OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 24 April 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - www.parliament.scot or by contacting Public Information on 0131 348 5000

Tuesday 24 April 2018

CONTENTS

JUSTICE COMMITTEE
12th Meeting 2018, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

Neil Devlin (Scottish Government)
Nigel Graham (Scottish Government)
Michael Matheson (Cabinet Secretary for Justice)
Craig McGuffie (Scottish Government)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 24 April 2018

[The Convener opened the meeting at 10:00]

Interests

The Convener (Margaret Mitchell): Good morning and welcome to the 12th meeting of the Justice Committee in 2018. We have received no apologies.

Agenda item 1 is a declaration of interests. I welcome our new member, Jenny Gilruth, to the Justice Committee and invite her to declare any relevant interests.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Thank you, convener. For the record, I declare that I am the parliamentary liaison officer to the Cabinet Secretary for Education and Skills.

The Convener: Thank you for that.

Decision on Taking Business in Private

10:00

The Convener: Agenda item 2 is a decision on taking in private item 6, which is consideration of witnesses for stage 1 scrutiny of the Management of Offenders (Scotland) Bill. Are we agreed to take item 6 in private?

Members *indicated agreement.*

Remand

10:00

The Convener: Agenda item 3 is our closing evidence session on remand. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper.

I welcome Michael Matheson, the Cabinet Secretary for Justice, and his Scottish Government officials: Philip Lamont from the criminal justice division and Kerry Morgan from the community justice division. I understand that the cabinet secretary wishes to make an opening statement.

The Cabinet Secretary for Justice (Michael Matheson): It is just a brief comment. Thank you for inviting me to give evidence on remand. It has been interesting to hear the previous evidence sessions, which have covered a range of topics. It might be helpful to the committee if I briefly set out the Scottish Government's position.

Bail decisions are rightly a matter for the courts, and they are made within the legal framework that this Parliament put in place back in 2007. However, I am keen to address issues relating to the inappropriate use of remand in Scotland, by working together with partners and stakeholders to consider what can be done to reduce the use of remand, where it is safe and appropriate to do so.

I am committed to reducing the use of short periods of custody, as demonstrated by our intention to extend the presumption against short prison sentences. It is clear to me that remand is just as disruptive as short prison sentences. It impacts on families and communities and it adversely affects employment opportunities and stable housing—the very things that evidence shows support desistance from offending.

I believe that measures such as supported bail, as an alternative to remand, have a greater role to play in supporting our vision for a safer, fairer and more inclusive Scotland where those who are involved with the criminal justice system can be supported to be active and responsible contributors to their communities. Crucially, we can take such an approach while ensuring that public safety is maintained.

I hope that that is helpful. I am, of course, happy to answer any questions from committee members.

The Convener: Thank you. We move to questions, starting with Liam Kerr.

Liam Kerr (North East Scotland) (Con): Good morning. I want to pick up on something that you talked about, cabinet secretary—the presumption

against short-term sentences. You suggested that people who are remanded may experience the same disadvantages that the Scottish Government has identified in short-term sentences. Will you clarify whether you believe that the disadvantages of short prison sentences are shared by remand, and will you elaborate on what plans you have to reduce the use of remand?

Michael Matheson: Are you asking whether I share the view that short-term prison sentences and remand cause disruption to people's lives and end up affecting their employment and potentially their housing situation, as I commented in my opening statement? Of course I do—they have a similar disruptive effect. The average time that a person spends on remand is something like 23 days for a male and 26 days for a female, but for some the time can be longer. We know that things such as housing, employment and family contact are key factors in helping to support desistance from criminal activity, and short-term prison sentences very often have negative impacts on those things. There is no doubt that being on remand impacts on those things as well, so there are similarities between the two.

Over the past 10 years, use of remand has gone down by about a fifth; there has been a reduction of around 20 per cent since 2008. That fits alongside the new provisions in the Criminal Proceedings etc (Reform) (Scotland) Act 2007, which reset the criteria and arrangements for the use of remand. It sets out the exceptions to the presumption in favour of bail and the public safety issues that have to be taken into account. We have made provision to support the development of bail supervision programmes and bail information services, and we have provided additional resources specifically for female-based programmes so that they can provide specialist bail supervision and diversion programmes for women who end up in the criminal justice system.

A range of factors have contributed to the reduction in the use of remand but, overall, our levels of remand reflect the significantly higher prison population that we have compared with nations of a comparable size in Europe. Members will be aware that Scotland has the second-highest prison population in western Europe. It is exceeded only by that of England and Wales. Our use of remand broadly reflects that high prison population, the vast majority of which comprises people who are serving short-term prison sentences.

Liam Kerr: You said in your opening statement that bail decisions are a matter for the courts. What do you understand the main drivers to be for the current level of the use of remand?

Michael Matheson: The likelihood is that, when sentencers are considering whether to hold someone on remand, they take into account a variety of different factors. The legislation requires them to do that. Many of the individuals with whom they are dealing will have chaotic lifestyles and, on the basis of their presentation to court, may already have several bail orders in place. There may be issues with the likelihood of their appearing in court. All those criteria have to be taken into account, as does public safety, when sentencers make decisions.

I was interested in the evidence that you received from Sheriff Liddle. There is a perception that, if more services were available, it would change sentencers' views. I hope that I have interpreted him correctly as saying that that is only one of the range of factors that sentencers will take into account. There is no single aspect that we can say is driving our use of remand. Ultimately, it is a matter for sentencers.

There are also issues with prosecution policy. Cases are marked in the central hub and then determined by the depute who is dealing with the case in court if there is a variation from their views on the case marking. There is no single factor; a variety of different things come into play. I suspect that most sentencers take into account several different factors when they determine whether they should remand someone.

Liam Kerr: In your opening statement, you talked about inappropriate use of remand. By that, do you mean that the sentencer has made the wrong decision? In fact, those are not the right words. Do you mean that the sentencer has come to a decision that is not appropriate or that it is the appropriate sanction but the wrong thing for the individual?

Michael Matheson: What I mean is that, where reasonable bail supervision programmes that could have been appropriately used are in place, we must try to make sentencers aware of them and encourage them to make appropriate use of them. Where bail information services are in place, we must also ensure that sentencers make as much use of them as possible.

Is there more that we can do to give sentencers confidence about those matters? Yes—no doubt there is more that they might find helpful, and we should always be prepared to look at how we can improve the information that they have available to them. It is also about looking at how we can do more in addressing issues relating to bail through the use of, for example, electronic monitoring. I know that you will take a briefing on that later in the meeting, and I believe that there is scope for that in the future.

It is not necessarily about them making the wrong decisions. It is about making sure that they are armed with all the necessary information,

which includes information on the bail supervision programmes and information services that are available in their locality at the time when they are making decisions.

Daniel Johnson (Edinburgh Southern) (Lab): The starting point for our inquiry was the stark figures on the proportion of the prison population that is there because of remand. We have a written submission from the Scottish Courts and Tribunals Service that shows that, under summary procedure, 40 per cent of those who are remanded are given a non-custodial sentence and 12 per cent do not receive a sentence at all. Half of the people who are on remand and are going through the summary procedure go into prison but, ultimately, that is not where they are destined to be, which seems odd.

One of our frustrations is that there is a lack of data on why remand is being used. Do you share that frustration? Could more be done to centrally collate the reasons why remand is used by the courts?

Michael Matheson: On your first point about the number of people who end up on remand and ultimately—through summary proceedings, for example—receive a custodial sentence, one of the criteria that the courts should consider when determining whether someone should be remanded or bailed is the likelihood of their receiving a custodial sentence at the end of it. That provision has been in place since 2007 or 2008, so it is a matter that we take into account. However, I fully recognise that there will be times when a sentencer decides that a period on remand is appropriate from a public safety point of view—they might believe that it is appropriate for the purposes of witnesses or victims—even though they recognise that, given the nature of the offence, the likelihood of a custodial sentence is remote. I understand the importance of our courts and sentencers having the flexibility to make those decisions.

On your second point, I am always keen to make sure that we gather as much appropriate data as possible, as long as it serves a purpose. As things stand, when it comes to summary proceedings, the court minute usually records whether someone has been granted bail, but not necessarily the reasons for that, although the sheriff or judge is likely to set out orally why bail has or has not been granted.

I know that the Scottish Courts and Tribunals Service has said that there is potential to gather more data, but there are downsides to that in terms of both the cost and the bureaucracy that might be associated with it. I also want to be clear about whether gathering the data would help to improve and change things, and the purpose that it would serve. I am always open to looking at whether there are areas where, without being unduly bureaucratic, we can collect data that has a purpose and will help to improve things, but we need to consider that further and see whether gathering the data would truly make much of a difference.

Daniel Johnson: Perhaps I can suggest two possible purposes. First, it would ensure that there was consistency so that people received broadly the same outcomes from different courts. Secondly, in relation to your seeking to drive system-wide change, it would be useful to understand at a system-wide level why particular outcomes are arrived at. Will you reflect on those two broad points? Without that data, it is difficult to establish either of those things.

10:15

Michael Matheson: On your latter point, I am open to hearing what the committee has to say in its report, having considered the evidence on remand over five evidence sessions. You may believe that the collation of further detail could be helpful in understanding some of those aspects. Would it deliver greater consistency? I am not sure that it would. Very often, sentencing decisions around bail and remand are individualised. They depend on an individual's circumstances and history, so it would be difficult to create a data collection system that would allow us to make that direct comparison. I understand where you are coming from, but I suspect that there are such variations between cases that appear in court that it is difficult to envisage a data collection system that would allow us to make a direct comparison between cases.

I am open to looking at whether further data collection could assist us in understanding what is going on in the use of remand. However, I sound a note of caution, because the collection of data needs to serve a purpose in improving how the system operates. What are we trying to achieve from the collection of data? If it could improve how the system is operating, let us look to see whether we can develop a data collection system that will facilitate that improvement, rather than just collecting data for the sake of it.

Daniel Johnson: Connected to data are individual court records. I would like to make a distinction. To my mind, data is about the aggregate view and collecting data at a system-wide level, whereas individual courts will have a record of each case. You mentioned in a previous answer that the sheriff will ordinarily give a reason why he is granting bail or putting someone on remand, but that is not necessarily always recorded, and it is certainly not always recorded in the same way. Given both the seriousness of the issue and the general concern that we should be

trying to minimise the use of remand, is there scope for recording the reason that the sheriff gives when putting someone on remand rather than granting bail?

Michael Matheson: In summary cases, the minute of the court will record the basic detail of whether remand was granted. In a solemn case, everything is noted, so much more detail is held on those matters.

It is more a question of whether recording the data would start to drive change in the system. For example, about two and a half years ago, I commissioned three pilots in three different sheriffdoms that used improvement methodology and looked at the use of remand and bail, and a big part of that was about collecting data during those exercises. One thing that they showed was that there were great variations in the use of remand from day to day and from court to court, depending on what cases were being heard.

If we were to create a statutory requirement for sheriffs and the court to record exactly the reasons for not granting bail, additional bureaucracy would go with that. Notwithstanding that, however, I return to my original point about the purpose of doing that and what change it would drive in the system. Even if the court minute noted the reason why remand was not granted by recording what was said orally in court, what purpose would that serve in effecting any change in the system or in how remand is used?

The key factors in my mind when determining whether to make any change to the data collection system would be whether it would drive change and improvement, and what improvement we were trying to achieve. We collected a lot of data during the three pilots that we held in the three sheriffdoms, but it did not give effect to change in practice; it just demonstrated where marked variations were taking place.

Daniel Johnson: Spotting variations does not necessarily lead to changes in practice, but at least it allows you to identify where change might be required. I add that, when we are depriving someone of their liberty, recording the reason for that is important. Setting to one side the wider purposes in relation to the system and thinking only in terms of the individual case, if someone is being deprived of their liberty, recording the reason for that is clearly important in and of itself. What is your reflection on that?

Michael Matheson: We are getting into the territory of what is and is not in a court minute. I imagine that the Lord President would have views on what it is appropriate to record in that. When it comes to solemn matters, all the details are recorded within the court, unlike in summary cases.

I hear what you are saying. I will be interested to hear the committee's views, given the evidence that it has heard, on whether additional data collection would be helpful. I am not opposed to that, but I want to understand what purpose it would serve and what benefit could come from it, and to ensure that any additional data that is to be collected will have a purpose and can help to inform practice and improvement in the system. I am open to looking at whether additional data collection could help to improve things, but I am mindful that it should have a clear purpose and an effect on the system.

Liam McArthur (Orkney Islands) (LD): Good morning, cabinet secretary. I take your point about the allocation of resources. We have heard considerable evidence about where the resources that become available could be usefully spent, and it was not necessarily on data collection.

My question follows on from Daniel Johnson's question. Notwithstanding the variability that you quite rightly point out, it would be a concern if it were not being captured—whether in an individual court or across the piece—that a consistent part of the unwillingness to grant bail was a lack of available services or that available services were deemed not to be effective enough, because multiple referrals to them had not achieved the necessary outcomes. That information would at least allow some kind of policy response to address whatever shortcomings there are, whether they are to do with a service not being available or its ineffectiveness in a particular area. Would that not be a valuable outcome to be derived from the sort of data gathering that Daniel Johnson is referring to?

Michael Matheson: That is a potential, although it is important to keep in mind that the presumption is in favour of bail. The use of bail information services and bail supervision programmes is an alternative to the person being remanded. If someone would ordinarily receive bail and the court sees bail as being appropriate, they should receive bail, irrespective of what services are available. Where remand is being considered and it is believed that services provide a viable alternative to remand, it is important that the available services are known to the sheriff or judge to enable them to make that determination. That is an important distinction to make about how the existing arrangements operate.

I am open to the question of whether further data could be collated, but I re-emphasise that it needs to have purpose and we need to know what we are trying to achieve with it.

I go back to the evidence that the committee received from the Sheriffs Association and the Edinburgh Bar Association. There are often several factors, rather than a single factor, that

lead to sheriffs and judges determining not to grant bail. It may be that service provision is only one aspect that they would consider in determining such matters.

The Convener: It might be helpful to note that the lack of data in general is a theme that has run through evidence since the Parliament's inception. Where possible, if it is not too burdensome, as much information should be recorded as possible, without trying to second guess the purpose of the data. You never know what could be useful in the future. That is how I would approach the emphasis on trying to record as much as possible.

Michael Matheson: I think that the committee received evidence from the Scottish Courts and Tribunals Service that if additional measures were put in place, there would be not just financial but court time resource implications. Courts are often under significant time pressure.

I am clear that I am not a fan of collecting data for the sake of it. If we are going to request the collection of additional data we should be clear about the purpose and what we are trying to achieve by the collection of that data. We do not want to create undue bureaucracy, cost and burdens, when those could be avoided.

The Convener: We are cognisant of the burden and the cost. However, when we second guess what data might be appropriate, it can eliminate the possibility of answering questions that suddenly jump out from the data, such as, "How many vulnerable people do we have here?" and, "Is there a niche or gap here?"

Michael Matheson: If I were to make a request for lots of data to be collected, I have no doubt that people would say that it was creating unnecessary bureaucracy and that that was causing delays to cases. When we collect data, we should be mindful of the potentially negative consequences at the same time as being clear about what we are trying to achieve from the data collection. We should not be asking sheriffs to spend more time collecting data and asking clerks of the courts to spend more time and resources dealing with it if that means that cases are delayed and court time is used up purely for the collection of data. People like to pore over the data, but it might not have any effect in relation to improving how the system is operating.

If there is a view that we should go down the route of collecting more data, it should have a purpose and the potential to create improvement, rather than creating bureaucracy for the sake of it.

The Convener: We are agreed that there is a balance to be struck.

Michael Matheson: There is a balance to be struck, but I am not a fan of collecting data simply because people like to collect data.

The Convener: You have made that plain, cabinet secretary.

Liam Kerr: I want to move us on to people's experience of remand. In 2013, the predecessor Justice Committee reported on purposeful activity in prisons and noted that there was a lack of opportunities for remand prisoners to participate in purposeful activities. What has happened since then? Has there been an improvement in the situation? What opportunities are available now that were not available five years ago?

Michael Matheson: The purposeful activity framework that was introduced by the Scottish Prison Service was a long-term piece of work that looked at how it could ensure that the range of programmes available in our prisons was more effective, more consistently available across the system and better targeted at the prisoner group that it could best serve.

The challenge in respect of remand prisoners is the length of time that they are in prison, which makes it extremely difficult for them to engage in purposeful activity programmes. As I am sure that the committee will recognise, the purposeful activity and education programmes that the Scottish Prison Service operates are targeted at convicted prisoners, as there is a fixed timeline during which the service can engage and work with those individuals. That is not often the case with remand prisoners.

In reality, there is limited opportunity to undertake work in prison with someone who has not been convicted and who is in prison for a very short time—at that stage the period could be undefined, depending on the progress that has been made on the individual case. The timeframe makes it hard for the Prison Service to deploy significant resource to be able to provide the individual with additional input.

10:30

My view is that it is wholly unrealistic to expect the Prison Service to be able to effect much change in someone in such a short period of time. Many remand prisoners will go through the same process as a convicted prisoner would in being assessed generally and medically, and they will have the opportunity to participate in education programmes where they are available. However, in many cases, it will be a matter of stabilising them. Many of those individuals will have a chaotic lifestyle or a significant drug problem that the Prison Service will need to prioritise and manage. What can be done with someone on remand is very limited in terms of the medium-term to long-

term work that we would expect through purposeful activity programmes. Remand prisoners have the opportunity to participate in programmes, but priority is given to convicted prisoners, and it is highly unrealistic to expect the Prison Service to have much effect in changing someone on remand, given the very limited time in which they may be on remand. Very often, the Prison Service will not have a defined period of time for how long the person will be with it on remand.

Liam Kerr: I understand the point that you have made, but would opportunities be available? Let us say that I have been remanded for an undefined period and that I want to engage in purposeful activity. Would that be available to me, or would I not be able to positively engage in purposeful activity because of the pressures that you have identified?

Michael Matheson: Remand prisoners are entitled to participate in education programmes if there is availability.

Liam Kerr: As far as you are aware, is there availability?

Michael Matheson: It continues to be the case that priority will be given to convicted prisoners, as they are in prison for a defined period and have been assessed and engaged in programmes in order to address their offending behaviour. Remand prisoners are unconvicted prisoners. As members have already heard from their colleague Daniel Johnson, some 40 per cent of them will not end up getting a custodial sentence. Giving priority to convicted prisoners is the right thing to do, given that those individuals have been convicted and are in prison for a defined period and that their offending behaviour should be addressed. Where there is additional capacity and scope to provide opportunities for unconvicted individuals who are in prison, they can participate in programmes.

Mairi Gougeon (Angus North and Mearns) (SNP): My question directly follows on from Liam Kerr's question. When I recently visited Rossie school, which is a residential secure facility for young people just outside Montrose, people spoke about the adverse impact on young people when they are put on remand in a prison environment as opposed to an educational environment in which people are better able to work with them and can have a more positive impact on them. Is where we put young people when they are on remand being looked at, or can it be looked at?

Michael Matheson: The way to deal with young people is to try to prevent them from getting engaged in the criminal justice system in the first place. Our whole-system approach has proven to be very effective in doing that. As a result, the number of young people who end up in custody has significantly reduced, which has meant that the number of young people who end up on remand has significantly reduced. We continue to take that approach. If we are to effect change, particularly in respect of young people who come into contact with our criminal justice system, there must be prevention.

The arrangements in places such as Her Majesty's Young Offenders Institution Polmont are somewhat different from those in adult prisons, given the range of services that are available for young people who are remanded to such places, but I agree that if there is an opportunity for a young person to be in a setting other than one such as Polmont, and that is more appropriate for them, we should take that approach. It is the approach that we have taken in our youth justice strategy, which has had a significant impact on the number of young people who end up in custody.

We should try to prevent young people from getting into such settings in the first place. We should work hard to achieve that and our resources should be targeted at reducing the need for young people to end up in custody, through remand or any other means. When young people end up on remand, there is the opportunity to consider other settings, as and when another setting is appropriate for the young person's needs, and in light of safety issues.

Rona Mackay (Strathkelvin and Bearsden) (SNP): You talked about the negative effects of remand on prisoners and their families. Her Majesty's chief inspector of prisons agrees that there are negative effects, and Community Justice Scotland has talked about the stress on relationships and the impact on housing and employment. What is the Government doing to mitigate the negative effects of remand?

Michael Matheson: Part of that is about ensuring that we get the balance right on the use of remand. Some of the measures that I mentioned, such as bail supervision programmes, bail information services, the shine mentoring service and the new routes programme for males, are all about helping people to move on or preventing people from getting remanded.

It is important for individuals on remand that family links are maintained. Eleven of our prison establishments have family centre provision. Four centres were introduced last year and a further one will be introduced this year, which will mean that 12 out of 15 establishments will have a family centre. We are providing funding support for the centres. The purpose is to provide an environment that helps to maintain family links and offers support to families when someone is in prison or on remand.

Of course, the visiting rights for a person who is on remand are different from those for a convicted prisoner. Remand prisoners are entitled to daily visits. Visitors centres can be a much more helpful environment for families who visit prison on such a frequent basis, especially if children are involved.

It is also worth keeping in mind that a parent having a period in custody is recognised as an adverse childhood experience—or ACE—which we know can have a negative impact on the child's development and future. We need to do everything that we can to support children who are affected by parental imprisonment, whether that is due to remand or a prison sentence. The work that we do in family centres is targeted at addressing such issues.

Sustainable housing on release for everyone—SHORE—guidelines are in place to help people to get housing when they have spent a period in prison. I encourage you to consider the report on the effectiveness of throughcare officers; their work has transformed how the Prison Service supports people as they move out of prison. Sometimes that involves supporting individuals who have been on remand, where appropriate, for two to three months after they have moved into the community.

A range of arrangements are in place that, collectively, can help to address the negative effects to which you referred. However, a level of damage is always going to be caused when someone is in prison, whether they are on remand or have been convicted. We need to do as much as possible to address the consequences of that, so that when people go back to the community we minimise the risk of their coming back into prison and maximise the opportunity for them to become productive contributors to society.

That is a short version of some of the measures that we have put in place to try to address some of the issues that you have just mentioned.

Rona Mackay: I was aware of the support systems that are available, but I was not sure whether they were available to those on remand. Thank you for clarifying that.

George Adam (Paisley) (SNP): In a number of sessions, we have heard that there are information delays around getting medical data for prisoners on remand—people who might be alcoholics or drug users, people who have chaotic lifestyles or people who have asthma or a heart condition, for example. Basically, we heard that people were presenting themselves to prison, but the data from their medical records was not following them.

Are you confident that the national health service and the SPS are working together to try to sort out that issue? It seems pretty basic to be able to make sure that that information is there.

Michael Matheson: It is worth keeping in mind that back in 2011, we made a decision to transfer health and medical services within our prison service to the NHS in order to help to improve that flow of data. Prior to that, the SPS was responsible for providing health and medical services within the prison estate and one of the real challenges that came about from that situation was to do with the transfer of information and data, not just into prison but back out of prison.

Transferring the services to the NHS was about helping to make sure that that information and data flow issue was addressed. I believe that things have improved significantly. Are there aspects that could be improved further? I suspect that there are. Some of the evidence that you have heard might demonstrate the need for that.

My health minister colleagues are looking at an area of work on the back of the Health and Sport Committee's report on healthcare provision within the prison estate. They are looking at some of the measures that need to be taken to improve the consistency with which healthcare is being provided.

It is fair to say that some health boards are better than others. For example, the health board in my constituency, NHS Forth Valley, has to cover three prisons—Polmont young offenders institution, Cornton Vale and Glenochil. By and large, it delivers a very good service and is very attuned to and works in close partnership with the SPS.

In other parts of the country we need to refine that process and make it work better. There are aspects that we can improve and my health minister colleagues are working on how to help that happen.

We have also created the joint health and justice collaboration improvement board, which is headed up by the director general for health and the director general for justice. It has a range of different parties on it, including the chief executive of the SPS and chief executives from the NHS. It is looking at targeted measures that we can take across our justice system, including in the SPS, to improve the flow of data and to get those partnerships right, in order to make sure that people receive the right service.

By and large, however, when someone goes into prison, they will be screened by a nurse and, after that, there will often be provision for them to see a doctor within 24 hours if that is necessary. There will be consistency in how those services are being delivered.

The committee received some anecdotal evidence about whether people were getting access to their medication at the right times. My only note of caution on that is to ask whether there

is hard evidence to demonstrate that that is the case. If there is hard evidence to demonstrate that it is, there is no doubt that both the NHS board responsible and whichever prison is referred to need to sort that issue out. However, my understanding from the SPS is that it is not aware of a particular concern having been raised with it. It is open to addressing the issue if there is evidence that it is a problem in any particular establishment.

Those partnerships are stronger now than they have ever been as a result of the NHS now delivering prison service healthcare. Some health boards are doing it better than others and some need to improve further. The work that is being done by my health colleagues is about helping to improve those partnerships and the work that we are doing in the health and justice collaboration improvement board is about helping to make sure that there is much clearer direction on addressing some of these issues at a strategic level.

The SPS and the NHS should be able to address individual concerns regularly as and when issues are raised.

10:45

George Adam: We have received evidence that people are not necessarily getting sent to a prison that is local to them. Not only is there a difference for their medical records, distance is an issue.

I asked Colin McConnell of the Scottish Prison Service whether he believed that information sharing was a data protection problem or a process problem, and his answer was:

"I think it is about all of that. There are information-sharing blockages that are related to particular permissions that are not allowed to be given across organisations without the individual giving their say so.

Without doubt, there are system and process issues that simply get in the way because systems are incompatible. That is not beyond us to resolve, but it is a huge challenge for us."—[*Official Report*, *Justice Committee*, 20 March 2018; c 22.]

That backs up what you said, cabinet secretary. We talk about having a national health service but, within the various boards, there tend to be different information technology systems. The problems seem to be with such basic things as that. I know that IT is never basic, but information is key. How can we overcome what seems to be a technical challenge?

Michael Matheson: I am not an IT expert or an expert on the technical fixes, which is often the term that is used by IT experts.

Before 2011, Scottish Prison Service nurses and medical staff would have had difficulty accessing NHS medical data because of data protection rules. NHS staff are now working within the prison estate and they can access NHS information as required. Part of the challenge will be having computer systems within the SPS that gives it access to NHS data.

Some of the wider data issues are being considered by the health and justice collaboration improvement board. That strategic work needs to be taken forward. We are looking at where there are barriers or blockages, whatever they might be, and, if the solution is an IT solution, whether we can take a more strategic approach.

I would prefer to avoid a situation in which our prison establishments in different health board areas all have to have different fixes so that they can access the appropriate NHS information. It would be good to do this once for Scotland so that the Scottish Prison Service could have a system that allows it to access appropriate medical records as and when that is necessary within a prison establishment, no matter where it is in the country.

That is my view from the justice perspective. I am conscious that there are differences between health boards in respect of their ability to access and share information. I do not kid myself on that it is an easy problem to resolve. That is why we have brought together a new body that includes some of the key leaders in justice and health to deal with some of the more strategic issues. Part of that is about IT and data sharing and putting in place appropriate protocols and systems that can help to facilitate that.

Daniel Johnson: You are quite correct that the evidence that we heard about delays was anecdotal, but it came from people who have a wealth of experience. That evidence was repeated during our visit last week to Circle Scotland, which has a fantastic track record. It told us that people are often waiting weeks, if not months, to see a doctor. That sounds wholly unacceptable. If that is the case, do you share the view that it is unacceptable for someone to wait weeks, if not months, to see a doctor if they are in prison?

Michael Matheson: It depends on the purpose. For example, someone in the community might require to see a specialist and there could be a waiting period. I am not sure what you mean. Are those individuals just not seeing a doctor—full stop? Are they being referred to see a particular clinician for a specific purpose?

Daniel Johnson: When we discussed it with Circle, there was broad agreement that that is just a general problem. We were talking specifically about addictions.

Michael Matheson: If someone was waiting weeks to see a general practitioner or a clinician for a basic medical appointment, I would have concerns. However, that waiting time might be for

a referral to addiction services or some other specific service. Those services will be meeting the demands that are coming from the community, too, and individuals in the community might also experience a waiting period in order to see someone.

I am trying to understand whether you are asking about someone seeing a GP about basic health issues or being referred to a specialist service, for which there will be a demand from within the community and, consequently, a waiting time to see a clinician. In that case, the waiting time will arise not because someone is in prison but because of the general demand on that service.

Daniel Johnson: I quite understand that you cannot react to the specifics; I was just trying to share our slight shock at the report.

The other shocking thing that was reported last week, certainly from my perspective, was that, if someone self-reports with an addiction problem without a prior prescription or diagnosis, they will be referred only if they have had three positive drugs tests in prison. That is what we were being told by Circle. The implication was that that would be possible only if they were illegally procuring drugs in prison. Again, that strikes me as worrying. Indeed, if someone is self-reporting as having an addiction problem, at the very least that is drug-seeking behaviour, which would be a worry in and of itself, even if they were not correctly reporting the situation. Is that a report that you would want to follow up on? Would that concern you if that were the case?

Michael Matheson: I need to get a better understanding of this. Is this a problem that has been peculiar to Serco?

Daniel Johnson: This is certainly something that it reported. The practitioners who were discussing the matter were all in broad agreement. The point was not made by one individual, with everyone else reacting in shock. This seemed to be a well-understood problem. It might be worth following it up directly with the people concerned.

Michael Matheson: It is just, when you said—

The Convener: Just for clarification, Daniel Johnson is talking about Circle, the charity.

Michael Matheson: Oh! I thought you said "Serco", Mr Johnson.

Daniel Johnson: No, I was talking about the charity.

Michael Matheson: Sorry, I misheard you. I apologise.

I am happy for us to consider that issue, but I think that we need to understand exactly what it is. It sounds to me that, if there is a requirement for three positive tests, there is some sort of protocol in place. I do not know what the history of that protocol is or why it was put in place. It might be that there is good reason for it being in place but, until I have an understanding of that, I am not sure what we can do. However, I am more than happy for us to take away the matter and try to identify what the issues are. We can pick up on some of the experiences of Circle, which is a third sector organisation, and see whether they can be addressed.

It sounds to me that the system that is in place might be having some unintended consequences. However, before committing to saying that the system should end or change, we need to understand what the reasoning behind it is. I can certainly look into the matter.

Daniel Johnson: That would be extremely helpful.

Jenny Gilruth: Good morning, cabinet secretary.

We know that Scotland locks up more women than any other part of the United Kingdom does, so I want to focus on women's experiences of bail. The committee took evidence from Community Justice Scotland, which told us that the provision of services was patchy. The witness said:

> "I worry for women in rural areas. The position is great for those who live in town centres, where there are probably enough people to justify having a service."—[*Official Report, Justice Committee*, 6 February 2018; c 47.]

In a letter to the committee earlier this year, the Government said that it has committed £1.5 million to local authorities to improve bail support services for women.

My question goes back to the issue of the purpose of data, which we spoke about earlier. How is the Government monitoring local authority spend of that fund to ensure that there is national parity in the services that are offered to women?

Michael Matheson: Resources are deployed for the purposes of delivering bail, bail supervision and bail information services through the criminal justice social work funding, which is ring-fenced money that amounts to about £100 million a year. It is then down to individual local authorities to determine what services they will deliver in their areas. We do not ring fence certain amounts for the purposes of bail services within the criminal justice social work budget, because that is determined by the local authority.

The element that is ring fenced is the £1.5 million that we provide for programmes that are targeted at female offenders. Local authorities report back to us annually on the delivery of those services and the way in which they are using those resources. If it would be helpful, we could

provide the member with further information on the way in which that is taken forward. Some of those programmes are targeted at reducing the risk of people ending up in the criminal justice system and some are targeted at reducing the requirement for remand by providing an alternative.

We have not prescribed how the local authorities should spend the money. We allow them the scope to determine what they believe is appropriate. The additional money that we provide for the purposes of programmes that are targeted at women is ring fenced. That comes off the back of a change fund, which we set up back in 2015. The fund came to an end, but we continued the specific funding for female-based programmes. That money is distributed across the country via a formula that has been agreed by the local authorities. It is then for the individual authorities to determine how they will use the money at a local level.

Given that the authorities report back to us on that, we can draw together some information and share it with the committee, if that would be helpful.

Jenny Gilruth: Thank you.

I have one further question, which goes back to Rona Mackay's point about young people. It is not always because they have become involved in the justice system that a young person has experience of the system: the young person will have direct experience if their parent is in the justice system—you have already alluded to that, cabinet secretary. David Strang told the committee that many women face additional, more complex problems, such as child custody issues, and Social Work Scotland told the committee that people do not always tell children the truth about what has happened, but children will know that something is not quite right.

I was very interested in what you said about the Government's work on adverse childhood experience. To what extent do you work with the Cabinet Secretary for Education and Skills to join up the work of the justice and education departments in tackling adverse childhood experiences?

Michael Matheson: That is a really important issue. It is an area where a much more extensive level of engagement is taking place within the Government, across portfolios, to address the issues. The programme for government has a specific section on adverse childhood experiences and the range of different measures to address those issues that are under way across portfolios such as education, justice and health. The Deputy First Minister recently hosted an event at Bellahouston academy in Glasgow with stakeholders from across justice, health and education, including ministers, looking at a range of specific policy measures that can be implemented to address adverse childhood experiences. For example, the work that we are doing—

The Convener: I am sorry to interrupt you, cabinet secretary, but we have gone slightly off subject. Please continue, but be mindful of the time.

Michael Matheson: I just want to say that parental custody is a recognised issue for remand prisoners. One of the ways in which we are trying to address some of the issues is by providing support to families affected by imprisonment through the family centres at our prison establishments and ensuring that we are providing a greater level of resource and support to individuals and children in particular. The expansion of those centres over the past year reflects the fact that we recognise the need to maintain those family links in order to address some of the underlying causes of adverse childhood experiences for children.

I hope that that is a practical policy illustration. There is no doubt that, at a strategic level, the Government is trying to join up the dots to minimise the damage that is caused to children who experience custody in some way.

Maurice Corry (West Scotland) (Con): The 2008 report of the Scottish Prisons Commission stated:

"often remands are the result of lack of information or lack of services in the community to support people on bail."

Have things changed very much since 2008?

11:00

Michael Matheson: Yes, they have. The range of available bail supervision and information services has increased and, with regard to the comments that I made about the provision of resources for women, the range of female-specific programmes has increased. That is reflected in the fact that there has been a 20 per cent reduction in the use of remand since 2008.

That said, is there more that we need to do? Yes, of course there is, and it will be interesting to hear what the committee says on the areas in which we need to make further progress. There have been improvements and progress has been made, but there is no doubt more that we could and should do. I hope that the committee report will help in identifying some of the areas where further progress can be made.

John Finnie (Highlands and Islands) (Green): I was interested when you touched on pilot

projects that have taken place in Hamilton, Dundee and Paisley. We have heard differing views on the impact of supervised bail on the use of remand. Does the Scottish Government have any specific evidence on that issue?

Michael Matheson: There was the evaluation of bail arrangements in 2012. If I recall correctly, that report said in particular that bail supervision is valuable and helps to improve how the system operates. I do not know whether the committee is aware of that evaluation, which was carried out to evaluate the changes that took place in 2007 and see how they were operating. The evaluation demonstrated that the bail arrangements in place are robust, fair and appropriate in how they operate. Part of the report made reference to bail supervision programmes and their value, so evaluation has been carried out.

John Finnie: Were those the specific pathfinder projects? Why were those areas chosen? How were they different from what happens elsewhere?

Michael Matheson: No, those were somewhat different. They were informed by the use of improvement methodology, which has been used in the healthcare setting—for example, our patient safety programme has been developed on that basis. I was keen to look at whether we could use that type of improvement methodology in aspects of our criminal justice system to drive some change and improvement.

We worked in partnership with the Scottish Courts and Tribunals Service and the Crown Office to identify a couple of sheriffdoms where we could test whether such a methodology could make a contribution to how our court system operates, particularly on the use of remand. Those three sheriffdoms were identified, by and large, because of their sheriffs principal, who were interested and keen to explore how it could operate. The three pilots operated with slightly different models and approaches, and they were designed in partnership locally to test whether certain measures could be put in place to drive change in the use of remand.

The results were very mixed, part of which goes back to an answer that I gave earlier about the element of consistency in this. It demonstrated that there is no consistency in the use of remand because of the difference in the nature of the cases that present in courts. Trying to set arbitrary levels or make specific comparisons proved to be very difficult. It demonstrated that information being available to sentencers was valuable in helping them to understand that the input from criminal justice social workers was important, and it gave sentencers confidence about whether to use bail, as opposed to remand, in certain cases.

It gave us some important insights, but it did not demonstrate that it would make a significant change in the system, and it demonstrated the significant variations in the use of remand even in an individual court through the course of a day. It tried to test improvement methodologies to find a method that could help us get a level of consistency. It demonstrated that that was difficult to do, because of the variation in the nature of the cases that the courts deal with.

Maurice Corry: What is the Scottish Government doing to ensure that there is effective and sustainable funding to help third sector services to be effective?

Michael Matheson: We provide direct funding to a couple of third sector services: the shine mentoring service and the new routes mentoring service. The funding for the bail supervision and bail information services that are operated by third sector organisations will be provided by local authorities, working in partnership with those organisations. From my perspective, I prefer to be able to provide third sector organisations with consistency of funding over a couple of years, where we can achieve that. It is not always possible, but I try to achieve it where I can. The decisions by third sector organisations and local authorities on how funding is arrived at locally are a matter for them, as I am sure you will appreciate.

Maurice Corry: In our discussions and information gathering, what has come through loud and clear is that third sector organisations find it very difficult to budget beyond one year, because funding comes from the Government to the local authority, and from the local authority to the organisations. The issue was mentioned particularly to me by Sacro when I met it the other day. I am concerned about the funding issue because Sacro would like to do some good, substantial planning, but that is very difficult to do with funding for only one year. Has the Government considered funding for a longer term?

Michael Matheson: Yes. Part of the challenge has been around the comprehensive spending review. If we do not know what will happen three years down the line, it is difficult for the Government to plan. If we do not know what our budgets will look like, it is difficult to offer budgets to others. However, we do it where we can. For example, I announced new funding of over £13 million last week for Victim Support Scotland over a three-year period, and knowing what its budget will be will allow it to develop the new homicide service, with a single point of contact to create a much more victim-sensitive approach.

I have sought to provide such three-year funding where I have been able to, but I am conscious that that is not always possible in certain areas and I recognise some of the challenges that local

authorities have. Having annual budgets is not peculiar to the criminal justice setting, though, because it happens across the third sector and the public sector in general. As I said, I recognise the challenges that arise from that, but I hope that I have illustrated to you that we try to achieve funding over a couple of years, where we can, to give organisations time to plan, manage and develop their services.

The Convener: Following the reforms to community justice made by the Community Justice (Scotland) Act 2016, the Scottish Government has responsibility for the national strategy and the national performance framework. You have mentioned the third sector and arrangements to use it to support alternatives to remand. However, the committee has heard concerns. Apex Scotland, for example, said:

"It has been quite difficult because there is an underlying tension between the strategy and the localism agenda ... A vast amount of the money still goes through the local authority filter."—[*Official Report, Justice Committee,* 27 March 2018; c 10.]

More specifically, going back to the 2016 act, you will recall that there was a bit of concern about whether the third sector would be involved to the extent that we would all like it to be. Turning Point Scotland told the committee:

"There has been a reduction in third sector involvement in structures across the local authorities. The legislation only suggests that they should include the third sector in their decision making and strategic plans."—[*Official Report, Justice Committee,* 27 March 2018; c 9.]

Is there something that we could do to firm up that situation a bit, to ensure that third sector organisations absolutely are partners, given the very valuable contribution that they make?

Michael Matheson: I am very clear that third sector organisations play an important part in the mix of services that work with individuals. That is why this Government provides some direct support to them. It is of course down to individual local authorities to decide with whom they have direct partnerships in the delivery of services at the local level.

There would be a danger in setting out in legislation that there must be third sector involvement—which is why the legislation does not specify that—because in some local authority areas there might not be a third sector organisation that could deliver the service and it might need to be delivered by a statutory organisation such as the local authority itself. It is down to each local authority to determine what relationship to have with third sector organisations with regard to the delivery of such services.

Your first point was about funding. I think that it was Apex who raised the issue of how the funding still goes through the local authorities. You might recall that when we introduced the Criminal Justice (Scotland) Bill, which my then colleague Paul Wheelhouse took through Parliament, there were those who wanted Community Justice Scotland to be the budget holder and to determine how the money should be distributed at a local level. There was very strong opposition to that idea, particularly from our local authorities, which asked why we should create another body that would have control of how their money would be used, so we agreed to take an approach whereby, although a small amount of the money would be retained by Community Justice Scotland, the vast majority of it would be distributed to local authorities to determine how it should be used in their local environments. That was the debate that was had at the time.

I recognise the point that has been made, but it was considered when the bill went through Parliament. It is for local authorities to decide which third sector organisations they choose to engage with and on what basis, for the delivery of whatever services they believe are appropriate at a local level. Notwithstanding that, I recognise some of the challenges that third sector organisations face. I have seen fantastic work being done by third sector organisations, and there are some good, strong relationships between local authorities and third sector organisations that deliver effective, good-quality services.

That said, I am keen for there to be greater sharing of good practice in such areas. As part of its work, Community Justice Scotland is looking at how, where good relationships exist, good services have been developed and partnerships are working extremely well, information on how those operate can be shared with other parts of the country. Community Justice Scotland is looking at how we can more effectively share that good practice—including on the work that is done with third sector bodies—across all our local authorities.

The Convener: Instead of only suggesting that there be third sector involvement, could the legislation be strengthened to say that local authorities "must, where appropriate" involve third sector bodies? That would strengthen the legislation a bit, while still providing flexibility. That subtle difference would ensure that the third sector was more involved.

The fact that the funding goes through the local authorities provides an element of localism, but given their restrained budgets, local authorities will always be tempted to consider using an in-house service, whereas it is often the third sector that has the flexibility, the experience and the ability to provide a better service, which offers better value for money and, more importantly, results in better

outcomes for the recipients of the service. You probably recognise that that is the case from your various experiences.

Michael Matheson: You were a member of the committee that considered the Criminal Justice (Scotland) Bill, which was passed in its current form and includes the terms to which you refer. Such issues were considered at the time. The Criminal Justice (Scotland) Act 2016 has been in place for only a year and, at this stage, I am not minded to consider changing it. I am not convinced that including in the legislation a provision that said that what you suggest "must" happen would make it happen.

With any service, it is better for relationships between local authorities and the third sector to be undertaken on a mutually agreed basis rather than a forced basis. That is why I think that the work that Community Justice Scotland is doing on helping to share good practice and understanding of how such partnerships can operate more effectively, how they are working in some areas and how that could be translated to other parts of the country is much more valuable than trying to find some sort of legislative fix.

The issue of third sector involvement does not require a legislative fix—it is about culture and approach. If a local authority is forced to provide a service through a third sector organisation when it does not wish to, purely because it is legally obliged to do so, that relationship will not be positive. It is much more valuable for us to promote the sharing of good practice and positive working relationships, rather than looking for a legislative fix.

11:15

The Convener: You are absolutely right—I was merely making a comment. I was indeed a member of the committee that considered the Criminal Justice (Scotland) Bill. I laboured the point at some length at that time, as Paul Wheelhouse will probably tell you, and it is worth raising again.

The third sector is valuable in so many ways, and we certainly need to look at whether it is being, or is perceived as being, disadvantaged. I ask you again to consider the language in the legislation, which is crucial. I am not talking about forcing anyone to do anything—I am simply suggesting a shift in emphasis with the inclusion of "must, where appropriate", which is stronger. However, you have given your view, and I do not want to dwell on the point any longer.

Michael Matheson: To be clear, I have no intention of revisiting the legislation, and I do not believe that the matter requires a legislative fix.

The Convener: I understand that, but I think that my point was worth making.

John Finnie: It has been argued that electronic monitoring should be available as a condition of bail. I know that we will discuss the matter at a future date, but it has been raised in our discussions on the Management of Offenders (Scotland) Bill. What plans does the Scottish Government have in that regard?

Michael Matheson: You are about to receive a briefing on the Management of Offenders (Scotland) Bill. We have sought to provide in the bill powers that enable ministers to bring forward pilots that involve the use of electronic monitoring as an alternative to remand. There has been some past practice in that regard but, for a variety of reasons, the screening was not very effective in enabling us to identify the right individuals. At that time, electronic monitoring involved radio frequency, whereas the bill will allow us to use global positioning system monitoring, which is much more effective in enabling us to know where someone is at any given time. I am keen to ensure that we have the legislative powers to enable us to test that approach as a potential additional dimension to the range of programmes that we currently have in place as alternatives to remand. However, we have to do so carefully, because we need to provide other services that sit alongside electronic monitoring. I want to ensure that we go about it in an appropriate fashion.

The briefing that you will hear later will set out some of the provisions that we intend to put in the bill. With the support of Parliament, the bill will give us the scope to test some approaches. With GPS monitoring, there is now greater potential for electronic monitoring than we previously had with radio frequency. We must be cautious, however, that electronic monitoring is not simply used for upping the tariff for someone who, by and large, would at present receive bail with the appropriate bail information service or with bail supervision provision. Anything that we do with electronic monitoring must be over and above that provision as an alternative to remand. I want us to be cautious in how we take forward electronic monitoring, because it should be innovative rather than simply a way to up tariffs and monitor everyone who gets bail supervision—that is not what we are trying to achieve. Electronic monitoring has value, but we need to be cautious in how we take it forward, and we need to ensure that it is targeted and used appropriately.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): As you have heard in a number of questions from other members, the committee has received evidence that a significant reduction in the use of remand will require action beyond the criminal justice system. We have talked about the

third sector and local authorities, and I want to pick up on one specific point. You talked about working across portfolios and sharing good practice, and the disruption to the housing situation of individuals who are remanded. How much has your department engaged with the Minister for Local Government and Housing on that matter, in particular with regard to the new action that is taking place on homelessness and rough sleeping?

As a constituency MSP who has a lot of the Edinburgh temporary accommodation in my constituency, I have had individuals who have been liberated from general custody and remand come to me with their concerns. I am interested in your thoughts on that point.

Michael Matheson: The ministerial group on offender reintegration, which I chaired and which included the Minister for Local Government and Housing and other ministers, looked at the contribution that different portfolio areas could make to reducing reoffending. Housing is absolutely key.

Fairly extensive work has been undertaken. I think that at the end of last year the SHORE guidance was issued on housing provision for those who are leaving custody. A key part of what that seeks to achieve is a consistent approach across the country. There are indications that the approach works well in some local authority areas but not in others.

The SHORE guidelines are specifically aimed at helping to achieve a more consistent and sustainable approach to the provision of housing. It is early days in terms of their impact, but they were taken forward by the housing minister specifically to address some of the issues of people who leave custody and need access to housing.

That takes us back to the point that I made earlier: we know that housing is a key factor in helping to promote desistance and reduce the risk of reoffending. It is important that the narrative around this issue is not just about ensuring that people who come out of prison get a house. It is about helping to promote public safety, because we know that if we get people rehoused and settled, the risk of reoffending is reduced. It is about trying to create that virtuous circle of communities that are safer, and housing has an important part to play in that.

The SHORE guidelines, which were issued at the end of last year, were taken forward off the back of our reintegration working group's work and were led by the housing minister as a contribution to work to address that matter. We hope to see evidence of improvements as a result of the guidelines now being applied right across the country. We hope that that will help to demonstrate greater consistency of approach. Obviously, time will tell us how effective they have been.

Ben Macpherson: Thank you for that response. I will also ask the housing minister privately about the action group that has been put together on temporary accommodation, in particular, as a lot of the concerns that we have heard are specifically related to that.

On the other side of the issue, will you talk about what is being done to ensure that the interests of victims and families are not adversely affected by measures, whether current or future, to reduce the use of remand?

Michael Matheson: One of the central legislative requirements for the court when it is considering bail is that it consider the issue of public safety. Even though courts also have to take into account the likelihood of the person's receiving a custodial sentence if they are convicted of the offence, I can understand that there will be circumstances in which the court will wish to have the person remanded, for the personal protection of the victim or witnesses. I fully support and recognise that.

That is why I am not in favour of the idea of carve-outs that say that there cannot be remand for certain types of case. Courts have to have the flexibility to consider individual circumstances, including potential victim and witness issues. It is a balance. They have to have regard to public safety and there is a public interest element that has to be considered in making any decisions about bail.

There are some exemptions in exceptional circumstances, for example, in offences that will be considered on a solemn basis. Exceptions apply for serious violent offences, sexual offences and drug offences, in that courts should look to remand those individuals. The court has to be satisfied if it is not going to remand the individual, so the balance is changed from a presumption in favour of bail to a presumption against it. The courts have to give proper consideration to a number of factors in deciding whether they are going to remand individuals who are being considered in the context of those particular types of offence.

We have just added domestic abuse to the list. The Domestic Abuse (Scotland) Act 2018, which the Parliament passed a couple of months ago, adds domestic abuse cases as an exception in which remand should be considered, and the circumstances must be taken into account in determining whether bail will be allowed. A key part of that test is public safety.

The balances in the current system, alongside the exceptions, are the right ones. The evaluation

in 2012 demonstrated that, by and large, the system is robust and effective. We also tightened up the actions that the courts can take to deal with breaches of bail. I hope that that provides reassurance on the balances that we have in the existing system.

Electronic monitoring can also help to provide greater assurance to victims in certain circumstances. If certain types of individual are going to be given bail, electronic monitoring could be attached as a condition of the bail, to provide some assurance. Should the Parliament approve the Management of Offenders (Scotland) Bill, I will consider whether some of the pilots can take place in areas where victims might be particularly vulnerable, such as in domestic abuse cases, to determine whether electronic monitoring can provide greater assurance. I have already given consideration to the area and would like to explore it.

The Convener: That concludes our questioning. I thank the cabinet secretary and his officials for attending.

I suspend for five minutes to allow the cabinet secretary to leave and for a comfort break.

11:26

Meeting suspended.

11:32

On resuming—

Management of Offenders (Scotland) Bill: Stage 1

The Convener: Agenda item 4 is an evidence-taking session with the Scottish Government bill team for the Management of Offenders (Scotland) Bill. I refer members to paper 3, which is a note by the clerk; paper 4, which is the Scottish Parliament information centre briefing on the bill; and paper 5, which is a private paper.

I welcome from the Scottish Government Neil Devlin, who is the bill team leader from the community justice division; Nigel Graham, who is a policy adviser from the criminal justice division; and Craig McGuffie, who is a principal legal officer in the directorate of legal services. Neil Devlin will give us an overview of the bill.

Neil Devlin (Scottish Government): Thank you for the opportunity to provide you with evidence. The Management of Offenders (Scotland) Bill introduces a number of reforms that are designed to deliver on the Scottish Government's commitment to continue to reduce reoffending, thereby ensuring that Scotland's justice retains its focus on prevention and rehabilitation, while enhancing support for victims. The substantive provisions of the bill are contained in three parts: part 1 expands and streamlines the uses of electronic monitoring; part 2 modernises and improves the provision of the Rehabilitation of Offenders Act 1974; and part 3 delivers some of the aims of the parole reform programme to clarify the role of the Parole Board for Scotland.

The expansion of electronic monitoring supports the broader community justice policies of preventing and reducing reoffending by increasing the options that are available to manage and monitor individuals in the community, and to further protect public safety. The bill's EM provisions are designed to provide an overarching set of principles for the imposition of electronic monitoring. The bill provides clarity as to when and how electronic monitoring can be imposed by the courts through criminal proceedings, or by the Scottish ministers in relation to release on license from detention or imprisonment. It also creates a standard set of obligations that clearly describe what is required of an individual who is subject to monitoring.

The bill also empowers ministers to make regulations to specify the types of devices that can be used for monitoring. The introduction of new technologies, such as global positioning system technology, may present opportunities to improve the effectiveness of electronic monitoring through,

for example, use of exclusion zones, which could offer victims significant reassurance and respite.

The Rehabilitation of Offenders Act 1974 reforms will reduce the length of time for which most people with convictions must disclose their offending history, bring more people within the scope of the protections not to disclose, and make the regime more transparent and easier to understand. The provisions in part 2 are designed to achieve a more appropriate balance between, on the one hand, the rights of people not to disclose their previous offending and thus to move on with their lives and, on the other hand, the need to ensure that the rights of the public to be protected can be effectively maintained. Those progressive reforms will help to unlock untapped potential in Scotland's people by helping them to move on more quickly from their offending behaviour in order to assist the economy and improve their life chances, and will help to reduce reoffending rates.

The Parole Board for Scotland reforms will deliver on the Scottish Government's commitment to

"improve the effective rehabilitation and reintegration of people who have committed offences and complete the implementation of the parole reform project to modernise and improve support for the vital work of the Parole Board."

The measures in part 3 aim to simplify and modernise processes and support consistency of approach in parole matters. The provisions amend the tenure of Parole Board for Scotland members to bring it into line with other tribunals, reinforce the independence of the board, and provide for the administrative and accountability arrangements of the board to be set out in secondary legislation.

The Convener: The 2016 report "Electronic Monitoring in Scotland Working Group Report" included a range of recommendations, a number of which are in the bill, but what is the Scottish Government doing, with stakeholders, to implement the recommendations that are not in the bill?

Neil Devlin: As you say, a number of the expert working group's recommendations are not in the bill. In some cases, provision may be made for them in future legislation. The intention is that the bill will provide an overarching framework that lays the groundwork for future use of electronic monitoring. One of the provisions in the bill is to allow Scottish ministers to make regulations that will extend the ways in which electronic monitoring is used currently or as laid down in the bill, which would allow us in the future to introduce alternative means for which no provision is currently made. That would allow measures that were suggested by the working group but are not in the bill to be brought forward at a future time.

There are also a number of recommendations that do not require legislation to bring them into effect; that could be done in collaboration with the Scottish Prison Service or with local authorities. That work is being done by the Government, but it falls outwith the provisions of the bill.

The Convener: Are there recommendations that the Government does not intend to take forward?

Neil Devlin: We fully support the basic ethos of the report's recommendations—that electronic monitoring could be used more creatively and more effectively. It is fair to say that the report expresses disappointment that the way in which electronic monitoring is currently used is purely restricted to radio frequency monitoring of a curfew. It suggests that there are better ways in which electronic monitoring could be embedded in the support that is provided to individuals, and that it does not work as a stand-alone service but should be more integrated. That is something that we have tried to carry forward into the underlying principles of the bill. I do not think that there are any specific recommendations that I could point to and say, "We definitely don't think that's worth taking forward." Those that are in the bill are the ones that we think could have the most immediate impacts.

John Finnie: The working group report highlighted concerns about geographical variations in use of electronic monitoring. How have those been addressed?

Neil Devlin: To an extent, it is beyond the capabilities of the bill to address that question. I know that on-going concerns about differences in geographical provision have been raised in a number of the responses to the committee's call for evidence. The current RF technology could be used anywhere, by and large, and GPS technology is improving all the time, so it, too, could be used around the country. With the bill, we are trying to create a system that could be used anywhere and that has equality of impact, but I am aware that there are other measures that need to be taken forward to ensure that that happens.

John Finnie: Do you consider the bill to be—to use a much-used term—future proofed for technology?

Neil Devlin: The bill's aim is to ensure that the ways in which technology can be deployed are in no way restricted. We fully intend to continue using the RF technology that is currently available, because it has proved to be useful and has a definite place. The enabling powers to allow the Scottish ministers to specify new devices were envisaged such that if technology comes along that is better or more useful, we can use it and not

be restricted to the technology that is available in 2018.

Liam McArthur: I will follow up on John Finnie's line of questioning. As well as future proofing, the expression "island proofing" has entered the political lexicon, of late. In remoter parts of the country, there have been technological issues with radio frequency tagging. Some sheriffs or judges have also been reluctant to allow release, because of concern that some islands have no police presence, which means that the response time for incidents is likely to be longer.

In developing the bill, have you considered issues that are more pronounced in island settings, although they do not arise just there? Those issues are partly about technology and partly about public safety—about whether GPS can operate without giving rise to unacceptable risks.

Neil Devlin: Public protection is at the heart of the bill. The idea is that expanding electronic monitoring will enable a greater range of sentencing disposals while ensuring that public protection is considered.

The committee may be aware that the Scottish Government recently released a prior information notice about our intention to issue a new contract for the technology. The contract with the current service provider runs until the end of March 2020, so we will need a new contract to take us forward. In the new contract, we will look for information that relates to the technology's ability to work in remoter areas, to ensure that it is fit for purpose and that it addresses the particular difficulties of island and remote communities.

Liam McArthur: It appears from the financial memorandum that the expectation in the initial stages is that use of electronic monitoring will not expand greatly as a result of the shift from RF to GPS monitoring. What levels of use are expected? What timeframes are envisaged in the first three to five years of the new provisions being brought into force?

Neil Devlin: I have to put my hands up and say that we do not know. One of our difficulties when putting together the financial memorandum was that the increase or otherwise will be determined by how much sentencers and other decision makers use the new provisions.

It is fair to say that we expect a shift, in the short term, from the current position, in which monitoring a person who is subject to a community payback order requires a restriction of liberty order at the same time. It is intended that the bill will provide sentence makers with the ability to monitor somebody who is on a CPO without the need for a concurrent RLO. The information from our contract provider is that about 1,000 cases a year are in that position. We expect the shift to increased use of CPO monitoring to be offset by a decrease in the use of stand-alone RLOs.

11:45

The anticipated costs in the financial memorandum are based roughly on a 10 per cent increase across the different forms of monitoring that can be used. We think that that is a realistic first estimate of the increase, but I say again that it will depend on the amount of use of the disposal by sentencers and other decision makers. We are also aware that new technologies will require a lead-in time, following the bill's passage, which means that we are hampered in estimating uptake until things actually start to happen.

Liam McArthur: It is envisaged that electronic monitoring will not operate in isolation; in many instances, it will run alongside efforts to assist and support those to whom it is applied. Can you provide clarity on the estimated costs of such support measures?

Neil Devlin: That question is slightly difficult to answer. The bill is intended to ensure that electronic monitoring, rather than being seen as a stand-alone service that is provided outwith the regular criminal justice and social work system, sits wholly within an ethos of person-centred and tailored disposals. That is happening now, as individuals who are subject to CPOs already receive support from local authorities. The idea is that electronic monitoring should be another tool that enables people to work with those individuals to help them to rehabilitate.

The bulk of the costs that are associated with electronic monitoring will be covered by the Scottish Government's contract with the service provider. We recognise that there will be an increase in the amount of work for local authorities, but the work is, to some extent, captured in work that they already do.

Liam McArthur: Is it expected that the application of GPS monitoring, whether through local authorities or under a contract with third sector parties, could allow savings to be made? Is that built into the assumptions that have been made?

Neil Devlin: That is not built into the figures that the financial memorandum provides. It is intended that the extension of electronic monitoring will allow savings to be made throughout the justice system, but those savings will not necessarily be realised in the same places in which the outlay is made.

Liam McArthur: Is that not slightly problematic? The organisations that make savings would like very much to have such money reinvested in them

in order to allow them to do other things that will help to make the system a success overall. However, if those savings are clawed back and are instead used to benefit other parts of the system, we will end up with an overall set-up that does not necessarily deliver the outcomes that we seek.

Neil Devlin: That is a difficulty. There will always be tension between different parts of the justice system, given, for example, that savings in expenditure by the Scottish Courts and Tribunals Service may be experienced as savings for the Scottish Prison Service further down the line. As the cabinet secretary mentioned in his evidence earlier today, the idea behind block funding for the criminal justice service is that part of it can be made available to local authorities, which have the discretion to decide how best to spend that money. Savings that result from use of electronic monitoring could be moved around within the system in order to allow local authorities to spend money in areas in which they may not always have been active. We will need to look at that, further down the line.

Liam McArthur: We might end up with the perverse situation in which electronic monitoring disposals being used frequently in one local authority would free up savings that would be deployed in other parts of the country. There might be a legitimate call on that funding, but at the same time organisations that operate in the local authority area that is using electronic monitoring extensively may say, "We're under pressure, too, so that funding could be deployed better here." I presume that there is not really a way, through the bill, to guard against such a situation.

Neil Devlin: My colleagues in community justice who deal with finances would be better placed to explain how that might be guarded against, but I do not think that it would be possible to put something in the bill to guard against such situations.

Mairi Gougeon: We have touched on some of the new technologies that might emerge and the powers for ministers to ensure that we can keep pace with those changes. I have a couple of questions, first of all about transdermal alcohol monitoring. I am curious to find out what conditions the courts would set at the moment in which that would be required. What does the technology involve and how far off is it from being implemented?

Neil Devlin: I will answer your second question first, which is a slightly odd way to take things.

A number of different alcohol monitoring systems are available. One of those systems is transdermal alcohol monitoring, which is an ankle bracelet that monitors the level of alcohol in someone's sweat. Much like a current tag, it is designed not to be removable and it monitors 24/7. There are also a number of available systems that are, in essence, breathalyser kits that monitor alcohol at certain points in time and can be fixed in a home or carried around. They are very much like the breathalysers that police use. The data from them can be sent to the monitoring service.

On how far off the technology is, alcohol monitoring is probably further off than GPS. We could quickly introduce the GPS products that we are aware of, which are tried and tested. More work needs to be done before we are able to say that we are definitely ready for alcohol monitoring to be used within the current legislative set-up. That is why we hope to provide the ability to run pilots, as the cabinet secretary said earlier. We definitely do not want to run before we can walk. The idea is that we have pilots that allow us to work out how such monitoring devices would best fit within the current legislative system and then, if those pilots were successful, to roll out those devices more widely. However, that will not happen as soon as the bill comes into force.

Mairi Gougeon: Can you answer the initial part of my question as well? It was on the conditions that require alcohol monitoring to take place.

Craig McGuffie (Scottish Government): There is nothing specific in legislation just now about the court's ability to impose a condition that an offender must not take alcohol. However, the power to make sexual offences prevention orders and their replacement—sexual harm prevention orders—includes a general power to impose conditions on an offender. In theory, one of those conditions could be that the offender must not take alcohol.

Such a condition is less likely to be imposed in that setting than in the custodial setting. If a prisoner is released early from prison, licence conditions regularly include the condition that the offender must not take alcohol, whether they are on temporary release or on parole. In those situations, it is more likely that there would be a restriction on a prisoner's intake of alcohol.

If transdermal alcohol monitoring is introduced once the technology is ready and we take whatever legislative steps are necessary, the bill would allow us to specify devices that monitor transdermal alcohol and to add to the lists in the bill any other court disposals or forms of early release to which we can attach electronic monitoring.

Mairi Gougeon: You said that the technology might be a bit further off than GPS. What would be its main benefits over the radio frequency electronic monitoring that is used at the moment?

Neil Devlin: The current radio frequency technology is limited to showing whether a person is present in a particular place. Typically, a box is placed in the house of an individual who is subject to a curfew between 7 pm and 7 am. The individual wears a tag on their ankle that tells the monitoring system whether they are in the required area within the curfew times. If they are not, the system sends an alert.

The GPS monitoring system is more wide ranging. As well as specifying an area in which a person must stay for certain periods, it can deal with an area that a person cannot go into. In theory, that is possible under the current system, but it would involve having a box in the place where the person could not go. The difficulty of that is that, if a person could not go to more than one place, more than one box would be needed. GPS allows areas to be drawn on a map to show exclusion zones so that, if the tag is present in an exclusion zone, it triggers an alert.

Mairi Gougeon: The working group report recommended extending the use of monitoring to be an alternative to remand—the committee has been looking at remand in quite a lot of detail. The bill gives the Scottish ministers the power to expand the list that electronic monitoring covers, but the bill refers to things that are done in relation to "an offender". Will that be clarified further? Someone who is on remand has not been convicted of a crime. Will the language be made clearer?

Craig McGuffie: We can look at that at stage 2. The difficulty in drafting the provisions relates to the term of art to describe a person. In the context of electronic monitoring, we already refer to a designated person, and some disposals refer to a supervising officer, who is from criminal justice social work.

I appreciate the problem, which we can consider at stage 2.

Rona Mackay: I would like to probe what was said about the disclosure of convictions. An analysis of responses to the Scottish Government's 2015 consultation paper noted calls for more substantive reforms of disclosure. What was sought and to what extent are those views reflected in the bill?

Nigel Graham (Scottish Government): When we had the engagement events and published the discussion paper, nobody had a particular view on what an appropriate disclosure period should be. In organisations such as Nacro, Unlock, Recruit With Conviction and Positive Prison? Positive Futures, the majority of people accept that the disclosure periods that are in the 1974 act are too long. However, what they should be is open to question.

The Scottish Government proposes a balanced approach. Some bodies wanted to go as far as the recommendation in the Home Office-led "Breaking the Circle" report of 2002 that the disclosure period for all custodial sentences up to but not including life imprisonment should be the length of the sentence plus two years. In relation to general disclosure—the bill has no impact on the higher-level disclosure system—one view is that there may be a point at which no disclosure should take place. Should someone disclose a fine before working in an office, a garage or a shop? If the balance is right for public protection, should the approach rely on standard disclosure, enhanced disclosure or, in relation to the regulated care of adults or children, the Protection of Vulnerable Groups (Scotland) Act 2007?

One view is that, under basic disclosure, there should be no disclosure at all. The insurance industry's view is that far more should be disclosed under basic disclosure, because it assesses risk only on the basis of unspent convictions. A variety of other people sit somewhere in between.

When we had the engagement events, the initial view was, "Oh—that should be this length." When we asked how the arrangements would affect someone or their brother, son, daughter, husband or wife, most people wanted to move to less disclosure, but the question is about what society can take, given that the disclosure periods under the 1974 act have never changed.

The Government's approach is to get an appropriate balance of the views of those who want no disclosure, those who want less disclosure and those who want more disclosure. The Government has adopted that balanced approach in part 2 of the bill.

12:00

Rona Mackay: Will you outline that approach? What are the Government's proposals if you are trying to strike a balance?

Nigel Graham: The Government's proposal is to reduce the disclosure periods. Currently, the disclosure period for a fine is five years, so the proposal is to reduce that to one year. The disclosure period for admonishment is, currently, five years and the proposal is to reduce that to zero. For an absolute discharge, the disclosure period is six months and the proposal is to reduce that to zero. The period for a children's hearings disposal that, under a special provision, is classed as a conviction or sentence to provide protection is currently six months for a discharge and 12 months, or the length of the order, for a compulsory supervision order. Both of those will be zero.

We are also reducing the disclosure periods for custodial sentences while increasing the scope to 48 months and creating three sentence bands. There will be a sentence band of zero to 12 months, which will have a period of the length of sentence plus a two-year buffer period. A sentence of more than 12 months and up to 30 months will have a disclosure period of the length of sentence plus four years. The new sentence band—more than 30 months and up to 48 months—will have a disclosure period of the length of sentence plus six years. The reason for that six-year buffer period is that the Government's proposal is also to maintain the current 10-year maximum disclosure period for a sentence that can have a finite period of disclosure.

Rona Mackay: Will that be widely accepted by stakeholders and the community?

Nigel Graham: The evidence that you have received so far shows that the majority are supportive of it. Some insurance companies have come back and said no. Police Scotland is supportive of it, as are Unlock, Nacro, Recruit With Conviction and, from what I have read, Positive Prison? Positive Futures. The feedback that we received from the consultation is supportive of it because we have based the approach on consultation, on letters that I have received over the past number of years from individuals and from MSPs and Scottish MPs on behalf of their constituents, and on the parliamentary questions that have been asked over the years.

We are taking a balanced approach. There will always be somebody who would want more or less disclosure. However, remember that we are dealing with the system of basic disclosure. It is not the system of high-level disclosure, in which there is a standard disclosure, an enhanced disclosure and the provisions under the Protection of Vulnerable Groups (Scotland) Act 2007.

Rona Mackay: Thank you. That is helpful.

Liam McArthur: The conclusions that were reached on the basis of that consultation seem to mirror relatively closely, with a few exceptions, the approach that has recently been taken in England and Wales. Was that a factor? Were the people to whom you spoke looking to whatever consultations happened there?

Nigel Graham: The view was that we should have a system that was at least equivalent to that in England and Wales because of the cross-border movement for employment—people moving and travelling and companies that might have employees who work in Scotland as well as employees who work in England and Wales. We considered the system there but we also have to consider the conditions in Scotland and the Scottish Government's view on disclosure. The system of high-level disclosure in Scotland is more progressive than that in England and Wales.

As well as looking at conditions and considering current policy, we have tried to understand where each disposal fits on the spectrum of seriousness. Life sentences are at one end, compared with police warnings at the other. How do we fit all those disposals together meaningfully? There is no such thing as an optimum disclosure curve. We cannot put down a line and say that, if we have a disclosure at a certain point, it will reduce reoffending by a certain amount.

It is about looking at what is happening in England and Wales, looking at the feedback that has been received, listening to the conversations that we had at engagement events on the discussion paper and trying to come to an appropriate balance that reduces disclosure, allows people to move forward and still allows employers to have information at a particular point to make employment decisions for general disclosure purposes. The Government is trying to take such a balanced approach.

Liam McArthur: Your point about people who move back and forth across the border and businesses that want to have a degree of consistency throughout the country suggests that the Scottish ministers, officials and wider stakeholders would have wanted to feed into the process that was gone through in England and Wales. Was that the case?

Nigel Graham: That is certainly an aspect of how things have worked. The UK Government looked at the Home Office-led report, "Breaking the Circle", which is about trying to match the custodial sentence length more closely with the disclosure period. That is why we have sentence bands plus a buffer period in order to match the disclosure period more appropriately.

We looked at the recommendations in "Breaking the Circle" that seemed appropriate. We also considered the evidence that we received following the publication of the consultation paper, and in the responses to our discussion paper and our engagement events. That information suggested that it would be better if the time periods were more aligned. Whether the outcome was perfect—or, indeed, whether we can ever get a perfect system—is open to question, but we have tried to strike a balance that feels appropriate and which considers all aspects. One could easily say, "We'll just copy what they've done in England and Wales", but it is better to investigate and listen to what people say, and to look at all the reports and the evidence.

We went right back to the Gardiner committee's 1972 report "Living It Down: The Problem of Old Convictions", which led to the Rehabilitation of

Offenders Act 1974. We looked at the founding principles behind the 1974 act—for example, the principle that the disclosure period should be based on the sentence—and considered whether those principles are consistent with new research. The UK Government and the "Breaking the Circle" report said that disclosure should still be based on sentence. The evidence that we received from the consultation on our discussion paper suggested that, although the current system is imperfect, disclosure should still be based on sentence, because that is an easier way to consider it. In addition, the courts can, in determining a sentence, consider all the available information, which may cover culpability, the seriousness of the offence and the person's previous convictions. In all those instances, we had to determine whether sentence should determine disclosure, and we looked at a lot of different factors in order to come to a conclusion. The Scottish Government's conclusion was that that approach is still appropriate.

Maurice Corry: Good afternoon, panel. With regard to the armed forces, the bill does not propose any changes to disclosure periods for sentences that are imposed under the legislation.

Nigel Graham: That is right.

Maurice Corry: What is the reason for that?

Nigel Graham: That area is reserved.

Maurice Corry: Ah. Thank you—that answers my question.

The Convener: Do you have another question, Mr Corry?

Maurice Corry: One of the bill's aims is to make the rules of disclosure easier to understand. To what extent will the changes that the bill sets out achieve that? Could more be done to simplify the system?

Nigel Graham: I am sure that the Government will be open to any proposals to improve that aspect. In order to increase accessibility, the bill removes redundant provisions. The key changes that stakeholders asked for concern sections 5 and 6 of the 1974 act. Section 5 sets out the disclosure periods, and section 6 sets out the rules that apply when someone gets more than one conviction. We have removed all the redundant provisions, and we have set out clearly and accessibly exactly what the disposal will be in each case. For example, if it is a fine, it will be on table A, which shows that the relevant period will be 12 months, or six months if the person was under 18. It should now be easy for anybody to go and have a look at section 5. They might say, "I got a CPO—what will be the length of the order?", and they will see that the time period is 12 months. They can work their way through the information.

One of the provisions deals with the way in which section 1(1) is constructed in order to address what is called the sentence rule. At present, if someone gets a disposal such as a fine and, before the disclosure period ends, they receive an excluded sentence—currently, that is a sentence over 30 months—both will be disclosed forever. We did not think that that was right. We thought that excluded sentences should be outwith the rules in the 1974 act so that, if someone gets an excluded sentence, they know that they will always have to disclose it. Someone may, as a consequence of getting subsequent sentences later on, eventually get an excluded sentence. If a person gets a consecutive custodial sentence—if the sheriff turns round and says, "I'm going to sentence you to two years and three years to run consecutively"—the sentences are added together. Two plus three equals five, which is greater than 48 months, so it will therefore be an excluded sentence. There is still the possibility that the person will get a further excluded sentence, but that should not impact on the rules in the 1974 act.

We appreciate that section 6 of the 1974 act is probably one of the most difficult sections to work out. Because we are changing some definitions and changing the excluded sentence rules, we can change the language, so we are updating subsections (1), (2), (4), (5) and (6). That will make the rules easier to understand. We will also publish guidance on the Scottish Government's website to explain how the rules will work more effectively.

Liam Kerr: You mentioned terminology. The policy memorandum notes that the rules on disclosure are not intended to suggest that a person who has unspent convictions is always unsuitable for employment, and the bill will change terminology in the hope of clarifying that for employers. Is anything else being done to clarify that for employers?

Nigel Graham: The cabinet secretary is clear that changing the law is not enough in itself. I work in criminal justice, but Neil Devlin works in community justice, where a lot of work is going on with employers on an employer support network to develop an understanding of why employers might have an unconscious bias that means that they do not employ someone who has an unspent conviction. A person might not be employed because they are not, or are not deemed to be, rehabilitated.

Organisations such as Virgin, BT and Marriott hotels are positive about employing people who have convictions and recognise that barring an individual just because they have an unspent conviction—or even a spent conviction under higher-level disclosure—is not necessarily good

for those organisations, because they are cutting off their employment pool.

Community justice colleagues are discussing with employers and with organisations such as Recruit with Conviction and Positive Prison? Positive Futures how we can best encourage employers to take an approach of thinking that it is best to have a dialogue with someone and to consider that the person who has a conviction may be the best person for the job. If that person has all the skills, will employers ignore them?

We are making legislative change to the language and we want to remove the unconscious bias that lots of people do not realise that they have. We are immersed in justice issues, but someone who works in a small business and sees a person who is not rehabilitated might not want to employ that person and might ignore them.

We are changing the language so that we say that it is just about disclosure and nothing under the 1974 act prevents anybody from having a job. It is about disclosure for a period of time, and if a conviction is still unspent, employers can have a dialogue, so that there is that opportunity. Community justice colleagues are working with employers, in addition to the change in the law.

Liam Kerr: I understand. You talked about basic disclosure and three other categories at a higher level that require more disclosure. The bill does not change higher-level disclosures, but the committee understands that the Scottish Government is to consult on changes to higher-level disclosure. Will you give us more details on that?

Nigel Graham: We will consult shortly on such disclosure and the protection of vulnerable groups.

Liam Kerr: What is the interest there?

Nigel Graham: I am not a spokesperson on the Protection of Vulnerable Groups (Scotland) Act 2007 or on the higher-level disclosure system, and I am conscious that the consultation paper has not been published yet, so I am limited in what I can say.

The key point is that the paper will ask questions about how the PVG act works and the number of disclosures that are available under it. The consultation will look at what standard disclosure and enhanced disclosure mean. Standard disclosure involves spent and unspent convictions and enhanced disclosure involves not only spent and unspent convictions but part V of the Police Act 1997, under which the police are allowed to provide other relevant information, such as non-conviction information—soft information. That differs from the PVG act arrangements, under which, if someone is a part of the vetting and barring scheme, they are monitored for life. That act concerns regulated work with children and adults. Questions will be asked about what that means.

The consultation looks at the whole system of higher-level disclosures. It recognises that, as a result of case law in the Supreme Court, that system has changed. The paper brings that together and asks questions so that legislation might be introduced in the future.

12:15

Liam Kerr: I appreciate your difficulty; let me rephrase the question, to see whether we can get a clearer answer. Do you know—

Nigel Graham: Well, I am limited in what I can say about another policy, which is outwith the remit of the bill. The consultation paper has not been published, and I do not want to get into detail on something that is not my policy area.

Liam Kerr: I understand that, but do you have a sense of the Government's current thinking? Does the Government think that the system is working?

Nigel Graham: The current thinking of the courts is less disclosure.

Liam Kerr: Less disclosure in relation to higher-level checks.

Nigel Graham: And that is what has happened.

Liam Kerr: I understand. Thank you.

The Convener: I think that we just got there—but no further.

Daniel Johnson: On the changes to the Parole Board for Scotland, I am conscious that as the bill was being prepared, the Worboys case in England came into sharp public focus. To what extent did people reflect on the case and the lessons that might be gleaned from it? Will the proposed changes address the issues that the case raised? Might changes be needed that are outwith the scope of the bill?

Neil Devlin: It is fair to say that the changes that are proposed in the bill have been in train—and in gestation—for some time and are designed to address specific difficulties that have been identified.

On the issues that the Worboys case raises, it is important to say that there are distinct differences between the way in which the Parole Board for Scotland operates and the way in which the Parole Board for England and Wales operates. However, if additional issues are identified during the course of the committee's investigations into the Parole Board, I see no reason why we would be against seeing whether we can address other difficulties while this legislative vehicle is available to us.

Daniel Johnson: If there is one lesson to be drawn from the case, it is that there is a really bad public perception of how the Parole Board for England and Wales operates—or certainly of how it operated in that case.

Changes to the tests for release are to be implemented. The Parole Board for Scotland suggested in its submission that greater clarity on the tests that are applied would improve the bill. Have you reflected on the suggestion? What is your reaction to it?

Neil Devlin: Part of the issue in that regard is that it is difficult to identify what a common test might look like. I do not think that there is, at large, an agreed position on what a common test could look like. If such a common test were to be identified and thinking on it was sufficiently far along, I see no reason why we could not look at it.

Daniel Johnson: A central point in the Parole Board for Scotland's submission is about the board's independence and how appointments to it are made. I understand the substantial points about changing the board's composition; the point that the Parole Board makes is that greater assurances could and should be given about the independence of appointments. Indeed, the board suggests that the Judicial Appointments Board for Scotland should make appointments. Was such an approach considered and dismissed, and if so, why? If not, could it be considered during the passage of the bill?

Neil Devlin: There are a number of competing demands in relation to the way in which the current system works, which involve the regulator and how appointments might be made in future. We are perfectly happy to continue to consider such matters during scrutiny of the bill, and if an agreeable compromise can be reached whereby we can identify a way forward, we will be happy to consider it.

Daniel Johnson: Does that include the specific point about appointments being made by the Judicial Appointments Board?

Neil Devlin: We would probably need to discuss that with the Scottish Courts and Tribunals Service, but I am more than happy to get back to you on that point.

Daniel Johnson: The Parole Board also says that it should be explicitly set up as a "Tribunal NDPB". Will you consider that point during the bill process?

Neil Devlin: The Scottish Government's position is that the bill is designed to reinforce the independence of the Parole Board. We feel that the provisions as drafted are sufficiently strong in that regard. If, during the course of evidence, it becomes apparent that that is not necessarily the case, we would not dismiss that suggestion out of hand. However, our position is that the independence of the board is enshrined in the bill as drafted.

The Convener: I have one final question, which is on the composition of the Parole Board. Under the Prisoners and Criminal Proceedings (Scotland) Act 1993, the membership of the Parole Board must include a High Court judge and a psychiatrist. Why have those been omitted from the new composition under the bill?

Neil Devlin: I understand that the board's position is that there is sufficient breadth of expertise in the current board members, so specific requirements are no longer necessary. Our intention is to ensure that there is a wide range of expertise on the board. Certain administrative difficulties arise because of the requirement to have those specific members, which can be overcome by its removal from the legislation.

The Convener: Can you be a bit more specific about what those difficulties are?

Neil Devlin: I am afraid that I do not have that information to hand, but I can certainly get back to you on that.

The Convener: The board looks at very serious cases, so it seems sensible to include a High Court judge and the particular expertise of a psychiatrist. I would welcome further information on that.

That concludes our questioning. I thank the witnesses for attending.

Justice Sub-Committee on Policing (Report Back)

12:22

The Convener: Agenda item 5 is feedback from the Justice Sub-Committee on Policing on its meeting of 19 April. Following the verbal report, there will be an opportunity for brief comments or questions. I refer members to paper 6, which is a note by the clerk. I invite John Finnie, as the convener of the sub-committee, to provide feedback.

John Finnie: As you say, the Justice Sub-Committee on Policing met on 19 April, when we took evidence on Police Scotland's review of its custody provision from: Chief Superintendent Garry McEwan of the criminal justice services division of Police Scotland; Calum Steele, the general secretary of the Scottish Police Federation; and Lucille Inglis, chair of the police staff Scotland branch of Unison Scotland.

The sub-committee heard that, although the number of people being taken into police custody has been reduced and there have been improvements to Police Scotland's custody provision, there remain a number of custody issues to be resolved. One is the continued use of police officers to backfill vacant police custody and security officer—PCSO—posts. Another issue is that some PCSOs are working alone in custody centres, which is not best practice and, although 70 new staff are to be employed by July, there are doubts about whether that is sufficient to fully resource the custody centres. Although the number of prisoners being transferred on long journeys has reduced, that still occurs, and the issue is exacerbated by an increase in custody processing times.

The sub-committee agreed to keep the issue under review. It also considered its forward work programme and agreed to request information from Police Scotland on its information and communications technology strategy.

I am happy to take any questions.

The Convener: Do members have any questions or comments? Some important issues were raised in the sub-committee that we should certainly monitor, such as the delays in processing and how the new restriction of liberty orders are working.

Liam McArthur: That is a fair point, convener. It is probably worth reflecting that Calum Steele offered to follow up on some of the bureaucratic issues that appear to be arising out of the new forms. It is up to the sub-committee to consider how it responds to that invitation, but we probably need to explore that issue in more detail.

The Convener: That concludes the public part of today's meeting. Our next meeting will be on 1 May, when we will take evidence on the proposed integration of the British Transport Police in Scotland into Police Scotland.

12:25

Meeting continued in private until 12:38.

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

All documents are available on
the Scottish Parliament website at:

www.parliament.scot

Information on non-endorsed print suppliers
is available here:

www.parliament.scot/documents

For information on the Scottish Parliament contact
Public Information on:

Telephone: 0131 348 5000
Textphone: 0800 092 7100
Email: sp.info@parliament.scot

The Scottish Parliament
Pàrlamaid na h-Alba