



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 1 September 2015

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CONTENTS

	Col.
DECISIONS ON TAKING BUSINESS IN PRIVATE	1
COMMUNITY JUSTICE (SCOTLAND) BILL: STAGE 1	2
CRIMINAL JUSTICE (SCOTLAND) BILL	28
SUBORDINATE LEGISLATION.....	29
Scottish Courts and Tribunals Service (Administrative Support) (Specified Persons) Order 2015 (SSI 2015/224).....	29
Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/225)	29
Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No 2) (Personal Injury and Remits) (SSI 2015/227).....	31
Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228)	31

JUSTICE COMMITTEE
23rd Meeting 2015, Session 4

CONVENER

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

DEPUTY CONVENER

*Elaine Murray (Dumfriesshire) (Lab)

COMMITTEE MEMBERS

*Christian Allard (North East Scotland) (SNP)
*Jayne Baxter (Mid Scotland and Fife) (Lab)
*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (Ind)
Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Rt Hon Dame Elish Angiolini (Commission on Women Offenders)
Mark Roberts (Audit Scotland)
Cleland Sneddon (Argyll and Bute Council and Society of Local Authority Chief Executives and Senior Managers Scotland)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 1 September 2015

[The Convener opened the meeting at 10:00]

Decisions on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the 23rd meeting in 2015 of the Justice Committee. I ask everyone to switch off mobile phones and other electronic devices as they interfere with broadcasting, even when switched to silent. We have received apologies from Alison McInnes.

Agenda item 1 is a couple of decisions on taking business in private. Does the committee agree to take in private item 6, which relates to witnesses for the Community Justice (Scotland) Bill, and item 7, which relates to our draft report on the Inquiries into Deaths (Scotland) Bill?

Members *indicated agreement.*

Community Justice (Scotland) Bill: Stage 1

10:00

The Convener: Agenda item 2, which is our main item of business, is our first evidence-taking session on a new bill—the Community Justice (Scotland) Bill. We will hear today from one panel of witnesses: the Rt Hon Dame Elish Angiolini, the chair of the commission on women offenders; Mark Roberts, senior manager at Audit Scotland; and Cleland Sneddon, executive director of community services, Argyll and Bute Council, who is representing the Society of Local Authority Chief Executives and Senior Managers Scotland. Saying that very long title has woken me up.

This is our first evidence-taking session after coming back from recess, which, I should note, is not a holiday—we have been working during our break. I will kick off with a general question. What is wrong with the system? What is right with it? Is the bill an improvement?

Mark Roberts (Audit Scotland): Our report “Reducing reoffending in Scotland”, which was published nearly three years ago, highlighted that, although there was quite a good understanding of the services that were helping to reduce reoffending, there was a mismatch in what was being delivered across the country. There was good knowledge of what worked, but it was not available everywhere, and we recommended a much more strategic approach to the delivery, planning and designing of community justice services at national and local levels. That was the issue when we reported nearly three years ago.

Moreover, we highlighted, as did Dame Elish Angiolini’s report, the complexity of the community justice landscape with regard to the number of bodies involved and, in some cases, the lack of clarity in governance and accountability arrangements. Although we think that some of the proposals will potentially improve those arrangements, complexities in the system might remain. Many bodies in the public sector and the third sector in particular are involved, and the accountability systems are complex.

The Convener: I will let members pick up on some of the issues that you have raised in a moment. Do you want to comment, Mr Sneddon?

Cleland Sneddon (Argyll and Bute Council and Society of Local Authority Chief Executives and Senior Managers Scotland): The findings of both reports, which we accept, were important for us. The analogy that we have used for the existing system is that it is like looking at the national health service, but only at the

treatment end. We became very effective at managing offenders and discharging orders, but less successful at having a strategic overview of our work, and there was an absence around prevention and early intervention. That is an area that the committee might want to return to in its questioning.

My only other point is about the community justice authorities. For a long time now, we have been looking at them and questioning the additional value that we have received from them. Have they been giving the appropriate strategic direction to the work being undertaken in their areas? Have they added value? The quite clear answer from both reports was that they have not, which leaves us with the question of how we redesign community justice services. We have been enthused by the extensive consultation and the proposals. Obviously we have comments on how those are operationalised, but we think that it was the right time for a review and for restructuring.

Rt Hon Dame Elish Angiolini (Commission on Women Offenders): The report for the commission that I chaired looked at women offenders, so it examined only a specific aspect of offending: how women came into the system, how they were dealt with and their custodial status, as well as community service and what happened thereafter.

The overall conclusion was that a very significant proportion of the women in Scotland who go to prison should not be there. Many of them—or at least a very significant percentage—serve very short sentences of imprisonment, many suffer from significant mental health difficulties and prison does nothing whatever to reduce their behaviour thereafter. Many of them come out many weeks later and then go back in as soon as they hit the closest dealer or off-licence, and that particular cycle is not being dealt with by imprisonment.

We also looked at the framework and structures around prison after a very important issue was brought to our attention by those in the Scottish Prison Service. They found themselves having to deal with so many different authorities with regard to throughcare for prisoners afterwards that the process had become utterly fragmented. When we looked at the community service structure at that time and why it was not being used more extensively or given a greater opportunity by judges, we found what seemed to be a lack of faith in the efficacy of community justice. To some extent, prison was a very tempting default position, because it meant that a person would go away and at least be off drugs for a period of time. However, even though that was tempting, the fact

that so many were in prison was a very significant flaw in our justice system.

The impetus of our report was the need for a very strong structure for community justice and very robust alternatives. We saw that the effectiveness of community justice was not being measured at that time, which meant that judges could not be convinced that it made a difference. There was no extensive research, and the provision of projects was very short-term. A project would exist for 18 months and then the personnel would disappear or it would metamorphosise into another project in order to gain funding from the Government. Such short-termism meant that the whole system was very bitty and not cohesive, and we recommended that there be a structure with very strong leadership on a par with the prison service, the police service and the prosecution service in the justice system to give it just as strong a voice and ensure that it was just as accountable for its effectiveness. There were examples of very good work that was being done, and we asked why that work was not being taken forward extensively throughout Scotland. The fact is that people were not looking at it, and it was not being taken forward.

That is what we looked at. However, the Community Justice (Scotland) Bill does not look at all of that. Clearly, it does not look at custody—measures on custody and the women's prison have already been taken—and it does not deal with diversion, which to me is a very significant aspect of keeping people out of the system. However, it might well be that diversion is being dealt with elsewhere.

In short, the bill will go some way towards achieving a stronger structure, but I am not convinced that it will be strong or cohesive enough to deliver what we hoped for in our report.

John Finnie (Highlands and Islands) (Ind): Good morning, panel. I would like to ask about two things that you have already mentioned and which are referred to repeatedly in the submissions: early intervention and prevention. What role do they currently have? People tend to think that the issue is about what happens post-custody instead of prevention and early intervention, but to what extent, if any, will the bill improve or enhance those things?

Dame Elish Angiolini: I take it that, by early intervention and prevention, you are talking not about children, but about those who are coming into the system or coming to the attention of the authorities, such as the police.

John Finnie: It is clear that there is a role in that respect. There are different levels. Maybe the issue is the extent to which you would involve education people in criminal justice.

Dame Elish Angiolini: Our report made it very clear that the real solution to much offending behaviour lies in what happens when people are very young. That is where the difficulties arise. By the time people get to 16 or 17, many of the problems have set in and it is much more difficult to deal with them. If we lived in some fantasy land and could transfer all the money to education, nurseries, support for families and so on, we could probably shut down many prisons, but we are where we are and we have to deal with what we have.

People who come into the system at 16 or 17—or even before then into the children’s hearings system—need intensive concentration to divert them away from criminality. A lot of energy, ingenuity and innovation are required to do that. That is not reflected in the bill, which is very much about post-conviction community justice, whereas our report was about taking a much more holistic approach to the centres that we looked at. Something similar has been established in Glasgow, where people are looking at the issue from the beginning of offending behaviour to the time when people come out of custody and are exposed to the same people and peers and the same struggles that they had before, which can often lead them back to self-medication through drugs and theftuous behaviour to accommodate that.

The Convener: Does anybody else want to comment on early intervention? If any member wants to ask a supplementary on this aspect, they should let me know.

Cleland Sneddon: Perhaps I could deal with early intervention in the round, because I am fortunate enough to have as part of my portfolio early years and education et cetera, as well as social work.

We now have a platform in legislation for putting in place a great many truly beneficial initiatives around the early years collaborative, which is absolutely fantastic and provides a tremendous focus. If I do nothing else in my career but work towards the collaborative’s outcomes, I will have at least contributed to the generational improvement of young people’s life chances.

I am sorry—I sound like Harry Burns.

The Convener: There is nothing wrong with that.

Cleland Sneddon: It is absolutely correct to say that if we get it right at that early stage and support young people and their parents all the way through the process, some adverse life outcomes, including offending behaviour, will reduce significantly over time. That will be a generational change.

A key comment in Dame Elish’s opening remarks was about the short-termism of some funding and the introduction of what people have called “change funds”, “innovation funds” et cetera. To get true generational change, we need stickability—now I am really sounding like Harry Burns. If we know what works, we need to put the foot down regarding those preventative and early interventions. They will reap benefits, although we might not get them for 10 or 15 years—or perhaps even longer.

Quite often the opportunities to intervene with a child or a young person arise when they enter the youth justice system, but part of the early intervention work that we need to do is to get in there and support families at pre-crisis stage, when we see the trajectories of where they are going. Families who are struggling to cope need that little bit of additional help to avoid children becoming looked after, because we know that once children become looked after, their life chances deteriorate.

I do not want to turn this into a discussion about early intervention—

The Convener: I want to cover early intervention first, because it has been raised in several of the submissions that we have received.

Cleland Sneddon: I could not agree more with that focus. Our concern, which has been articulated in the Convention of Scottish Local Authorities response and a number of other responses, is that we believe that there could be more clarity not just on managing offenders and their orders but on providing duties to undertake preventative work right across the partnership. That includes partners that are part of the wider community planning partnership but do not naturally associate themselves with community justice services. That is one of the key aspects that could be strengthened in the bill.

John Finnie: Is that—for want of a better term—a presentational failure? Is that collaborative work taking place?

Cleland Sneddon: Let me clarify what I mean. There is a range of policy initiatives around the Children and Young People (Scotland) Act 2014 on things such as throughcare and aftercare for formerly looked-after young people and the early years collaborative. To my mind, those things need to be stitched together. I do not want to turn this into a discussion about resourcing, but I should point out that local authorities’ resources for the work that we are doing in community justice services are pretty well fully assigned to managing the business, by which I mean managing offender behaviour et cetera, and there is very little flexibility to redirect resources within that strict financial envelope.

I must admit—and you will see this in the responses from various organisations—that we are a bit puzzled by the allocation of £2.2 million to community justice Scotland. There is a role for community justice Scotland, but I see no additional resource for local authorities or any of their community justice partners to invest in preventative work. We know the financial envelope that they are working within.

John Finnie: So is the bill reactive rather than proactive?

Cleland Sneddon: In my view, yes.

10:15

The Convener: Christian Allard has a question about early intervention. Is that all that you are going to ask about, Christian? I should point out that we have a big queue.

Christian Allard (North East Scotland) (SNP): If I may, convener, I want to clarify something about early intervention as well as diversion, which was mentioned early on. We all seem to agree with the submissions and that it is not in the bill—

Dame Elish Angiolini: I am sorry—what did you say?

Christian Allard: I said that diversion is not in the bill. However, you have said that it might be dealt with somewhere else. I just want a little bit more input about whether it is already being treated somewhere else—and whether we can identify that—or whether you have any indication that it is going to be treated in other bills or in different ways.

Dame Elish Angiolini: I am sure that the Cabinet Secretary for Justice will be able to explain what the plans are for diversion. I am also sure that there will be plans in place, but I should point out that diversion is not something that is generally governed by legislation. It grew out of the practice adopted by prosecutors back in the 1970s of exercising a more humane approach to prosecution than there had been formerly. In fact, it was the procurator fiscal of Ayrshire who introduced a system of diversion for social work intervention or drink-related offenders' programmes that might assist, and the practice has grown from that.

It might well be that diversion from prosecution is not in the bill because it is part of the role of the prosecutor, who is constitutionally independent of others. Because that independence must be there, the idea of a partnership with the prosecution is, in a sense, anathema. I assume that that is the reason why the Government has not specified it, but I think that the bill must take some cognisance of that. Recognition of what goes before is vital, because keeping people out of the prison structure

is important. After all, once someone has been to prison, it loses all deterrent effect. People talk about the short, sharp shock, but that is a myth. Once you are in—

The Convener: You just go in and become part of the establishment. Sometimes it is a great security blanket for people—they feel better off there.

Dame Elish Angiolini: Absolutely.

The Convener: That is an issue that we can raise with the cabinet secretary or, indeed, the Minister for Community Safety and Legal Affairs, who is dealing with the bill. We can ask him whether it would be possible to put something about that in the section on definitions. It might not be there because it is not possible to bring early intervention and diversions from prosecution into the bill.

Roderick Campbell (North East Fife) (SNP): Will the bill make an impact on what has been described as a cluttered strategic landscape and on the delivery of services or will the landscape still look cluttered? What impact will that have on the issue to which Dame Elish Angiolini referred of the judge paying attention to the issue of community justice?

Dame Elish Angiolini: I do not know. It will depend on how the bill is executed. On paper, anything can look as if it has a capacity to do something, but much will depend on the strength of leadership. The chief executive's role will be to establish a strategic direction and thereafter to hold 32 authorities to account. That in itself could result in his getting bogged down all year in reading reports and assessing performance indicators and could affect how much that individual has the power to influence change to ensure that the third sector can play its important role.

Third sector organisations have traditionally been a huge support to local authorities in their partnerships, but they cannot do that if constant starvation affects their motivation to survive. If they employ staff for 18 months or three years and those staff cannot see themselves having a career in that area, they will disappear. The local sheriff might say, "We have this great project" and then find out that it has gone, has been replaced by another one or has been renamed. Moreover, sheriffs move around the country, and what is available in one area might not be available in another.

We must ensure that the system is made much more robust and that people know whether projects are going to continue and understand that that they will not always be there if they are not producing results. That is the other side of the equation. Some projects might look attractive

superficially, but they are not actually changing behaviours, and the proposals provide the chief executive with the capacity to focus on that. I cannot tell you whether he or she will have the resources to do that, but the bill certainly provides the capacity to improve what has been there before.

Mark Roberts: I think that, just three years ago, we described the landscape of community justice as “complex”, and I interpret what is proposed here as maintaining a complex relationship between the proposed community justice Scotland and the individual community justice partners and local authorities. Mr Sneddon may wish to comment on the role of integration joint boards in health and social care integration, as they will also have responsibility for criminal justice social work in some local authorities. That means that, although the CJAs will no longer be present, additional and different complexities will be built into the system.

That comes back to the point that I made originally about the complexity of governance and accountability arrangements and who is accountable to whom within those arrangements, and about the position of community justice Scotland as a national body.

Cleland Sneddon: It may be helpful if I give an illustration. Yes, it has the potential to remain a difficult and cluttered landscape. My own authority has a three-authority shared service and has taken the decision to transfer its entire social work functions to an integration joint board. The integration joint board has connected closely with the community planning partnership, because the original intent behind the redesign of the justice services was to firmly embed the new services into the community planning partnerships. We then have the complexity of community justice Scotland exercising a role in performance monitoring, making recommendations and reporting.

One of our concerns is over exactly what community justice Scotland is—is it fish or fowl? We know that we would get tremendous value from community justice Scotland providing cultural and professional leadership almost similar to the joint improvement team arrangements that we have in health and social care. It would engage with a range of partnerships and undertake unique research that would spread good practice. However, if it spent its time reviewing performance reports that are locally produced and locally accountable, what additional value would we get from that arrangement? Although the arrangements might be quite clunky, it is not beyond the wit of any partnership to map them and ensure that those local arrangements are in place. Our nervousness arises over whether community justice Scotland should spend its time

duplicating the accountability arrangements that exist at a local level against a national framework of outcomes or whether it should provide professional and cultural leadership. I think that we would get more value from the latter.

Roderick Campbell: In your ideal scenario, what would be the relationship between a national body such as community justice Scotland and local—

Cleland Sneddon: I readily give the example of the joint improvement teams, which are a very effective and welcome support to local partnerships. They are populated with people of high capacity and great subject knowledge, and they perform an exceptional role in spreading good practice and undertaking research. If community justice Scotland were able to perform those roles in addition to some key strategic commissioning work that would sit outwith the local commissioning arrangements, we would get good value from community justice Scotland. I do not see the value in its replicating the performance monitoring arrangements and making recommendations that could overlap with some of the areas of the inspectorates for different partners.

I reinforce the need to look at how well embedded the community justice partnerships are within the community planning partnerships. I think that we would get better value if they were firmly embedded. One might even argue that there should be a different single body—the community planning partnership—to bring a much wider range of partners to the table to make their contributions. That goes back to the earlier point about the need to harness all the contributions of the public sector to do the early intervention and preventative work.

Dame Elish Angiolini: I do not know whether you want each of us to respond.

The Convener: You can if you want to.

Dame Elish Angiolini: On that point, what the commission wanted was a quite different model—a national service in which the chief executive would have the power to measure performance and accountability and be a spokesperson for community justice. At the moment, our perception is that that area is quite weak. If anything, we tend to hear the bad stories. The example was given of two boys smoking cigarettes and drinking coffee for two hours, and we always hear the apocryphal tales of community justice when, in fact, it has undergone a significant transformation and is now much more effective generally than it ever was. We need someone to go out there and lead on that, to convince the community and show it that it is much better for people to be doing something productive or learning skills than for them to be sitting on their BTMs in a cell watching television.

I think that I am pleased that the criminal justice authorities have been disbanded, because they were hovering above those who were doing the work without themselves having a role to play. However, I differ with Cleland Sneddon on his comments about the role of the chief executive. The difficulty with the proposed structure is—I suspect—that, although the chief executive will have accountability to the press and the Parliament, he will not have the power to do anything, although he can direct certain things to happen in the future. He will have to look at performance, because he is looking at many different authorities, each of which could be reporting on the basis of its individual performance indicators. It is important that the public get something that is meaningful and shows that this approach is making a difference, perhaps not by preventing reoffending altogether but by reducing the level of reoffending, with someone who might have offended five or six times a year offending once every two years.

That will take a lot of work, which is why we need to ensure that the chief executive can really look at the difference that this is making. I hope that the outcome of this will be that we not only know the outcomes of community justice but reduce the proportion of people going to prison, because that is costing us a huge amount of money. The taxpayers are paying a fortune for that, and the system is just not working.

The Convener: There is a job to do to get the public to understand what is meant by community justice, but much of the bill's explanatory notes is just jargon. All we are talking about is ensuring that people do not go to prison in the first place—and that, if they have to go, they do not just go back and forth through the revolving door—and that the money is well spent. Some members of the public might think, "Why are you helping these bad people?", but the fact is that, first, they might not be bad people and, secondly, this is all costing an arm and a leg and it is simply not helping. Sometimes the Parliament puts out stuff that I do not think the public understand; in this case, there are references to "landscapes" and "outcomes", but in fact this is quite a simple matter of ensuring that people do not go back and forth into prison or, indeed, that they do not go into prison in the first place.

Dame Elish Angiolini: The other objective is to reduce crime and make communities safer.

The Convener: Indeed.

Dame Elish Angiolini: In their submissions, Victim Support Scotland, SACRO and others make an important point about the role of victims, who need and want to know what the outcomes are and that there is likely to be a reduction in crime. The focus is not just on offenders but on

communities more generally and ensuring that those communities are safer and more peaceful places for people to live in.

The Convener: And there are also families to think about.

Dame Elish Angiolini: Of course.

Roderick Campbell: I might be slightly labouring the point, but I wonder whether it is possible to amend the bill in order to make the structures slightly less complex and, indeed, to home in on a structure that more effectively reaches the goals that you have been talking about. Is that a step too far?

Dame Elish Angiolini: That was the subject of extensive consultation, and the conclusion was that people wanted local delivery and local authorities to be involved. Of course, that is a decision for the people of Scotland, and only time will tell whether those structures have ensured that community justice has become as robust as it is required to be.

Moreover, the structures must ensure that a wider approach is taken, and that there is not a focus merely on a slice of what is happening to the neglect of, say, diversion, which can be an even more powerful tool, and what happens while people are in prison and when they come out. The important point is that the issue needs to be looked at in the round—these are not separate entities.

Given my background in central Government, I find local authority structures quite complex. There are the multi-agency public protection arrangements and the community planning partnerships; there will now be community justice partnerships, and I am not quite sure about the relationship between them or which of them, if any, will have authority. That provision seems a bit ambiguous and needs to be clarified, and streamlining that relationship might help to declunk what might be seen as a clunky structure.

The Convener: Do you want to comment on that, Mr Sneddon?

Cleland Sneddon: I do not think that the structure is that complicated, but we could make it simpler. I have looked at the issue of clarity in the original consultations and the central role of community planning partnerships, and I think that there will always be local variation. If the bill permits a particular partnership to say, "It will be easier if, initially, we vest the responsibilities with the integration joint board, which will report to a community planning partnership and then on back to ministers," I realise that that will put in an extra layer. However, I have to come back to the centrality of the CPP in this.

The CPP brings a wider range of partners to the table. To come back to the member's original point, it would strengthen the bill if there was clarity about the duties on all partners, because there is often a default to local authorities. We sometimes use "local authority" as a default for "local", and it should not be. It is necessary to have clarity about the contribution of all partners to community justice work. That should be about their local contribution as well as their national one. It is easier for some organisations to say, "We contribute at national level in the following ways," but if this is a local partnership and the activities and priorities reflect the local context and local priorities, the focus should be on what they are doing locally. The bill would be strengthened if the central role of CPPs was reinforced and there was greater clarity about the duties on all partners to contribute locally.

10:30

The Convener: Should somebody take the lead in a local authority area for what is happening in community justice? At the moment, there are CPPs, which may not be effective as different local authorities have different ways of doing things—for example, there are rural local authorities and urban ones. Should one organisation take the lead? Could it be a different organisation in each local authority, depending on the set-up? Such an approach would ensure that somebody is in charge of what is happening rather than having a situation whereby everybody is round a table together and nobody is in charge.

Cleland Sneddon: It is easier to have a lead agency model, so that there is one lead agency. The lead agency does not need to be, for example, a local authority, the police, or health; it is for the local partnership to determine the lead agency. However, it is always easier to have a lead agency. The lead agency approach works best if there is complete clarity about the duties and responsibilities of all partners, so that the lead agent does not have to go round all the other partners to get them to contribute. There should be a clear expectation of their contribution and they should have to account for that contribution. The answer to your question is yes.

The Convener: In your view, the CPP might be the body that decides, by agreement, on the lead agency in a local authority.

Cleland Sneddon: Yes, and the agreement should be underpinned by a set of statutory duties on all partners.

The Convener: Yes. Thank you.

Dame Elish Angiolini: I would like to comment on that. The difficulty will relate to the point that we made in the report, which is that if there are

different set-ups all over and something goes wrong in community services—for example, someone breaks into a house after they have been fixing the garden—who is responsible? To the public, a community justice partnership is a rather vague concept. How will the press deal with that? Who is responsible? The temptation will be to come to the new chief executive of community justice Scotland to ask them to explain the situation. That difficulty has to be ironed out, because if different agencies are responsible, accountability will be difficult.

From what I have seen from some committee meetings in the past, some agencies do not send the people responsible; I am not suggesting that they are at fault, but they send another representative, who is not in a position to commit or to make a decision. It is tough in a committee set-up to have real accountability when things do not work. That is why there needs to be a strong, discernible lead. If community justice Scotland is going to be a voice for community justice, it has to have powers that it can direct to where there is poor performance. Community justice Scotland must be able to measure performance and the measures must be meaningful. If each area sets up its own performance indicators, that is a very easy world to live in, because it allows each area to say, "I will develop my own performance indicators and assess myself against them." There has to be some form of link to ensure that communities in Scotland get good value for money and that community justice partnerships work to effective orders that are carried out.

The Convener: Mr Sneddon, you look as if you do not agree.

Cleland Sneddon: We have a different perspective. The national outcomes for Scotland give national outcomes for a range of areas that can be absorbed and reflected in local priorities. We report on those, for everything from alcohol and drug partnerships all the way through to a range of education outcomes—I hope that we will soon have pretty much a new national education outcome framework. That model applies right across local authority services and I am sure that it goes into other areas of the public sector. I understand the need to articulate a clear view at a national level so that the public are given assurance around community justice services—I absolutely get that. However, it does not necessarily involve community justice Scotland or its chief executive duplicating the accountability arrangements that could be delivered at a local level. These are local services and they are accountable to local communities.

Mark Roberts: By way of an example, one of the challenges for us with community planning partnerships is a degree of ambiguity about the

need to reconcile national and local priorities. In some cases, that kind of problem for community planning partnerships may be replicated at the local level for community justice partners. In terms of the outcomes that ministers wish to see, it is about what is needed at the local level versus what is needed at the national level.

The Convener: I am no further forward—I will have to read it later.

Elaine Murray (Dumfriesshire) (Lab): First, I want to ask about something that is not in the bill. Dame Elish, your commission proposed a joint community justice and prison service board. Presumably that would have facilitated the transfer of resource from the Prison Service into community justice. Has the bill missed an opportunity?

Dame Elish Angiolini: A lot has been done to improve the structures for prisons for women. There is a champion, which is very important. The chief executive himself took on that role.

When we had the commission, there was a great deal of nervousness from social work about any form of integration with the Prison Service. You have a probation service, and you would have all of these things under that. Clearly, there is a strong move away from that form. Nonetheless, culturally, social work and the Prison Service are very different, and that must be overcome.

Much of the social work that went on in prisons was separate and distinct; I hope that it has moved on. Someone going into prison would lose contact with their social worker in their local area. They would have different people looking after them in prison and when they left prison. There was a complete disjunction in their care. It was thought necessary to have a joint board to look at what was happening there and to look at the types of activities that were taking place in prison.

If we have a great community justice set-up, and if effective community justice projects are taking place, the prisons need to learn from that. A lot of what is going on is skills building. With the new prison that is being developed and the new community-facing prisons that have been suggested, there is the potential to transfer what happens in prisons. Community justice projects should be closely tied into what is happening in prisons.

Although there does not necessarily have to be a board, we are talking about a board at a very senior level. It would be a good way of looking at what is happening in this whole area of care. It would be an opportunity—whether those who are responsible agree with that is entirely a matter for them. I am not sure that they have said that they will not have a board. However, the issues are so complex that a board could be helpful. What we

are dealing with here is very complex lives and very different types of offenders. They are not widgets. They are entirely different, with very different needs. That is why a degree of sophistication is required. It is why the two agencies—prison and social work—and those who are responsible for community justice, need to come much more closely together. They are already involved in the partnership at local level, certainly in prisons.

Elaine Murray: I want to move on to the definition of community justice partners in section 12 of the bill. A number of written submissions have criticised the content of that section. For example, there is no mention of the third sector. Some have suggested that the Crown Office should be on the list. Others have suggested that it should include the judiciary, although there are concerns about the independence of the judiciary. Do you feel that the list of partners in section 12 is adequate, or should other partners be added to that, particularly from the third sector?

Cleland Sneddon: At least two of us have commented on that issue. It is really important to have wider presentation in the local partnerships. They should certainly include service users' voices. It can be hard to harness that and ensure that it is not tokenistic. A tremendous number of high-capacity third sector organisations operate in Scotland. It is important that they have an appropriate voice at the table.

The Scottish Prison Service has been referenced, and some of the submissions reference having the local PF represented. We think that it is important to have that breadth of representation, but I say again—I am sorry to repeat this—that we need clarity over what is expected of people and what their duties are.

Going back to the point that I made about community planning partners, I note that the focus tends to be on the post-offence work. If we are genuinely going to make a transitional change, we need to ensure that we harness the early years services, education services and housing services—the whole range of people who are addressing social justice issues.

The Convener: I note that housing associations are not on the list and that some local authorities have no housing to access other than that of housing associations. It is pretty key to people who come out of prison that they have somewhere to go to almost immediately or that they retain their tenancy while they are in prison. That has been raised with us.

Elaine Murray: Are the interests of victims, offenders and the families of victims all sufficiently represented in the partnerships?

Dame Elish Angiolini: I do not think that they are. I hope that all the organisations have a real interest in victims, and I suspect that they do, so I am not suggesting that that is in the gift of one particular organisation. However, there is a problem if committees are so large that they become unwieldy and different people turn up at every meeting. How can the services be managed by a committee? How can we make sure that they are working if different people are coming in?

We want a lean and effective core partnership that heavily and meaningfully consults those who have real interests, such as the prosecutor. The prosecutor decides whether somebody goes into the court or is diverted out of the system to a project, so they have to have faith and understanding, and there have to be good relations there.

The third sector is a major player in this area, and it is important to have on the partnerships representatives of those who, often, will be doing the work. I was surprised not to see such representatives included.

The judiciary has to be independent, of course, but it is important to ensure heavy consultation with the Judicial Institute for Scotland and judicial training organisations so that they understand what is happening. In turn, they can consult judges on their experiences of dealing with sentencing and their frustrations when they feel that a community justice sentence does not cover what they need but could keep someone out of prison if it did.

I do not think that the answer is to expand who is included, which would then become almost like a town hall event. We are looking for something that has a slick ability to move forward, change and address any difficulties that exist.

Elaine Murray: Should the bill therefore contain a requirement to consult rather than to have a huge body of people involved?

Dame Elish Angiolini: There is a provision for consultation in the bill, from what I can see, although it will be quite difficult to police how consultation takes place. It will be up to the partnerships and whoever chairs them to make sure that it takes place.

Gil Paterson (Clydebank and Milngavie) (SNP): Having been involved in the voluntary sector for quite a while, I often wonder whether it is possible to enforce in statute obligations and responsibilities on that sector in the same way as we can with the public sector. Is that the real problem for boards and suchlike?

Dame Elish Angiolini: We cannot compel such bodies. Most of them are registered charities, and they can register a function as part of what they

do. Even if they are not substantive members, their attendance would be helpful. The Lord Advocate attends Cabinet not as a member of it but to give advice and views, because they are central to the organisation of Government. The voluntary sector could have that type of status.

Charities are certainly capable of being members. There is no prohibition on legislating for that. However, if they then dissolve, change their name or change their charitable status, there is nothing that the Government can do. The bill has significant enabling powers that give the Government a lot of scope to beef up or change the various roles. That tends to suggest that it is a bill for growth, or a piece of legislation that may grow with the passage of time.

10:45

Gil Paterson: From the submissions that we have received, it seems that the public sector is well catered for; the voluntary sector is less well catered for, but it seems keen to be at the centre of activity. Maybe the way to get round that is through the nitty-gritty of awarding contracts, which can be looked at and measured. Maybe that element of the bill—or the operation of it—would work in that way.

Dame Elish Angiolini: A permissive provision could be made. That does not require an obligation—the bill can say “may”.

Cleland Sneddon: A number of third sector partners are service providers, so they not only represent a body of interest but are in effect small not-for-profit businesses. Those organisations need to be protected from any accusation that they are inappropriately involved in the award of any contracts or work. There are mechanisms to achieve that.

I do not think that it is possible to apply the same set of duties to individual third sector organisations or charities in the way that we have been talking about for the statutory sector, where it is wholly appropriate for organisations to be available for discussions and to help formulate strategy at both national and local levels.

On consultation expectations, there is a world of difference between having an expectation that an organisation will be consulted and having an expectation that that organisation will contribute something. I would prefer to have clarity about what public sector agencies are expected to contribute, so that the partnerships do not have to go to the agencies in the hope that they will contribute.

The Convener: Jayne Baxter has a question on the same issue.

Jayne Baxter (Mid Scotland and Fife) (Lab): I have a small follow-up question for Mr Sneddon. You have largely answered the question that I was going to ask, which was about the balance of contracts and the sometimes unfair dependence for survival that the third sector has on contracts, given the income that third sector bodies get from them. That sometimes puts pressure on the third sector's ability to be perceived as objective. Is the balance in the bill right in respect of the importance of local voluntary projects, given their rootedness in local communities, their credibility and their ability to be connected to communities? Is there enough recognition of the need to negotiate that and of how it might work out in practice?

Cleland Sneddon: I am going to say something that is probably controversial—not everyone will agree with it.

First, I could not agree more with what Dame Elish Angiolini said about the short-term nature of funding. Even when organisations alight on a fantastic service model, half the time they have an eye on what will happen in 18 months' time. It is ridiculous that what works cannot be sustained because of the short-term, cyclical approach to funding.

The Convener: This is absolutely depressing, because I have been hearing that for 16 years in the Parliament. Different revenue funding sources do not match up. An organisation or charity might have three sources of funding, ending at different times, so it spends half its time bidding for money and then changing slightly its name and purpose so that it can keep going. I hope that somebody is listening, because some of us have been here a long time and this issue has still not been resolved.

Jayne Baxter: Some of us have not.

The Convener: I know, Jayne, but we raised the issue in committee years ago, with different Governments. Let us hope that something changes in the short term. I am sorry, but I had to get that off my chest, because it is terrible that the same issue is arising over and over again. It is counter to the funding and counter to the services. Sorry, Jayne—I am fine now.

Jayne Baxter: I am still listening to you, Mr Sneddon.

Cleland Sneddon: I could not agree more, convener.

The controversial thing that I am going to say is that, for me, this is about outcomes for families, service users and communities. I would far rather have the organisation that can best support communities, families and service users, irrespective of whether it is local, regional or

national. As a point of principle, I am not wedded to having support in place for a small local organisation if it is not best placed to provide the best-quality support and care for local communities.

That is an unpopular view that sometimes brings me into a bit of disrepute with organisations that are unsuccessful in tender exercises, because they are in effect small not-for-profit businesses. However, for me, this is all about the outcomes and not about the organisation that delivers.

Jayne Baxter: Does there need to be a bit of consultation about how the outcomes are developed, worded and framed, so that the esoteric values of operating locally can be reflected in the outcomes?

Cleland Sneddon: The outcomes will flow from the national strategy and the national outcomes framework. The outcomes will be customised in different areas to reflect the local context, so they are maybe not the issue. I agree that, in commissioning services to deliver the outcomes, we need to consult on the criteria that we apply and the supports that we put in place to allow small organisations that are not used to tender processes or do not tender terribly regularly to compete on a level playing field with the pretty big and meaty national organisations that have a large capacity. We should give the small organisations the best chance to deliver locally, but not at all costs, because this is about outcomes for communities.

John Finnie: To carry on with that issue, Orkney Islands Council and the outer Hebrides community planning partnership voice the same concern in their submissions in relation to procurement or the commissioning of services—call it what you will. The submission from the outer Hebrides community planning partnership states:

“The concern for any island CPP will be for the potential of a national board focusing on the areas of higher population without the geographic challenges facing this area.”

The submission cites the example of the moving forward: making changes programme, which requires group work that might be practical in an urban area but which is not in a rural or remote island area. Does what the bill proposes allay such concerns? If not, should it do so?

Cleland Sneddon: The point that SOLACE and COSLA made is that there is a role for national-level commissioning, but it should be there to bridge gaps that cannot be filled locally or when there is a particular benefit in getting a national or regional contract in place.

I will trade Orkney for Argyll and Bute, where we often have singleton offenders on an island and we have an unpaid work order to discharge, so we

have one-to-one supervision that is visible and local. We have to deliver something that suits our context and which would not be discharged in exactly the same way in the central belt—for example, in Paisley or another urban area. I am sorry; I do not mean to pick on Paisley.

The Convener: You did not say anything bad about Paisley.

Cleland Sneddon: The point is about any urban area.

It is important that the services that we commission reflect the local context. I take Dame Elish Angiolini's point that there has to be an expectation of having at least a consistent standard of service. The services might not look exactly alike in urban and rural areas or be the same from one area to another, but there has to be a clear expectation that people have a standardised level of service, which gives confidence to the judiciary and others.

In my view, the national-level commissioning should not be the meat of it; the balance should be localised, or even a locally shared service should be commissioned, if you see what I mean. We decided to put three authorities together because that gave us mass and capacity, and we could reflect a service that was local to us. If national contracts did that, that would be fine. However, the further away we get from the local, the less the contract understands what is needed in the local context.

I hope that that has been helpful.

John Finnie: That rather confirms the concerns. How would those concerns be addressed? You gave the example of your local authority area, but another Parliament committee has heard that a per-head cost is used. That is fine if someone is getting a bus and going half a mile down Leith Walk, but it is different if they are getting two ferries and it takes 10 hours to go and meet an individual. Wearing your day-job hat, do you think that those concerns will be allayed by what you see in the bill?

Cleland Sneddon: Not as the bill is currently formatted. We have commented today and in writing on how the bill could be strengthened, but the bill's introduction is a critical and positive development. We want to ensure that the bill's proposals are robust enough to be embedded in local partnerships and that they can deliver flexibly according to the local context and be supported by community justice Scotland.

Does the bill prevent what I have described from taking place? No, but there could be clearer language around the statutory guidance.

John Finnie: Is that something that SOLACE might come back to the committee with,

particularly on the financial implications of any central procurement?

Cleland Sneddon: SOLACE has endorsed COSLA's submission, which reflects on some of the commentary around commissioning and the balance between the local and the national.

Christian Allard: I seek clarification of your views on the bill's implementation and the preparation for the new arrangements. I see that Audit Scotland has welcomed the proposal that community justice Scotland should operate in shadow form for six months prior to starting full operations on 1 April 2017. Is six months too long or too short a period?

The Convener: Wait a wee minute—that is not a supplementary.

Christian Allard: I am sorry—I thought that I could ask a new question.

The Convener: No—park that. Margaret Mitchell has been waiting. I would keep her onside if I were you, Christian.

Margaret Mitchell (Central Scotland) (Con): Most of the issues that I wanted to address have probably been covered, but I want to return to Dame Elish Angiolini's comments and to some of the comments from Audit Scotland. We started with a cluttered criminal justice landscape, short-term funding, concerns about lack of accountability and leadership, and inconsistent service provision, and I am not convinced that the bill addresses those valid issues. Would it help, for example, if CPPs and the third sector were mentioned in the bill and were very much part of it? There seems to be huge ambiguity about how much local autonomy there is going to be, and about how much leeway local authorities and local partnerships will have to deal with the specific problems in their area. Is there a problem with setting national outcomes? Is there conflict between national outcomes and the local areas where, as Dame Elish Angiolini said, things are addressed in a diverse way, whether by releasing people from prison with throughcare or by trying to prevent people from going to prison in the first place through community justice disposals?

The Convener: There is a lot to comment on there. Some of it has already been discussed, but let us hear further views.

Margaret Mitchell: That is what happens when you are at the end.

The Convener: I know, Margaret—you will have to put your hand up quicker next time.

Dame Elish Angiolini: Margaret Mitchell mentioned the cluttered landscape, and there is still the capacity for that to persist. There is nothing in the bill that says that there will be more

streamlined delivery. John Finnie made a point about understanding local needs, but that can be done in a national context. The local procurator fiscal in an area such as Arbroath is a very different creature from a depute fiscal in Glasgow city centre. Just because they are part of a national organisation, that does not mean that they are somehow divorced from the local. They are involved in local meetings and committees, so they understand the issues in their communities because they see them when they deal with the police and when they are in court, and they know the individuals involved quite intimately. It is not necessarily a question of having one or the other. The partnership structure is there, and the bill is permissive in that it says that the community justice partners will have regard to the guidance that is issued by Scottish ministers. That means that they will look at it, but not necessarily that they will follow it, so there could be variation and some partnerships could reject the guidance if they have determined to go their own way. If the chief executive reports that they are failing in some way, they would be obliged to explain why they are not following the guidance. There are more powers of direction in that regard, but the outcome is still a system that allows for great variation.

I do not think that there is any community justice service that does not want the system to work or that is going to be thrown. The authorities want to find out what is working best, and this provides a mechanism to give them that information. One of the most important aspects of our report, and one that was not really picked up on, was that we measure a lot of activity but we do not actually measure the success of that activity. I have to say that that falls on the whole justice system. We have never really looked at how prison works, although researchers have done that in the past. It is not just that the community justice system has been neglected; the whole system has never really looked at how we change behaviours.

11:00

Of course, this is not just about changing behaviours but about how we keep people safe; it is not just about the individual offender but about the victim and restoring equilibrium to the community. It goes much wider, but we need to measure all of that in some meaningful way. If, as chief executive of the organisation, I had to read 32 different accounts, that would keep me going for a few months; if the chief executive gets bogged down in all that, they might not be able to rise above it and look at what is actually happening.

No one has suggested that any inspectors will be looking at this. Cleland Sneddon said that each

of the agencies has its own inspectorate, but we are talking about a collaborative function, which means that there might need to be joint inspectorates or a separate inspector. If we have inspectors for police, prosecutions and prisons, why do we not have an inspector who can report to this Parliament on the effectiveness of community justice to ensure that we do not have everyone telling everyone else that things are going well? Superficially, it might all look very attractive, but we need someone who can actually tell us what is going on. Such a provision would strengthen the bill, but it would be an additional cost and it would be up to the Parliament to determine whether it would be worth while.

Cleland Sneddon: Such an approach would be absolutely correct. We integrated children's services inspections to involve Her Majesty's inspectorate of constabulary in Scotland, the Care Inspectorate and so on, and we are now taking the same approach to adult services. Given all that, it seems appropriate and sensible to have integrated inspections for community justice services; such a move would free up community justice Scotland's capacity to do all the positive activity that we have mentioned.

The Convener: For a start, that person would be the one to read the 32 reports that Dame Elish mentioned. I take your point about the leadership that you see with regard to community justice.

Mark Roberts: I think that the complexity that has been mentioned will remain, but its nature will change. Our experience of partnership working at the local level is that getting all the partners involved and round the table necessarily makes things messy, and although we are very keen to produce nice neat diagrams of accountabilities, such diagrams can become very complex, simply because of the range of accountabilities. Health boards are accountable to ministers, councils are accountable to the local electorate and, as we have mentioned, the third sector is involved, too. The complexity is therefore, to a certain extent, almost necessary.

As we point out in our report, more than 1,300 different community justice services are provided by different providers across Scotland, which means that an awful lot of players are involved—and need to be involved and engaged. The complexity that we have been discussing is almost inevitable with work in this area.

Margaret Mitchell: The inspectorates seem to suggest that they are making a lot of their provisions and work come together, that there is a balance between national and local aspects, that there is proper assessment, that the various leadership roles are being played as they should be and that at the end of the day people are being held accountable. That could be germane to

making all of this work well. I am slightly concerned about the huge lead that local authorities will take in all of this, because, given funding constraints, they sometimes want to retain funds and are unwilling to use the third sector, which can be much more effective in certain situations. I think that having an inspectorate would solve such a problem.

The Convener: That suggestion has come late in the day, but I think that it is a good and interesting one.

Christian, you may now ask your question.

Christian Allard: Thank you, convener. I made it clear that it was not a supplementary, but a new question.

The Convener: It was my fault. I should have read out the list of those who were still waiting.

Christian Allard: If you remember, I wanted to ask about the timetable for implementing the new arrangement. As many of the submissions make clear, this is enabling legislation, which means that it is important that we have a clearly defined timetable for giving us the local leadership that has been referred to. However, some services could be put in place before the legislation itself comes into force.

In that respect, we are talking about a six-month period. Could a lot of things happen in that time? Should the period be shorter or, indeed, longer? Do we really have an opportunity to address at a local level many of the problems that have been highlighted this morning before the legislation is implemented on 1 April 2017?

Mark Roberts: The period of six months that we mentioned came from the findings of a report that we undertook into the formation of various new public bodies. That has happened quite successfully when an operation has been in place well in advance of the formal start date of the new organisation. We have therefore issued guidance on the setting up of new public bodies that recommends having a board operating in a shadow form in advance. We recently did a piece of work on the Scottish Fire and Rescue Service within which we identified that some people were in place at a senior level before the formal start of operations, which certainly assisted that merger to happen quite well. The only caveat to that is that although you can have the timetable in place to get people in post, you have to be able to make appointments. We are aware of some situations in which there were challenges in making early appointments and although the intention may have been to have people in post, it was not possible to appoint in advance.

Christian Allard: How long does that take?

Mark Roberts: To an extent, that is like asking how long a piece of string is. The process could be longer, but then it would be more drawn out. We settled on six months as an appropriate period.

There is quite a lot of work going on at the moment among the community justice community—for want of a better word—to prepare for the transition. The Government and its partners are involved in that. People are starting to think about that, and I believe that the Government has asked CPPs to prepare a transition plan for how they will think about going forward.

Christian Allard: Are the local authorities quite happy?

Cleland Sneddon: There is a great deal of statutory guidance still to be produced. Is six months a sufficiently long lead-in time? Once I have full clarity as to what we need to do in conjunction with that statutory guidance, the position will be clearer. Our community planning people indicate that their planning of the transition is well under way. There has been a lot of discussion and engagement with the wider community around community justice, and I am not hearing anybody say that we will not make the implementation date. However, that will depend on the final content of the bill—what it looks like and what it requires—and the statutory guidance.

Another consideration is what the arrangements are for the set-up of community justice Scotland and who will be on the board. Will it be a true collaboration? Will local partnerships be represented in some form? Will local government feature on the board in some fashion? We still do not have clarity on some of the detail around that.

I am not throwing up my hands about the timescale, but I will not know all the implications until that information is produced.

Christian Allard: Do you think that those few months will provide an opportunity to design a lot of the leadership locally? A lot of things can be done in six months.

Cleland Sneddon: Yes. On the front line, the support for families, service users and so on will still be provided from one day to the next. Business will continue as usual, irrespective of governance structures and all the other stuff round about that. There will really start to be an impact when we start to define what the national strategy and the national outcomes framework will look like at a local level, making strategic, directional changes to the preventative and anticipatory work. Will the world grind to a halt from one day to the next? It will not.

The Convener: No other members are waiting to ask questions—I am not looking at anyone in case somebody puts their hand up—so that

concludes this evidence session. Thank you very much for your evidence, which has been extremely interesting and will lead us nicely to our consideration with other witnesses and, ultimately, with the Minister for Community Safety and Legal Affairs.

I suspend the meeting for one minute to allow the witnesses to leave. Members should stay where they are.

11:09

Meeting suspended.

11:10

On resuming—

Criminal Justice (Scotland) Bill

The Convener: Item 3 is consideration of motion S4M-14094 in my name, which proposes a change to the order of consideration of the amendments at stage 2 of the Criminal Justice (Scotland) Bill. It would move our consideration of amendments to part 1 of the bill from 8 September to 22 September to allow more time for members and the Scottish Government to consider possible amendments arising from the outcomes of the work of the advisory group on stop and search, which was due to report to ministers yesterday. Amendments to parts 2 to 6 would be taken on 8 September.

I move,

That the Justice Committee considers the Criminal Justice (Scotland) Bill at stage 2 in the following order: Part 2 (with schedule 2 being taken after section 61), Parts 3 to 5, Part 6 (with schedule 3 being taken after section 87), Part 1 (with schedule 1 being taken after section 52), Part 7 and the long title (with any amendment inserting a new part before or after an existing part being taken before or after the existing part in accordance with this order).

That sounds like something out of “Yes Minister”. Are we agreed? Did I lose members?

Roderick Campbell: I ask for clarification on what we will deal with on the first day of stage 2. How far will we go?

The Convener: We will deal with everything except part 1. Perhaps that was easier. I felt like the motion was something that the adviser in “Yes Minister”—who was that?

Jayne Baxter: Sir Humphrey.

The Convener: I felt that it was a Sir Humphrey moment. However, we are all agreed, which is good.

Subordinate Legislation

Scottish Courts and Tribunals Service (Administrative Support) (Specified Persons) Order 2015 (SSI 2015/224)

11:12

The Convener: The order adds the Scottish sentencing council to the list of persons to which the Scottish Courts and Tribunals Service must ensure administrative support is provided. The Delegated Powers and Law Reform Committee has not drawn the Parliament's attention to the order. If members have no comments on the order, are they content to make no recommendation on it?

Members indicated agreement.

Scottish Sentencing Council (Procedure for Appointment of Members) Regulations 2015 (SSI 2015/225)

The Convener: The regulations set out the procedure for the selection and nomination of members of the Scottish sentencing council. The Delegated Powers and Law Reform Committee has no concerns on the regulations. Do members have any comments?

John Finnie: I have a number of comments about the selection for appointment, which we have discussed previously. The clerk's paper says:

"The regulations require that before a person can be appointed as the advocate or solicitor member of the Council, the Lord Justice General must consult with the Dean of the Faculty of Advocates and the President of the Law Society of Scotland, respectively."

I find it quite strange that there seems to be a double-check on some people getting into the council, but the policy memorandum for the Community Justice (Scotland) Bill, which we discussed under the previous item, says under the section on equal opportunities:

"In appointing the members of Community Justice Scotland, Scottish Ministers must act in a manner which encourages equal opportunities. Scottish Ministers have recently launched a partnership for change pledge, called '50:50 by 2020' to challenge all private, public and third sector bodies to achieve gender balance on their boards by 2020. It is expected that the appointment ... will comply with this pledge".

I would like a similar provision to apply to the sentencing council.

The Convener: The note on impact assessments in the clerk's paper states that the criminal justice division has said:

"We have considered the impact of policy on particular groups of people (their age, race, gender, sexual orientation, religion or belief or whether disabled or not). We are not aware of any evidence that any of the equality strands will be affected by these regulations."

John Finnie: With respect, convener, that is the same bland statement that we get with every piece of legislation.

The Convener: I do not mean to be bland. I have never been accused of being bland before, but there we go.

Roderick Campbell: It is a wee bit difficult. I am slightly confused: the clerk's paper says that the council will have "three legal members", then it talks about one advocate and one member of the Law Society of Scotland. It is quite difficult to deal with that on a gender-balanced basis, if those people are, in effect, representing institutions. However, I take John Finnie's point.

John Finnie: We are never going to get out of the bit here. The danger is that members can be self-selecting. I know that there is a tension here because people self-nominate. However, there is a finite pool. If the general principle applies to the previous matter that we discussed, I would have thought that Scottish ministers would want it to apply similarly to this.

We know from past experience on this committee that there is a marked reluctance to appear to challenge the legal establishment in any way. Well, we want the legal establishment to be as representative of the wider community as we want every other public body to be. I would be guided by you, convener, as to whether we can ask for that principle to be applied to this series of appointments.

The Convener: My understanding is that we must report by 7 September, which of course is next Monday. We can raise those concerns with, I think, the Lord President and the Government. I am not sure—bear with me. I suspend the meeting for a moment.

11:16

Meeting suspended.

11:19

On resuming—

The Convener: We have clarified the processes. I propose that we write to the Lord Justice General to ask that he takes cognisance of the Government's policy commitment to move towards a 50:50 gender balance by 2020 for selections for appointment to the Scottish Courts and Tribunals Service, in terms of the order. Are you content with something along those lines, John?

John Finnie: Yes. Thank you, convener.

The Convener: It would just underline the point.

Roderick Campbell: It is the Scottish sentencing council.

The Convener: Sorry—I beg your pardon. It is the Scottish sentencing council. I like to be reminded—thank you for that.

Are members content to make no recommendation relating to the instrument, given what we will put out in writing?

Members *indicated agreement.*

John Finnie: That will be reflected in the *Official Report*. I am content.

Act of Sederunt (Rules of the Court of Session 1994 and Sheriff Court Rules Amendment) (No 2) (Personal Injury and Remits) (SSI 2015/227)

Act of Sederunt (Rules of the Court of Session 1994 Amendment) (No 3) (Courts Reform (Scotland) Act 2014) 2015 (SSI 2015/228)

The Convener: Agenda item 5 is consideration of two instruments not subject to any parliamentary procedure: SSI 2015/227 and SSI 2015/228 will amend rules of court mainly in consequence of the coming into force of the Courts Reform (Scotland) Act 2014. The Delegated Powers and Law Reform Committee has drawn the Parliament's attention to the instruments, as they contain minor drafting errors. The Lord President's private office has undertaken to lay amending instruments to correct the errors. Are members content to endorse the DPLR Committee's comments on the instruments?

Members *indicated agreement.*

The Convener: Thank you. We move into private session.

11:21

Meeting continued in private until 11:57.

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