The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 19 January 2016

Session 4

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JUSTICE COMMITTEE
3rd Meeting 2016, 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)
*Margaret McDougall (West Scotland) (Lab)
*Alison McInnes (North East Scotland) (LD)
*Margaret Mitchell (Central Scotland) (Con)
*Gil Paterson (Clydebank and Milngavie) (SNP)

*attended

THE FOLLOWING ALSO PARTICIPATED:

Michael Matheson (Cabinet Secretary for Justice)
Michael McMahon (Uddingston and Bellshill) (Lab)
Paul Wheelhouse (Minister for Community Safety and Legal Affairs)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The David Livingstone Room (CR6)

Scottish Parliament

Justice Committee

Tuesday 19 January 2016

[The Convener opened the meeting at 09:45]

Decision on Taking Business in Private

The Convener (Christine Grahame): Good morning and welcome to the third meeting in 2016 of the Justice Committee. I ask that people switch off their mobile phones and other electronic devices, as they interfere with the sound system.

Agenda item 1 is a decision on taking items 4 and 5 in private. Item 4 is consideration of a draft stage 1 report on the Abusive Behaviour and Sexual Harm (Scotland) Bill, and item 5 is consideration of our work programme. Do members agree to take those items in private?

Members *indicated agreement.*

Criminal Verdicts (Scotland) Bill: Stage 1

09:46

The Convener: Item 2, which is our main item of business today, is an evidence session on the Criminal Verdicts (Scotland) Bill at stage 1. Members will recall that we delayed our consideration of the bill until the Criminal Justice (Scotland) Bill, which contains some overlapping provisions on the reform of jury majorities, had completed its passage through Parliament.

We will hear from two panels of witnesses. I welcome Michael Matheson, the Cabinet Secretary for Justice, and Scottish Government officials Orla Davey, from the criminal justice division, and Kevin Gibson, from the directorate for legal services.

I invite the cabinet secretary to make a brief opening statement if he so wishes. He does not; that is absolutely lovely. I will go straight to questions from members, although the cabinet secretary has probably caught them on the hop. No, he has not—Margaret Mitchell will begin.

Margaret Mitchell (Central Scotland) (Con): Cabinet secretary, your recent submission makes it clear that your preference is for a holistic and evidence-based approach to reform and that having evidence from jury research is important. The Abusive Behaviour and Sexual Harm (Scotland) Bill includes provision that requires a judge to provide jury directions in sexual offence trials. Why is that reform being taken forward in advance of jury research?

The Cabinet Secretary for Justice (Michael Matheson): As you will be aware, Lord Bonomy's review group gave very detailed consideration to any changes that should be made to our jury system, in particular on jury size, jury majorities and the three verdicts, and highlighted that there was a lack of evidence to support any fundamental reform in those areas. Prior to reform being undertaken in those areas, the review group recommended that there should be an evidence base to explore what impact it would have. Part of our response has been to commission the research that the Lord Bonomy review group recommended into those specific areas.

We believe that there is already a strong evidence base for the introduction of statutory provisions on jury directions, largely for the reasons that I have previously outlined to the committee. We also believe that there has been an opportunity for reform of that area to have taken place in the past, without statutory provision, and that it has not been taken forward.

Notwithstanding that, as I mentioned to the committee a couple of weeks ago, there are already some judges who use jury directions at appropriate stages. It is worth keeping in mind that juries receive directions on, for example, the evidence from expert witnesses.

We have rehearsed those points over the past couple of weeks when I gave evidence to the committee on the Abusive Behaviour and Sexual Harm (Scotland) Bill. However, Lord Bonomy's review group also looked specifically at the links between jury size, jury majorities and the three verdicts. It highlighted that, if one aspect of that system were to be altered, it could have an impact on the other parts.

Prior to undertaking any fundamental change in those areas, we should have a clear evidence base and an understanding of what the impact would be.

Margaret Mitchell: Is the research limited to the areas that you have outlined? Is there more information on exactly what jury research will be looked at, how it will be done and the timescale involved?

Michael Matheson: When I gave evidence to the committee back in September, I mentioned that we would be undertaking the jury research as recommended by the Lord Bonomy review group. We have started that process. For example, the review group highlighted six specific areas that should be covered by the jury research. We are just about to enter the final phase of discussions with a range of stakeholders about whether we should add to those six areas. When we have completed that in the next couple of weeks, we will start the formal aspect of going out to expert groups that might be in a position to take forward that research.

Margaret Mitchell: What is the timescale?

Michael Matheson: Is your question about the timescale for completing the research?

Margaret Mitchell: Yes, and thereafter.

Michael Matheson: The timescale for completing the research will depend on several factors, such as whether we choose to go beyond the six areas that Lord Bonomy identified and the methodology that is used by those who undertake the research. Once we have the details of that, we will be able to give a more accurate timeframe. As I think that I have said previously, the process will not be quick.

The Convener: Paper 2 says something about two years being the backstop.

Michael Matheson: Lord Bonomy's report indicated that it could take two years, but that will depend on a range of factors.

The Convener: Absolutely, but we have a ballpark figure. We are talking not about weeks or months, but years.

Michael Matheson: It will take several years, yes.

There are additional issues, such as whether to use mock jurors or real jurors. If real jurors are used, the Contempt of Court Act 1981 will have to be amended.

The process will take a couple of years, but the timescale will depend on whether we add to the six areas that Lord Bonomy recommended and on the researchers' methodology.

Elaine Murray (Dumfriesshire) (Lab): The submission that we received from Professor Chalmers and Professor Leverick argues against delaying the decision on the not proven verdict. They state:

> "the not proven verdict raises questions of principle which must be confronted directly and cannot be evaded by calls for further empirical research."

How do you respond to the idea that it is an issue of principle rather than evidence?

Michael Matheson: I am not entirely convinced that it is purely a matter of principle; it is also a matter of outcome. I am not sure whether anything has changed significantly since Lord Bonomy's review group published its findings on the interlinked way in which the different component parts of our jury system operate and the lack of evidence base.

This issue is absolutely fundamental to how our justice system operates, so it is important that we take the necessary time to undertake the research that will give us an evidence base and some understanding of the impact that any changes might have on how the system operates.

Elaine Murray: At stage 2 of the Criminal Justice (Scotland) Bill, you indicated that you were not unsympathetic to the Criminal Verdicts (Scotland) Bill. Perhaps you could expand on your view of the views of victims organisations such as Victim Support Scotland, for example, that the reform is necessary.

Michael Matheson: As I have said before, I am not unsympathetic to changes but I recognise that the areas are linked to one another. If you choose to change by removing the not proven verdict, for example, what impact will that have? That is part of the six areas that Lord Bonomy highlighted as needing to be considered carefully.

I am not unsympathetic to reform in this area, which is why we are undertaking the research. However, I am mindful of the fundamental role that the area plays within our criminal justice system and I think that, prior to making any changes in the

area, it is prudent and responsible to ensure that we are clear about the evidence base for those changes. I think that we should undertake that research before we reform this area of the criminal justice system.

Elaine Murray: The bill suggests that the two verdicts should be guilty and not guilty, but some witnesses have suggested that they should be proven and not proven. Would you have any view on that if we moved to a two-verdict system?

Michael Matheson: You are asking me to pre-empt the research.

Elaine Murray: No.

Michael Matheson: Opinion broadly breaks down into three areas when it comes to the three verdicts. First, there are those who question why we have two acquittal verdicts and only one for conviction. They would get rid of the not proven verdict altogether and run with the other verdicts that we have at present. Secondly, there are those who would retain the not proven verdict because they see it as a safeguard in the system. Thirdly, there are those who say that we should change the verdicts from guilty and not guilty to proven and not proven on the basis that the system is about guilt being proven beyond reasonable doubt. The research will look into those three areas.

If we were to change the system to one in which the verdicts were proven and not proven, how would jurors interpret that and what impact could that have on their decision making? The researchers will be able to consider similar cases in which different verdicts were available for the juries to reach in order to see what impact that had on the juries' discussions, the dynamics of the juries and the decisions that the juries came to. That will give us a clearer understanding of the matter prior to our making any decisions on it.

It is important that we look at all those things, and it will be interesting to see what impact any changes could have. Most people will be familiar with the idea that someone is guilty or not guilty. If we changed the available verdicts to proven and not proven, would that have an impact on their decision making and reasoning? That is exactly what the jury research will consider.

The Convener: Forgive me, but I was not at the committee's previous meeting and I am a bit bewildered by the answers that you gave to Margaret Mitchell's questions. It is absolutely correct that the Government should undertake jury research before taking a view on the terms "proven" and "not proven". However, I do not understand why that does not apply in respect of the jury directions that the other bill will introduce. You told Margaret Mitchell that we have evidence that it matters that there is provision for jury directions in the Abusive Behaviour and Sexual Harm (Scotland) Bill. What evidence for that have we received while we are waiting for evidence about how juries come to their verdicts generally?

Michael Matheson: Do you mean research into jury directions?

The Convener: What research is there into the jury directions that you intend to introduce?

Michael Matheson: As I said to the committee, jury directions are already given by some judges.

The Convener: I understand that, but the bill goes a step further according to leading lawyers and the Lord President. I am all for evidence-based practice, but I wonder why, when we are undertaking research into jury size and the not proven verdict, we are not undertaking research elsewhere.

Michael Matheson: We have not reformed the area yet.

The Convener: I know that we have not.

Michael Matheson: Jury directions are already given by judges in particular sets of circumstances. In addition, some judges choose to give direction in other areas as well. A significant amount of research has been undertaken into jury directions, and we believe that there has been a robust consideration of those matters. That is why we believe that there is a case for introducing jury directions into Scots law.

The Convener: You rightly said that we need to consider how juries think about things, how they come to decisions and why they arrive at a not proven verdict in certain cases rather than a guilty or not guilty verdict. Juries' thinking is complex, and I am glad that we are doing the research. Nevertheless, it seems to me that jury directions are something else that could be encompassed in that research.

I leave it at that, because the issue was dealt with in the committee's consideration of the Abusive Behaviour and Sexual Harm (Scotland) Bill. I simply wanted you to note my feeling about your answers to Margaret Mitchell's questions on the matter.

10:00

Roderick Campbell (North East Fife) (SNP): I should perhaps refer to my entry in the register of members' interests, which notes that I am a member of the Faculty of Advocates.

Elaine Murray has asked most of the questions that I was going to ask, but I would like to ensure that the view of Professor Chalmers is given a good airing. In his submission, he says:

"it is undesirable in principle to have two different verdicts of acquittal when the difference between them cannot properly be articulated."

He goes on to talk about what would happen if there were research. He says:

"Research might, for example, show that mock juries asked to view simulated trials are either more or less likely to convict when presented with two possible verdicts rather than three. There would, however, be no means of establishing for the purposes of such a study what the correct conviction rate was, and so the research would not establish which of a three or two verdict system was 'better'."

Lord Bonomy is, of course, an extremely experienced judge, but can you answer the point that Professor Chalmers made and perhaps give the critics of the research something that might assuage them?

Michael Matheson: I am aware of the opinion that some academics have on the value of research in this area. I am of the view that, as Lord Bonomy's review highlighted, a change to one part of the system will inevitably have an impact on the other parts. We have to think about what that impact will be, so that we have a more rounded understanding of matters. If the research considered only getting rid of the not proven verdict and did so in a narrow way, it would be of less value to our understanding. However, if—as is the case—the research considers at least six areas, that will give us a much more rounded understanding of the reasoning and behaviour of jurors.

The other issue is that, as has been highlighted, there are two options: you can use real jurors or you can use mock jurors. It is also worth keeping in mind that other jurisdictions have undertaken research into jurors' behaviour, largely using mock jurors, and have gained important insight into their reasoning and behaviour.

If you were to undertake narrow research and focus only on the not proven verdict, its value would be limited. However, that is not the intention of the research. It will have a much broader base.

Christian Allard (North East Scotland) (SNP): We received a lot of written submissions from various organisations. Scottish Women's Aid, Rape Crisis Scotland and Victim Support Scotland all agree that it would not be right to introduce section 2 of this bill before the absolute requirement for corroboration was removed. There seems to be a consistency there. The Highland violence against women partnership goes even further. It says:

"We believe that the removal of 'Not Proven' as a verdict should be implemented in Scotland, but that this should be one measure along with others, as recommended by Lord Carloway, such as the removal of corroboration."

It concludes:

"We urge the Scottish Parliament not to take this Bill forward without considering other measures, such as the removal of corroboration, as to do so would be damaging to those seeking justice for experiences of Violence Against Women."

How would you respond to the views of those organisations?

Michael Matheson: I understand that concern, which is why we do not support this bill or these reforms at this stage. The expert group under Lord Bonomy considered a wide range of issues, including the issue of post-corroboration safeguards.

I have already given a commitment to Parliament that we intend to take forward Lord Bonomy's recommendations. I take the view that, once those recommendations and the work around them have been taken forward, the abolition of corroboration should be considered again. I have previously stated that I see that as unfinished business. It is important that we take forward Lord Bonomy's recommendations, including those on jury size, jury majorities and the three verdicts.

If we start to alter one part of the system and think that we can do that in isolation without having an impact on other parts of the system, we are in danger of unbalancing the system. That is why I am committed to taking forward Lord Bonomy's recommendations as a package of measures. Research in a very specific area is part of that. Once that work and the other issues that Lord Bonomy made recommendations on have been taken forward, we can revisit the abolition of corroboration.

Christian Allard: So you agree with the Highland violence against women partnership that the not proven verdict, the change in the number of jurors required to reach a guilty verdict and the removal of the absolute requirement for corroboration are linked.

Michael Matheson: I do. I believe that they are all interlinked. That is why I do not believe that it is wise to look at changing one of those three things, or even two of them, without having a better understanding of the impact that that will have on how the system operates.

Christian Allard: Thank you.

John Finnie (Highlands and Islands) (Ind): Good morning, cabinet secretary. You alluded to the two different acquittal verdicts. We received evidence from Professor Chalmers and Professor Leverick, who said:

"There is, quite simply, no merit in having two different verdicts of acquittal, when each verdict has exactly the same practical consequence and the distinction between them is not well understood ... In particular, we support the

argument that it is wrong for a verdict of acquittal to carry any implication of stigma."

The not proven verdict carries that stigma, does it not?

Michael Matheson: Some individuals may interpret it in that way, as the person will not have been proven guilty. However, I am conscious that there has been a debate in the legal system for many decades about what the difference is between a not guilty verdict and a not proven verdict. That is not based in statute or case law, and judges are discouraged from trying to explain the distinction to jurors, as it is very difficult to explain it.

If we moved to a system that had a not proven verdict and a proven verdict, for example, what impact would that have and what perception would that create? That is why we need to explore the issue more fully before we look at introducing such a change. Perception more than reality may give rise to the feeling that there is a distinction between the not proven verdict and the not guilty verdict.

John Finnie: A lot of eminent people, including you, have provided us with information, but the reality is that the public make judgments, and they do not do so on the basis of reams of paper, briefing notes and all the rest. There is no doubt that a stigma is attached to the not proven verdict. I think that you would agree that, if any of us found ourselves being acquitted, we would want to hear the words "not guilty" rather than "not proven".

Michael Matheson: I suspect so. As I said, that is why we need to explore these issues before we look at introducing any changes. In the first place, a not proven verdict is returned in a very small number of cases every year. I understand that there is a perception that a not proven verdict is significantly different from a not guilty verdict, despite the fact that there is nothing about that in statute or in case law, and there is no meaningful definition of the difference between the two. That suggests that it is an issue more of perception than of the reality of the distinction between the two. They both have the same outcome as acquittals.

John Finnie: Thank you very much.

The Convener: I do not know whether you have these figures—if not, perhaps we can ask the Scottish Parliament information centre for them—but, proportionately, in how many cases where only a judge sits is there a not proven verdict and in how many cases where a jury sits is such a verdict reached? What are the figures for different types of case? We do not have those figures, but it would be interesting to know whether they are part of the research that the Government is undertaking on the rationale for juries' verdicts. Are there figures for verdicts in cases where a jury sits and in cases where a single judge sits and for verdicts in different types and levels of case, whether summary or indictment? It would be interesting to have those figures. Does the Government have that information? Is it part of the research?

Michael Matheson: We are looking at whether there are other areas that we should include in the research. The most recent figures for the number of cases in which there was a not proven verdict are for 2013-14. We can try to provide you with further detail on how those figures break down.

The Convener: It would be interesting to have that information, particularly when considering whether, proportionately, there is a divide in the use of the not proven verdict between cases where a single judge sits and cases where a jury sits. It would also be interesting to have the figures for different categories of case.

Michael Matheson: We can try to provide you with that detail as best we can from what we have at present. We do not have figures for 2015, because they are not available yet. However, we can give you the most recent figures and try to break them down as much as possible for the committee.

The Convener: Perhaps SPICe can provide us with that information.

Gil Paterson (Clydebank and Milngavie) (SNP): I want to go back to my colleague's question about corroboration, because I did not quite understand your response. You said that certain areas are interlinked, and I can see that the issues of jury size, jury majorities and the reduction to two verdicts are interlinked. However, is your thinking on how those changes would impact on other areas related to the fact that we still have the corroboration requirement in place? I am not sure whether you meant that to be understood or whether you are simply restricting your comments to the three categories mentioned.

Michael Matheson: I am restricting my comments to those three categories on the basis of the bill that the committee is considering, given that it is about jury majorities and the not proven verdict. Part of the consideration of whether to abolish corroboration is to do with whether we should alter some areas—for example, increasing the proportion for a jury majority verdict—to provide safeguards if corroboration is removed. That is why those areas were considered by Lord Bonomy in a much more holistic way. Consideration of whether to change any of the areas mentioned would be linked to the work that we are doing on Lord Bonomy's recommendations on the safeguards that would be put in place if corroboration were abolished.

The bill is specifically concerned with certain areas, but those also fit with the wider work that we are undertaking on the post-corroboration safeguards that Lord Bonomy recommended.

Gil Paterson: Maybe I can go a bit further. You are on record as being sympathetic to what Michael McMahon seeks to achieve with his member's bill. You are reluctant to refer to other areas because corroboration is still in place. In fact, if corroboration had been removed, you might have been a bit more positive today, or is that putting it too strongly?

The Convener: I think that you should let the cabinet secretary explain his position rather than tell him his position.

Gil Paterson: No, I am asking a question about it.

Michael Matheson: I understand the point that Gil Paterson is making. One of the safeguards for the abolition of corroboration in the Criminal Justice (Scotland) Bill as introduced was changing the majority provision for juries from the existing simple majority. Obviously, the abolition of corroboration was not taken forward, so that provision on juries was removed from the bill.

A range of areas in the criminal justice system are interlinked. It is important that we alter those in a way that allows us to understand what the potential impact of the alteration could be. We need to do so much more holistically; we must also ensure that the system is properly balanced.

The Bonomy review looked at how the system could be balanced were corroboration to be abolished, and we are progressing its recommendations in order to achieve that. Obviously, some of that will require primary legislation, so it will be for a future Government to determine how it chooses to progress that and what it brings before Parliament.

The Convener: That concludes the questions. I thank the cabinet secretary and his officials.

I will suspend the meeting to allow the next set of witnesses to come in.

10:15

Meeting suspended.

10:17

On resuming—

The Convener: I welcome Michael McMahon to the committee. I know how hard appearing before a committee is, Michael, because I did it about a month ago, but you have braw people either side of you who will keep you straight, if you allow them to. Those people are Clare O'Neill—hello, Clare—and Neil Ross; I am familiar with Neil, too, from my own voyages into members' bills. I invite the member in charge to make a short opening statement.

Michael McMahon (Uddingston and Bellshill) (Lab): Thank you for finding the time to speak to me this morning about my Criminal Verdicts (Scotland) Bill, which has been discussed and looked at for some time now. I am delighted to come before you to discuss the proposal, which I have been working on for a considerable time. I thank Clare O'Neill, Neil Ross and others in the non-Government bills unit for all the support that they have given me over that time.

Parliament should have had the opportunity to discuss criminal verdicts before now. A lot of matters have been discussed in relation to the criminal justice system, but there has never before been the opportunity to discuss the not proven verdict, which is one of the most controversial aspects of our system. That issue has always been there in the background; it has never gone away. The time is right to discuss and look at it, and to make the changes not only that parliamentarians should want to bring about but which the people of Scotland want to see—that is the evidence that I have accrued from the various consultations that I have conducted. The evidence also suggests that the time is right for us to take away that anomaly in the system and get to a place where people have more confidence in the system and feel that they can trust the verdicts much more than is currently the case.

I am open to answering questions, convener.

The Convener: I recognise in your voice the passion and commitment that members have—quite rightly—for their bills. Christian Allard will start.

Christian Allard: Good morning, Michael. Your bill is a very good piece of legislation that got wide support from everybody.

You talk about the timing being right. Unfortunately, a lot of organisations say in their submissions not so much that the timing is wrong but that there should be a delay because the removal of the absolute requirement for corroboration did not take place this session. Do you want to respond to that view, which came from organisations such as Rape Crisis Scotland, Victim Support Scotland and Scottish Women's Aid?

Michael McMahon: I can understand why people would make that argument, but let me counter it. We have had a series of criminal justice bills—as the committee knows, because it has had the workload—in which issues have all been taken in isolation. We are discussing this point now because the corroboration aspect of the Criminal

Justice (Scotland) Bill got into some difficulty, let us say, and so the issue arose.

One of the reasons why I have not been able to introduce this reform is because it was never part of the discussion on or consideration of any of the criminal justice bills that have been introduced. Given that it has never been felt that the not proven verdict had to be looked at in relation to double jeopardy or any of the other changes that have taken place, I cannot see why there is now an inextricable link between the not proven verdict and corroboration. That link was never made before, but now, all of a sudden, because the corroboration aspect of the criminal justice system has got into some difficulty, the argument is being made that we have to link corroboration to the not proven verdict and the jury majority issue.

I do not think that the idea that the link has to be made and that we cannot take forward this separate aspect of the judicial system in isolation bears any scrutiny, given that it was never required to be considered along with corroboration when corroboration was the main aspect that was being looked at.

Christian Allard: Did you challenge all those organisations on that particular point?

Michael McMahon: No—I think that they are entitled to their view. They have made that connection, but I am saying that the connection was never made when we were looking at corroboration, double jeopardy or other aspects of the judicial system in isolation and making changes to them.

Why all of a sudden do we now have to hold back on not proven because corroboration got into some difficulty? If there was a link between corroboration, not proven and the jury majority, why was that not made when corroboration was the main issue that was being looked at in the criminal justice system?

Christian Allard: I do not know whether you can help me on this point, convener, but do you think that there were some links? Michael McMahon's bill was very much talked about when the Criminal Justice (Scotland) Bill was going through Parliament as being complementary to the removal of the absolute requirement for corroboration.

The Convener: In fairness, I think that it was probably the committee that took the view that if we removed the mandatory requirement for corroboration, juries might be less likely to convict, which might up the ante in relation to not proven and not guilty verdicts. That was implied by our consideration rather than anything else.

Michael McMahon: It also gave me an opportunity to lodge an amendment to the Criminal Justice (Scotland) Bill. However, an argument appears to be being made now that there is an inextricable link between the two aspects. If that was the case, why was the not proven verdict not dealt with as part of the Criminal Justice (Scotland) Bill, which looked at corroboration? If it is the case that these things cannot be looked at in isolation, why was corroboration looked at in isolation?

Christian Allard: I tend to agree with you. I do not think that there is an inextricable link. However, there was a kind of reassurance that, on the back of the removal of the absolute requirement for corroboration, your bill would be coming in.

You are right that you lodged an amendment to try to complement the changes that were proposed in the Criminal Justice (Scotland) Bill—there is a complementary interaction between the two aspects. I was surprised that even the Highland violence against women partnership linked it to the not proven verdict, believing strongly that it was not only about the number of jurors, but—

Michael McMahon: In previous consultations that I undertook, Miscarriages of Justice Organisation said that it wanted the issue to be considered in conjunction with the removal of double jeopardy. Different organisations have argued that if we look at one thing we should also look at another.

The Criminal Justice (Scotland) Bill contained no provision on the not proven verdict; now, all of a sudden, we are being told that the issue cannot be looked at in isolation and must be looked at in conjunction with all the other aspects of the criminal justice system. My argument is—

The Convener: Do you think that it has to be looked at in that way, because you are changing—

Michael McMahon: No, I take the opposite view, convener—

The Convener: But you are changing jury size and so on. Should not the whole thing be looked at holistically?

Michael McMahon: When I conducted my first consultation, it came through strongly that there was concern across the board that we could not look at removing the not proven verdict without looking at the jury system.

The Convener: Correct.

Michael McMahon: That link was made immediately. Only one or two organisations talked about the possibility of looking at double jeopardy. It is only recently, since we have been talking about corroboration, that organisations have started to say, "Let's wait until we've looked at

corroboration before we look at not proven." I do not think that—with the exception of the issue to do with majorities on juries—there is a clear link that means that we cannot do one thing without doing the other.

Christian Allard: You are not sympathetic to that view. Should a bill come after your bill, to remove the absolute requirement for corroboration?

Michael McMahon: I have never taken a view on corroboration. I think that that is a legitimate—

The Convener: May I stop you there? I want us to keep to the bill that you have introduced, which is about jury size and removal of the not proven verdict. That is what we are testing.

Christian Allard: But the evidence that we received—

The Convener: We have examined the major point in that regard and I do not want to go down that road again.

Elaine Murray: Some supporters of a move to a two-verdict system say that the verdicts should be proven and not proven, rather than guilty and not guilty. Why does Michael McMahon prefer the latter?

Michael McMahon: The simple answer is that the evidence from the consultation was that we should have guilty and not guilty.

There is an argument, which we hear from people in the legal profession, and which is logical, that a trial takes place to test the evidence that is brought forward, so that it can be determined whether a case is proved beyond reasonable doubt. Therefore, people are asked to consider whether the case that the prosecution brings forward is proven or not proven. Those were the original trial verdicts in Scotland; not guilty was added, by chance rather than by direction or statute—

The Convener: I did not know that you were as old as that, Michael. There we are.

Michael McMahon: It is amazing how we find things out. Every day is an education.

We started off with proven and not proven and then moved to having three verdicts, which, over time, have become guilty, not guilty and not proven.

However, there is a strong argument—which certainly convinced me—that, given that the not proven verdict is the controversial one, to go back to having proven and not proven might cause more confusion in the minds of juries than would be caused by their being told to look at the evidence and determine whether it suggests beyond all reasonable doubt that a person is guilty or not, which is what juries are there to do. I was persuaded to move away from proven and not proven on the basis that juries understand that they are being asked to find someone guilty or not guilty.

Elaine Murray: The cabinet secretary said that although he is sympathetic to the intention of your bill, he thinks that there should be more research about jury size and which verdicts to have, which should be undertaken over the next couple of years. Is it worth waiting for the results of the research before we finalise our approach?

Michael McMahon: I see no value in waiting, because I do not think that the research findings will be very different from what we already know. We know that there is a stigma attached to the not proven verdict and that there is confusion about what it means. We know that it results in acquittal, as does the not guilty verdict. We know that judges cannot articulate to juries the difference between a not proven and a not guilty verdict. We know all those things, and I do not see what further evidence will be found that will clarify all that.

I tend to think that the argument for waiting is more to do with a desire to continue discussing other aspects of the judicial system, such as corroboration. In relation to what juries think, I genuinely do not think that we will find evidence that adds to what we already know.

10:30

Perhaps you could help me with this. When I spoke to the cabinet secretary, there was not even clarity about whether it would be permissible to speak to jurors in any review. There had to be clarification about whether jurors could be approached to speak to researchers about what they had discussed in the jury room. I do not know whether that has been clarified. We might discover that we cannot get the information.

The Convener: I think that we are about to get a point of information from Roderick Campbell.

Roderick Campbell: That would require an amendment to the Contempt of Court Act 1981, so it is certainly not straightforward.

The Convener: There we are. Having an advocate sometimes has its uses. We do not even have to pay him for his advice.

Michael McMahon: Roderick Campbell makes the point that the cabinet secretary made. I am asking whether it has been clarified and whether we will get the research and insight that the cabinet secretary asks us to wait to get.

Roderick Campbell: If we want to use actual jurors, we will be required to change the Contempt

of Court Act 1981. That is why there are some advantages to using mock jurors.

Michael McMahon: That is what I thought.

Elaine Murray: We have had some submissions from victims organisations that are concerned about the change in the jury majority proposed in section 2 because they think that it will create an additional barrier to justice for victims and lead to a bias in favour of the accused. How do you respond to that concern?

Michael McMahon: There is some validity in the argument, but it is outweighed by what a majority decision can mean. In very serious cases, the outcome can be entirely different if one juror changes their position and takes the majority in one direction or another, which hardly suggests to me that the jury has arrived at a conclusion that is beyond reasonable doubt. If, having presented all its evidence, a legal team can convince only seven out of 15 jurors that the evidence does not suggest that the accused is guilty or it can find only eight people who believe that the evidence suggests that the accused is guilty, that far outweighs any concerns that people could have about moving to 10 or 12 jurors making the decision. If 10 or 12 jurors made the decision, we could genuinely believe that, whether the verdict was guilty or not guilty, the strength of the evidence had convinced a sizeable majority of the jury.

The Convener: I appreciate that, but the problem is that, currently, we do not know whether a verdict was decided by a simple majority of one or a substantial majority. Does that not give weight to the argument for carrying out research into how juries come to their verdicts by using mock juries and research comparing how often a not proven verdict occurs in cases in which a single judge sits, as opposed to in jury cases, and, indeed, in different types of case, so that we have some meat in front of us? I am very sympathetic to the bill, but we do not know whether everybody on any given jury thought that the case was not proven or whether that was decided by just a simple majority.

Michael McMahon: From the evidence that I have been able to collect, we know that people would have much more confidence in a verdict if they knew that a majority of 10 out of 15 had reached it. At present, people can suspect, surmise or guess at how close a verdict was. I do not know that any further research would enlighten us about whether people would be more confident if we had a majority of 10, rather than eight, out of 15. We already know that people would prefer the majorities to be much clearer. People would understand that; they would be more concerned that it is possible—not definitely the case but possible—that a not proven verdict was handed down on a majority of one person.

The Convener: But we do not know.

Michael McMahon: We may never know.

The Convener: That is a good riposte.

Roderick Campbell: I will labour slightly the connection between the two aspects of the bill. The proposal to abolish the not proven verdict is coupled with a proposal to change the level of jury support required for a guilty verdict in order to deal with concerns that abolishing the not proven verdict would heighten the risk of wrongful conviction. The purpose of the bill is stated to be:

> "to provide for the removal of the not proven verdict as one of the available verdicts in criminal proceedings; and for a guilty verdict to require an increased majority of jurors."

We have received evidence from a number of people and organisations, such as Scottish Women's Aid, that although they might favour abolishing the not proven verdict, they do not favour increasing the number of jurors required for a majority verdict. Do you believe in your heart of hearts that the two measures are strongly connected, or do you have a preference for abolishing the not proven verdict over and above that?

Michael McMahon: Based on the evidence that I have received, and having spoken to people throughout the period for which I have been consulting on the bill, I believe that there is a very strong link between removing the not proven verdict and reassuring people that the majority that has decided between the verdicts of guilty or not guilty is at least a substantial majority, rather than a majority of one. I think that there is a clear link between removing the not proven verdict and reassuring people that the evidence that has been presented has enabled the jury to arrive at a conclusion beyond a reasonable doubt. That is vital.

Roderick Campbell: So, for you at any rate, the two are inextricably linked.

Michael McMahon: That is the link that has been made. As I said, the link with double jeopardy and corroboration was never made strongly. I think that the link between increasing the number needed for a majority and removing the third verdict is strong. Other jurisdictions have a higher threshold for the majority and every other jurisdiction has an outcome of guilty or not guilty.

John Finnie: It has been suggested that the not proven option allows for a more nuanced verdict, as it enables a judge or jury to indicate that, although the prosecution has not proven its case, the complainer was not necessarily disbelieved. Will you comment on that?

Michael McMahon: That suggestion might be made by people speaking from experience, but I

do not believe that a jury or a judge is sitting there judging a case as if it were "The X Factor" and saying, "I like your appearance and you come across very well, but I don't think that you sang particularly well." They are there not to present marks out of 10 but to test the evidence that is brought forward. Although I understand that there may be nuances in how strongly or convincingly a trial lawyer presents their case, we have to look at whether the evidence takes people towards a conclusion beyond a reasonable doubt. I do not think that we need nuance.

The argument around the not proven verdict is that we do not actually know in certain cases that someone is guilty—people who have been found guilty have subsequently been proven not to have been guilty; the issue is whether the evidence suggests beyond a reasonable doubt that the person could be convicted on that evidence. There are a whole range of nuances within that, so nuance matters, but I do not believe that it should supersede clarity.

The clarity that we want is clarity about the outcome. If a sheriff or a justice of the peace decides that the likelihood is that the person is guilty but that the evidence that was presented was not particularly strong, which has led them to reach a not proven verdict, that does not give clarity; it suggests that there is an openness about the verdict that allows people to believe that the person who was acquitted could actually have been guilty. I do not believe that that is the kind of nuance that we want to see; we want there to be clarity.

John Finnie: Is it possible that some people want a stigma to be associated with one of the verdicts of acquittal?

Michael McMahon: That is possible, but I do not think that it is right that that should be the case. If someone walks out of a court having been acquitted, they should have the right to say that they have been tried and acquitted and that they are not guilty of the crime.

Some people who corresponded with me said that they had been acquitted on a not proven verdict and had to move because they believed that the local community thought that they were guilty and had got off with it.

People may still believe that in a two-verdict system, but a not proven verdict suggests that there may have been some evidence that the person had done it—just not enough to convict them. That is not what a trial is there to achieve; it is there to look at the evidence and arrive at a conclusion as to guilt.

John Finnie: I asked the cabinet secretary about the issue of stigma, and you also referred to stigma and the confusion that people may have. How important is it that the public understands the disposal of any criminal case?

Michael McMahon: It is vital. It concerns me that, even recently, we have seen trial judges being reprimanded for having tried to suggest to a jury what a not proven verdict might mean in that particular case. If a judge cannot articulate to a jury what a not proven verdict might mean in any given case, how can we rely on it as a verdict? There is no place for that type of confusion in the system.

I am not arguing that we should try to either increase or reduce the number of convictions. The public want to know beyond reasonable doubt that the verdict was arrived at on the strength of the evidence that was brought forward and that there was no grey area left.

I have heard it said in the past that you cannot be a little bit pregnant. You cannot be a little bit guilty either.

The Convener: I am glad that you cannot be a little bit pregnant. That is breaking news for me.

If there were no not proven verdict, would there be an impact on the way that the Crown and the procurator fiscal brought cases to court?

Michael McMahon: I have heard that suggested. I hope that a prosecution or defence lawyer would do their utmost on behalf of either the Crown or their client in all circumstances. One would expect the professionalism of lawyers to drive them towards that.

When I first consulted on the bill, an academic said that he believed that, in some cases, the jury was making a judgement on the prosecution or defence lawyer, rather than the evidence—

The Convener: I meant to ask whether there would be an impact in relation to considerations of sufficiency of evidence, rather than whether there would be an impact on lawyers' performance in court. At the moment, the Crown might take the view that, although it is not sure whether it will achieve a conviction, it should still run a case in court, and it might end up with a not proven verdict. If we take away the not proven option, the Crown might apply more rigorous criteria and take less of a chance in bringing cases, some of which might have been successful if they had been brought.

Michael McMahon: There is an argument for that, but I would not want to spend a lot of time trying to suggest that, in our trial system, either the prosecution or the defence were not doing their utmost to present the case. If that were so, it would raise substantial questions about whether we thought that the performance of our courts was at the level that it should be at. I do not want to make that suggestion.

The Convener: I was really referring to cases in which the evidence was on the cusp, as it were. The Crown might want to be more secure in bringing a case, because it would not want to get a not guilty verdict. It might currently think that certain cases are worth running. I just leave that thought with you—I wondered whether it had been raised with you.

Michael McMahon: It has come up. There has been some written evidence to suggest that that might well happen, but it is not the strongest argument against the provisions.

The Convener: Thank you very much, and congratulations. You did very well—10 out of 10. I know that this is not the "The X Factor".

10:44

Meeting suspended.

10:50

On resuming—

Community Justice (Scotland) Bill: Stage 2

The Convener: Agenda item 3 is stage 2 proceedings on the Community Justice (Scotland) Bill. Members should have their copies of the bill, the marshalled list and the groupings of amendments for today's consideration. I intend to conclude this item at around 12 noon so that we can move on to other items of business. We will conclude our stage 2 consideration next week.

I welcome to the meeting Paul Wheelhouse, Minster for Community Safety and Legal Affairs, and his officials.

Section 1—Meaning of "community justice"

The Convener: Amendment 1, in the name of the minister, is grouped with amendments 2 to 6, 94, 95, 66, 7, 8, 67, 9, 10, 96, 11 to 15, 68, 69, 16 to 20 and 22 to 27.

The Minister for Community Safety and Legal Affairs (Paul Wheelhouse): At stage 1, the committee and stakeholders called for a stronger element of prevention and early intervention to be reflected in the definition of community justice. That was to enable effective intervention to take place earlier, with the aim of reducing the likelihood of future offending.

I have reflected on those views and now propose a series of amendments that aim to broaden the definition of community justice in the bill so that it applies to people at the point of arrest, rather than once a conviction has taken place, as had been set out previously. I recognise that, if we wait until someone has been convicted, that might be too late and we might have lost an opportunity to prevent offending behaviour from escalating.

Evidence shows that diverting individuals from the criminal justice system is an effective way of preventing further offending; that is especially true when the diversion is complemented by an intervention that is designed to address the underlying issues that contributed to the offending behaviour. That is why I propose amendments to broaden the definition of community justice, so that community justice services must be planned for people from the point of arrest onwards.

Amendment 11 is the key amendment in broadening the definition in section 1 beyond the current provision, which is limited to persons who have been convicted. It inserts three new subsections after section 1(2) that set out the persons who will be included in the broader

definition. They are persons who have been convicted of an offence; persons who are subject to a relevant finding; persons who have been given an alternative to prosecution for an offence; and persons who have been arrested

"on suspicion of having committed an offence".

The broader definition of community justice will also include people who are subject to

"a recognised EU supervision measure"

and persons aged 16 or 17 who are subject to a specified compulsory supervision order. In addition, the amendment provides that the offence, or alleged offence, can have occurred anywhere in the world.

Amendment 11 therefore broadens the definition to enable earlier intervention, with a view to preventing offending behaviour from escalating. As I said earlier, if we wait until someone is convicted, that is too late and means that we have lost an opportunity to prevent future offending behaviour. I urge the committee to support the amendment.

Amendments 2, 5, 16, 22 and 24 are a consequence of the changes to the definition that amendment 11 introduces. As members will have noticed, in amendment 11 I have avoided using the word "offender" to describe those who have been convicted of offences. Evidence that was given at stage 1 suggested that the use of the word was associated with negative perceptions and in the context of what the bill is about might encourage stigmatisation of those who had committed offences. However, the committee noted in its stage 1 report the challenges of finding a succinct and accurate alternative.

I have reflected carefully on the evidence and reached the view that it is possible for the word "offender" to be avoided in the bill without damaging legislative clarity or precision. Amendments 6, 23 and 27 deal with that point in places where it cannot be picked up in other amendments. I therefore urge the committee to support those amendments.

Amendments 4, 8, 10 and 26 remove the word "reoffending" from sections 1 and 3 and replace it with "future offending". Given that I propose to broaden the definition of community justice to include people who have, at the time of engagement with services, not been convicted of an offence, use of the word "reoffending" is no longer appropriate, as it suggests that an offence has been committed.

At the stage 1 evidence sessions, committee members and witnesses expressed a strong desire for prevention of further offending to be more strongly referenced in the bill and especially in the definition of community justice. I reflected on what I heard at stage 1 and I lodged amendments 3, 7, 9 and 25, which are intended to be a positive response to the concerns that were expressed.

Prevention is vital to our aim of reducing further offending. Every form of intervention, support or management is an opportunity to work with an individual to aid prevention. The bill does not cover primary prevention—stopping people offending in the first place—which we believe is dealt with effectively by other Scottish Government policies, such as those on early years, raising educational attainment, action to tackle youth unemployment, health and housing. However, the bill covers secondary and tertiary prevention—stopping further offending and the escalation of people's offending. The amendments allow us to more strongly reference secondary and tertiary prevention in the bill.

Amendments 3 and 25 insert wording in section 1 to clarify that the ultimate aim is to support people so that they do not offend again or, if that is not possible, at least to reduce any further offending. Amendments 7 and 9 insert into section 1 a reference to prevention of offending by adding the words "eliminate or" to section 1(2)(b) and section 1(2)(c)(i). They make it clear that the ultimate goal is to eliminate future offending by the person who is referred to in section 1 or, if that is not possible, at least to reduce their future offending.

Taken together, the amendments provide the stronger reference to the prevention of offending that the committee and stakeholders requested. They highlight the link between prevention and reducing or eliminating offending and put those aims up front, in section 1.

I turn to a series of amendments that give effect in sections 1 and 3 to the broadening of the definition. Amendment 19 inserts new subsections after section 1(3) that explain what is meant by particular terms that are used in new section 1(2B), which is inserted by amendment 11. Amendments 14 and 15 are consequential. Amendment 16 deletes from section 1 the term "in the community" and its definition, as that term will be superseded by the wording inserted by amendment 11.

Amendment 1 inserts "bail conditions" into the definition of community justice, so that community justice includes giving effect to bail orders as well as community disposals and post-release control requirements. That is an important aspect of the broadening of the definition, which gives effect to our policy intention to enable earlier intervention, upstream from the point of conviction. Amendment 12 defines what is meant by "bail conditions", and amendment 18 defines what is meant by "recognised EU supervision order" where that term appears in the definition of "bail conditions".

Amendment 13 inserts a reference to section 227M of the Criminal Procedure (Scotland) Act 1995 in the definition of community disposals in respect of community payback orders, to reflect the fact that such orders can be granted under that section as well as under section 227A of the 1995 act.

Amendment 17 inserts the words

"in consequence of conviction of offences"

in the definition of post-release control requirements in section 1(3), to make it clear that section 1 refers to people who have been in prison or detained in a penal institution because they have been convicted of an offence.

Amendment 20 divides section 1 into two sections, to assist users of the bill, given the amount of new material that will be added by the amendments that I have just discussed.

Amendments 66 to 69 were lodged by Alison McInnes and seek to define the support and services that are to be available to people who are covered by the definition of community justice. Throughout the process, and in the bill, we have been clear about the need to take a person-centred approach to improving outcomes for community justice. That means having the widest possible scope for the support that is offered to people who come into contact with the criminal justice system. The existing definition of supporting provides for just that.

I recognise the important role that emotional and practical support and access to a range of other services, including those for housing, employment and support for recovery from alcohol and drug dependency, play in reducing and preventing further offending. The references to services in section 1, together with the addition of the Scottish Government amendments, are intentionally not defined, so that the services that are covered are not limited. The references include the services that are mentioned in Alison McInnes's amendments as well as others that are not listed in the amendments. Therefore, the amendments are unnecessary and potentially restricting, although I am sure that they are well intentioned. To specify a particular service, as amendment 69 does, or to include the list that is set out in amendment 68, could lead some to focus solely on those services to the exclusion of others. We want the support to be more open in scope, which will support the individual approach that is required.

I remind the committee that local authorities, health boards and integration joint boards will be community justice partners and that they will therefore ensure appropriate coverage of important support services in the community justice outcomes plan for their areas. For that reason, I cannot support amendments 66 to 69, so I invite Alison McInnes not to move them.

11:00

Alison McInnes's amendment 94 seeks to broaden the definition of community justice to include people who are at risk of first-time offending. I recognise that preventing people from offending in the first place is hugely important. That is why the Scottish Government is tackling primary prevention through a range of policies such as those on early years provision, raising educational attainment, tackling youth unemployment, health and housing. As I said, the bill does not cover primary prevention; its focus is secondary and tertiary prevention, which is about taking action to stop people reoffending and to prevent the escalation of offending once people first present to the justice system.

Amendments 95 and 96 highlight two important issues: the interests of victims of offences and the preparation of people for release from prison. Margaret McDougall's amendment 95 seeks to broaden the definition of community justice to include victims of offending behaviour.

I very much recognise victims' concerns and their interest in justice-related issues and I recognise the motivation behind the amendment. I note that the Victims and Witnesses (Scotland) Act 2014 is the relevant legislation to cover victims' concerns. From a community justice perspective, a number of key aspects of the new model are being developed in collaboration with a wide range of stakeholders and partners. I make it clear that organisations that support victims are included in that collaborative development work.

I will soon speak to amendment 31 in group 4, which gives the third sector, including victims organisations, a stronger participative role in the planning of community justice and the preparation of key strategic documents such as the national strategy for community justice, which will give the relevant third sector organisations stronger representation in the new model for community justice.

Amendment 96 seeks to insert a definition of preparing people for leaving prison that includes

"assisting such persons by facilitating continuity of health care, including mental health care."

Although continuity of healthcare is undoubtedly important when people are leaving prison, so too are other support services, such as support to access housing and apply for state benefits. All such services are relevant to preparing a person for release from prison, so we believe that it would be inappropriate to single out one service over others in that context. As I said, local authorities, health boards and integration joint boards are all

community justice partners that will contribute to community justice outcome plans for their areas. In so doing, they will ensure appropriate coverage of healthcare, including mental health care.

Although I accept that the bill does not define what is meant by "preparing" and the associated support services, that will be covered in guidance, which has the advantage of being more flexible than legislation in order to include other support services should they be identified in the future. I therefore fully expect that preparing persons for release from imprisonment will include facilitating continuity of healthcare.

Although I recognise the importance of all the issues that are reflected in amendments 94 to 96 and the motivation behind them, I cannot support them.

I move amendment 1.

Alison McInnes (North East Scotland) (LD): The group of amendments relates to changes to the definition of community justice as currently set out in the bill. A great deal of the evidence that we gathered in the committee focused on the need to widen that definition.

It is important to remember the bill's genesis. The report from the commission on women offenders described the lack of opportunity for strategic leadership and accountability in the delivery of offender services in the community, the short-term funding, the difficulties in measuring impact and the inconsistent service provision across Scotland; it told us that interventions delivered in prison often ceased at the gate; and it argued for radical reform. I supported the recommendations that it made then and I support them now.

The bill could be stronger, and setting out clearly the scope of community justice would be a start. I have been dismayed by some of the wrangling that has gone on between the different players in the development of the proposals.

I generally support the Government's amendments in the group and I will vote for them. I am disappointed that the minister does not support my amendments, because I think that we can go further.

Amendment 94 seeks to add the responsibility to consider persons who are identified as being at serious risk of first-time offending when activities that relate to community justice are considered and designed. The bill as it stands focuses heavily on people who are already in the criminal justice system. However, we should strive to reduce first-time offending.

Amendment 94 recognises that merely adding "reducing offending" to the meaning of community justice would be too far-reaching. I have instead chosen to focus on people who are at significant risk of offending. The risks of offending are clear and well documented, and putting that wording in the bill would ensure that services were not deflected from working in the area. The criminal justice voluntary sector forum strongly supports amendment 94.

Amendments 66 and 67 identify the type of support that should be provided to persons who are serving their sentences in the community—it is emotional support, such as counselling, and practical support, such as housing advice or education advice. The amendments recognise that receipt of such support can in itself make the difference for someone between turning their life around and ending up back in court.

Similarly, amendment 96 would set in statute the requirement to facilitate the continuation of healthcare, including mental health care. As with amendments 66 and 67, amendment 96 recognises the importance of such support in preventing further offending. We only need to look at how inadequate mental health care provision is in the wider community to know that it is even poorer—almost woefully inadequate—in our criminal justice services.

Amendments 68 and 69 seek to add to the definition of general services that are provided to persons who are serving their sentences in the community. Amendment 69 recognises the crucial role that appropriate, safe and secure housing has in preventing further offending. I have worked closely with Shelter Scotland in developing the amendments that seek to put access to appropriate housing in the bill. Shelter Scotland's recent report "Preventing Homelessness and Reducing Reoffending" was a powerful call to action.

We know that a person who is without a stable home has an increased risk of reoffending, and yet 50 per cent of people who go to prison lose their homes. The committee has heard over and over again about the importance of providing appropriate housing. The Scottish Government commissioned a report on the issue entitled "Housing and Reoffending: Supporting people who serve short-term sentences to secure and sustain stable accommodation on liberation".

I hear the minister's argument about having the widest possible definition, but one of the problems that were identified in the past was the lack of appropriate leadership. He is worried that the focus would be solely on the services that are listed, but I believe that listing the key issues that need to be focused on would encourage greater development of services.

Amendment 68 relates to the wider definition of community justice. It sets out further areas of

support that there would be a benefit in naming. In addition to housing, it includes employment, education and support for groups that we know to be particularly vulnerable, such as looked-after children, those with alcohol and drug dependency and those who have been affected by physical or emotional childhood or adolescent trauma. I recognise that other members might wish to add areas to the list, but I believe that support in relation to all those issues, or the lack of it, can make a difference to whether someone offends again.

If members feel unable to support the wider list in amendment 68, they should at least lend their support to amendment 69, which would be superfluous if amendment 68 was passed. Shelter Scotland strongly supports both amendments.

Margaret McDougall (West Scotland) (Lab): Amendment 95 seeks to include the meaning of "community justice" by identifying the risk management and public protection elements of community justice that are lacking in the current definition. My amendment seeks to ensure that managing and supporting offenders in relation to the safety of other persons in the community, including victims of offences and their families, is taken into account.

Amendment 95 is a small measure to ensure that victims, their families and communities are given more prominence in the Community Justice (Scotland) Bill. It has been lodged because concerns were raised by Victim Support Scotland and Scottish Women's Aid. I therefore urge all members of the committee to support amendment 95.

Amendment 31A seeks to amend amendment 31 to add a reference to

"victims of offences and their families"

in order to ensure that they are given a higher profile in the bill by being explicitly specified.

The Convener: Amendment 31A is in another group. You can persist with it if you want to—I am quite flexible today.

Margaret McDougall: I am sorry.

The Convener: Rather than "flexible", perhaps I should have said "weakened".

Margaret McDougall: I can stop and start again later.

The Convener: Just leave it then. We will keep to the amendments in group 1. Do you want to speak to other amendments in the group—did I stop you in full flow?

Margaret McDougall: No.

John Finnie: I want to comment on amendment 11. I welcome the Government's broadening of the definition. I particularly welcome the categories that have been picked up beyond those who have a conviction for an offence to those who have been given an alternative to prosecution, for example. Proposed new section 11(2E) talks about younger people aged 16 or 17 and people who are subject to compulsory supervision orders. That is a positive step forward.

I will support Alison McInnes's and Margaret McDougall's amendments. I hope that other members will do likewise.

Roderick Campbell: As John Finnie is, I am supportive of amendment 11, which will broaden the definition of community justice. It is right that we look beyond

"persons who have been convicted of an offence",

and that we have a much wider definition. It is also important to stress that the bill is not about stopping offending in the first place: that is dealt with by other policies.

I have a fair bit of sympathy with the flavour of Alison McInnes's amendments. On amendment 96, which talks about

"facilitating continuity of health care, including mental health care",

I am reassured by the minister's comments about guidance on that—guidance will be an important part of community justice. I also hope that, even if the committee does not support her other amendments, the Government fully takes on board the flavour of her comments.

On victims, we have the Victims and Witnesses (Scotland) Act 2014. However, I hope that victims organisations will be fully involved and will effectively participate in any future national strategy on community justice.

Elaine Murray: First of all, I welcome the Government's work to address the concerns that the committee expressed at stage 1. I support the Government's amendments.

I want to talk particularly about Alison McInnes's amendment 94 and Margaret McDougall's amendments 95 and 96. We have discussed the need for the judiciary and the community to have confidence in the community justice system. Although I accept that both the issues that are dealt with in amendments 94 to 96 are dealt with in other legislation and strategies, there is merit in their being in the bill not only to encourage community and judicial confidence that community justice is not a soft option, but to show that it has an important role in dealing with and preventing offending. We must win that battle in public perception if we are to have a successful community justice system.

Margaret Mitchell: Good morning, minister. Like others, I very much welcome the amendments that have been lodged that take cognisance of concerns that were expressed at stage 1, and that prevention is included, as well as early intervention, which is a crucial part of community justice.

I also very much welcome Alison McInnes's amendments. They start to put meat on the bones and home in on people who are at serious risk of first-time offending. They also mention the support that is needed to stop reoffending, for example, support in healthcare, mental health services and, particularly, the services that we know are all too often not available, including housing, employment and education. Housing is absolutely number 1 on the list. There are vexing examples of people being released with absolutely nowhere to go and having to rely on the third sector.

I also support Margaret McDougall's amendments. She has raised an important point about the safety of victims.

11:15

Christian Allard: Good morning, minister. First of all, I would like to compliment the minister and thank him for all the changes with regard to the word "offenders", which I think was in response to Pete White of Positive Prison? Positive Futures. I congratulate all the minister's officials who worked hard to make the changes, and I encourage other officials, when they think about drafting legislation, to ensure that we do not call people names. The term "persons who are convicted of offences" is a lot more relevant than labelling somebody as "offender" for the rest of their life. I am delighted that all that work has been done. It is more a matter of tone than a matter of legislation; when we draft legislation, we sometimes forget about what the tone should be.

Regarding Alison McInnes's amendments—particularly amendments 68 and 69—like my colleague Roderick Campbell, I am very supportive of their intention, but Ms McInnes might remember that, during our deliberations and in evidence, it has been seen as important that the bill be an enabling bill and that we are not too prescriptive. Therefore, I see the matters in those amendments as sitting a lot better in guidance.

Paul Wheelhouse: I thank members for their thoughtful contributions to this debate on the first group of amendments. I have listened carefully to the points that have been made by committee members, and by my party colleagues in giving their views on the amendments that have been lodged by Opposition members.

For the reasons that I gave earlier, I have a particular concern about amendment 94 because it would broaden the bill out to include primary prevention. That said, I have, with regard to the other amendments that Alison McInnes has lodged, some sympathy with the desire that she expressed eloquently in her comments—and which Margaret Mitchell commented on—to reflect the breadth of activities that are covered. Elaine Murray also made the important point that we need to give confidence in respect of the kinds of activities that are covered.

At this point, I want to express my desire to work with Alison McInnes to come up with a more comprehensive list of activities, so that we do not single out some, but are instead comprehensive in our coverage of what might be included—if it is possible to come up with the right wording. I offer an olive branch to Alison McInnes: if she is prepared not to move her amendments, I will be happy to work with her in advance of stage 3 to see whether we can produce a form of words that will meet the desire that she and other members have expressed to cover the range of activities.

I very much sympathise with Margaret McDougall's point about victim support services. We believe that they will be covered in the national strategy and in engagement with the third sector. A later group of amendments that I will deal with will formalise the relationship with the third sector, which will include services for victims. As Christian Allard said, that will also be dealt with in guidelines on how we engage with such groups as victims.

I will listen to the views of the committee, but I wanted to make the particular point to Alison McInnes that I would be happy to work with her to see whether we can come up with an agreed wording, in her name, for stage 3.

Amendment 1 agreed to.

Amendments 2 to 6 moved—[Paul Wheelhouse]—and agreed to.

The Convener: Amendment 94, in the name of Alison McInnes, has been debated with amendment 1.

Alison McInnes: I will move amendment 94. I have heard what the minister said, but I have also heard the strength of other committee members' points of view. However, if we need to amend the bill at stage 3, I absolutely understand that we need to work together to do that.

I move amendment 94.

The Convener: The question is, that amendment 94 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

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

The Convener: The result of the division is: For 5, Against 3, Abstentions 1.

Amendment 94 agreed to.

Amendment 95 moved—[Margaret McDougall].

The Convener: The question is, that amendment 95 be agreed to. Are we all agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Grahame, Christine (Midlothian South, Tweeddale and Lauderdale) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

The Convener: The result of the division is: For 5, Against 4, Abstentions 0.

Amendment 95 agreed to.

Amendment 66 moved—[Alison McInnes].

The Convener: The question is, that amendment 66 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

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

The Convener: The result of the division is: For 5, Against 3, Abstentions 1.

Amendment 66 agreed to.

Amendments 7 and 8 moved—[Paul Wheelhouse]—and agreed to.

Amendment 67 moved—[Alison McInnes].

The Convener: The question is, that amendment 67 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

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

The Convener: The result of the division is: For 5, Against 3, Abstentions 1.

Amendment 67 agreed to.

Amendments 9 and 10 moved—[Paul Wheelhouse]—and agreed to.

Amendment 96 moved—[Alison McInnes].

The Convener: The question is, that amendment 96 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

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

The Convener: The result of the division is: For 5, Against 3, Abstentions 1.

Amendment 96 agreed to.

Amendments 11 to 15 moved—[Paul Wheelhouse]—and agreed to.

Amendment 68 moved—[Alison McInnes].

The Convener: The question is, that amendment 68 be agreed to. Are we agreed?

Members: No.

The Convener: There will be a division.

For

Finnie, John (Highlands and Islands) (Ind)
McDougall, Margaret (Central Scotland) (Lab)
McInnes, Alison (North East Scotland) (LD)
Mitchell, Margaret (Central Scotland) (Con)
Murray, Elaine (Dumfriesshire) (Lab)

Against

Allard, Christian (North East Scotland) (SNP)
Campbell, Roderick (North East Fife) (SNP)
Paterson, Gil (Clydebank and Milngavie) (SNP)

Abstentions

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

The Convener: The result of the division is: For 5, Against 3, Abstentions 1.

Amendment 68 agreed to.

Amendment 69 not moved.

Amendments 16 to 20 moved—[Paul Wheelhouse]—and agreed to.

Section 1, as amended, agreed to.

Section 2 agreed to.

Schedule 1 agreed to.

Section 3—Functions

The Convener: Amendment 21, in the name of the minister, is grouped with amendments 74, 76 to 80, 38, 39, 43, 81, 44, 82, 45, 46, 83, 84, 48, 85, 86, 49, 50, and 52 to 54.

If amendment 74 is agreed to, I cannot call amendment 75, in the group entitled "National strategy and performance framework: things to be addressed", because of pre-emption—I know that members have written that down. If amendment 82 is agreed to, I cannot call amendments 45 and 46 in this group, because of pre-emption.

Paul Wheelhouse: This group of amendments focuses on reporting on outcomes and providing feedback on achievements. The ability to demonstrate to communities that better community justice outcomes are being delivered is a key part of the new model for community justice, and we all want better outcomes.

Amendment 45 concerns the requirement in section 20 for community justice partners to produce annual reports on their progress towards achieving community justice outcomes. As the bill stands, the requirement is for community justice partners to report on whether they have achieved the nationally and locally determined outcomes for community justice and on progress that has been made towards achieving those outcomes. Amendment 45 will add an element to the reporting requirement, so that the report must cover the activity that has been undertaken to achieve or maintain the outcomes.

We will set out in guidance the sort of information that should be included in annual reports, such as a description of the activities that the community justice partners took forward, who delivered those activities and who else was involved. Our having such a reporting requirement in legislation will provide for greater transparency in reporting on community justice, which will enable best practice to be identified and shared. The reporting will draw out the sort of analysis that would routinely be contained in an annual report and identify the level of engagement with, for example, the third sector, which is important.

Amendments 44 and 46, which are linked to amendment 45, will make minor changes to section 20 to complement the changes that will be effected by amendment 45.

Amendments 38, 39 and 43 are technical amendments that will update references in sections 18 and 19 to sections of the Community Empowerment (Scotland) Act 2015.

At stage 1, the committee requested clarification of community justice Scotland's oversight function. Amendments 21, 48, 49, 50 and 52 to 54 will reframe and expand on existing provisions in the bill to clarify the oversight powers that community justice Scotland will have and to set out more clearly that it can make local improvement recommendations to community justice partners and national improvement recommendations to ministers.

Amendment 21 will amend community justice Scotland's functions, which are set out in section 3, to make it clear that they include monitoring, promoting and supporting improvement in performance in the provision of community justice.

Section 23 puts a duty on community justice Scotland to report to community justice partners from time to time its findings in relation to progress against the outcomes within that local authority area. To ensure that community justice Scotland can properly perform its oversight functions as originally intended and agreed with stakeholders, amendment 52 will insert a new section that makes provision about performance improvement activity. The new section will provide that the general powers that community justice Scotland has under section 4 include the power to carry out the performance improvement activities that are set out in that new section. That power supports

the function at section 3(1)(b), which is amended by amendment 21.

The list of activities in amendment 52 is not exhaustive. It is intended to be flexible so that it does not limit the activities that community justice Scotland can undertake to support improvement in the achievement of outcomes—after all, local areas and partners may come to community justice Scotland with differing support needs. The activities that are set out in amendment 52 include making local and national improvement recommendations.

Amendment 53 provides that local improvement recommendations are recommendations to community justice partners setting out the actions that community justice Scotland considers necessary to enable the achievement of, or to improve performance in achieving, nationally and locally determined outcomes. Amendment 53 also sets out the associated obligation on community justice partners to respond to that recommendation, which mirrors the existing provision in section 23(4).

The power in section 24 for community justice Scotland to make recommendations to ministers will be reframed as a power to make national improvement recommendations; the detail relating to those recommendations is set out in the new section that will be inserted by amendment 54. Amendment 54 will not change the substance of section 24, but it is necessary in light of the other amendments in the group. As a consequence, section 24 will be deleted by amendment 49.

Amendments 48 to 50 are consequential and will remove existing provisions on oversight arrangements to allow those to be reframed by amendments 52 to 54.

I realise that there are a significant number of amendments in the group, but I reassure the committee that the intention remains that the responsibility for resolving any local issues with planning or the quality of delivery and for achieving progress against improving outcomes rests with the statutory community justice partners in the local area. Existing accountability lines for individual statutory community justice partners remain through their respective organisations.

If partners request assistance on issues that they have not been able to resolve locally, community justice Scotland will be able to offer support and advice. Where there are persistent issues in achieving improved outcomes, community justice Scotland will be able to make recommendations to the Scottish ministers. Recommendations could be made around the requirement for improvement plans, the potential for specific multi-agency inspections and, in exceptional circumstances, the establishment of a rescue task group to work with the local partners and relevant organisations to effect sustainable and long-lasting improvement. Recommendations could also be made at a national level. The amendments are intended to clarify that position without placing any further duties on community justice partners or materially changing community justice Scotland's functions.

I turn to amendments 74, 76 to 81, 84 and 86, which are all in the name of Elaine Murray. I am disappointed that those amendments have been lodged, because they undermine a key part of the new model for community justice—namely, the means of measuring the progress that is being made in achieving nationally and locally determined outcomes and key elements of the planning process. The Scottish Government and partners are working together to reduce reoffending and secure better outcomes for communities. Having a consistent set of nationally determined outcomes and indicators is key to the ability to demonstrate that better outcomes are being achieved. That way, there is a common understanding of what the community justice partners are aiming to achieve and the means by which they can measure the progress that they have made.

The Scottish Government has been working extensively with stakeholders, including the Convention of Scottish Local Authorities, the third sector and the statutory community justice partners to develop a suite of national outcomes and indicators that community justice partners will use in preparing their plans and in reporting on and demonstrating progress in achieving such plans. In addition, there will be flexibility for community justice partners to include locally determined outcomes and relevant indicators in their plans, if they so choose. However, the local outcomes should be consistent with the national outcomes to align with the overall strategic approach.

11:30

We feel that Dr Murray's amendments 74 and 76 to 81 would undermine that consistent and strategic approach to planning and reporting and the use of outcomes and indicators. I will, of course, be interested to hear the points that Dr Murray makes. We believe that the amendments would remove the need for plans to set out the progress towards achieving outcomes that have not been met and the actions that will be taken. They would remove requirements on community justice partners to make local outcomes consistent with national outcomes and they would remove the requirement for the plan to set out any indicators. They would effectively remove the planning elements of a plan.

I further note that Dr Murray proposes that community justice Scotland should be required to assist community justice partners in measuring progress towards achieving the national outcomes. We would be interested to know how that is possible in the absence of any reference to indicators in the community justice outcomes improvement plans. I appreciate that Dr Murray has not yet had an opportunity to set out her arguments.

The Convener: She is raring to go.

Paul Wheelhouse: I am sure that she is champing at the bit, convener.

Amendment 84 would amend section 23 in consequence of amendment 83, to replace the word "relevant" with the word "national" as regards indicators. Amendment 86 is consequential to amendments 83 and 84 and would remove references to the "relevant indicators" in section 23(5).

I strongly believe that, taken together, amendments 74, 76 to 81, 84 and 86 would reduce transparency and consistency in measuring progress in achieving outcomes. I am sure that that is not the intention, but we believe that it would be the effect. That would undermine the ability of the new arrangements to demonstrate progress in a consistent and credible way to our communities and the judiciary—I know that Dr Murray is keen to help with that—and to key partners and stakeholders. Therefore, I cannot support amendments 74, 76 to 81, 84 and 86 and I urge the committee not to agree to them.

Amendments 82 and 83, which were also lodged by Dr Murray, would substantially undermine performance improvement under the new model by removing key requirements under the performance reporting arrangements. If those amendments were agreed to, partners would no longer have to report on any locally determined outcomes that they may have set for their area. They would have to report only against the nationally determined outcomes, and when they did so, they would be under no obligation to use the relevant indicators. As a consequence, it is likely that partners would report only on the national outcomes that are provided for in statute; they might not plan for any additional important local matters that are specifically pertinent to their area. In a model that focuses on local planning and reporting, that is a key factor that surely must remain and must be expected locally.

Furthermore, that would mean that, across Scotland, all partners would use entirely different measures of progress, so they could not compare their performance with that of others. We believe that that would result in it being much more difficult to drive improvement. For those reasons, I cannot support amendments 82 and 83, and I invite the committee not to agree to them.

Amendment 85 was also lodged by Dr Murray. At its core, community justice Scotland is being established to provide leadership to the community justice sector as well as to support partners and stakeholders to deliver better outcomes for community justice in Scotland. As part of those overarching aims, it has a function to provide assurance on community justice partners' progress towards national outcomes. Community justice Scotland must be able to make recommendations to community justice partners, including in relation to promoting good practice or recommending specific action where progress towards an outcome is not being made. That is part of the assurance process.

Amendment 85 would remove the requirement for community justice partners to inform community justice Scotland how they will respond to any recommendations that it has made, including whether they have already taken action. Without that information, community justice Scotland cannot properly perform its assurance function, adequately share good practice or achieve its overarching aim of supporting partners to deliver better outcomes for community justice in Scotland. Regrettably, for those reasons I cannot support amendment 85, and I invite the committee not to agree to it.

In its stage 1 report, the committee stated that, if community justice Scotland

"does not have adequate powers of oversight to measure and drive forward improvements in performance, there is a danger that weaknesses in relation to accountability, strategic leadership and the ability to properly measure outcomes in the existing arrangements will persist."

My amendments respond positively to that recommendation by providing clarity on the arrangements for oversight and performance management.

I firmly believe that Dr Murray's amendments would undermine those oversight and measurement arrangements by preventing the consistent and transparent measurement of progress in achieving outcomes and by curbing community justice Scotland's ability to assist community justice partners in planning their activities, using their resources and improving how they achieve community justice outcomes. Therefore, I regret to say that I cannot support any of Dr Murray's amendments and I urge the committee not to support them either.

I move amendment 21.

The Convener: Elaine Murray has been accused of undermining. I ask her to speak to amendment 74 and other amendments in the group.

Elaine Murray: The amendments in my name in the group are a result of suggestions from the Convention of Scottish Local Authorities. I am grateful to COSLA and the legislation team for working together to produce amendments to try to address COSLA's concerns. The minister has said why he does not like certain amendments but, when he sums up, I ask him to consider how to address the concerns that lie behind them. Obviously, local authorities are important to the delivery of community justice and so they have to be confident about their role and about the way in which they are undertaking it.

The amendments were proposed by COSLA, which is still concerned about the reporting burden on local partnerships. It fears that the burden would be absorbed by local government and it wishes to rebalance the relationship between the national body and the local partners. COSLA feels that the system of reporting and planning local outcomes is overly burdensome and contradicts the wider public service reform agenda. COSLA stresses that the point is not simply about reducing work that the local partners are required to do; it is about maintaining a healthy balance between local accountability and national assurance. COSLA feels that it is difficult for local partners to fully sign up to the reporting requirements that are outlined in the bill when there is still significant uncertainty about what the performance framework will look like. The minister might be able to give some reassurance on that point.

COSLA feels that the burden of reporting requirements could seriously threaten the work of the community justice partnerships. It stresses that no resource has as yet been allocated to those partnerships, whereas community justice Scotland will receive £2 million per year and is therefore better placed to gather data on national indicators. Again, the minister might be able to give some assurances on that point.

It is important that the outcomes and performance management framework should be flexible enough to allow for local prioritisation. COSLA believes that the bill can be amended to ensure that that is the case. It believes that there is real local work to be done that will result in real local costs over the medium to longer term. COSLA emphasises the budget pressures on local authorities and argues that planning and reporting duties could take away from the meaningful activity on the ground that will be necessary to ensure that the intentions of the bill are realised. COSLA and other stakeholders have made it clear that the local partnerships must be adequately resourced to perform their functions. National and local resources need to be provided if the message that the redesign of community justice represents a shift to a local model is to have credibility.

COSLA stresses that local government is signed up to an outcomes-focused approach to community justice, as in other areas such as community planning, and it supports in principle the notion of an outcomes framework. However, it is concerned about performance reporting being set out in detail in the bill. The minister has gone through the effects of the various amendments in that regard.

The Government amendments in the group are the only ones on which we have had representations asking us not to support them. I would appreciate it if the minister would address COSLA's concerns over amendments 21, 42, 44 to 46 and 52 to 54, which appear to provide community justice Scotland with further powers of oversight over local partnerships, directly contradicting the assurances about the scope of the national body. To date, the Scottish Government has been clear about the non-hierarchical relationships between CJS and local partnerships. COSLA feels that the inclusion of terms such as "monitor" is not in keeping with that. It is concerned that, as a result of the amendments, local partners must comply with any direction that is issued. COSLA feels that that directly contradicts assurances about the scope of the national body and its relationship with statutory partners. COSLA therefore recommends that the committee should reject those amendments. I would appreciate the minister's comments and assurances on COSLA's concerns.

Alison McInnes: I listened carefully to what the minister said, and I would not want to support anything that would reduce transparency or undermine the proposals. A clear case has been made for a national body. I have been repeatedly concerned about the variation in services around Scotland, and I touched earlier on the wrangling behind the scenes about that. I am disappointed that, at this stage, COSLA is still uncomfortable with reporting. We need to challenge that and provide greater clarity in the bill. The provisions set a clear direction so, although I agree with Elaine Murray that we need to probe these issues, I would find it difficult to support the removal of the provisions. However, I agree with her that resources must follow—that is essential.

Roderick Campbell: It is vital that we improve outcomes in community justice, and measuring that improvement is also vital. However, I strongly support the idea of nationally determined outcomes and indicators. The question is whether local outcomes should be consistent with national outcomes—I believe that they should be.

I, too, am disappointed that there is a lack of agreement with COSLA. The minister has talked about having worked extensively with COSLA. We are at stage 2 and we have a way to go before

stage 3. Even if we do not support the amendments suggested by COSLA, it would be helpful if that dialogue were to continue.

Margaret Mitchell: Clearly, there should be transparency and a framework—all of that is good. However, I have some sympathy with the amendments, as they raise significant issues. When we first had a briefing on the bill, it was very much about a partnership between community justice Scotland and local justice partners. Now, there is a slight concern that, as COSLA says, we are moving to a limitless and overly directional function for community justice Scotland.

Although I take on board that it is not necessarily a good thing to have too much variation in services—a postcode lottery—nonetheless each local partnership should have the flexibility to address local concerns. I very much hope that the minister will work with Elaine Murray to find some common ground, because there are real concerns, especially over funding. We know how much funding there will be for the national body but not for the 32 local authorities, which we all know are severely strapped for cash.

John Finnie: I was reassured when Elaine Murray said that COSLA was not averse to an outcomes-focused approach, and I agree with Roddy Campbell that it would be good if dialogue continues. It would be very disappointing if there were a turf war about this; as Alison McInnes alluded to earlier, we must remember why we are here in the first place. I support the Government's position on this and I hope that dialogue will continue, but I will not support Elaine Murray's amendments.

Paul Wheelhouse: I thank members for their comments. In response to Dr Murray, I appreciate the motivation behind the amendments and it is helpful to hear from Dr Murray about the rationale behind them, as well as COSLA's thinking on the issue. We want to provide as much reassurance as we can. I reassure Dr Murray, Rod Campbell, John Finnie and others that we will continue the dialogue with COSLA as we approach stage 3 to try to reassure it in areas where it has concerns.

I put it on record that we do not anticipate that community justice Scotland will become a new regulator. That is important, because there has been concern that, in creating a new national body, we are creating a new regulator. That is not what we intend. The provisions in the bill and the amendments to the bill are to provide the greater clarity that the committee and other stakeholders were looking for about how community justice Scotland will engage not only with ministers but with the local partners. I hope that it has been helpful that we have set out the steps, which are mainly about providing advice and support to local partners rather than stepping in with tackety boots.

There are provisions in the bill for recommendations to be made to ministers, and we have tried to set out the circumstances in which that would happen. As a last resort, the approach taken would be as a sort of rescue task force. However, we would want to avoid that and to work with local partners where we can. I am sure that that is the approach that community justice Scotland will take, too, and that it will try to help and support, to provide advice and guidance, and to spread best practice.

Helpfully, the performance framework, and indeed the indicators, will help to inform the process and to provide understanding of where things are going well. Local partners may, of their own volition, decide to look at what is happening in other areas because they see that there is strong performance in those areas. Building up the local and national indicators will help to fuel that.

11:45

We will certainly be keen to see what we can do between now and stage 3 to give as much transparency as we can to what is emerging around the performance framework. It is obviously early days and I do not want to prejudge anything that will be coming, but I will try to be open and share any emerging thinking, which I hope will give some reassurance to COSLA and other stakeholders that the framework is something that they can live with and see as helpful to their performance.

I take on board the points that Margaret Mitchell, John Finnie and others have made in relation to supporting the principle behind what Dr Murray is looking for. I hope that the committee will reject Dr Murray's amendments today, but I will try to work to give as much reassurance as possible to COSLA and other stakeholders that community justice Scotland is not a new regulator; I hope that it is an organisation that can help them. Ultimately, ministers will have a role if things do not go well, but we hope that we would never have to use those powers.

Amendment 21 agreed to.

Amendments 22 to 27 moved—[Paul Wheelhouse]—and agreed to.

The Convener: Amendment 28, in the name of the minister, is in a group on its own.

Paul Wheelhouse: Section 3(4) empowers the Scottish ministers to make regulations altering the functions of community justice Scotland.

Amendment 28 proposes that if Scottish ministers in the future wish to make regulations to alter the functions of community justice Scotland, they are required to consult the other community justice partners as well as the existing statutory

consultees that are set out in subsection (6) before doing so.

At present, only community justice Scotland and such persons as ministers consider appropriate are required to be consulted. Of course, the other community justice partners could have been consulted under the current provision, but amendment 28 puts it beyond doubt that they must be consulted before ministers make regulations under this section. Amendment 28 therefore acknowledges the key role of community justice partners in community justice and will ensure that they are involved in any proposal to change the functions of community justice Scotland should that arise.

I move amendment 28.

Amendment 28 agreed to.

Section 3, as amended, agreed to.

Sections 4 to 8 agreed to.

The Convener: I intend to stop there. I know that I am stopping a bit early, but it seems a decent place to make a break. We will continue consideration of stage 2 next week. I thank the minister very much for his attendance. We now move into private session, as previously agreed.

11:47

Meeting continued in private until 13:59.

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