional groups in Europe.

**The Convener:** It might be argued that we have a greater moral duty to underprivileged countries, which perhaps do not have regulation and are used as a waste dump by western societies.

**William Wilson:** We have a legislative responsibility, as well as a moral duty.

**The Convener:** Absolutely.

You did not respond to John Pentland's question about suspending exemptions for recyclers.

**William Wilson:** We can suspend exemptions. We can also suspend licences or, indeed, take licences from individual operators. As I said, it comes down to the course of action that best fits the situation that we find on a particular site. We have a range of enforcement options in relation to compliance, including warning letters. A suite of options is open to the agency, and we apply those options.

**Calum MacDonald:** The key point is that simply removing a licence or suspending an exemption registration does not solve the problem. The tyres have to go somewhere, and the absence of a market for such materials, so that they can be reused, is part of the problem. Tackling the issue simply from the point of view of the site where the materials were dumped is not the whole answer. A collaborative effort is required, which includes developing markets and talking to the waste management industry about helping in that respect. A significant number of players have a role in that.

**The Convener:** Is it a case of soft-touch Scotland, if I may put it colloquially?

**Assistant Chief Constable Nicolson:** I would not suggest that—

**The Convener:** I am not talking about the police; I am talking about public perception. Do the public not believe that there is a serious issue?

**Assistant Chief Constable Nicolson:** I suppose that that is true to some extent. Do the

public know that we have 220 organised crime groups, which have 3,500 members? I have said that on many occasions in the media, but do the public understand the consequences of that? Perhaps not, but I guess that one of the reasons for this discussion is to help the public to become more aware of the areas in which organised crime is involved.

**The Convener:** It is part of the reason for this meeting. Police Scotland has run useful information campaigns. How much publicity has there been about the particular aspect that we are talking about?

**Assistant Chief Constable Nicolson:** Do you mean environmental crime or broader serious organised crime?

**The Convener:** I am talking about environmental crime, which can be invisible, unlike vandalism—although it is vandalism.

**Assistant Chief Constable Nicolson:** We probably have not done very much on environmental crime. That brings me back to what I said earlier. We try to talk to the media and the public about all commodities in which organised crime is involved, because organised criminals are unlikely to be involved only in environmental crime—they will have firearms, drugs and everything else that we can think of.

Organised crime is about making money and it is about territory, so the issue is the threat and harm to our communities. Organised criminals will use violence to secure a competitive advantage. They undercut other operators and they use violence to ensure that they get contracts. Our campaigns have been about getting the public to understand what organised crime is involved in across the spectrum, rather than just being about environmental crime. That is my focus. I want to ensure that there is a real understanding of the areas in which serious organised crime is involved.

**William Wilson:** The convener asked whether Scotland is a soft touch. I would say that it is not. Is there more to be done? Definitely. How do we compare with other countries? We do better than a number of countries. Mr Allard mentioned Italy, where there is a well-entrenched problem with mafia clans, particularly in the waste sector and in the southern half of the country. Italy is anxious to do more to address that. That criminal model has been exported beyond Italian borders to eastern Europe.

We as an agency are in touch with Interpol and Europol, and we are a partner in Interpol's pollution crime working group. We are anxious to participate in initiatives to learn from and share the best practice and perhaps the bitter experience of other countries. We are working on a project with

funding that we have received from an EU LIFE+ bid that is looking at the vulnerabilities in the market that make it attractive to criminals. Why do they want to operate in that industry sector and not other sectors?

In the year ahead, we will look at the waste streams that are the target focus. Mr Pentland touched on waste tyres, which are one target, but a number of other challenging waste streams are difficult to dispose of and have little or negligible value for recyclability—the value has been taken out of them. Because of their commingled nature, they attract a higher tax rate.

**The Convener:** Can you give examples, please?

**William Wilson:** There are waste fines—the detritus from materials at recycling facilities—that have been commingled to the extent that they can go only to landfill, which attracts the higher standard rate of tax. That rate is £80 per tonne, whereas the rate for inert material on its own is £2.50 per tonne. The difference between £2.50 and £80 is the margin in which criminals operate. Tax avoidance is an extremely attractive and highly profitable area to exploit.

**Calum MacDonald:** I was going to speak about whether Scotland is a soft touch, but Willie Wilson has pretty much addressed that.

On international comparisons, I agree entirely with Willie Wilson that we do not have the same scale of problem as exists in other countries, such as Italy, and I never want us to get anywhere near that. We need to be vigilant, but I suggest that Scotland punches above its weight in Europe. The environmental crime task force model that we have developed is the envy of many countries, and the idea of rolling it out has been suggested in different parts of the world.

The question of raising public awareness has come up a number of times. I will take the opportunity to give a free advert for an event in November that the environmental crime task force is organising. It will be in Edinburgh and we will have keynote speakers who will include the Cabinet Secretary for Rural Affairs and the Environment; Frank Mulholland, the Lord Advocate; and representatives from bodies that are on the task force. I would very much welcome attendance at that by committee members and other parliamentarians. The message is that we are trying to raise awareness of the subject.

**The Convener:** That was a poor trailer, because you did not tell us where or when the event will take place. If you want to advertise, you need to give those details.

**Calum MacDonald:** The exact dates will be made available to the committee. I would dearly

love to see some committee members in the body of the kirk to hear the speeches.

**The Convener:** That will depend on parliamentary commitments.

**Calum MacDonald:** Absolutely—I appreciate that.

**The Convener:** However, the committee is interested in the subject.

I call Ms Ovens. I beg your pardon—Mr Freeland was first.

**Linda Ovens:** Was he?

**The Convener:** Yes. I am sorry; my yellow lists are jumping before my eyes.

**Stephen Freeland:** I am looking at my wee notes and I will go back to a point that Sandra White raised but, before I do that, I say for the record that there is a legitimate trade in the export of materials for recycling.

**The Convener:** We accept that. You are not on trial.

**Stephen Freeland:** If it were not for exports, our recycling rate would not be anywhere near what it is.

Sandra White tried to see whether there is a distinction between fully illegal sites and sites that operate with licences. We are talking about five types of site: the fully illegal landfill site; the illegal recycling operation; the licensed site that deliberately abuses its conditions for financial gain; the licensed site that acts as a front for illegal activity; and the site that deliberately misclassifies materials to benefit from lower tax rates, which Willie Wilson touched on. I am not sure whether there is a distinction between those sites. Environmental criminals operate across and have a foothold in all such sites and probably use a range of them. Our effort needs to focus on the bigger picture rather than on whether a site is illegal or is operating with a licence.

**The Convener:** Thank you. That is helpful.

12:15

**Linda Ovens:** What would help raise awareness and raise the profile of all this is for some cases to make it through the system and be available to be talked about publicly in terms of the financial impact on the taxpayer and the general public.

I know that there are a number of cases in the system that we cannot talk about, but for events such as Calum MacDonald's in November, it would help to be able to stand up and say, "This is the evidence." The frustration for the industry is that we know that illegal activity is being

undertaken but it is anecdotal. We cannot put facts and figures and numbers to it. We know that it is happening and we can pass some of it—or all of it, we hope—on, but then we hear nothing back.

The time that it takes for cases to go through the system means that we do not know whether anything has happened. In the meantime, the compliant operators are being regulated in their own capacity and they are perhaps falling foul of their conditions—not deliberately—and are therefore getting the hard line from regulators. However, they are not seeing what is happening with the bigger picture in those cases that are coming through.

**The Convener:** We will come to that later. At last, Roderick and Alison, your time has come. Can I have your questions, please?

**Roderick Campbell:** My points have largely been discussed. I will just raise the question of whether the regulatory regime is adequate or whether the more fundamental problem—following on from what Mr Freeland and Linda Ovens have said—is that organised crime groups evade the regulatory regime by presenting

"a façade of compliance, employing ... managers and consultants to mask their activities."

Do the witnesses have any general comments on that?

**Alison McInnes:** My question is quite similar to Roddy Campbell's. It would be useful to hear from the industry witnesses whether there are weaknesses in the current system of licensing and monitoring that make it particularly attractive to illegal operators.

**Catriona Dalrymple:** I will comment on Ms Ovens's point. I recognise that successful outcomes are a very good way of raising public awareness. It is important to recognise that organised crime is very fluid, with organised criminals seeking new opportunities. The increase that ACC Nicolson identified shows that this is a relatively new opportunity for organised criminals.

As people are aware, we are working closely with SEPA and the Police Service of Scotland on a very large and complex inquiry into environmental crime, money laundering and potential tax evasion, which we cannot talk about. However, we recognise that effective prosecution is an important element in the strategy to reduce the harm of organised crime.

We have not talked about asset recovery, which is also very effective, as it hits the criminals where it hurts—in their pockets. As ACC Nicolson identified, serious and organised crime is about making money so what we can do is try to take that money away from them. The legislation—the Proceeds of Crime Act 2002—is there and I know

that SEPA now has its own financial investigators to identify the benefits and the assets. Where that occurs and there is a link to the organised crime groups, we can restrain those assets and ultimately, in the event of a conviction, seek for confiscation. We will do that as best we can when the evidence gives us the opportunity to do so.

**William Wilson:** Just touching on the legislation, I note that we now have the Regulatory Reform (Scotland) Act 2014, which came about as a result of the recognition that the various pieces of legislation that were in place needed to be substantially revisited to give us enhanced powers, to make us leaner in how we operate the legislation, and to make it easier and not overly bureaucratic for the industry.

We are looking towards having a simplified and integrated framework and to working under one regime rather than a series of regimes. Having a series of regimes was not helpful to industry and was not helpful to our own regulatory staff when it came to applying the compliance models. The 2014 act has been approved and we are working through it. It is giving us more enforcement powers as well.

Just touching on sentencing, I note that, as part of that work on the 2014 act, we are looking at improved compensation and an improved requirement on us to describe financial benefit. That is taken into close account when it comes to sentencing and when it comes to prosecutions.

Finally, we now have for the first time an offence of significant environmental harm, which brings in an aggravation, as it were, that did not previously exist in legislation, and which should allow us to place before the judicial system the evidence to support consideration of that element in sentencing.

**Calum MacDonald:** The new enforcement powers that are coming to us as a result of the 2014 act are very welcome. They will be available to us from April next year, and there will also be some new sentencing powers available for the courts as a result of that legislation.

However, an improved environmental regulatory regime on its own will not be enough to successfully tackle organised criminals and environmental crime. That will take more collaboration between all the different parties involved, and a bit of creativity, as we move forward. The four Ds strategy must come into play in that respect too, which I would welcome.

**Stephen Freeland:** Going back to Alison McInnes's point about where the weaknesses in the system might be, I see three weaknesses. The first, as Calum MacDonald said at the beginning, is that the barriers to entry are low. People need a truck and a skip, and off they go. That problem

needs to be addressed by the fit-and-proper-person test at the beginning to ensure that their suitability is properly considered.

The other weakness concerns the exemptions, which are also used by legitimate industry. They are in place purely to deal with a small amount of low-risk material, but that leads to a light-touch approach to the regulation of those activities that is being exploited. Greater oversight of exemptions is needed. The plans that are afoot to change the regulatory regime, including new tiers of regulatory oversight, should help to address that problem.

**The Convener:** I will stop you there, Mr Freeland, because you have summed up your point.

As I said at the committee's previous round-table session, if anyone would like to raise one issue for us to progress in the next session of Parliament, they should volunteer themselves.

We will move on from Mr Freeland now, as he has given three suggestions.

**Stephen Freeland:** Can I have one more?

**The Convener:** Okay—we will come back to you, and you can have one more.

Who else wants to suggest one issue that they believe the committee should progress? We are still waiting for the date, time and place, but that is not the issue.

**Calum MacDonald:** I promise that I will stick to one issue. I would like us to get to the point at which we can use intelligence to influence procurement decisions.

**The Convener:** Who wants to go next, with one issue that they want to remedy? You do not have to suggest one if you do not want to, but if you think that the committee should consider a certain issue, you can bring it to our attention.

**Linda Ovens:** We need to speed up the prosecution service, in whatever way we can work together to do so.

**Stephen Freeland:** We need to close the loophole on the duty of care.

**William Wilson:** I think that this has been said already, but we need financial investigation information and financial intelligence to be shared between all the parts.

**Assistant Chief Constable Nicolson:** I support that suggestion—it is about opening the gateway so that we can better share intelligence and what we know. A good example is where there is local knowledge that criminality is involved—how do we use that information and intelligence to good

effect? That is the type of thing on which we need to focus.

**John Mundell:** I support ACC Nicolson's suggestion—

**The Convener:** You are allowed a separate suggestion.

**John Mundell:** Dealing with information sharing and the barriers that are attached to that at present would allow us to create the biggest single step change. In turn, in due course, it would help to advance the pace of dealing with the enforcement side through the courts and so on.

**Catriona Dalrymple:** I do not disagree with any of that, but my plea is that we continue the massive amount of on-going collaborative working by sharing information and talking to each other.

**The Convener:** I think that everyone has had a say, so I thank you very much.

Sorry—did I miss you out, Mr Freeland?

**Stephen Freeland:** No—I mentioned the duty of care.

**The Convener:** We have looked after Mr Freeland—I did not miss him out.

I thank everyone. The session has been extremely useful and I thank you all for your time, which is very valuable.

12:25

*Meeting continued in private until 12:32.*

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