OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 8 May 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 8 May 2018

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JUSTICE COMMITTEE
14th 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:

James Blair (Community Justice Scotland)
Nicola Fraser (Victim Support Scotland)
Professor Nancy Loucks (Families Outside)
James Maybee (Highland Council and Social Work Scotland)
Karyn McCluskey (Community Justice Scotland)
Dr Marsha Scott (Scottish Women's Aid)
Pete White (Positive Prison? Positive Futures)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 8 May 2018

[The Convener opened the meeting at 10:00]

Management of Offenders (Scotland) Bill: Stage 1

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 14th meeting in 2018.

Agenda item 1 is our second evidence session on the Management of Offenders (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a private paper. We have two panels of witnesses today. I welcome our first panel, who are Karyn McCluskey, chief executive, Community Justice Scotland; James Blair, policy lead, Community Justice Scotland; and James Maybee, principal officer, criminal justice services, Highland Council. James Maybee is representing Social Work Scotland.

I thank the panellists for their written evidence. Such evidence is always very helpful to the committee in advance of our meetings. I understand that Community Justice Scotland would like to make very brief opening remarks. Does Karyn McCluskey or James Blair wish to do so?

Karyn McCluskey (Community Justice Scotland): I have taken part in the electronic monitoring review over the past two years. We are very committed to reducing the remand population and providing alternatives for people who are serving sentences in the community on electronic monitoring. I am not sure how deeply I should go.

The Convener: I understood that you wanted to say something in particular. You have one or two minutes to do so, but if you do not want to flag up anything in particular, we have lots of questions.

Karyn McCluskey: Most of what we wanted to say is in our written submission. We are very supportive of electronic monitoring—both global positioning system monitoring and transdermal alcohol monitoring—and of the review of the disclosure of convictions. I am happy to take any questions.

The Convener: That is fine. I will afford the same courtesy to Social Work Scotland. Does Mr Maybee want to say anything before we move to our formal questioning?

James Maybee (Highland Council and Social Work Scotland): I echo what Karyn McCluskey has said. Social Work Scotland is very committed to the electronic monitoring agenda and to addressing the disclosure issues and Parole Board for Scotland matters that have been brought before the committee.

The Convener: Thank you. We will move straight to questions.

John Finnie (Highlands and Islands) (Green): Good morning, panel. Thank you for your written evidence, which has been very helpful.

Ms McCluskey, Community Justice Scotland mentioned the 2016 report of the electronic monitoring working group, which argued that the use of electronic monitoring as a stand-alone measure remains legitimate but that it should be available in conjunction with other interventions. Do you agree with that? In what circumstances would you see one or the other being appropriate?

Karyn McCluskey: The bill does not really go far enough, and the opportunity to use electronic monitoring for bail and remand has been missed. I would like the use of electronic monitoring to be extended. There are opportunities to use electronic monitoring on its own where it does not need support, but a great number of the people whom we support in the community need support. It is a bit like wearing a Fitbit on your wrist; you need support with it if you are going to go out and exercise with it. Many of the people whom we are trying to support need to be supported to remain compliant. They need brief motivational interviews and a huge package of support around them. It is not just about technology; the technology works and is 100 per cent accurate. Transdermal alcohol monitoring and GPS are incredibly effective but, on their own, they are only technology. The skills of those in criminal justice work and, indeed, the third sector, which is sometimes neglected, are required to support people to remain compliant and to get them to the end of their sentence.

John Finnie: Would Mr Maybee care to comment on that?

James Maybee: I echo that. The research evidence that the electronic monitoring working group considered clearly shows that electronic monitoring is most successful when support is available alongside it. A key point to make to the committee is that support is crucial, whether that is through criminal justice social work or the third sector. That has to be an integral part of electronic monitoring in the future if we are to maximise its potential success.

John Finnie: The value that is placed on that jumps out of both submissions.

The Scottish Government says that it is committed to making electronic monitoring more person centred and fully integrated with other

community justice interventions. Ms McCluskey mentioned bail and remand. Do you believe that the proposals go far enough?

Karyn McCluskey: I would like them to go further. I gave evidence about remand a couple of weeks ago. Our remand population is too high. A percentage of those who are on remand just now might be suitable for electronic monitoring, which would enable them to be compliant and would protect victims, which is also an important part of the issue. It would also enable people to stay in their accommodation and keep them within their family networks, and stop some of the harm that is caused by the inappropriate use of remand.

James Maybee: Social Work Scotland supports electronic monitoring being made available for remand. We know that Scotland's remand population is very high, and that bail supervision is underused across Scotland. There are pockets where courts are using bail supervision but—I speak from my experience in Highland—it is woefully underused, despite it being continually promoted in courts, with sheriffs and defence agents, and with the Crown Office.

If electronic monitoring was available as part of remand as a bail condition, we might see an increase in the use of bail. It is important to recognise that the majority of cases need to sit alongside support, but if a bail supervision service is provided through criminal justice social work and the third sector, with a tagging element, it is reasonable to assume that courts might have more confidence in using it. That confidence would spread in a ripple effect throughout the public and with victims, which is a crucial consideration.

John Finnie: Your submission says:

"In most cases, in order to support desistance from offending, additional supervision and support would be required which must be adequately resourced."

For the avoidance of doubt, are you talking about personnel, money or both?

James Maybee: We probably mean both. The financial memorandum attempts to quantify the cost element of the impact of the proposed legislation but, until we get to the actuality of it, it is difficult to know. As the committee will know, at the point of conviction and sentence, a restriction of liberty order can be made alongside a community payback order. It is a good thing that the proposal is that electronic monitoring can become part of a community payback order at the point of sentence as a requirement, because it conflates the tagging element with the support element.

It is reasonable to assume that the number of stand-alone RLOs might drop as a consequence of that, but there is a lot of dubiety around the cost of a community payback order. Two years ago, a lot of work went into establishing the unit costs of a community payback order, but the outcome was inconclusive. We must be mindful of the impact. It is right to quantify and make proposals on costs, but we need to track the actuality of that when the proposed legislation is enacted and we are dealing with that situation in reality. It would be a failed opportunity if we ended up with increased workloads and pressure on social workers while the intent of the legislation falls through the cracks because there is insufficient resourcing.

Daniel Johnson (Edinburgh Southern) (Lab): If the purpose of the proposed legislation is to avoid people being in prison, your points about bail and remand are well made. What considerations might there be if remand were to be included? Can you see reasons why it has not been included? How straightforward would it be to expand the scope of the proposed legislation to include remand?

Karyn McCluskey: I am not really sure. You would probably have to ask policy colleagues about why that has not been included. There would probably be a cost element—there is little doubt about that. We have a lot of people on remand, which costs a bit of money, although less than incarceration. We would need some justice reinvestment to support the third sector. I am unsure about why the issue has not been included.

Daniel Johnson: Are there any practical provisions that you would want to be in the bill if it was to be expanded to include those categories?

Karyn McCluskey: It is really just that area.

James Maybee: It would certainly be a really good thing to include electronic monitoring for bail. As I understand it, the bill has been drafted to enable future measures to be incorporated without having to jump through too many hoops, but that seems to be a missed opportunity. There were some bail pilots involving electronic monitoring in the mid-2000s, but it is fair to say that the evidence on uptake from those was a little mixed. However, given the focus on reducing the remand population, it would be a missed opportunity not to consider that as part of the bill.

Daniel Johnson: To again follow on from John Finnie's questions, the written submissions from Community Justice Scotland, the Howard League and others raise a concern about ensuring that the bill is used to get people out of prison rather than to increase the tariff for people who would be at liberty anyway, albeit with restrictions. Will you expand on those concerns and say what safeguards you would like to be in place to prevent the bill from being used in that way?

Karyn McCluskey: With electronic monitoring, there is always the concern that it becomes the panopticon in the community, with everybody

under surveillance. GPS gathers a huge amount of data, and we will really need to consider that as we go forward. However, I think that there are enough safeguards in place. My colleagues in criminal justice social work use the level of service/case management inventory, or LS/CMI, tool and the framework for risk assessment management and evaluation, or FRAME, to assess the risk around people going on electronic monitoring rather than being incarcerated. It is a useful way forward for us.

James Maybee: Social Work Scotland is clear that electronic monitoring is not a panacea and is not for everybody. We have to take cognisance of the potential net-widening effects of electronic monitoring, as and when it becomes available in more forms. The key is the risk and needs assessment that goes along with electronic monitoring, whether as part of bail, a community payback order, a prison licence, a sexual offences prevention order or a risk of sexual harm order. It is critical that there is a professional needs and risk assessment as to the suitability of the particular individual for electronic monitoring as part of their sentence.

Daniel Johnson: On that point, I note that Criminal Justice Scotland's written submission, in answer to question 3, goes into some detail on its concerns about risk assessments and the need for greater clarification in the bill. Will you expand on those points, given that Mr Maybee has raised the issue?

Karyn McCluskey: I am just rifling through my papers.

Daniel Johnson: I apologise if I have made you check your own work.

James Blair (Community Justice Scotland): It comes down to the court being afforded all the relevant information on which to base an appropriate decision. Our concern is whether enough resource is being attached, so that criminal justice social work can provide the court with all the information to achieve the right outcome for the individual and the court. The issue is simply around resourcing and time, as I think our colleagues have also stated. It is about the section 27 funding and ensuring that local authorities are resourced accordingly so that an individual gets an outcome that is appropriate for them.

Daniel Johnson: Are you saying that the issue is the money that sits behind the process rather than what is in the bill?

James Blair: There are sections of the bill that are confusing. In some places, it says "must" and in others "should". The policy memorandum refers to different rules, but it is not quite clear. We have asked the Scottish Government to clarify those sections to make the bill clearer. Our concern is that the funding might not be there for criminal justice social work to make the full and frank assessments that are needed for the courts.

Daniel Johnson: That is helpful.

10:15

Maurice Corry (West Scotland) (Con): We have talked about the bill and the new forms of monitoring, such as GPS monitoring of a person's movements, and the monitoring of alcohol and drug use. What opportunities and risks do those represent? Perhaps Ms McCluskey might respond.

Karyn McCluskey: I have a big interest in transdermal alcohol monitoring. I brought some bracelets over about six years ago and have been discussing monitoring ever since, including through writing papers.

In my previous role in violence reduction, 80 per cent of what I dealt with was alcohol related. Scotland is saturated with alcohol. Monitoring is not suitable for those who are addicted, but not everybody is. The behaviour of those who go out on a Thursday or Friday night and get drunk is toxic.

We know that helping such people desist from drinking is a suitable support. Transdermal alcohol bracelets tests the ethanol in the person's sweat every 30 minutes and electronically transmit the information. When we put the bracelet on someone, we said that they needed to find their sober friends and their sober places and that we would help them not to drink. It is about that support.

Alcohol is everywhere in society. Trying to get people to desist from drinking is a difficult challenge. When people have an alcohol monitoring device on, they use the bracelet to save face. In the face of the well-known pressure to, "Have a drink, have a drink, have a drink," they can say, "Don't ask me to have a drink—I am wearing this bracelet." Probably one of the biggest psychological effects of wearing the alcohol bracelet is that it gives the person the ability to take themselves away from the crowd and change.

There have been over 1 million uses of the bracelet in the United States, including the tests of more than 17,000 people in Dakota on a 24/7 sobriety experiment. We have not used it widely in the United Kingdom, although when it was used in London compliance was 94 per cent. Colleagues who are sheriffs say that every court is an alcohol court in Scotland. The courts also have a lot to do with drugs. We need more tools to address people's drinking.

Maurice Corry: Do you think that the use of the bracelet will be effective? Obviously, it has had success in London and the US.

Karyn McCluskey: We have not used the device at all in Scotland.

Maurice Corry: Have we trialled it?

Karyn McCluskey: I have trialled it; I have written papers on it.

Maurice Corry: You have not physically trialled it, though.

Karyn McCluskey: No. There would have to be powers in legislation before we could trial it.

It is Hobson's choice. No one can be forced to wear an alcohol monitor. The person has to consent to it. That provides a teachable moment to address the person's behaviour. Alcohol monitoring in particular is something that helps address some aberrant, toxic behaviour that contributes to a great deal of our crime.

Maurice Corry: Would Mr Maybee also respond?

James Maybee: I want first to add a comment to Mr Blair's response to Mr Johnson's question.

It is not just about money, although money is great and we would always want more so that we could do more. On the information and evidence that criminal justice social work receives to inform our risk and needs assessment and the level of service/case management inventory tool, what is sorely lacking is the summaries of evidence that are narrated in court. More often than not, the social worker is entirely reliant on the information that the offender provides for the criminal justice social work report.

This has been a bone of contention for a long time and has been raised on numerous occasions in every conceivable forum. It is a critical part of enabling the social worker to provide a much more evidence-based and objective report on risk and need. Without it, we are entirely reliant on the offender's version of events. There may be important information missing from that, particularly in relation to victims. We get such information on sex offenders and that is helpful and informative. My plea is for that to be considered for other offenders.

I appreciate that there are practical issues relating to how those summaries are often narrated in court—they are not written down, which creates a problem. I am sure, however, that there is a way to get over that hurdle. It would significantly improve the strength and quality of risk and needs assessments if we were to have that information routinely on every occasion.

I want to say a few things on the issues around alcohol. In our submission, we noted that how people change their behaviour is not a linear process; people go through a cycle of change, sometimes several times. Relapse is not always the case but, more often than not, it is part of the cycle. I am sure that we can all think of examples from dieting or trying to stop smoking of how often people go back to their previous behaviour and start the cycle again. With alcohol monitoring, there is a risk that things can be seen too much in black and white. If we are going to have legislation on that—which I support—we will have to have the right guidance so that there is a recognition that there is a high likelihood that someone who is required not to use alcohol will breach that requirement at some point, and that, therefore, on-going management of that individual will have to be part of the sentence. That is a critically important point to make. Parole licence conditions often say that someone must not drink, but that creates a problem in cases in which there is a dependency, because it is asking something that is just not possible. We have to be mindful of that when we are creating the legislation and the landscape around remote alcohol monitoring.

We must also not forget the post-sentence issue—this applies to all electronic monitoring and, indeed, potentially all sentencing options. Research suggests that, when somebody gets to the end of the period of statutory supervision, there is often a question of how they can sustain the level that they have reached. If somebody has made good progress through their CPO or their prison licence, how can that progress be sustained beyond that period of statutory supervision? We have to give considerable thought to that. The solution might involve the third sector or further resources. However, if we are looking at this as a medium to long-term issue, we have to build that in. People will only be on CPOs for a maximum of three years. Most people on licences will not be on those licences for ever. What happens after that? Social work will obviously try to link people into community-based resources, but those resources need to be there in order to make that work.

Maurice Corry: Have you talked to the Drinkaware Trust, which is the alcohol education body of the drinks industry?

Karyn McCluskey: I work quite a lot with Alcohol Focus Scotland, and I am quite engaged in lots of the alcohol groups. However, I have not talked to Drinkaware.

Maurice Corry: Drinkaware has ways of getting out the message about responsible drinking, and I was wondering whether the issue had been discussed with it.

Karyn McCluskey: When we initially considered this issue six years ago, lots of sheriffs

were including a requirement that someone not drink as part of their sentence. At the time, the only way of monitoring that was through a breathalyser test. However, it is possible to drink around such a test, because you lose about one unit of alcohol per hour.

We pay attention to someone's course of conduct; that is, we see whether their offending behaviour includes two or more offences in which alcohol has been a factor—not a unique correlating cause, but a factor—and use that as the criterion for introducing alcohol monitoring. That means that the first time that someone is caught after having committed a drink-related crime, they do not go on to the monitoring system.

There is a gathering body of evidence about supporting people. Mr Maybee is absolutely right to say that we need to be extremely thoughtful around this issue. Even when we were doing some of the studies and we saw that someone had had one drink, we would call them up and ask whether they were finding things difficult and we would conduct brief motivational interviews around alcohol. At the end of the day, we want to keep people compliant, but we recognise how difficult that is. There is a motivational aspect to the process, and failure is absolutely part of it. The Prochaska and DiClemente motivational change model says that we should expect people to fail, and that we should use those failures as teachable times when we can intervene again.

James Blair: It is about being smarter with our justice and using an evidence base so that an individual is supported with their addictions. With regard to alternative forms of sentencing, the issues will still be there when an individual is released from a custodial sentence. It is therefore about society supporting an individual through a process in order to have better outcomes and about being smarter in the way that we look at that. We are convinced that there is an evidence base to take that forward.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, panel. I am interested to know how electronic monitoring affects the families of people being monitored. Does more need to be done to mitigate any difficulties with that?

Karyn McCluskey: I certainly think that home detention curfew is a big ask for lots of families. Having someone in the house from seven until seven might be quite difficult for families. We know that families can support people to comply with their order, but it takes a great toll on them. The extension of electronic monitoring with the use of GPS allows us to be more flexible and a lot smarter about how we induce compliance in people with regard to staying away from certain areas and places such as the houses of victims or witnesses. Using GPS is therefore probably slightly less onerous than some of the HDCs and RLOs.

Rona Mackay: How often is GPS used?

Karyn McCluskey: It is not used just now. It is not part of the legislation. However, it is incredibly interesting, as we can see if we look at some of the work that has been done in Germany, where they have some quite complex exclusion zones. The GPS device buzzes if people get too close to them, which tells them to move away. A GPS device can therefore be used cleverly and is individualised, so it is not just a blanket ban—the device can be individualised for each person.

James Maybee: The impact of electronic monitoring is certainly an issue for families, for obvious reasons. For example, there might be underlying tension between the partners in a household. Clearly, if somebody is confined, such tension can be exacerbated and the electronic monitoring might have unintended consequences. The research on the impact of electronic monitoring on families is fairly limited, so it would benefit from further study.

Interestingly, the default conclusion drawn is that using GPS is more intrusive, but there is some evidence to suggest that it can be less intrusive because somebody is not confined to a particular place and can go about their lawful business, provided that they do not go into the exclusion zone that has been set up. The fact is that they are not confined to one place.

However, using electronic monitoring requires having a thorough, strong assessment that takes into account the situation in the household and ensures that the individuals in it are spoken to. It is about making sure that that fuller assessment is carried out.

Rona Mackay: What feedback do you have from families? Do you find that they are generally supportive of EM?

James Maybee: It is difficult to comment on that, because I am not sure that I have an evidence base from which to do so. I suspect that the position is mixed and that electronic monitoring will work successfully in some places but that difficulties might arise in other circumstances. It goes back to the on-going supervisory element and contact with not just the offender but the family to ensure that if there are issues, they are picked up immediately and considered, and any necessary action is taken to head off potential difficulties.

Rona Mackay: Do the children in the household get any kind of counselling or explanation about what is going on if one of the adults in the house is

under a curfew? Do children generally understand that?

James Maybee: It is important that every member of the household is aware of what is happening, because children are very observant and will see that a box has been put in and that their father or mother is wearing an ankle bracelet, which will provoke the obvious questions. Making children aware of what is happening has to be an integral part of planning for electronic monitoring so that there are no surprises or shocks and that, depending on the age and stage of individual children, they have sufficient answers and information.

Rona Mackay: Who would that come from?

James Maybee: That would be done by the electronic monitoring provider, which is currently G4S. Its staff are the people who go into the house and fit the box. Where there is a supervisory element, I would expect the criminal justice social worker to be part of the discussion.

10:30

James Blair: To reiterate, we are supportive of Families Outside and what it said in its submission. I am sure its representatives will have more to say later.

On the G4S technology, we have come on a long way, but we live in Scotland, and the geography and topography mean that it is not always accurate. The technology is moving on, but there are parts of Scotland where there is no GPS coverage. That applies to inner cities, too. At the point of assessment of what is available, we need to consider whether GPS is appropriate, now and in the future. There are some concerns about that.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): Good morning, panel. I have a supplementary question to Rona Mackay's question about GPS. There are obviously limitations to the system. As Scottish Women's Aid has pointed out to us,

"GPS does not detect contacts attempted via ... telephone ... social media, text messages, or 'chance' encounters".

It will not catch certain types of behaviours. Scottish Women's Aid also highlighted research from America, which said that using GPS monitoring pre-trial made victims feel

"anxious"

as a result of

"seeing the abuser moving freely about".

Are there limitations for the use of GPS monitoring regarding certain types of crimes, such as domestic abuse?

Karyn McCluskey: That will come down to a social work assessment. James Blair is probably better placed to comment on this. The anxiety of victims should never be ignored. Things can be very difficult for any victim, whether of violence or otherwise, and whether it is a man or a woman, and it is a matter for risk assessment to pick out when it is proportionate to use monitoring for the victims and whether it is suitable for the person to be monitored. There are considerations with it, as there already are for RLOs and HDC.

James Maybee: The voice of the victim and the issues surrounding the protection of vulnerable people and victims are key—they are paramount. They have to be part of any thorough risk assessment. No order or licence is a magic bullet. Nothing will ever work perfectly, and there will always be instances where things do not work, which can be for a multitude of reasons. It comes back to the risk assessment. To pick up on an earlier point, it is also about having as much information as possible in order to formulate that assessment.

The point about geography and the limits of the technology has been well made by my colleague from Community Justice Scotland. That is a fact of life. However, I do not see that as a reason not to move forward. It is not unique that a certain programme is not available throughout Scotland. For example, the Caledonian system is not currently available to all criminal justice social work services, but it is a start, and money has been made available to roll it out further.

A further point is that the current contract for the delivery of electronic monitoring is up for renewal. I think that the contract expires in 2020.

Another key point is that the links between the provider of the electronic monitoring service, whoever that is—it is currently G4S—and criminal justice social work must be excellent. There has to be a synergy and a working together to achieve a shared goal or a shared aim, with a real understanding of what the different partners bring to the table by way of support, technology and the crossover. Criminal justice social work should understand the limitations of the technology and what will work and will not work in the landscape, especially in the island authority areas or in other remote rural communities such as those in Highland, where monitoring will be problematic. There has to be really good consistency and a joining together.

In my experience, G4S provides an excellent service, and I can confidently say that that is a reflection of Social Work Scotland's view. I hope that that continues beyond the life of the contract, regardless of whatever comes next. We have to get it right in the future. If we do not, we risk

undermining what we are trying to achieve with electronic monitoring.

James Blair: I want to reiterate those sections from our submission in which we call for the guidance to be co-produced. The rights of both those who have offended and the victims have to be respected. The issue is problematic and contentious. We need to get around the table, so that we get the right balance and everyone feels that they have a part in the process. That can be done only in a co-productive environment, and we have asked the Scottish Government to do that.

Liam McArthur (Orkney Islands) (LD): James Maybee mentioned GPS coverage and some of the communities where monitoring might be impractical. Those also happen to be the communities where incarceration is likely to be in a place that is much further away from the family and home network. Is it your expectation that the future contract, as a priority, will address any gaps in coverage, so that monitoring can be applied, where appropriate, across the country rather than piecemeal? Do you also expect that the future mapping exercise will be a good deal more reliable than the mapping exercise for mobile phone or broadband coverage, in which the operators give some comfort about the extent of coverage, but where the lived experience on the ground is a far cry from that? How will that work?

James Maybee: The answer is that those things must be an integral part of the future. We have to create a culture of honesty about what works, what does not work, where the gaps are and what the plans are to plug those gaps. I know from driving down here this morning that there are pockets of poor coverage where you would almost least expect it: the DAB radio suddenly cuts out and you are in a black spot, although not necessarily in a tunnel.

Those aspects must be part of future considerations; we must have clear and honest statements about coverage, so that we make decisions that are based on clear evidence.

Karyn McCluskey: Radio frequency monitoring will still be available; we will still be able to use it. We will probably have to wait to use GPS. I expect that, in five years, the scenario will look entirely different. We certainly do not want to disadvantage people from rural communities. We would like to keep people with their family, in their own house, in their own community and in a supportive environment where criminal justice social work and the third sector can support them. We should not have a two-tier system.

Liam Kerr (North East Scotland) (Con): I will come at the issue from a slightly different angle. People in some communities might look on any increase in electronic monitoring with concern. Someone behind bars is not able to recommit crime within the community. Karyn McCluskey said that she wants to keep people in their community. The community may not want those people in their community. Do the proposals offer any additional or, indeed, sufficient protection for victims and the community more generally?

Karyn McCluskey: There is an evidence base of compliance with GPS and, indeed, transdermal alcohol monitoring. You are right: we need to educate the community about what GPS and electronic monitoring can do in the widest sense, alongside support. People have community sentences now. We have more to do, and you are absolutely right that understanding needs to improve.

I would hope that the use of EM would induce compliance. The evidence shows that someone who is electronically monitored and provided with the right support becomes increasingly compliant. In some voluntary programmes, people wanted to keep the device on after the programme finished, because it helped them to desist from crime.

We have a difficult situation, given the level of remand and short-term sentences. We know that 98 per cent of women get a sentence of fewer than 12 months. Surely it is better for us to look at different ways to keep people compliant in the community and to support them to not reoffend.

Liam Kerr: I do not necessarily dispute that—particularly in relation to remand, which we have looked at in some depth.

In answer to my question, you spoke about educating the community, inducing compliance and helping people to desist from crime. However, my concern is that members of the community may say that they have been terrorised by an individual whom they do not want to have back and that they want the criminal justice system to keep that person away from them. How do you respond to that?

Karyn McCluskey: This is not binary. Not everybody who has been given a sentence of under 12 months will automatically go into the community. There will be some offenders for whom it will be decided that, for the protection of the public, they will have to be on remand or on a short-term sentence. However, there will be a percentage of people who are in our custodial environment just now who would be much better suited to a community sentence and would be much better supported by the use of electronic monitoring. That is particularly true of women, who will not be well served by spending two months in prison, only to come out to homelessness and a whole range of other challenges. There must be a better way to do this. We will absolutely have to support them differently.

Liam Kerr: To come at the situation from the community's point of view, are there sufficient protections in the proposals?

Karyn McCluskey: We need a complete paradigm shift. We need much more support in the community and to invest more in our third sector, because it can support people in a way that is very different from the way that I or criminal justice social work can. There is little doubt that it will need some justice reinvestment.

James Blair: The key word here is "supportive". The technology could be used in a smarter way, so as to be supportive for communities. An exclusion zone would support the communities involved and would also give confidence to victims that if the person with the conviction were to go into such an area, the police or whoever would come and deal with the situation at that point.

Karyn McCluskey: The response needs to be swift and visible. Non-compliance needs to be dealt with robustly, otherwise it will just increase. One of the recommendations in the electronic monitoring report was that we needed to look at how we address compliance robustly. At the moment, about 30 per cent of sheriffs will put a very robust programme in place and will ask criminal justice social work about every small breach; with others, that is less the case. As we go forward, in order to give the public confidence that we are dealing with people appropriately and that we will protect them, we will need to set up a very robust programme to manage people in the community.

The Convener: We move on to non-compliance, on which Mairi Gougeon has questions.

Mairi Gougeon (Angus North and Mearns) (SNP): I have a few questions that are based on Community Justice Scotland's submission. I noticed that quite similar threads ran through that submission and a few of the other submissions that the committee has received. One thread was about the language that is used in the bill, and about the use of the term "offender". I would like to hear a bit more about that from James Blair, and about whether the witnesses think that the language in the bill should be changed.

James Blair: In our response, we said that we thought that the language and terminology in the bill, and perhaps the title of the bill, should change. In the run-up to the passage of the Community Justice (Scotland) Act 2016, the Parliament had quite a discussion about how we talk about convictions, those who have offended and those who have convictions. The point is important because there is an anxiety around convictions, so the approach should be about getting the language right so that, when an individual has been reintegrated back into society, they feel part of it.

There are whole parts of the Management of Offenders (Scotland) Bill and the policy memorandum in which the language and the terminology do not meet the standard that the Parliament set in 2016, which is of concern to us. We are guardians of the national Community Justice Scotland strategy, so we adopt that language, and all services, including the police, use it when we refer to those who have convictions or offending behaviours. The use of language and terminology in the bill is therefore disappointing. We have had discussions with the Scottish Government about why that has happened. There has been a bit of hesitation, because the bill refers back to the Rehabilitation of Offenders Act 1974, which is an act of the Westminster Parliament. The terminology there is from 1974, and this Parliament has said that it was not appropriate. We have asked the Scottish Government to reconsider the use of the language in the bill. The policy memorandum asks whether something supports individuals in moving on—which is the terminology that the Scottish Government uses—but I would say that the language, terminology and title of the bill are not appropriate.

10:45

The Convener: Can you give examples of language that is not appropriate and language that would be appropriate?

James Blair: The use of the terms "offender" and "ex-offender" is not helpful. We should talk about people who have had convictions and people with offending behaviour, as that empowers people rather than demeaning them, which is quite important. In our view, calling somebody who has a spent conviction an ex-offender, even though they have been through rehabilitation, is not supportive. From the discussions that were had in committee and in the chamber in 2016, I do not think that such an approach is supportive of the direction that the Parliament wanted to take.

I think that the 1974 act is the culprit here. The question is how appropriate it is to replicate the language that was used in the 1974 act in the bill or the policy memorandum. Confusion will be created for those who are involved in sentencing, the police and people in statutory services or the third sector about what to call individuals. It is confusing that we seem to be moving back from the idea that we had in 2016, and we are not happy with that.

The title of the bill is confusing, because it is about electronic monitoring, changing the

disclosure periods and reforming the Parole Board for Scotland. We do not think that it is about the management of offenders, because somebody who has a spent conviction is no longer an offender. We feel that the title of the bill is misleading and unhelpful, and some of the language that is used is possibly pejorative.

The Convener: What kind of language would you prefer?

James Blair: We would prefer the bill to talk about those who have had convictions and those who have had offending behaviour. That is important. It is a question of getting the terminology right and not going back to the 1974 act, which is not appropriate and does not reflect what we do in Scotland.

Mairi Gougeon: I have a follow-up question, although it might be more appropriate to ask it of the people who drafted the bill. Is there anything that says that the bill must relate back to the 1974 act, which means that it is necessary to use such language? Do you get the impression that that is open to change? Is there any flexibility in that respect?

James Blair: I think that you would have to ask the bill team. We have asked the question. The 1974 act is reserved, so there are certain sections that cannot be changed without approaching Westminster.

Mairi Gougeon: Thank you very much.

In its submission, Community Justice Scotland says:

"There are inconsistencies and ambiguities between the stated intent in the Policy Memorandum and the Bill regarding written reports by Criminal Justice Social Work".

It goes on to say:

"a written report 'must' be placed before the court whereas this is not explicitly referenced in the Bill".

Could you tell us a bit more about those concerns?

James Blair: We are concerned about the use of the word "should" in a bill or a policy memorandum without that being well defined. We want to make sure that the intent of the relevant section is clearly defined by the Scottish Government. Different forms of drafting seem to have been used. The use of the word "should" or "must" in the policy memorandum needs to be replicated or defined in the bill, and we do not feel that that is the case.

Mairi Gougeon: I have a final question that is based on the submission that we received from Scottish Women's Aid and which relates to the 2015 evaluation of the presumption against short sentences. The organisation was concerned about the fact that further offences by an offender on a CPO do not constitute a breach of the order and that responses to breaches of CPOs "were poor and inconsistent". Is that your experience? Do you agree with that?

James Maybee: You are correct to say that, if somebody commits an offence while they are on a community payback order, that does not constitute a breach of the order. One can agree or disagree with that, but that is what the current legislation says.

With regard to how breach is dealt with, it has already been mentioned that breach of any order or licence must be dealt with clearly and strongly. There must be consequences.

It is, however, the job of the criminal justice social worker to look at the evidence. Somebody might be well into their order or licence, and there might be good evidence that they are generally making good progress, but then they might go through a difficult period. The reasons for that and why it has happened need to be assessed—for example, does it raise the individual's risk or the risk to potential victims? The decision can then be made and action can be taken accordingly.

When somebody has clearly and significantly breached their order, and there is a real increase in risk, the social worker can go to breach immediately and take the case back to court. That is not instant because it does not come with a power of arrest. In my own local authority—I am sure that this also happens in other local authorities—when you have concerns about an individual, you will have that discussion with the court and tell it that there are real issues with Ms X or whoever, and that you are going to submit a breach and ask the court to deal with it quickly. That can mean that the case is called the next day or as quickly as the court can manage within its timetable. There is a way to shorten the period. A normal breach can take some weeks to get before the court, which would not necessarily help to protect communities and victims.

The Convener: Liam Kerr started by asking about non-compliance. Have those points been answered?

Liam Kerr: Absolutely, but Mr Maybee was also going to say something in response.

James Maybee: Mr Blair has been clear about language, and I support much of what he said.

Language has to be understandable to the public. There is an issue in Scotland with people's understanding of what a community payback order means, or of the variety of prison licences, extended sentences, supervised release orders and so on. Things are sometimes not couched in plain language, and the lack of clarity and understanding creates a sense of unknowing and

leads to some communities not having faith. It almost leads to the default position being that people understand when somebody is in prison and think that they cannot do any harm to anybody because they are in prison.

It is important that all agencies—be that the Scottish Prison Service, my own service or Community Justice Scotland—do what we can to explain better to the public what we do. If we improve the common understanding of how we manage people who have offended, or whatever the term is, we have a greater prospect of increasing people's confidence in what we are trying to do. They will understand why we think that it is better to manage somebody in the community who would otherwise have received a short-term prison sentence during which—let us be honest—nothing would have happened with that individual. They would have gone into prison for two, three or four months, but because the Scottish Prison Service does not have the resources to do much with that person, they would have come out without necessarily being subject to any supervision, and the opportunity would have been lost.

If we are not clear about what we are doing and how we are trying to do it, and there is no common understanding, there is a risk that we do not do as well as we could some of things that we wish to achieve.

Jenny Gilruth: I am sure that I heard you say earlier that this is not just about the money, so I would like to go back to the point about resources. Your submission talks about CPOs being one of the most commonly used community sentences in Scotland, with more than 19,000 being issued in Scotland in 2016-17. You say:

"An increase in the use of EM would involve justice social workers carrying out more suitability assessments and supervising more monitored people ... In this event adequate funding would have to be provided."

What specific additional resources are required?

James Maybee: Under the current legislation, if the court makes a stand-alone RLO, it is not required to get a criminal justice social work report. In actuality, most courts ask for such a report because they want a wider assessment. We might therefore see an increase in requests for reports, because if somebody is going to get a CPO and EM has been considered as a requirement for that, a criminal justice social work report would need to be done. The evidence that has been put forward is based on the average length of a CPO being 15 and a half months, I think. Again, that is an assumption that may or may not be proved to be correct. There may be longer CPOs where there is an electronic monitoring requirement.

GPS is a bit of a step into the unknown. GPS can be either active or passive. With active GPS, where somebody is being monitored in real time, information is constantly fed back to the electronic monitoring provider, and we would expect a much greater need for liaison and communication between the EM provider and criminal justice social workers. That could be quite resource intensive—that needs to be considered and not forgotten. Passive GPS is perhaps less risky because, obviously, the data is aggregated over a particular period of time and then considered.

There are a number of unknowns. I think that the word "possibly" is used in our submission. Although we think that there has been a reasonable first go at quantifying the costs, we have to remain cautious: we need to get it right and monitor the impact of whatever is in the legislation that is enacted. There may be an opportunity to do that through demonstration projects before it is spread across the country. It would be regrettable if criminal justice social work was not sufficiently resourced to deliver electronic monitoring in the way that we are discussing, because there is a huge opportunity.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning, panel. I will move on to disclosure of convictions. In Karyn McCluskey's previous role in the violence reduction unit with John Carnochan, she spoke powerfully and passionately about people being able to move on once their convictions are spent. What impact do convictions have on people who are seeking to move away from previous offending? The bill seeks to make changes to the rules on when convictions become spent, reducing the length of time in some cases, and to extend the length of some custodial sentences. Do the proposals strike an appropriate balance, or is more consideration of the matter needed?

Karyn McCluskey: The current legislation is most confusing. With regard to people who have convictions understanding when they should and should not disclose, my experience is that people just end up disclosing everything, so the approach is keeping them in structural inequality. The majority of the people whom James Blair and I work with have children and families, and they need the opportunity to take part in the wealth creation of Scotland and get into employment. I know that if I get somebody—male or female—into employment, they will reoffend less and be able to earn square money for their families and support them. Currently, that is not happening. Lots of companies have a blanket policy. I can understand why: they get lots of applications, and they just sift people out. Therefore, things need to be changed.

The approach in the bill is much clearer, and I welcome it. It will absolutely reduce the terms.

Many people with convictions whom I have spoken to are excited because when they should and should not have to disclose their convictions will be clearer. We cannot disaggregate some of the people who are in structural inequality, in respect of disclosure of their convictions. They might be a long way from their offending behaviour, which may have been 10 years ago, but they still have to disclose it—when they go to university, for example—which seems to be particularly unfair.

Ben Macpherson: I agree. Do you think that the bill is a step forward? Are there other points about it that you would like to raise?

Karyn McCluskey: The bill is definitely a step forward. It will be interesting to see how its provisions are communicated to the people who are trying to navigate their way through it. It took me a number of reads and use of the policy memorandum to understand lots of it. We will have to address how we will communicate its provisions to people who have convictions from a long time ago, how they will understand what and when they have to disclose and who will have the right to ask.

11:00

James Blair: The changes in the disclosure periods are the start of a process, but the bill does not cover how we make the change. There is a process available via Disclosure Scotland and summary application to a sheriff, but it requires resources that people who have had convictions cannot afford. We are talking about thousands of pounds for the legal support to do that. Why would someone go through that process when they have to find the resources to do it and, at the end, the sheriff could still turn down the application?

As Karyn McCluskey said, we support the timeframes that are being spoken about. The issue is about informing the public, employers and people in education what it means for a person to have a conviction on their disclosure statement and how they can have it removed. We need to work on anxiety about convictions with everyone in society. As far as I can see, that anxiety still exists and there is confusion. I do not believe that the bill will make things clearer for people who are involved in looking at convictions.

James Maybee: It is a massive step forward. It is incredibly confusing—

Ben Macpherson: I am sorry to interrupt. Do you mean that the situation is incredibly confusing as things are?

James Maybee: Yes. The current situation is confusing. The bill is taking us in the right direction. We have talked about language this morning. It is important to run the measures past people who have convictions and who are going to apply for jobs, as well as employers, in order to see whether they understand what is being proposed. If we do not do that, we run the risk of improving things for ourselves but not for the people who must deal with the issue at the coalface—those who are applying for jobs and thinking about whether to disclose, what to say and how to say it, and employers. We need to apply that test in order to get the language right so that we maximise the potential for people to understand what we are trying to achieve.

Liam McArthur: James Maybee talked about a step in the right direction and removal of some of the current lack of clarity. What can we do in scrutinising and amending the bill to take us further, and to provide additional clarity for those who are caught by the provisions and for employers, who will need as much understanding as possible of the impact of how they act?

James Blair: My understanding is that some such areas are reserved, so it might not be appropriate for the Scottish Government to implement measures relating to employment. I understand that, with other bills that have gone through the Scottish Parliament that involved reserved matters and which, at the end of the process, have supported people, guidance was worked on to highlight issues so that the process was clear.

The current disclosure process is not supportive. Later this morning, colleagues will give evidence to the committee on that issue. To be frank, the problem is the Rehabilitation of Offenders Act 1974, which has been changed quite a few times. I am not sure how supportive it is of individuals or how easy it is to understand. We call on the Scottish Government to co-produce guidance so that in the implementation stages individuals, employers, people in education and bodies that provide services—volunteering is also involved—have a clear understanding of the process. They need to know what it means when someone has a conviction listed on their disclosure statement and it says that they can work with anybody. Given the anxiety around the issue, an employer might see that as too much. We need to work through co-production but, unfortunately, I am not sure that the bill is the right place to do that. The problem is with the 1974 act.

Liam McArthur: Earlier, Karyn McCluskey said that it took her some time wading through the documentation on the bill to understand the implications precisely. She is familiar with such documents, so that is a concern. Is the way in which the provisions on disclosure are phrased within the bill and supporting documentation as clear as it might be?

Karyn McCluskey: From speaking to my English colleagues, and to colleagues in Scotland

in Recruit with Conviction and Positive Prison? Positive Futures—I am sure that they will speak on this later—I know that the questions that are asked most are, "When do I have to disclose?", "Who do I have to disclose to?" and "Can people ask me about convictions?".

The documents that Community Justice Scotland puts out will try to make sense of something that is very complex, especially for people who have more than one conviction or mixed convictions. That is where the confusion will lie—certainly, for employers, who do not know how to work their way through this. The situation must be made much simpler for employers, or we risk excluding lots of people in vulnerable populations from work environments. That does not seem to be progressive.

Liam McArthur: Does James Maybee want to add anything?

James Maybee: The sentiments have been well expressed. In the Highland Council area, we have a contract with Apex Scotland, which runs a course on the Rehabilitation of Offenders Act 1974 because the act is complicated. The course covers not only the technical aspects of what and when an individual must disclose, but how to deal with questions that a potential employer might raise. If the 1974 act had been successful, we would not have to run the course because people would pick the legislation up and understand it. Social Work Scotland thinks that we have made a giant leap forward with what is in the bill, but I am sure that there is room to improve things in the future.

Liam McArthur: I turn briefly to the issue that the length of time for disclosure is determined by whether the conviction happened before or after the age of 18. I am not going to ask whether you think that that is right. Do you, however, think that 18 is the correct threshold to set in making the distinction?

Karyn McCluskey: That is a very difficult question. The approach is a pragmatic one for now, but it might be revisited in the future. We should not be holding some of our young people back because of circumstances that happened when they were under 18. I deal with many young people whose lives have been blighted. It is a good place to start, but we should reconsider the threshold later.

Offending and victimisation are often fleeting rather than consistent states. We have some prolific offenders, which is why we need custodial environments and to deal with them differently. We should, however, allow people to move on, particularly those who are young and have decades left to contribute to society.

Liam McArthur: Will the bill allow such a change to be made in due course, if doing so is thought to be appropriate?

Karyn McCluskey: I am sure that the provision could be amended later. It is a pragmatic approach now to set the threshold at 18. The matter has been consulted on, but I have not seen all the responses yet.

The Convener: Would you recommend a change of policy in respect of people under 18 who had committed predatory behaviour or sexual offences?

Karyn McCluskey: I am not sure of this, but I think that such cases would be dealt with differently.

The Convener: Do you mean any such case? [*Interruption*.]

Karyn McCluskey: I am not prevaricating, but I am not sure. I think that such cases would be dealt with differently.

The Convener: We will seek clarification on that point, because that type of behaviour is likely to continue.

James Blair: There are two schedules for convictions: for offences of a higher nature and for those of a lesser nature. The provision is not about convictions for higher offences.

The Convener: Offences such as those that I mentioned would not, therefore, be covered, so that would not be a problem.

James Blair: It would not, as I see matters.

Liam Kerr: Liam McArthur asked about the length of time for disclosure. It seems to me that an appropriate period cannot be set unless it is clear what disclosure is intended to achieve. I will therefore ask a basic question. There must be a purpose to disclosure: what do you understand that purpose to be?

Karyn McCluskey: There are certain jobs for which people will always have to disclose previous convictions—for example, jobs that involve working with children and vulnerable groups.

Liam Kerr: Yes—but is the base-level disclosure a warning to employers, for example, that a person has had a conviction in the past and therefore has a propensity to reoffend?

Karyn McCluskey: It is not clear that a person who has offended in the past has a propensity to reoffend, particularly when they are far from the offence.

Liam Kerr: That is what I am asking about.

Karyn McCluskey: There is a huge evidence base. Beth Weaver, for example, has just done a

big survey of all the relevant literature. When a person has not offended for 10 years, for example, the likelihood of their offending is no greater than the likelihood of me offending. There is a good deal of evidence that shows that people who offended a long time ago are not so likely to reoffend.

Your question about the purpose of disclosure is a really good one. We have set out that it will sometimes be about the individual—although I know that that does not answer the question very well. Can I have some time to think about it?

Liam Kerr: Yes. I will think about it, too, because I think that the question why we have disclosure at all is fascinating.

Karyn McCluskey: The question why we think that a person should tell an employer about something that they did a very long time ago is very good.

The Convener: There is the opportunity for you to provide that information later.

Karyn McCluskey: Good.

James Blair: The basis of the 1974 act was that people were not actively disclosing and there was confusion. Disclosure was originally partly about public protection. I cannot see that the bill has an answer to the question about the reason for disclosure. The bill is just about time periods; it is not about reasons for disclosure.

Liam Kerr: Can we muse on that question and come back to it?

Karyn McCluskey: Yes, we can. It is a great question.

Liam Kerr: I am genuinely interested in the matter.

James Maybee: I am not sure that I can provide greater clarity than my colleagues, on that question. However, I suppose that the obvious comment to make is that disclosure is about the seriousness of an offence and whether it makes an individual a lesser or greater risk to a potential employer—hence, the graduated scale of periods for disclosure.

Liam Kerr: If that is right, has analysis been done on which crimes mean that the offender will have a greater or lesser propensity to reoffend? One would think that that would directly dictate the appropriate period for disclosure.

James Maybee: I do not know the answer to that.

James Blair: Given that the Scottish Government decided on the periods involved, perhaps it would be more appropriate to ask it the question. I presume that its decision was evidence based. I know that there was a co-productive process with the working group; the periods would have been based on evidence from that process.

Liam Kerr: Right. Thank you.

Rona Mackay: I will continue with the theme of difficult questions. Do you have any views about what might be done about the potential availability of information relating to previous convictions, including spent convictions, on the internet?

Karyn McCluskey: Oh, grief! The right to be forgotten.

James Blair: Yes—the right to be forgotten.

There was no internet when the 1974 act came in; the issue was newspapers disclosing. I think that we need an examination of what is appropriate and not appropriate for disclosure on the internet. I cannot see from any of the bill documents that the bill addresses that issue. There is a good argument for having that discussion.

Karyn McCluskey: There were two cases recently in England involving a businessman and another person who had asked for the removal of documents from Google under the right to be forgotten. The businessman's appeal was upheld, but the other person's was rejected. I think that we are in new territory, now. We have the bill, but we can, through the tips of our fingers, find on the internet court documents and newspaper reports. It is a difficult area. People could think, "Should I just disclose because it's on the internet anyway?"

James Blair: It is a matter of how appropriate it is to disclose. Is it relevant to the employment that someone is applying for? Is the conviction spent? Has the person asked for it to be removed? Can they have it removed? There is confusion about appropriateness that is creating anxiety about disclosure of convictions.

Rona Mackay: I suppose that there is nothing to stop an employer googling an applicant's name.

11:15

James Blair: People just disclose. It is a very difficult matter and the Scottish Government needs to give it more thought.

Rona Mackay: I apologise if you have answered this question previously, but I will ask it for clarification. The bill does not seek to make any changes to arrangements under which spent convictions may be revealed under higher-level disclosure checks, although the possibility of reform could be revisited later. Are you content that that level of check will not be altered?

James Blair: I do not think that we have commented on that previously.

James Maybee: Social Work Scotland is content with the high-level check. We see the reason for it and its value and purpose.

The Convener: I do not know whether Maurice Corry's question has been answered.

Maurice Corry: It has been answered, partly. Part of the bill is about the armed forces and alternatives to prosecution. Obviously, the Ministry of Defence is a reserved department, so that part of the bill could be seen as being discriminatory in Scotland because more servicemen and servicewomen are coming to live in Scotland and are now included in the new tax system. What are your views on that? Will the bill create a problem? Has that been addressed in the bill?

James Blair: We have not responded on that issue. It is not within our remit.

Maurice Corry: Will it be an issue, down the line?

James Blair: I am not able to answer that.

Karyn McCluskey: I work a great deal with the Army in Scotland. I deal with a lot of servicemen who are now in the criminal justice system, and I would like there to be change. We have a two-tier system, which seems to be inherently unfair. However, that is a personal view.

James Maybee: I do not think that Social Work Scotland commented on that issue in our written submission, but I echo what has just been said. We should always try to provide a level playing field, so where there is a two-tier system, we should address it.

The Convener: Electronic monitoring can be used for disposals in the children's hearings system. Should that be included in the bill? Are you aware that it is used?

James Blair: Yes—I read the written submission from the Scottish Children's Reporter Administration. We do not have a comment on that.

The Convener: You have no view, one way or another.

James Blair: Other people are more suitable for responding to that.

The Convener: Mr Maybee—do you have a view on the matter?

James Maybee: Similarly, I would rather not formulate a response on that, at this point.

The Convener: The policy memorandum says that it is possible for Scottish ministers to add to the list by way of regulation. Do you have any concerns about that?

James Blair: In our written submission, we state that changes in powers should be brought before Parliament for discussion and approval, so that Scotland can debate the matter.

James Maybee: I concur.

Karyn McCluskey: There will be developments in technology. We now have alcohol monitoring, and there will be further monitoring as technology becomes more sophisticated. That provision is included in the bill to allow for new developments in technology.

The Convener: Can you comment on the changes to the composition of the Parole Board and the new term of office?

James Blair: We chose not to respond to matters about the Parole Board, because it is another agency.

The Convener: So, you do not have a view at all.

James Blair: No, we do not.

The Convener: That is interesting.

James Maybee: Social Work Scotland's submission is supportive of the information that is contained in the bill.

The Convener: Thank you very much. That concludes our questioning. I thank all the witnesses for their evidence, which has been extremely helpful.

11:19

Meeting suspended.

11:25

On resuming—

The Convener: I welcome our second panel on the Management of Offenders (Scotland) Bill: Professor Nancy Loucks, who is the chief executive of Families Outside; Pete White, who is the chief executive of Positive Prison? Positive Futures; Dr Marsha Scott, who is the chief executive of Scottish Women's Aid; and Nicola Fraser, who is the local operations manager at Victim Support Scotland. I thank the panellists for their written submissions. As I say to every set of panellists, it is incredibly helpful to have those in advance of our formal evidence-taking session.

We have divided our questions into two main areas. We will start with disclosure of convictions. Ben Macpherson will ask the first questions in that area.

Ben Macpherson: Good morning, panel. I will put to you the same questions that I put to the previous panel. What impact do convictions have

on people seeking to move away from previous offending? The bill seeks to make changes to the rules on when convictions become spent, reducing the length of time in some cases, and to extend the length of custodial sentences covered by the provisions. Do the proposals achieve an appropriate balance?

Pete White (Positive Prison? Positive Futures): They are a step in the right direction. The idea is that people will be able to work out what their disclosure period might or will be, which will make the system a lot clearer. That will help people to realise that they are on a journey back to being a contributing member of society much more than the current arrangements do, as they are highly complex and difficult to negotiate, especially for somebody who has not had the best education or chances in life. That is a big step forward.

There is scope to support people to work out how to disclose properly, and that will be an important element of the policy. In the earlier evidence-taking session, mention was made of employers being supported to recognise how to handle people with convictions in the recruitment process. An employer support network is being set up by a collaboration across all sectors of all employers who currently take on people with convictions, to support others to follow their good example.

Ben Macpherson: Thank you, Mr White. Will you touch on my first question? What impact do convictions have on people seeking to move away from offending? I am aware that your organisation is heavily involved in that area. I note your point, in paragraph 2.06 of your written submission, about the need for publicity. Will you elaborate on why that is important?

Pete White: I apologise if I did not answer the question. Helping people to move away from their offending behaviour includes making sure that they have good accommodation and good access to medication and welfare support. Once those three elements are in place, there is the prospect of their being able to have a job, and people can build on that. The bill will help with that enormously.

If people are able to negotiate and map out a way forward, that will keep them from offending. That will be better for everybody involved, and there will be less harm across the board. As I say, the bill is definitely a step in the right direction.

Ben Macpherson: And the publicity point?

Pete White: I fear that how we pull back what information is out there is way beyond my understanding. I wish that convictions were automatically removed from the internet at the end of the disclosure period, but I do not think that we have the technology available to do that. I, for one, would be appreciative if that were the case. It is all too easy to google somebody's name, and you may not have the right person or up-to-date information.

11:30

Ben Macpherson: In your view, a comprehensive campaign to inform employers about the new disclosure arrangements is important.

Pete White: It is. That comes under the process that has led to the setting up of the employers support network, which has involved working with the likes of Virgin Trains, Greggs the bakers and Timpson, which all have good practices in place for considering people with convictions in the recruitment process in a safe, well-managed way. We want to spread the word across the board, not simply with national employers but with all sorts of employers including small and medium-sized ones.

The campaign will start on 22 May, and there will be a reception here in the Parliament to promote the whole thing.

Professor Nancy Loucks (Families Outside): I can respond on the impact of convictions. As I am sure you are aware, their impact extends well beyond the person who has been convicted. Indeed, the stigma and publicity surrounding convictions can affect the entire family. It can affect their housing status. For instance, if someone has been selling drugs from a particular premises, the entire family can be evicted, even if they had nothing to do with the actual offence. That has implications for where someone can return after imprisonment, and it affects the wider family, even though they have not themselves been convicted of anything. That is a frustration, so we must flag up the need to involve families in discussions about what happens next.

Rona Mackay: I want to ask the rest of the panel about their views on problems with the internet and disclosure. Do you have any thoughts on how those problems could be tackled?

Professor Loucks: We raised that issue in our written submission, as it will need to be addressed. As the previous panel said, the problem came about subsequent to the previous legislation on the issue, and it follows people around. We have concerns about common practices such as publishing the addresses of people with convictions, as that impacts on the whole family. I do not have an answer to it, but we definitely need some sort of response.

Rona Mackay: Are the rest of you in agreement with that?

Nicola Fraser (Victim Support Scotland): That is not something that we commented on, but victims are affected when court cases are heard. A lot of stuff can be put on the internet. That is very much a new thing, but it needs to be seriously addressed.

Rona Mackay: My other question is on the fact that the bill has not made changes to the arrangements for higher-level disclosure. Are you content with that, or would you like to see that matter revisited at any time?

Dr Marsha Scott (Scottish Women's Aid): I was quiet earlier—surprisingly. We have fewer concerns about that than we might have, because most of the convictions for domestic abuse would probably not be affected by the changes around disclosure. Nevertheless, we have some concerns, which we laid out in our written response. However, I will say now—I will probably repeat this a number of times during this evidence session—that it is really important to be clear that violent crime, and particularly domestic abuse, is a relatively anomalous type of crime in terms of revictimisation and reoffending rates. We need to be careful to take an evidence-based, equalities impact-assessed approach.

As I have said, we are very pleased that the bill does not address the higher level of disclosures, but we think there are some concerns around possible extensions of or changes to the time of disclosure, which need to be carefully risk assessed in the context of domestic abuse.

Pete White: We have done very well with the changes for shorter sentences. In due course, that will perhaps give us an opportunity to consider what would be appropriate for the longer sentences, which are not covered by the bill as introduced.

The Convener: I want to tease out the employment issue a little bit with Nicola Fraser of Victim Support. We have covered unspent convictions in that disclosure is not supposed to make someone unsuitable for employment. There has been some discussion about changes to terminology and anything else that could be done. Does Victim Support have a view on the balance that has to be struck?

Nicola Fraser: It is not something that we commented on, but it is an issue that everyone in the voluntary sector is aware of. There is a lot of misunderstanding in relation to when and what people should disclose. A lot of organisations still give a blanket "no" in that regard. We try not to take that approach, but we are dealing with extremely vulnerable people, so the issue is vital. As was mentioned earlier, our approach to the protecting vulnerable people scheme process is very much based on what crime is disclosed and what level of impact that might have if we are dealing with vulnerable people.

The Convener: You mentioned the need for more awareness raising, and you talked about some good examples from Virgin and Timpson. Could anything else be done to help with the problem?

Pete White: The employers are only part of the deal. People who are going through some sort of punishment, whether it is in the community or in custody, should be given some information and support to learn how to disclose appropriately and effectively.

In general terms, the wider public could benefit from better understanding the direction of travel of disclosure and the way in which things are changing in that regard. The stigma that is attached to employers who employ people with convictions does not seem to have reached Virgin, Timpson or Greggs, and we need to spread that feeling much more widely.

The Convener: Does anyone else have any views on that?

Dr Scott: One of the issues for us is that the people who are involved in the system—the victims, the children and so on—need to be much better informed. I heard the reference to people who have not been lucky enough to have had a great education. In response to that, I would say that I cannot understand the rules and I have had quite a good education. At some point, we have to look at the outcomes of this. We need to look at how people are informed and, more importantly, what we do with the information that they give us in response. In the context of domestic abuse, in particular, it is important to talk to victims not only because it is the right thing to do but because, empirically, they are the best predictor of further harm by the perpetrator. If we do not take advantage of the data from them when we inform them about arrangements around disclosure and so on in relation to convicted offenders, we are missing a trick.

Professor Loucks: I underline the fact that we need to know what to do with that information once it is disclosed.

A lot of work needs to be done with employers, not just in relation to the ban the box movement, which seeks to stop there being a simple tick-box that asks whether someone has a conviction, but also with regard to the requirement for an assessment of whether a conviction that someone has disclosed is relevant to the type of work that they are applying for.

Liam Kerr: I understand that a tick-box exercise can prejudice someone's employment future for quite some time, and I have sympathy for that

point of view. However, some people might say that it is appropriate for an employer that is trying to select from quite a large number of candidates to say that, given that there is a need for some kind of filter, they will move forward with the ones who have played the game, as it were, rather than the ones who have a conviction, whether it is spent or unspent. Do you see that side of the argument?

Pete White: According to Government figures, 38 per cent of adult men and 9 per cent of women have at least one conviction. Are you going to exclude all of them from being recruited for a job? I do not think so. We need to be careful that we do not respond to a disclosure of a conviction without an understanding of when that happened, what happened and what has happened since then by way of the individual moving on.

Liam Kerr: The submissions from Families Outside and Positive Prison? Positive Futures suggest that we need to address the practice of employers asking about unspent convictions during the initial stages of recruitment. However, Mr White, are you suggesting that, far from addressing—and stopping—the practice of asking about it, there needs to be a more open conversation in which that is done up front?

Pete White: The recruitment process could be set up in such a way as to enable somebody to be seen as the person that they are now and to be about whether they are suitable for the job. At the point of their being offered a job, self-disclosure by the individual would be a good thing to do, because, in that process, the employer would have seen the person and not the conviction.

Liam McArthur: I want to take us on to disclosure of convictions. Earlier, you touched on the additional clarity that you thought the bill could provide on when disclosure should and should not happen. From the previous panel, we heard that the process would be tricky but that, with guidance, it is hoped that progress could be made. Does anyone on the panel have thoughts about improvements that might be made to the bill to give greater clarity, if not to employers—it was suggested that they might be covered by reserved legislation—then certainly to those who are expected to disclose and, by extension, to those who advise them.

Pete White: I hesitate to go first again—my apologies. It would be possible to come up with some means by which employers, potential employers, friends, family and individuals who are involved could put all the information about themselves—and, in the case of the individuals, their date of birth and their convictions—into a machine that would come up with an answer as to whether that individual should disclose. We worked with a software engineering student from Edinburgh Napier University and got very close to achieving that—just in time for the new bill to come out and for it to be suggested that our figures might have to be changed. However, a system that does not mean that disclosure is left to chance would be very good and could be used by everybody if it were online, so that they could check out the position for themselves.

Liam McArthur: As long as someone's information was not left online.

Pete White: I am sure that we could sort that one.

Liam McArthur: If other panellists have no further views on that, I will turn to the distinction that has been made on timeframes for disclosure, depending on whether an individual's conviction happened before or after their 18th birthday. I assume that panellists support that, but is that a suitable threshold, taking into consideration the point that the previous panel made about the differentiation between higher-tariff and lower-tariff convictions?

Professor Loucks: That is not Families Outside's area of expertise and we did not comment on it specifically, but it seems as reasonable a threshold as there can be. A distinction will be made between more serious and less serious offences.

As we go through this discussion, I would like to give an example—although it is not one from Families Outside, unfortunately. I was a child protection officer for a local gymnastics club. One of the training examples that Scottish Gymnastics gave was of a man who is a qualified coach and who has on his record a conviction that will stay there for life because it is for a sexual offence—that of having sex with an underage girl. However, the details of the offence are that he was 16 years old when the conviction went on to his record, his girlfriend at the time was 15 and her mum was the one who had brought the case to the police because she objected to the fact that they were sleeping together. The police had imposed a £50 fine but, unfortunately, that stays on his record forever. He and his girlfriend are now married and have four kids, and they are both excellent gymnastics coaches.

Such a case shows the need to look behind the label and to take the time to look at the details and circumstances of the offence, which most people just do not get the opportunity to do. Over time, that example has stuck with me; such a conviction is something that could be scarring for life and that could carry on being on someone's record without their necessarily being a risk to the public.

The Convener: We will move on to questions on electronic monitoring. Before I bring in John Finnie, there are a number of submissions in

which people have argued that electronic monitoring should be available as a condition of bail. The Government seems to be open to that. Could I have the panel's views? Nicola Fraser, would you like to start, for a change?

11:45

Nicola Fraser: It is an interesting issue, because many victims struggle with bail and bail conditions. An intensive level of risk assessment would be necessary prior to releasing somebody on bail with a tag instead of remanding them, and a lot of factors would have to be taken into consideration. With a crime that lies on the threshold between custody and the use of tagging, we need to take into consideration the fact that—especially in smaller rural towns in Scotland—the individuals in question will come into contact on a regular basis. In Brechin, for example, there is one Co-op, where everybody does their shopping. That is an example of the kind of issue that we need to take on board.

We are talking about a victim who has just been traumatised. If the person responsible was released on bail, they would be back in the community, so a lot of risk assessment would need to be done. In addition, there would need to be huge ramifications if that person breached a condition of bail or of tagging. The community will never accept such a system unless it sees that something happens when there is a breach.

The Convener: It is unclear what the ramifications of a breach would be—the bill is very vague about that.

Do the panellists have any other comments?

Dr Scott: I echo what Nicola Fraser said. In this context, as in virtually every other context, technology can be a great boon and a great challenge. It is a case of understanding the context.

We have concerns about the accused being released prematurely, before an appropriately conducted risk assessment has been carried out. I will continue to bang on about that, because when it comes to police risk assessment in the context of domestic abuse, the evidence base is quite thin. Although I think that we need to use the tools that we have, we really need to understand the role of professional judgment in such decisions. Professional judgment that is not competent around the dynamics of domestic abuse is very dangerous.

From our perspective, we underscore the fact that there is not a yes or a no answer when it comes to the use of electronic monitoring and bail, although we absolutely believe that it needs to be a possibility. What is critical is the decision making around it.

A piece of research is being done down south by the College of Policing on police risk assessments. We need to take some of the findings of that work on board when we think about rolling out the use of tagging and a number of other measures to do with the new law. In addition, the breach issues will be extremely important.

Pete White: I agree completely that risk assessments need to be carried out very thoroughly and professionally. That is an important part of the process. When it comes to a breach of conditions, there should be a zero-tolerance approach, because individuals who are under some kind of electronic monitoring need to know what the limits are. I find myself surprised to hear myself say that. It is also important that people with a court case pending realise that it is a very serious matter and that, if they are to be released on some kind of monitoring, their conduct will, in effect, form part of the trial process.

The Convener: You are saying that a breach of conditions must be taken extremely serious.

Pete White: Absolutely.

The Convener: That is interesting.

Professor Loucks: I will link my response to the response that we gave recently in relation to the use of remand generally. I would not necessarily say that electronic tagging is appropriate for everyone who is remanded into custody, but we should look at why we remand people into custody. For people who do not turn up to court, for example, better use could perhaps be made of things such as supervised bail, which is used very inconsistently around the country. The issue should be connected to that conversation.

The Convener: Daniel Johnson has a supplementary.

Daniel Johnson: Professor Loucks has just touched on what I was going to ask about. Public safety is one dimension of the use of remand. The risk of flight and the reliability of the accused in turning up at court are others. Would the panel agree that there are a number of considerations? Why might electronic tagging be a good alternative to remand?

Professor Loucks: Tagging can be useful where people have particularly chaotic lives. I was at an event in Lanarkshire last week, where a young man said that he wished he could remain tagged. That was a rather extreme response. He said that it helped him to create some stability, predictability and accountability, especially in trying to return to the community. Tagging could

also provide that structure for remand, although it has to be supported, rather than be purely surveillance, to make it most effective.

Pete White: There is great potential in people being able not to go into remand halls. The conditions under which people on remand are kept are quite different from those of convicted prisoners. The lack of structure and of access to services for remand prisoners does nothing but damage to a large proportion of the people who are in there. They would have a better chance of recovering their sense of being a member of society if they were on a tag than if they were held in the limbo land of remand.

I agree that risk assessments are vital.

Liam McArthur: I am trying to link Professor Loucks' comment about chaotic lifestyles—a message that the committee has heard from most witnesses throughout our inquiry on remand—with Mr White's comment about breaching conditions being one strike and you are out.

As we heard from the previous panel, this could be a management process over a long period of different incidents. I am not sure how we square Mr White's approach to a breach of conditions and the characteristics that often crop up with the type of people who we are trying to keep out of remand and support into better behaviour.

Professor Loucks: For me, that underlines the point that surveillance on its own is not enough. What is needed to go with it is the support that can prevent a breach in the first place.

Pete White may have something to add.

Pete White: The zero-tolerance approach is one that I was encouraged to take on board by Karyn McCluskey. I would not argue with her.

Dr Scott: One of our big concerns on community disposals generally is a failure to act appropriately in response to breaches of the orders. That leads back to the question of who manages the orders and how much resource and training they have for doing that.

There are huge gender issues around who gets sent on remand and the impact of being held on remand. I urge the committee to be mindful—as I suspect that you already are—that the impact on women offenders is more harmful. We need a justice system that responds to the equality characteristics of both victims and offenders. When we try to create responses that are not nuanced in the appropriate ways around equalities, we do great harm to both.

John Finnie: We have touched on bail and remand, where there is potential for electronic monitoring. Such monitoring as a stand-alone measure was endorsed by a 2016 report, which commended its use along with other interventions.

When does the panel think that it would be appropriate to use electronic monitoring?

Professor Loucks: This again connects to the discussion about the presumption against short sentences. Electronic monitoring should be considered when the person can benefit from support within the community through addiction programmes, mental health services and other supports that they can access in the community without breaking the connections with the supports that they might already have, such as family connections, housing and employment. If someone is on a tag rather than sent into custody, they can at least maintain those structures that are more likely to keep them from offending in future.

Dr Scott: I am happy to weigh in. We think that electronic monitoring has the potential to improve the safety of victims and their children, so we support its use in that context. We are mindful that many of the accused—more than we would like—are released into the community prior to trial, but also out in the community are offenders with CPOs, or whatever disposals have been made, that do not include custody. I remind members that, currently, only 1 per cent of convicted domestic abuse offenders are sentenced to be in custody for over a year. Therefore, we are talking about a lot of convicted offenders. If electronic monitoring could be used to better manage their presence in the community and their danger to women and children, we would like that.

We are concerned about the failure to understand a number of key things, one of which is that, when victims and abusers live apart, there is not additional safety and there is often additional risk. People still suffer under the myth that separation equals safety. When that myth is combined with potential technical fixes such as electronic monitoring, we have a system that is far more confident about the safety of victims than it should be. Electronic monitoring is an opportunity, but it is absolutely critical that it be done with appropriate understanding of the dynamics and the context of domestic abuse.

The Convener: I want to intervene briefly. We are competing with some grass cutting outside, and we are trying to get the window closed. That is done automatically downstairs, and the window may make a bit of noise when it closes. If we hear that, I might suspend the meeting briefly so that what people are saying is not blocked out by the noise of the window closing. [*Interruption*.] We will continue. If the noise interferes with our hearing people, we can stop. Where were we?

John Finnie: An issue that came up in an earlier session and which has come up again is

the support that is required to underpin electronic monitoring. The Scottish Government refers to making electronic monitoring more person centred and more fully integrated with other community justice interventions. Does the bill go far enough in that direction?

Nicola Fraser: The current situation is that people are released with an RLO with absolutely zero supervision. There is absolutely nothing. They have no support or help, and they are out in the community. Any form of supervision or support in respect of a tag will definitely be beneficial. Whether that support goes far enough is difficult to say, because we have to consider the victims.

What I will say may be quite harsh, but communities have no faith in community sentencing. That is because—we have discussed this before—it takes too long for someone to be found to be in breach of their order. People have suggested that we look at zero tolerance for breaches. If a person has an RLO, they can have eight or nine breaches of 10 to 15 minutes each. How long do we wait until they are in breach of their conditions? How many times will somebody stand outside a victim's house before they are in breach? The supervision aspect is to try to help people to reintegrate into society and become less likely to reoffend, but the victim must also be supported to know that they are safe.

John Finnie: If that is the issue, has sufficient regard been paid to the level of support, if not through direct reference in the bill, then in the supporting documents? That there is no point in having the technology without back-up from humans seems to be a recurring theme.

Dr Scott: I support the reference to supervised bail. There is some good evidence from the US looking at serious supervised bail interventions in the context of domestic abuse, which have really good outcomes in reducing reoffending. My sense is that there is a great opportunity also to consider the expanded use of supervised bail as support. It also feeds information into the system much faster and earlier about the likelihood of a breach.

12:00

John Finnie: Is that covered by the supporting documents to the bill, Dr Scott, or is there just a passing reference to being more people centred?

Dr Scott: I am sorry, I could not hear you, John.

John Finnie: We heard from the previous panel that additional resources would be required to support that approach. Do you feel that the Scottish Government acknowledges that?

Professor Loucks: We felt that the bill focused very much on the surveillance and security side of things, without enough reference to the need for structured support to be available. Much more emphasis is needed on that as a requirement or condition, and not just on the surveillance. It also requires a recognition that that support will not be universally available throughout Scotland—it might be more concentrated in urban areas, for example—but without that support there will be difficulties with compliance.

I can give an example. It is not just about things such as addiction, housing and so on, which are the standard ones. We had a call from a family that had taken their daughter home after her release on a tag. The house was surrounded by drug dealers because they knew that the daughter was there; they wanted to collect debts and to try to get her to resume her habit. There was no support for the family in dealing with that, let alone the support that the daughter needed to address her addiction in the first place. It is important to try to make support universally available if the measure is to succeed.

Pete White: One of the benefits of support is not just the technical monitoring of somebody, but the discussion with them. The personal contact is vital. If a person who is on their journey back knows that there is somebody out there who knows the full story and from whom there is no need to conceal what is going on, that could allow them to develop what may be the first positive relationship that they have had in a long time. That is where support is particularly beneficial. The fact that it is not clearly specified in the bill is good, because there is room for innovation and expansion and for new things to come along and be introduced that are not set down in a bill at the moment.

Dr Scott: Can I just add that there are a number of on-going pilots, which started not long ago. We have a commitment from the justice directorate to carry out a domestic abuse pilot around electronic monitoring, because we were convinced that we needed to ask some very specific questions about electronic monitoring. We believe that there might be different outcomes from such a pilot depending on whether it was done in a very rural and remote area or an urban area.

The question of resources is a really good one. I agree that the bill leans towards the idea of a tech fix, rather than working out what resources would be needed to make the technology work the way we want it to. I do not think that that is not still possible, but it is important for us to be careful not to make decisions about the implementation of electronic monitoring—and also short sentences—until we have some information from the pilots.

John Finnie: Will you be able to furnish the committee with the information about those pilots?

Dr Scott: The justice directorate is doing the pilots, so they are the people who should provide that information. We are meeting them in a couple of weeks to talk about the domestic abuse pilot.

Liam McArthur: On the back of the discussion about resources and the additional ones that might be required to support the wider use of electronic monitoring, do you think that there has been enough assessment of the resource shift? If we are trying to keep people out of remand, presumably we need to shift resource from what is going into remand at the moment into more community-based local measures. Is it your impression that that has been debated and that the Government has a clear view on how it might manage that budget shift?

Pete White: There has not yet been an active debate of sufficient depth and extent, but the general feeling among the people I represent is that if people can be helped not to be in prison, that will save a lot of money further down the line. The timeframe for budgeting is too short. Investing in helping people to start their journey back to being a constructive citizen, without going to prison, will save a lot of money further on.

Liam McArthur: The distinction that you make is that you do not necessarily foresee a short-term budget shift; you think that a medium-term calculation is more likely, which will free up the resource for other measures.

Pete White: I would like to think so.

Dr Scott: My opinion is—possibly—slightly contrary. If we shift into the community folks who would ordinarily be on remand—although I have strong concerns about the use of remand, so I want members to hear my views in that context—we will need to be careful that we do not shift the task of supporting victims and their children to organisations such as Women's Aid and other domestic abuse organisations, which would have to advocate for safety in the context of new technologies when they do not have more training than anybody else in the use of such technology and when they are stressed by local budget cuts. In the face of system change, a careful analysis is needed of where support for victims will come from. We must ensure that we provide support not just with my organisation but with other victims organisations.

Daniel Johnson: The discussion about the past few questions has been interesting and has hit on the central tension. Fundamentally, the increased use of electronic monitoring should enable us to provide people who would otherwise be in prison with the opportunity of being outside. However, that comes with risks. That is a broad summary.

I will look at that issue in a little more detail. Marsha Scott discussed risk assessment. We heard earlier that improved clarity about risk assessment is needed and we heard a call for courts to provide an evidence summary, which hits on the support point. The risk assessment is critical to providing the right support to individuals. Does the panel agree with the call for an evidence summary to be provided? To address the central tension, what other requirements for risk assessment would you like?

Pete White: It is dangerous territory for me to think about what happens in a courtroom. I would like it to be a standard requirement for the sheriff or judge to read social work reports before sentencing. That is important. The idea of carrying out a risk assessment before somebody is found guilty is quite difficult, if a choice between custody and the community is within the frame of the offence that has been committed.

The risk side of things needs to be balanced carefully. I am well aware of the need to look after the rights of victims of crime and other people in the community; we also need to be really sure that, when we put somebody into the community, we know that the chances are strong that, with the right support, that person will not offend again. An evidence summary is a crucial part of that.

Daniel Johnson: Do the other panellists agree?

Professor Loucks: I will say something about the type of risk that we are talking about assessing. In a risk assessment, the tendency is to focus on the risk to the public—the risk of reoffending.

That is perfectly understandable, but wider questions need to be asked about, for example, the impact of tagging on the rest of the family. With regard to people who are tagged in their home, that is a new field of research, but we know that it often means that the rest of the family tends to become isolated because they are left with almost a policing role of ensuring that the person complies with the conditions of their tag. Further, if the person who is tagged cannot go out, the rest of the family will not go out either. Another problem is that, if the offence is unrelated to a domestic abuse offence but there is an abusive relationship, that is not part of the risk assessment.

We need to ask about the wider context and the impact on the family when these orders are made.

Nicola Fraser: We regularly come across individuals who are involved in home detention curfews or tagging. When they go through the court system, the police usually check their bail address to ensure that it is okay. Once they are tagged, the address is supposed to be checked to ensure that it is compatible and that the other individuals who live at that address are happy with the arrangement. However, what happens then is

that we get a family member on the phone afterwards saying, "I couldn't say no—I am terrified of them." A risk assessment needs to be done. A lot of the people who get in touch with us in that context are grandparents or members of the extended family, because the close family has already said. "Do you know what? You're not coming home. I've been through that already." It is important that the level of risk for the family is taken account of.

Another point is that, as has been said, someone with a 7 pm to 7 am curfew cannot go out, so everybody comes to them. That is the biggest issue for families, because they then have all these people at their house, and there is no escape.

Daniel Johnson: That really brings to life the broad-spectrum approach that risk assessment has to take.

Marsha Scott raised an interesting point about the possibility of electronic tagging improving the situation with regard to CPOs and providing assurances in relation to people who have been given such a sentence. That could be quite controversial. A number of submissions have highlighted that issue. In particular, the Howard League raised concerns that the option might be used to add on sentences or increase sentences for people who would otherwise be at liberty and not in prison; it wants the option to be focused on providing new opportunities for people who would otherwise be in prison. How would you reflect on that point? Other witnesses might want to reflect on it, too.

Dr Scott: I will bang the same drum as before, and say that domestic abuse is different. A failure to highlight domestic abuse, given that it forms 25 per cent of our police business and 20 per cent of our Crown Office business, would be a hugely risky move.

It is important to think of electronic monitoring in the pre-conviction and the post-conviction settings. However, I also think that it needs to not be an easy answer. I have sympathy with the position of the Howard League, but I have to point out that crime and offending are not homogeneous things, and offenders in the context of domestic abuse are very different.

The approach has to be appropriate for the context. If you cannot find a way to create a bill that is sufficiently flexible so that we protect victims of domestic abuse and sexual assault at the same time as we create a society that allows people to move on from other kinds of crimes, the approach is not right and must be redone.

Daniel Johnson: Another way of putting it would be that the option can do both things: it can improve the situation with regard to existing CPOs as well as provide opportunities that do not currently exist.

Dr Scott: I agree, and I think that that is what we said in our submission.

I will add a quick point about something that is the elephant in the room around criminal justice social work, from a domestic abuse perspective. The Caledonian programme is a perpetrator programme. Everyone wants something to fix perpetrators of domestic abuse and we need support to look at how to respond.

12:15

A third of the country will not have a Caledonian perpetrator programme, even after the roll-out. For a long time, criminal justice social work departments have made it up as they went along if they did not have access to appropriately accredited perpetrator programmes, such as the Caledonian programme, because they are under local pressure to provide intervention for courts. It is important that we consider the risks that are associated with the different criminal justice social work interventions that are supposed to help convicted offenders of domestic abuse to limit their reoffending. There is little evidence that the interventions limit reoffending, but they provide a sense of confidence, which is not real, about safety being provided to victims and their children.

With the resources for criminal justice and other parts of the system that might come into play with the passage of this bill, we need to look at perpetrator programmes in the context of domestic abuse and what to do about the third of Scotland that will not have such a programme.

Pete White: Could you repeat the question, please?

Daniel Johnson: I will need to remember it first.

I was asking about whether electronic monitoring is an opportunity to get people out of prison who otherwise might have been in prison, or whether there is a risk that it will simply be an add-on for people who already have community-based orders or sentences?

Pete White: Electronic monitoring adds an option. The Government's understanding is that short-term prison sentences do more damage and are less likely to help people to reconsider their way forward than community-based sentences, which have a far higher success rate in relation to completion and people not reoffending. If electronic monitoring can support that positive success rate, it needs to be considered.

No process should be automatic in any of this; the approach should be individualised and should take into account everything that Marsha Scott

and Nicola Fraser said about the needs of families and victims of domestic abuse. The approach has to be worked out carefully and not taken as a simple answer.

Professor Loucks: The bill introduces the scope for electronic or technological options to support the community, such as alcohol bracelets, which can be used voluntarily and are effective in the right context to support people who are in recovery from addiction. You do not want to add so many conditions that people are set up to fail—that is not helpful.

Maurice Corry: On that point, what do you see as the opportunities and risks of implementing a scheme for electronic monitoring of alcohol and drugs?

Professor Loucks: That issue was addressed in our written evidence, which said that its use purely as a punitive measure goes completely against recovery-focused approaches. It can be used, ideally on a voluntary basis, to support people who are trying to work towards their recovery. They can use the scheme as an excuse to avoid going out with their mates to the pub, similar to what the young man said about tagging. However, it needs to be used in that context, rather than to punish people for having an addiction.

Pete White: I agree with Nancy Loucks that its use should be as a support, not a punitive measure, and must be voluntary.

Dr Scott: Yes.

Nicola Fraser: I agree, yes.

Jenny Gilruth: Good afternoon to the panel. My question is a supplementary to that of Maurice Corry. Nicola Fraser said in her submission that GPS technology has

"the potential to give the victim a sense of security by limiting the movement of the offender and creating safe spaces for victims."

I was quite taken by the written evidence from Marsha Scott, in which she points to the limitations of GPS, in that it cannot detect certain types of behaviour, such as text contact, chance encounters and social media contact. Her submission also calls for

"further exploration with the Scottish Government and criminal justice partners of the ... use of GPS"

with bail conditions. Do the other panel members support that? Do you acknowledge the limitations that GPS technology might have with regard to crimes such as domestic abuse?

Pete White: We have to be careful that we do not have a one-stop-shop solution. GPS has great potential, but we need to ensure that it is properly supported and used in a way that protects the victims and gives them sufficient confidence to go on with things. I do not know how we can control access to social media or the telephone, although I understand why that issue has been raised. That is where the support element comes in. Somebody who is under monitoring must be supported towards realising that making contact by those means is wholly inappropriate and harmful. The support element is the important bit there, as we cannot prevent people from accessing machines to communicate with others.

Nicola Fraser: There are different kinds of victims, and I totally respect the fact that the issue is different in a domestic abuse situation. The same applies to stalking or similar kinds of cases, in which the perpetrator is often very manipulative, clever and underhand. I agree that it is difficult to stop access to the internet or to texting. My feeling is that, if it is part of the order that the person is not allowed to contact someone or enter a zone, that has to be dealt with the second that they breach that. That goes back to the point about the community having faith in the breach process. If there is an exclusion zone and a buffer zone and somebody goes in it, we need to deal with that immediately to give the victim confidence. The victim needs to be able to report back and say, "He keeps contacting me and that is a breach."

There are a lot of different approaches. I get the point that domestic abuse is a totally different thing. A lot of domestic abuse is based around family members such as children. Perpetrators tend to be desperate to get access to children, and there are lots of processes involved. The issue has to be dealt with as part of the order, the risk management and the breach process.

Professor Loucks: It is worth underlining that everything needs to be done in close discussion and communication with victims. Not long ago, we worked with a family in a situation in which the ex-partner was sending a series of abusive and threatening texts. The police response was to remove his phone, but the problem with that was that the phone was the one way that the police knew where he was, so it was actually more disconcerting for the victim for him not to have his phone than it was to receive the texts in the first place. We need to ensure that there is a conversation about such issues and that it is not taken out of the victim's hands.

Dr Scott: There has been some encouraging research—although it is a bit old now—on the use of actively monitored GPS with an exclusion zone that is sizeable enough to give women confidence. An alarm is set up so that the woman knows that there will not be any surprises in the middle of the night without the alarm going off and—it is a really important "and"—they trust that there will be a timely and sufficiently robust response if the alarm

goes off. Those are important conditions. It is about making the process work for us absolutely in communication with victims. Everybody will say that GPS might not work here or there. We have the keys to use it, but it is critically important that, initially, we explore the impact and test it before we roll it out. For us, GPS is exciting, but it is not magic.

The Convener: Given that the bill is a little vague about what would happen with breaches, should that be explored further as we scrutinise the bill? Should we ask for more information and detail on breaches? Perhaps we should ask for pilot projects to test the various scenarios. For example, it is good for people to have mobile phones because at least we know where they are, but if they use phones in ways that cause fear or alarm or continue the very behaviour that led to their being electronically monitored, that will need to be dealt with. Is there enough in the bill or does more need to be added as we scrutinise it? It seems to me that that is the difference between this being an effective and worthwhile tool and it going in the wrong direction.

Nicola Fraser: If you want to build community confidence in this, there needs to be a zero-tolerance approach. I understand that that is difficult because it requires a lot of the statutory bodies to buy in to it and the police would need to react quickly. I do not know how the courts would react quickly. Usually, they get a breach report and they will assign a hearing within four weeks, but four weeks is no good to a victim. I agree that we might need to look deeper into how the system will cope with increased breaches if we have zero tolerance in relation to these things.

Dr Scott: We definitely need more clarity on the status of a breach. Will it be a criminal offence and, if so, in what circumstances? It is already a real problem in relation to CPOs. Let us not replicate that problem. Let us be clear from the beginning about how we expect the orders to work in the context of offenders who will not necessarily have that good, positive response to community disposals. Many will have that response, but there is a big question mark about domestic abuse offenders.

Pete White: I have nothing to add. I fully support what Marsha Scott and Nicola Fraser have said. It is a way forward, but we have to be careful that we do it properly, so a little more direction in the bill would be helpful.

Professor Loucks: I have nothing to add.

John Finnie: We have a submission from Social Work Scotland, which I entirely agree with. On remote alcohol monitoring, it says:

> "It is important to acknowledge that the typical journey towards change may involve several lapses or relapses for example."

In relation to the issue with someone with an alcohol addiction problem—I am talking simply about the consumption of alcohol, rather than about any other issues—do you understand that there must be a level of discretion around how that breach is responded to?

Nicola Fraser: It is not something that we commented on, but we know from experience with things such as drug testing and treatment orders that people can relapse a number of times. Would it not be beneficial to monitor somebody's alcohol level as part of the support? However, I think that they would have to have started on that pathway, and there would need to be support such as alcohol counselling and so on.

Dr Scott: Are you talking about the use of alcohol bracelets, John?

John Finnie: Yes, indeed.

Dr Scott: If no domestic abuse is involved, I think we have to look at what the literature tells us about recovery. It tells us that recovery from addiction involves lapses. The construction of a response around that needs to reflect what we know about what is most likely to be helpful in recovery.

As with the other elements of the bill, we would benefit enormously from some pilot projects. I know that there is a plan to do some pilots including alcohol bracelets to find out how they work. I am concerned about there being a punitive response in relation to them, but I am also concerned because people misunderstand the relationship between domestic abuse and alcohol and think that, if they keep an offender from drinking, that will keep them from offending. That is a really dangerous assumption.

Pete White: The concept of people wearing an alcohol bracelet is a good one, but it has to be a voluntary decision—the person has to put themselves up for it. That is part of the recovery process. There will be lapses and relapses, but the direction of travel is one that can be supported, in the right circumstances, in order to help people to move away from the use of alcohol and to reduce their likelihood of reoffending.

12:30

John Finnie: I am conscious that you used the term "zero tolerance" earlier, Mr White. I understand that approach as it relates to someone going somewhere where they should not go, but in the case of someone breaching a requirement when they are sitting in their house, would you

hope for a measure of discretion to be afforded by the authorities?

Pete White: What a wonderful question, John. Thank you so much.

John Finnie: You can work out the answer that I am hoping for.

Pete White: A lot depends on the way in which somebody conducts themselves prior to their breach in terms of alcohol. That is a different thing from someone breaching an order that is to do with their behaviour in the wider community.

Professor Loucks: The bill addresses different types of technology. If the sections on breaches are to be clear, they must acknowledge that there must be different responses to breaches based on the different types of technology that we are talking about. The response that is required when someone goes outside a boundary or breaks a curfew is different from the response that is required for someone who is using an alcohol bracelet. That should be addressed either in the guidance documents or in the nuances of the bill itself.

Rona Mackay: Do you agree that, before the bill comes to fruition, it is vital that the issues are communicated to the public in the correct way? I am thinking about families and children and the removal of the stigma that you were talking about. I can imagine that children—younger ones in particular—will need some form of counselling to answer their questions about why their mum, dad, big brother or big sister cannot leave the house between certain hours. Do you agree that that will require quite a lot of work?

Professor Loucks: That is what my organisation does, so I agree that it requires a great deal of work and a willingness to talk about the issue. When someone goes to prison, the tendency is to pretend that something else is happening—"Daddy is working away," "Your brother's gone into the military," or, "Mummy's in hospital"—and you can see similar types of excuses being used for tagging. In order for children and young people to be able to deal with these issues, they have to have open and honest conversations in which they can ask questions.

Rona Mackay: With regard to the need to communicate the issues to the public, I can already imagine the hysterical headlines that we will see when the policy gets out there. We need to be careful about how things are presented to the public and how we communicate the policy, so that there is no detrimental effect.

Nicola Fraser: We are a bit tied by the press, which always goes for the negative aspects. We get that all the time. The press reports on someone who commits an offence while they are tagged or on bail but never reports on the positive aspects even though, let us face it, a lot of positive stuff has come out of community-based disposals, which support victims and support people to get back into the community. We have to get the approach out there in a positive way. That is the major issue because, without buy-in from the community, the approach is a difficult one to sell.

Dr Scott: This is about what kind of country we want to be and what kind of communities we want to live in. We can say that the approach is about giving people second chances, but we should also say that it is about making some people safer. If the changes that we are looking for are made, we can say that the bill contains a balanced approach to ensuring that people who are vulnerable get the support that they need and benefit from the technological protections that we might be able to provide.

Pete White: A number of initiatives are under way that will support the publicity around the bill. The employers support network is an example of a forum in which people talk about the benefits of people with convictions finding work. Disclosure Scotland's Scotland works for you programme is also doing a good job of seeing that someone who has committed an offence and been punished for it should be able to move on in a structured way. The bill is not standing alone, and I think that we can do something very positive with it.

Jenny Gilruth: I have a brief question on resourcing. Dr Marsha Scott mentioned that only a third of the country has access to the Caledonian perpetrator programme. We heard in the previous evidence session from Social Work Scotland, which highlighted in its written submission that the use of electronic monitoring

"in Scottish prisons as a condition of temporary release from prison may further increase the number of assessments completed jointly by community based and prison based social work and this may also impact on staffing levels/resources."

Do you foresee that the legislation in its current form will have a resource impact on your organisation?

Dr Scott: First, I need to make sure that I was not giving you the wrong idea—we do not have the Caledonian programme in two thirds of communities at the moment. It is getting rolled out to an additional one third, but we will still have a gap of a third once that happens.

I foresee some concerns, in part because, if this is done correctly, it means more information flow. There will need to be more information flow with prison officials, with victims and children, and with criminal justice social work. Sharing information in the general data protection regulation world that

we have at the moment is quite complicated and difficult.

Additionally, if we have fewer people in custody—which is a bit of a nightmare from our perspective, in some ways—there will be more of a burden on our women's workers and children's workers in terms of providing advocacy in the legal system.

This is not a plea for more money; this is us saying, "Please, we need an impact assessment,"—although if there is more money around, we will take it.

Mairi Gougeon: I have a question on an area that we have not really touched on in the evidence that we have heard so far. It is on part 3 of the bill and the changes to the Parole Board for Scotland. A couple of the submissions have referred to this area—Pete White's submission in particular says:

"there is a lack of understanding amongst the prison population and the wider public of the detailed workings and procedures of the Parole Board."

I would like to tease that out a bit more, because it is certainly an area that the Justice Committee has not heard too much about and we are not too familiar with it. The Families Outside submission talks about engagement with families through the parole process and I would like to hear a bit more about that as well.

Pete White: The difficulty that I highlighted in our written submission is that a great many myths go round prison halls, and the people who have successfully negotiated the parole process are no longer in the prison to tell people how it works, because they have gone. The rumours and the misunderstandings lead to a lot of people failing to manage their expectations, because they do not have any kind of factual basis to them. That leads to a lot of upset and anxiety, which appears as antisocial behaviour in the prison because people are frustrated. If people understood how the process worked, they would realise that perhaps their opportunities for parole were further away than they imagined.

Professor Loucks: I underline that, in our organisation, we are not particularly expert on the operation of the Parole Board by any means. Our written submission stated that quite clearly. However, we feel that there is an opportunity for it to engage families in the conversation about release and preparation for release much more effectively than it does at the moment. For example, in preparing someone for release, the Parole Board might not discuss conditions of parole or conditions of release such as housing—where they are allowed to live depending on the nature of the offence—until six weeks prior to release. Even if the family is willing to support the person on their release—we were working with a family that was willing to sell the house, move somewhere else, relocate the kids in different schools and so on—that family will not be involved in that conversation at all until six weeks prior to release, which is not enough time to make quite major life-changing decisions for the entire family.

It is also about recognising that families, although they might be supportive, are not just a tool in the resettlement of the person who is coming out of prison. It is about recognising the impact on those families in their own right as well as their ability to support someone on their release, because there will be complexities in relationships and families. It is about making sure that families are recognised as people who are impacted separately from what is happening to the person who is coming out of prison.

Mairi Gougeon: So there needs to be more information and better general awareness of how the process works, and people need to be involved at an earlier stage.

Professor Loucks: It is also important to make sure that they are involved in the discussion. There is often a perception from the family's perspective that the social work assessments and social worker home visits that are required for people who come out of prison after a longer-term sentence relate specifically to the prisoner and not to what the family might need.

The Convener: At present, there must be a High Court judge and a psychiatrist on the Parole Board, but the Scottish Government says that that is not necessary. The policy memorandum states:

"The judicial member rarely sits and their role can be fulfilled by the legal members of the Board. There are also sufficient members with experience in forensic psychiatry".

Are you concerned about those two must-have elements being removed from the Parole Board?

Pete White: One of the issues is that parole hearings sometimes cannot go ahead because one of those people is missing. That is my understanding of the reason for the proposed change.

The Convener: I wonder whether that is a good reason. I would have thought that those people should be there to assess.

Dr Scott: I have to confess that my expertise in relation to the Parole Board is pretty thin. However, I cannot believe that we have been here for an hour and I have not yet talked about the importance of training for sheriffs who hear domestic abuse cases, so I will just say that we need more evidence in the whole system from victims and their advocates around the likely impact of release on those victims and their children. Although I absolutely believe that the judicial member and the psychiatrist are welcome

to add their expertise, I am not convinced that they always understand the dynamics of domestic abuse.

The Convener: The Scottish ministers have the ability to add to the list by regulations. Do you have any concerns about it being done in that way?

Pete White: Is that in relation to—

The Convener: Electronic monitoring, yes.

Pete White: It is fair to allow for the fact that technology will move faster than Government. It is possible that new developments will come along and things will be identified as useful and appropriate in relation to monitoring. It would not be good if that was held back by parliamentary process.

The Convener: Okay. That is helpful.

In its written submission, Community Justice Scotland is strident on the use of the terms "offender" and "ex-offender". Can I have the panel's views on that?

Pete White: On 1 May 2015, the Scottish Government agreed never to use the terms "ex-offender" or "ex-prisoner" again in cabinet secretaries' and ministers' speeches and publications, and that decision has been honoured by cabinet secretaries, ministers and other politicians and civil servants. When somebody has been found guilty of an offence, they are no longer an offender. They are either a prisoner or someone who is serving a community-based sentence. The term "offender" holds people back when they are already in the justice system.

When people in prison were surveyed some years ago to find out what term they would be comfortable with, they said, "If I'm not going to be a person, I'm going to be a prisoner", because they realised that they were people who were being held inside a prison. The way forward is the one that has been put very well by Community Justice Scotland. To label somebody as an "ex-prisoner" or an "offender" when they are already being processed away from the offence back to the situation where they might rejoin society is not helpful.

The Convener: Is there a balance to be struck? Do other panellists have different views, maybe from the victim's perspective?

Dr Scott: I am slightly uncomfortable with that statement. I guess I would be totally supportive in certain contexts. However, in the context of domestic abuse, in which revictimisation and reoffending is so much more likely than in many other crimes, we suffer from a failure to share information about the background of convicted abusers—that is the phrase that we use—and we need to be very careful that the balance does not underplay the risk that many of them continue to pose to their families and, indeed, to future partners.

Nicola Fraser: In some ways, a lot of victims are tied by the criminal justice system. It could be their first time going through the system, and it uses that terminology all the time. I have never asked a victim what terminology they want to use or how that affects them—most of the time, it would not be repeatable—so I do not know whether it would change anything for victims. We do not work on that side, but I do not feel that it has a massive impact on victims.

Professor Loucks: I think that the terminology is unhelpful, not only because it labels somebody according to the worst thing that they have ever done, but it creates a dichotomy between the offenders and the victims when, often, both have had both experiences.

There is also a lack of recognition in the bill that it is talking about not just people who have been convicted, but people on remand who might not be offenders and might never be convicted. We need to try to be clear about what we are talking about.

The Convener: Thank you all very much. That concludes our questions. We will suspend briefly to allow the witnesses to leave.

12:46

Meeting suspended.

12:47

On resuming—

Subordinate Legislation

Act of Sederunt (Fees of Messengers-at-Arms, Sheriff Officers and Shorthand Writers) (Amendment) 2018 (SSI 2018/126)

The Convener: Agenda item 2 is consideration of a negative instrument. I refer members to paper 3, which is a note by the clerk. If the committee wishes to report the instrument to the Parliament, it has until 28 May to do so.

Members have no comments, so I ask whether members are agreed that the committee does not wish to make any recommendations in relation to the instrument.

Members *indicated agreement.*

The Convener: That concludes our 14th meeting of 2018. Our next meeting will be on Tuesday 15 May, when we will continue our evidence taking on the Management of Offenders (Scotland) Bill.

Meeting closed at 12:48.

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