OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 15 May 2018

Session 5

The Scottish Parliament
Pàrlamaid na h-Alba

Tuesday 15 May 2018

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JUSTICE COMMITTEE
15th 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:

Dr Louise Brangan (Howard League Scotland)
Liz Dougan (Brazenall and Orr Solicitors)
Dr Hannah Graham (University of Stirling)
Leanne McQuillan (Edinburgh Bar Association)
Douglas Thomson (Law Society of Scotland)

CLERK TO THE COMMITTEE

Stephen Imrie

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 15 May 2018

[The Convener opened the meeting at 10:00]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 15th meeting in 2018.

Agenda item 1 is to decide whether to take item 4, which is consideration of our work programme, in private. Do members agree to take item 4 in private?

Members *indicated agreement.*

Management of Offenders (Scotland) Bill: Stage 1

10:00

The Convener: Item 2 is our third 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.

I welcome Liz Dougan, partner, Brazenall and Orr Solicitors; Leanne McQuillan, president, Edinburgh Bar Association; Dr Louise Brangan, policy and public affairs manager, Howard League Scotland; Douglas Thomson, criminal law committee, Law Society of Scotland; and last, but not least, Dr Hannah Graham, lecturer in criminology, Scottish centre for crime and justice research, University of Stirling.

I thank in particular those who have provided written evidence. As I always say, and as members of the committee always confirm, it is very helpful to have written evidence in advance of our evidence sessions.

We will move straight to questions.

John Finnie (Highlands and Islands) (Green): To kick off, I have two or three questions for Howard League Scotland. In its submission, Howard League Scotland expressed concern that there could potentially be

"penal expansion rather than reduction".

The second paragraph of the submission says:

> "Fundamental questions and aims of the Bill remain to be clarified. What are the precise underlying penal rationales motivating the expansion of electronic monitoring in Scotland?"

Do you have any notions at all of what those rationales might be?

Dr Louise Brangan (Howard League Scotland): Howard League Scotland is very pleased to have been invited to this meeting to speak to the bill, given that it is such a considerable piece of legislation.

We welcome the extension of electronic monitoring, of course, and we are not opposed to its refinement and the introduction of GPS—global positioning system—but one concern that we have raised is about the opaqueness around why we might want those expansions. As we have said, if that is to do with institutional issues such as our staggeringly high imprisonment rate and our courts' huge and consistent reliance on the use of imprisonment, which has remained steadfast in the past 20 years, that could be an effective and important means to reduce those things. That is important.

We talk about Scotland's incredibly high imprisonment rate. I sometimes get concerned about that turn of phrase because it is almost threadbare from overuse, but we should remain alarmed that, despite lots of progressive moves on Scottish penal policy, our per capita imprisonment rates remain among the highest in western Europe. If we can use GPS electronic monitoring to address that by releasing people who would otherwise be sent to prison on remand, increasing the number of people on temporary release, and encouraging the courts to use it as an alternative to a carceral sanction, it is an exciting and promising platform. However, if it is to do with increasing public protection from the risk of individuals and increasing surveillance in the community—if it is just used as a technological fix—we are concerned that the net widening and uptariffing will result in an expansion in the number of people in the deeper end of the criminal justice system.

Over the past 10 to 15 years, community sentences in Scotland have expanded, which is to be welcomed, but that has been at the expense of fines. The rate at which the courts use prison sentences has not changed at all; it has remained between 13 and 15 per cent. Unless the bill explicitly says that it is about reducing the imprisonment of target groups such as long-term prisoners and remand prisoners, we are not certain that it will achieve more than its surveillance aims when it comes to tackling imprisonment rates. Therefore, more people will be drummed into the criminal justice system, fewer people will get a fine, which is a less intrusive punishment, more people will get something more onerous and intrusive, such as GPS, and there will be more community sanctions while the prison system and the prison rates remain unchanged. Are we trying to reduce our imprisonment rates and create a more humane penal system? Will we be able to use the bill to reduce our use of the most severe sanction, which is imprisonment?

John Finnie: In your statement to the committee, you mentioned evidence a few times, and my question is about two bits. The first relates to an evaluation in 2000 of trials in which, in the majority of cases, electronic monitoring did not displace a custodial sentence. About a further bit of evidence, you say:

"There must be a way to monitor and make public the number of people who get"

temporary release

"with and without a tag, and track how that fluctuates in the future, namely: how many ... people are receiving TR?"

You feel that those are relevant to the topic that we are discussing. Will you comment on them?

Dr Brangan: The research from 2000 looked at trials of community sanctions. Without looking at the court practices, it found that 40 per cent of the people who received the alternative sanction would have likely received a prison sentence, which means that we are not using it effectively enough to reduce prison numbers by using it as an alternative to divert people away from imprisonment. That is a serious issue, but the research reveals it and we can address it with the bill and explicitly state its importance and say that we want to increase those numbers.

Ireland has historically had low imprisonment rates because of the high use of temporary release. Scotland could easily reduce the number of people in prison by expanding the use of temporary release. Electronic monitoring with GPS is an important avenue as a release valve, and it also allows for public protection. Those surveillance measures can support public reassurance about releasing people from prison earlier or on and off, using home leave so that people leave prison intermittently or return to prison intermittently.

We need data to monitor how those patterns change. How will we know whether the number of people who receive electronic monitoring is increasing or stabilising? We will need lots of public data about that, and lots of criminologists, researchers, non-governmental organisations and third sector groups are eager to get their hands on such information.

We also need to monitor the number of people who receive temporary release with electronic monitoring and GPS as well as with community sanctions and other support measures. We have to ensure that we do not use temporary release only with electronic monitoring, which would make temporary release more punitive in some ways, because it would be more onerous and tightly controlled. We would deny people the independence, autonomy and trust that temporary release is meant to garner by engagement between the system and the person who has been imprisoned. We need data to be able to track changes over time, to see whether, if more people used electronic monitoring or were subject to electronic monitoring, the number of people who were released from prison temporarily significantly increased. That data is incredibly important, and it is important to make it public, so that it is not just for the Howard League and the Government—lots of people are interested in those issues.

Daniel Johnson (Edinburgh Southern) (Lab): I hear the arguments that you have made for the bill to deal explicitly with those issues. Why do you argue for that rather than for them to be dealt with as matters of policy? Would you like to include simply data in the bill, or would you like other

things in the bill to ensure that it gets more people outside of prison rather than just putting additional measures on the people who would already be out?

Dr Brangan: Those issues would certainly be matters for policy—I do not want to draw a line and say that they are mainly to do with the bill. I get the impression that part of the motivation behind the bill is that people are aware that Scotland's imprisonment rates are high and there is an appetite now to address that, with public support, but there is a wish not to create too many media headlines. That aim is therefore slightly less explicit, and it could be more centralised to say, "We want to reduce the imprisonment rate so that we can tackle remands." Remand is not dealt with in the bill. We could tackle the use of temporary release by seeing how many people in prison are on remand and how many of them could be released on temporary release. That might just be a matter for policy, but my point is about getting clarity about whether this is just a technological fix and what the ambition is to make these extensions to the existing community justice system.

The Convener: Although John Finnie started by asking Dr Louise Brangan to give the views of the Howard League, we would like to hear the whole panel's views, so please add anything else that you would like to say in response to Daniel Johnson's question.

Liz Dougan (Brazenall and Orr Solicitors): I agree with the suggestion that it might be helpful to consider remand prisoners for tagging. If someone appears on a summary complaint and has bail refused, they are remanded for a period of up to 40 days for trial. I do not have any statistics, but that probably happens to quite a lot of the remand population, and I would submit that it would be ideal for that group of people to be monitored on a tag. The likelihood is that, even if convicted, they are not going to receive a custodial sentence, so why should they be on remand for that first period?

Dr Hannah Graham (University of Stirling): The aspect of the bill that refers to introducing electronic monitoring with temporary release on licence is a response to some of the recommendations that were made by the Scottish Government expert working group on electronic monitoring in its final report in 2016. In addition to what Louise Brangan has said, I think that it is about nuancing how it is being used. If, as she has pointed out, it is increasingly used in a risk-averse way, so that prisoners have temporary release that would not otherwise have had electronic monitoring added, there is the prospect of net widening and increased rates of recall at that end of the criminal justice system, and that might not be widely supported.

If electronic monitoring is used to try to increase the number of people who are given temporary release on licence, and for some of the purposes that I believe are referred to in the bill's policy memorandum—to support reintegrative activities and focus on activities that would lead towards prospects of work, volunteering, education, connection with family and social relationships that would support reintegration and desistance from crime—that could yield some good results in cases that might not otherwise have been granted release. However, there is a need for on-going, skilled and individualised assessment of the person to determine whether temporary release on licence without electronic monitoring is appropriate, whether there might be a reason for that, and what technology is used.

Leanne McQuillan (Edinburgh Bar Association): The Edinburgh Bar Association included this point in its submission. I definitely see great potential for using electronic monitoring to reduce the remand population. The committee has the statistics. I cannot remember them off the top of my head, but it is certainly true that, of the people who are remanded in custody, a very low percentage ultimately receive a custodial sentence. As the committee knows, the reasons behind remand are entirely different from the sentencing considerations.

We have raised the issue of curfews, and if those were electronically monitored, there would be a huge potential for saving police time and ensuring compliance, as long as it does not just become automatic that, if you are being released on a curfew, you will be electronically monitored—a point that has been raised in a lot of the responses to the consultation. There is always a danger that, if the power is available, the procurator fiscal will ask for it and the sheriff will say, "Yeah, that's fine."

The other area where I see good potential is domestic abuse cases, in which an awful lot of people appear from custody because they have breached bail conditions to go back to an address where their partner is residing. If the GPS was able to widen the scope of electronic monitoring to say, "You can't go to this address," it would deter people from breaching bail. I do not have the figures, but large numbers of people appear in the custody court because they have breached their bail conditions. That is something that electronic monitoring could really reduce.

10:15

Daniel Johnson: I want to follow up on something that Hannah Graham just said. Last week, we had an interesting discussion about how, if this approach is going to be successful, people with electronic tags need support.

However, that will be possible only if there is sufficient risk assessment and it is provided to the right people, particularly criminal justice social work. Furthermore, if we are going to use electronic monitoring effectively for prisoners on remand, the courts will also need that information.

To what extent is there scope to improve the bill in relation to risk assessment to ensure that both the courts and criminal justice social work have the right information so that they know the requirements of the prisoner and the support that they need? I would be interested to hear what Dr Graham or other members of the panel think about whether that is an avenue that could be explored.

Dr Graham: Electronic monitoring as it currently operates, using radio frequency technology and home curfews, involves a risk assessment, because we need to think about the property that is involved. If we move towards new technologies and the introduction of GPS electronic monitoring, there will be instances where that can be used to support exclusion zones and can also—this might not necessarily be the best use of the technology—support restrictions to a place or a curfew.

There are fairly coherent voices among electronic monitoring researchers saying that, where a person is being restricted to a place and where that place involves other people—such as fellow members of the household, partners and children—no matter what technology is used, it must involve individualised and multifaceted risk assessment. I have conducted research in Scotland on that in relation to current technology. Criminal justice social workers have made that prominent in their conversations on the topic and I am not aware of widespread concerns about the current risk assessment that they use. They are also involved in risk assessments for people leaving prison on home detention curfew.

The current approach involves a fair degree of risk assessment. That information is provided to the authorising agency, whether that is the court, the Scottish Prison Service or the Parole Board for Scotland. I do not know that it is necessary to have a brand new risk assessment framework or tool, but I must emphasise that risk assessment is important and must continue to be done well by helping professionals who are qualified to do it.

The Convener: We will have a line of questioning on risk assessments and on GPS more specifically, so perhaps we can leave that for now. If members have supplementary questions, please can they make sure that those are not points that are going to be raised later on?

Mairi Gougeon (Angus North and Mearns) (SNP): I have a brief supplementary question in relation to an earlier point. My question is for the Howard League, which said in its written submission:

"Electronic monitoring is unlikely to reduce the prison population."

The submission cites a study that showed that

"only 40% of those who received a tag would in fact have received a custodial sentence".

I noticed that that study was from 2000. Do you have any more up-to-date statistics, or is there further on-going research?

Dr Brangan: I do not have any further statistics on that, but I can seek some out and speak to colleagues about it. There are studies going on in England and Wales and in the United States. I chose to cite that particular study to make the point because it was Scotland specific.

Another piece of evidence that I have comes from a Howard League Scotland report that we released earlier in 2018, which shows that the expansion of community penalties in the past 10 years has displaced the fine, rather than the prison sentence.

Prison numbers have dropped moderately in the past few years, which is absolutely to be welcomed. However, the reason why that has happened is that there is less crime. The number of people who are proceeded against by the courts has dropped and the rate at which courts are giving out prison sentences has remained steadfast. Where we see an expansion of community sentences in Scotland, we see a reduction in fines. That is my concern about penal expansion.

It is very hard to say how we can assertively direct electronic monitoring towards addressing the prison population. We can do it at the point of sentence by making judges more confident about the use of electronic monitoring through criminal justice social workers saying that it will be a useful intervention and tactic as part of the suite of measures, but it is also a means of tackling back-end sentencing—remand prisoners. Right now, 15 per cent of the prison population have never been convicted. As Leanne McQuillan said, the majority of those will not go on to receive a prison sentence; whatever crime they are convicted of will not be seen to befit a period of incarceration, but we will already have incarcerated them. That is serious.

The reason why we use remand in that way—and David Strang, Her Majesty's chief inspector of prisons, regularly and forcefully makes this point—is that we are trying to make sure that people turn up for sentencing in court. The people we most regularly incarcerate who are not found guilty are the poor, the vulnerable, the marginalised and the homeless. That is why electronic monitoring and

tagging can help reduce remand. We also need to think about expanding bail services and support. In that way, we would reduce prison numbers using this new measure and also think more holistically about the social supports that are required to prevent the diminution of our justice by using prison sentences against people who have not been found guilty and are not likely to go on to receive a sentence either.

The Convener: That is a wide subject. We have specific questions on some of the areas.

I am conscious that Douglas Thomson has not had an opportunity to say anything. Are you happy to wait for the topic of risk assessment, or is there something you want to add to what we have heard?

Douglas Thomson (Law Society of Scotland): I note that the bill before us relates only to disposals post-conviction. There has been a great deal of discussion about the position of remand prisoners, but the bill as it is presently drafted and introduced works on the assumption that the person has been convicted. It is the Management of Offenders (Scotland) Bill, and the person is therefore, by definition, an offender. We are perhaps looking at something that is not before the Parliament at this stage.

The Convener: That is a fair point. Obviously, we will be looking at how the bill can potentially be improved, and at stage 2 we will lodge amendments. Whether those amendments would affect the title of the bill and whether they would be within its scope remains to be seen. However, at this stage it would be helpful if the panel could concentrate on what is in the bill. We also want to hear about what is not in it, and we will have questions on that later.

If supplementary questions stray too far, I will cut them out and we will go straight to the substantive questions.

Liam Kerr (North East Scotland) (Con): Dr Brangan mentioned studies in other countries. Does the panel have any comment about how the bill's proposals on electronic monitoring compare to approaches in other countries? What are other countries doing that we might copy?

Dr Graham: The Scottish Government's expert working group on electronic monitoring commissioned me and Gill McIvor, my colleague from the University of Stirling, to do that. There is a 137-page Scottish and international review of the uses of electronic monitoring, and, in recent years, we have done some more work through a European Union-funded comparative research study. That review was the first of its kind in Europe to look at electronic monitoring in Scotland, England and Wales, Germany, Belgium and the Netherlands and to consider the broader literature.

Electronic monitoring is used moderately commonly in a lot of jurisdictions in Europe. I do not want to make a generalisation, but the European literature and practice evidence overall tends to have more constructive outcomes or findings, whereas some of the uses of electronic monitoring in some parts of the United States have more mixed results. That could be strongly influenced by different approaches to criminal justice and punishment in America.

Plenty of other countries use electronic monitoring within community sanctions and measures. The Netherlands, Sweden, Norway, Denmark and several other countries use it within a probation order, for example, and electronic monitoring is led or overseen by their national probation service. There are things that we can learn from that to inform proposals to add electronic monitoring as a potential option within the community payback order. The use of electronic monitoring within a probation or community payback order is moderately widespread in other countries and has not led to particularly concerning results. There are quite high levels of order completion and moderately high levels of compliance where electronic monitoring is involved.

I cannot foresee what might happen in Scotland in the future, but we could expect that, where the electronically monitored order was used proportionately within a community-based sanction, the majority of people would tend to comply with it. The order usually comes with imposed supervision and other forms of support that help people to leave crime behind and address some of the issues that contribute to it.

Liam Kerr: Dr Graham, you have studied what happens in all those other countries. Is it your view that the bill sufficiently distils the essence of what is working in those other countries such that the positive outcomes that you have identified will be at least implied if they do not naturally follow? Or is the bill lacking in some regard?

Dr Graham: The part 1 provisions are broadly coherent with the findings of the Scottish Government's working group on electronic monitoring, which cited the international evidence quite frequently. I would therefore say that there is broad coherence with the international learnings.

We have some questions about how it might be implemented in practice but, thankfully, it does not appear to be mirroring some of the particularly punitive uses and lessons from the international literature. For example, some people in the US are subject to electronic monitoring for a lifetime in

very punitive and disproportionate ways. We are not seeing that reflected in the bill.

I would say that the bill is broadly coherent with European examples. I will raise some questions and critiques about its implementation, but it is broadly coherent with the Council of Europe's electronic monitoring recommendations and soft law rules on basic thresholds for the use of electronic monitoring in Europe.

Douglas Thomson: I bow to Dr Graham's greater knowledge of the subject. My understanding from the court system is that, although electronic monitoring is not rarely used—quite often, when considering a custodial sentence in summary proceedings, the courts will ask for a restriction of liberty order assessment—it is not used as much in Scotland as it could be or as much as it is used in a number of other European countries that have gripped the technology with a great deal more enthusiasm.

I have seen examples of courts imposing such orders on people with no fixed address, which is perhaps setting them up to fail. Also, a number of people have been given a restriction of liberty order assessment although the pre-sentence report has revealed details of a dysfunctional family set-up, which is perhaps bound to create a difficulty. However, I am going into specifics.

On the general point about how electronic monitoring works, I think that Scotland could use it much more commonly than it does at present.

Liam Kerr: Why is Scotland not using it? Do we require a legislative fix or a different approach?

Douglas Thomson: I suspect that certain sheriffs are still a little uncertain about the technological advantages of electronic monitoring and that some are uncertain about the extent to which it is seen as a realistic punishment. Requiring somebody to be monitored and be in a certain place has a particularly clear benefit, but it is relatively new and is perhaps not as well understood by sentencers as it might be.

The Convener: John Finnie has a supplementary question.

John Finnie: It is about the GPS system. The term "increased surveillance" is already being used, and there is no doubt that the equipment concerned would be capable of harvesting significant data. Do you have concerns about the retention of, access to or, indeed, potential use of that data? As things stand, it is in the hands of a private company.

Dr Brangan: We briefly addressed that issue in our submission, as it did not seem entirely clear—

The Convener: I am going to stop you there, because what John Finnie asked is actually Jenny Gilruth's question and is not a supplementary question. We will return to the issue later, because I know that the witnesses will have a lot to say on it. That question has been allocated to Jenny Gilruth.

John Finnie: I beg your pardon, convener. I did not realise that.

The Convener: I realise that the allocation is sometimes not clear.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning, panel. I want to return to a line of questioning that we pursued earlier, which is about assessment and risks. We have heard in previous evidence that, although people are generally supportive of electronic monitoring, there is very much a need for greater support and assessment. I am thinking, in particular, of the evidence that we received from Dr Marsha Scott, last week. She said that electronic monitoring presented Scottish Women's Aid with a bit of a dilemma, because, although it could offer benefits through the monitoring of perpetrators, if someone on a CPO commits an offence, that does not automatically constitute a breach of the CPO. Can you say a bit about the risk and the support that will be provided?

10:30

Leanne McQuillan: Currently, when an offender is made the subject of a restriction of liberty order, the equipment is fitted and that is it—no support is provided.

I agree with Douglas Thomson. The courts do not tend to use restriction of liberty orders, for a variety of reasons. One reason is that they feel that, if a person's liberty is to be restricted, the gut reaction is to send them to prison. In addition, there are concerns about restricting someone's liberty to a family home where there might be children or difficult relationships. Even people who are on a curfew condition without any electronic monitoring can often be thrown out of the house following a big fall-out. It is difficult to expect a parent, a spouse or a child to live with someone who is restricted to that address. At the moment, when someone is made the subject of such an order, no support is provided.

Understandably, someone can be restricted only for up to 12 hours a day. If they were restricted for up to 24 hours a day, that would be extremely punitive. That means that, if they want to offend, they can offend in the 12 hours of the day for which they are not restricted, so there is not much of a rehabilitation element to a restriction of liberty order. It is very much a punitive sentence that is designed to reduce the prison population, although I am not convinced that it has had that effect.

Rona Mackay: You mentioned children and families. Surely, more support and counselling would need to be provided to children in the event of such methods being used more. Do you agree that more support services will have to be provided?

Liz Dougan: Instead of having stand-alone restriction of liberty orders, it might be better for the restriction of liberty element to be ancillary to a community payback order with a supervision requirement. In that case, there would be an allocated social worker for the person who was the subject of the order. As part of their remit, the social worker could ask questions of the people living in the home and various family members about how the arrangement was working.

At present, there is an opportunity for the local authority monitoring services to submit a review of a community payback order to the court if the order has run its course or it believes that the order is no longer required or is not working in some way—for example, if the person who is the subject of the order is not getting as much out of it as had initially been envisaged. If the restriction of liberty element were factored into a community payback order with a supervising officer, they could fulfil that role. That is already in the framework that is in place.

Douglas Thomson: I endorse that view entirely. In our submission, the Law Society states:

"Electronic monitoring can never be a 'goal in itself' but always a 'way to reach other goals' such as changing behaviour and protecting victims."

The monitoring is important, but it must be part of the process of looking at the behaviour of the offender, what caused it and what can be done to manage risk in the future. The monitoring allows the state to know what the offender is doing and, more important, what they are not doing; however, as a stand-alone measure, it simply puts somebody in a particular place for a number of weeks or months. If we do not look at the whole picture of the offender—including their past behaviour and how they might behave in the future—it will be of no benefit to society.

Rona Mackay: Did I interpret Dr Marsha Scott's evidence correctly as being that, in the case of domestic abuse, if a perpetrator offends again while they are on a monitor, that is not a breach of the order? A high proportion of domestic abuse perpetrators reoffend constantly, which is the dilemma. Is that correct?

Douglas Thomson: It is not automatic. My experience is that, when somebody who is subject to an order is accused of a fresh offence, it is rare for the Crown not to take proceedings and for the court not to take some fairly condign steps. Technically, however, it is not an automatic requirement. One would assume that, if the police force and the procurator fiscal service became aware that somebody had breached their restriction of liberty order, they would submit it as breach proceedings. That should be done with a degree of urgency in all cases.

The Convener: I noticed that Douglas Thomson said that electronic monitoring should not extend beyond the sheriff court to include justice of the peace courts. Why?

Douglas Thomson: In general, JP courts tend not to deal with high-tariff offences: domestic abuse is always prosecuted in the sheriff court, for example. It is relatively rare these days for cases that are prosecuted in JP courts to be on matters that would attract a custodial sentence, and electronic monitoring is generally an alternative to that.

Practice might vary from court to court, but in the court in which I practise, it is extremely rare for an offence that is prosecuted in a JP court to be of a level at which one would likely feel that the appropriate penalty would require restriction of a person's liberty.

The Convener: I was thinking that you were talking about this in relation to community payback orders, which sheriff and JP courts can use. Why would there be a difference? Is it about the level of offences that attract CPOs?

Douglas Thomson: As a direct alternative to a custodial sentence—although a level 1 CPO is an alternative to a fine when the person cannot pay—a community payback order is imposed when the court considers that the matter is worthy of imprisonment. Given the current restriction on short sentences, that generally means that the court is thinking of a sentence that would be measured in months. As an alternative to that, the court will commonly impose a package of measures as part of a community payback order that might include a restriction of liberty order and supervision, or restriction of liberty and unpaid work. In my experience, the sort of offence that attracts that level of penalty does not generally come into justice of the peace courts.

The Convener: Are you saying that electronic monitoring is not a stand-alone measure in JP courts?

Douglas Thomson: I do not think that the Law Society's view is that we should say that it should never be considered. We are simply questioning whether there is a real benefit to allowing it as a potential penalty—

The Convener: That strikes me as curious. Perhaps you would like to come back with more rationale when you have had more time to think about it after the evidence session.

Douglas Thomson: Certainly. I am not aware of there being any particular pressure from the Magistrates Association to have the power. It might be that there is, but not that the Law Society is aware of.

The Convener: I wonder whether it would help the offender to complete their sentence. That is part of the rationale for introducing electronic monitoring.

Douglas Thomson: It might do, in some situations. I am thinking about my practice in the justice of the peace court and how often the court would feel that that is a weapon in its armoury that it would find useful.

Liam McArthur (Orkney Islands) (LD): We will park Mr Thomson's earlier comment about whether, in the context of a bill on management of offenders, that would be competent. I want to explore whether the panellists consider that it would be beneficial to have electronic monitoring as a bail condition. If that was the case, would that need to be explicitly stated in the bill, and would it be solely where remand was the alternative, as opposed to applying to individuals who would have been bailed in any event?

Leanne McQuillan: The two areas where electronic monitoring could really assist are remand prisoners and—this is an area that I do not know too much about—people serving custodial sentences who are on early release. I have personal questions about how electronic monitoring would work in conjunction with a CPO. That is another issue, but I am not quite sure how, in practice, an extension of electronic monitoring would help someone to complete a CPO. However, as far as remand is concerned, 15 per cent of the prison population are remand prisoners, and the measure would be a relatively easy way to reduce the number of people who are in custody and who do not need to be there.

As has been mentioned, we would have to be very careful that the Crown did not automatically ask that someone be electronically monitored in a situation in which they would not normally be. If a sheriff has remand at the front of his mind, the fallback could be a curfew with electronic monitoring. At the moment, the police monitor curfews by randomly attending a house. Banging on a door in the middle of the night can disrupt children and families. I am sure that the police have better things to do. Therefore, electronically monitoring when a curfew is considered to be appropriate has real potential, if the bill's scope was widened in that way.

Liam McArthur: You do not, however, see the need to express that explicitly—with whatever conditions—in the bill.

Leanne McQuillan: The measure would have to be included in the bill. The bill does not cover remand—it covers electronic monitoring in conjunction with sentence and people being released from prison post-conviction. The bill would have to address the issue specifically. Perhaps the Government is missing an opportunity by not doing that.

Liz Dougan: I agree totally. Such provision is missing from the bill, so unless it is written into the bill it cannot be implemented, because electronic monitoring would continue to be policed by the police service rather than handed over to, for example, G4S.

Liam McArthur: Is there a need to express that in the bill, with the caveat that it is solely for people who would otherwise be considered for remand?

Leanne McQuillan: Yes.

Liz Dougan: Yes.

Liam McArthur: I see others nodding their heads.

Dr Brangan: I have already expressed the Howard League's view, and I defer to the legal expertise on the panel. However, including such provision in the bill would create a legal obligation by which we would reduce our prison population by tackling the people who have not been convicted. We could use electronic monitoring for that purpose, so this marks an exciting moment at which to do something productive and positive.

Liam McArthur: Now that putting such a measure in a bill that is about management of offenders has been posited, how do we get around that challenge, Mr Thompson?

Douglas Thomson: That would require either a fresh bill or a fresh section in the bill. I suspect that, given how the bill is framed and that it is the Management of Offenders (Scotland) Bill, the appropriate way forward would be to amend the Criminal Procedure (Scotland) Act 1995, rather than to have a short, one or two section, separate bill. Section 1 (1) begins:

> "When disposing of a case".

Therefore, the bill's starting point is the assumption that the case has been disposed of post-conviction. To include remand in the bill would require a fair bit of drafting skill. It might be more practical to have a separate short bill.

Liam McArthur: Dr Graham was involved in a lot of the preamble to the bill. Is the bill's title being "Management of Offenders (Scotland) Bill" an accident, or was it a deliberate attempt to avoid including people who are under bail conditions?

10:45

Dr Graham: In some ways, the Scottish Government is best positioned to say whether that was accidental or intentional.

Liam McArthur: Did you and colleagues address that as part of your work on use of electronic monitoring?

Dr Graham: In the research that we have done, everyone has been careful to use the term "monitored person", so we are not running round saying "offender". In conducting interviews and in doing observations, people said "monitored person". The committee has already heard evidence to the effect that that happens more broadly in community justice for people on whom a conviction has been imposed. The term "offender" is contentious in Scotland because of the Scottish Government's position, or commitment, not to use it. The language would need to be adjusted in considering what Douglas Thomson has just spoken about, because we cannot use that language more broadly with people who have not been convicted.

Liam McArthur: We will come to terminology in a minute, so I will leave it there.

The Convener: Would, for example, a person who was in court for a number of charges, two of which had been proved and the court was continuing with the other charges, be released and bailed? Is that a situation in which bail conditions could include electronic monitoring? Might that be within the scope of the bill, and is it something that we will have to look at?

Douglas Thomson: When there is an outstanding trial in the same matter—if somebody has, for example, pled guilty to two charges and the Crown still wants to proceed on other charges—the court cannot pass sentence until the trial has concluded.

The Convener: If that person has been found guilty, could they then come within the scope of the bill? Although sentence had not been passed, they would be deemed to be an offender—in inverted commas.

Douglas Thomson: The central point is that the bill starts from the proposition that the court is disposing of the case. The court will not dispose of the case until guilt on all matters upon which the Crown seeks a conviction has been determined, so I do not think that that would get round the problem.

The Convener: Right. I wonder whether the terminology could be changed.

Leanne McQuillan: I was going to say the same. I do not think that that would occur in practice. If someone pleads guilty to two charges and the Crown does not accept that and wants to proceed to trial on other charges, that person is still an untried person, whether they are a prisoner or whatever, so the court would not be considering sentencing. I do not think that that would work, within the scope of the bill.

Jenny Gilruth (Mid Fife and Glenrothes) (SNP): I want to go back to something that Leanne McQuillan said about GPS. She said that it would be beneficial, and that it would encourage people not to visit certain areas while they had an electronic tag. In last week's evidence, we heard from Social Work Scotland and Community Justice Scotland, which were also pretty positive about use of GPS. However, Dr Brangan's submission says that when people are deprived of

"access to large areas of public space, like city centres, it sends a clear statement that they do not ... deserve equal membership of Scottish society."

We also heard last week from Scottish Women's Aid, which was generally quite positive about use of GPS. However, it also pointed out an American study that had been conducted with victims of domestic abuse, who had felt quite anxious about use of GPS because they could see the whereabouts of the person who had attacked them, for example, which caused them stress. Does the panel think that use of GPS lends itself more to some crimes than to others?

Dr Brangan: Howard League Scotland is not opposed to the idea of exclusion zones, if we are talking about something like domestic violence, in which GPS can be used in a sensible and right-minded way. Our central concern is to do with the issue of "certain crimes". If a criminal has had an assessment by a social worker, that will allow for the various circumstances of the case to be deliberated over and implemented in use of an exclusion zone, rather than its being done on a crime-by-crime basis. For something like domestic violence, the use of GPS certainly has clear benefits in terms of the sense of security that the victim can achieve.

Our concern is about the enthusiasm for the idea of exclusion zones in the run up to the bill, which suggested that whole city centres could be created as safe zones from which we would exclude offenders. The idea of being a citizen in Scotland would be diminished if some people were not allowed into mainstream public spaces and had to stay in their zones and communities. It is sensible and right minded to apply that to certain areas, such as certain streets or houses or a person's workplace, but the ideas of citizenship, belonging and reintegration require us to be careful. We need to set a specific maximum spatial size or distance—in metres or kilometres—and a maximum number of areas that can become

exclusion zones. We have to protect citizenship and the reintegration aims of penal policy.

Dr Graham: The type of GPS monitoring that Jenny Gilruth refers to is technically called bilateral monitoring. In other countries, the system is used not only to monitor an offender but is used with electronically monitored restraining orders—which, again, gets us into different parts of the criminal justice process and different language. Under that approach, which has been used in the US and is commonly used in Spain and Portugal, a victim who gives their informed consent has the opportunity to carry a device or have an app that notifies them. In London, the Metropolitan Police is considering using that system to seek to prevent stalking. Victims can have a device and in some cases they can even consent to wearing one, although I do not know how common that is, or they can carry one or have some way of getting a notification or information.

The responses of victims of crime who have taken part in those schemes have been mixed, because they are a diverse group. There is modest evidence to suggest that the approach has been moderately positive where victims have been adequately briefed that electronic monitoring cannot stop a person in their tracks—it cannot actually stop a crime, although it can give advance notification to victims and/or authorities and monitoring companies. Where that briefing has happened, there has been some cautiously optimistic victim feedback that the system is helpful, particularly where there is a moderate risk of harm.

However, some people have raised legitimate concerns. For example, if an exclusion zone is round a victim's house, it might be reasonable for them to think that they need to stay at home, so that they will know if the person comes near. The same might apply to the victim's workplace or a child's school.

There is an issue about how we cope with more dynamic movement. That is where the option of a victim carrying a device or having a way of knowing their location comes in. There can be concerns about the impact on the victim, but I emphasise the need for informed consent in participating, and the ability for the victim to withdraw at any point, if they need or want to, because we should not impose on victims things that have a detrimental effect on them. In Spain, Portugal and the US, the studies have been moderately optimistic that the approach can lead to some victim satisfaction, and that the information is helpful in alerting them and authorities.

On the point about GPS exclusion zones potentially being applied to entire Scottish cities, the news headline on that caught our attention, too. The principle of proportionality is really important. If a sentencer were to impose an exclusion zone around an entire city in Scotland, that would raise questions as to why such a wide-ranging exclusion zone was being imposed and was not being tailored, and what supports, as well as surveillance or controls, could be put in place to ensure that we were not displacing the problems that we were seeking to address. If the concern about them was so great that a person was not allowed in an entire city, we would need to think about displacement—whether that person is taking their behaviours and propensities elsewhere. I therefore caution against restricting people from going into entire cities. Exclusion zones are usually used where there has been a strong propensity to offend, and in very tailored approaches when there is a need to keep someone away from a place for a period.

Leanne McQuillan: When I talk about the potential use of electronic monitoring to keep a person away from a place, I am referring, for example, to a house that they have been asked to leave because of domestic violence and they have had to provide an alternative address. At the moment, there is just a bail condition and people can breach it, but if that was electronically monitored, that might deter the person on bail and give a bit of comfort to the complainer.

As for exclusion zones, it is not rare for the court in Edinburgh to grant people bail with the special condition that they must not enter the city-centre exclusion zone. The accused is given a map on which the area that they are not allowed to go is drawn in red. Some sheriffs do not like that condition, but when it is imposed, it is usually for people who have been accused of shoplifting or of causing trouble in the middle of the night in city-centre bars. As Dr Brangan said, that moves people away but, if they are going to offend, I am sure that they can find somewhere else to do so.

I have seen a bail condition that the accused is not to enter Edinburgh or not to enter Scotland—that is usually for a person who is from outwith Scotland. Such conditions can be imposed for months and months. They are dubious, and I would be concerned about extending that approach to electronic monitoring.

Jenny Gilruth: There are limitations on the use of the technology. Last week, we heard about the effective use of GPS in rural areas being limited by reception there. In her submission, Dr Brangan highlighted another limitation, which concerns how the general data protection regulation will interact with data protection rules and GPS monitoring. The submission says:

"With GDPR reframing future organisational behaviour around privacy, what are the precise data protection implications of expanded"

electronic monitoring,

"including GPS?"

I am really interested in the panel's views on how the two areas will interact.

Dr Brangan: We raised the question because there is no organisation that is not in a frightful state of GDPR anxiety. Everywhere that I go for meetings, I hear about other meetings at which people are saying, "Have you had your adviser in yet? What are we going to do?" That has made me think about how electronic monitoring involves some of the most personal and intimate data, which could include data from transdermal alcohol monitoring.

I do not want to create an air of suspicion, but the new parameters of data protection raise the questions of who will have the data, how long they will have it for and who else will have access to it—for example, will it be right and appropriate to share data across the criminal justice system? I am not suggesting that we have all the answers to that, but that should be at the forefront of our thinking if we want to expand the use of the technology. We must keep it in line with basic data protection rights and think about vulnerable people and the detailed data that we will gather from people.

Dr Graham: I note the submission from the Information Commissioner's Office. During some consultation activities, the Information Commissioner's Office made statements about being mindful of the privacy principles and privacy legislation and about keeping an eye on the uses of GPS electronic monitoring in other jurisdictions. In England and Wales, electronic monitoring has been used on what is called a voluntary basis for some people who have prolific offence histories but who are not currently subject to a sanction. That use of electronic monitoring was police force led and was not regulated.

Research has shown some uses of the information, but it has been suggested that GPS electronic monitoring data could be of keen interest to police forces in other countries for law enforcement and criminal investigation activities. The European ethical standards caution that privacy needs to be upheld and that we need to question robustly the potential use of GPS electronic monitoring data not only for monitoring but for when people say, "Oh—a crime has been committed. Should we open a map and see who was there?"

The Information Commissioner's Office has warned about some serious considerations; I believe that it warned against fishing exercises. At the moment, the Scottish Government owns electronic monitoring data, so it is the data controller, which means that requests go to it.

11:00

This is not to cast doubt on whether police should have some access or reasonable access to the information, but my understanding is that at the moment, they would need to know the broad parameters of who and what they were looking for. In other jurisdictions, the police might take the approach of opening up a map to see who was about, although some people would say, "I can prove that I wasn't there, and you can check."

There are some privacy concerns about how the privacy legislation would fit with electronic monitoring if the data was used for purposes other than monitoring. We have encouraged the Scottish Government to continue to be the owner of the data or the data controller so that access to the data is subject to vetting or checks and a decision-making process.

Douglas Thomson: I suspect that slightly different considerations might apply where someone is accused of and disputes breaching a restriction of liberty order assessment or similar, and that matter goes before the court. The questions of who retains the data and for what period will be different, because there may be circumstances in which the precise circumstances of that breach will become controversial. It is not as straightforward when the data is being used in connection with the latest breach.

I am not saying that I have the answer, but that is something that has to be considered.

The Convener: That is helpful. Jenny Gilruth mentioned the rural aspect. Liz Dougan may want to comment on that, given that her practice is in Dumfries and Galloway.

Liz Dougan: We do not keep any records on who is subject to a restriction of liberty order and electronic monitoring, but I contacted G4S and I spoke to the research and development officer. She has produced monthly statistics for April 2017 to April 2018 for the whole of Dumfries and Galloway. You could perhaps take Dumfries and Galloway as an example of a typical rural area. I do not think that I have enough copies of the statistics to give a copy to everybody—

The Convener: The clerks will distribute copies after the meeting, so do not worry about that.

Liz Dougan: There is not a high uptake of electronic monitoring. I think that there needs to be a bit of education for sheriffs to encourage them to consider it as an option. There also needs to be more education of social workers so that when they are doing a report for sentence, they consider electronic monitoring as an option. There probably also needs to be more education of defence solicitors to stress that we should be asking for that option at the point of adjournment for

sentence. In our area, we often find that if the sheriff does not specifically ask for a criminal justice social work report and a restriction of liberty order assessment, the report that comes back will be silent on restriction of liberty. In April 2018, only four persons were being electronically monitored in the whole of Dumfries and Galloway.

Liam McArthur: I wonder whether the reticence about using electronic monitoring in remote or rural areas is always a reflection of the technology reach or whether it is partly a reflection of the potentially longer response times to breaches, which could mean that the risk assessment of its operation uses a different calculation from that used in more urban areas.

Liz Dougan: That may be correct. The officer whom I spoke to advised me that G4S does not have any permanent staff based in Dumfries and Galloway. For the fitting of the equipment, G4S sends someone from Glasgow or Edinburgh. From Glasgow, it takes about an hour and a half to get to Dumfries, and from Edinburgh, depending on the traffic, it takes up to about two and a half hours. The same would apply for any alleged breach.

The officer indicated that G4S has had no difficulties installing the equipment anywhere, even in the most rural areas. Currently, it works on radio waves, I think. If there is no telephone system, G4S just contacts BT and it will connect one. G4S advises that it has had no difficulties with installing the equipment and monitoring; it is just that it does not have a lot of people being monitored.

Liam McArthur: The Government officials said that the contract will be up for renewal in due course, and that the difficulty with establishing the likely costs and usage is partly a reflection of that. Given what you have established in Dumfries and Galloway, is it your expectation that any new contract needs to operate not only from a Glasgow or Edinburgh base, for the reasons that you have identified to do with the distances involved in getting to places such as Dumfries and Galloway? As the member for Orkney, I suggest that the times involved might be even greater.

Liz Dougan: I suppose that, when the contract is put out for tender, it will have to be explained that there is expected to be an uptake of such orders and that the company that wins the contract will be required to have a permanent base in the more rural areas, or at least to have someone stationed there for the majority of the time for installation and monitoring purposes.

John Finnie: I do not know whether to be extremely concerned or just a bit concerned about the ease with which you acquired information from G4S. I would have thought that that information should not be readily available over the phone. That is not to cast any doubt on you.

Liz Dougan: Actually, the statistics are published annually and they obviously do not include names. The figures that I just mentioned will go into the report next year. The most up-to-date published statistical bulletin runs from 1 January 2016 to 31 December 2016, and that is readily available—you can look it up on the website and print it off. It has a section that shows the number of orders received during the period by geographical area. I have a copy of it, although only one.

The Convener: We would be grateful to receive that, if you could hand it to the clerks.

Liz Dougan: It says that the highest uptake was in Glasgow, which is understandable. For the year from 1 January 2016 to 31 December 2016, there were 467 orders there. Interestingly, the next highest was Kilmarnock, with 244. Dumfries came in at 32, but Stranraer is detailed separately, and it had 11, so the total for the whole of Dumfries and Galloway for that year was 43.

John Finnie: I do not doubt that we will pick up on those statistics. It is reassuring to hear that they are available.

Does the panel have concerns about a private company retaining data? There is a lot of understandable concern about data and the potential use that it could be put to. I hear what Dr Graham said about the Scottish Government, but the approach seems entirely out of kilter. I would have thought that the legal profession, the statutory bodies and criminal justice social work would have led on the issue, rather than a commercial concern.

Leanne McQuillan: I suppose that it depends. At the moment, the company holds data that relates to someone who is generally restricted to their house.

John Finnie: I was referring more to the use of GPS and the additional information that would come with that.

Leanne McQuillan: It depends on what statistics are held. It would be very concerning if a private company held details on a person's alcohol and drug use. Robust measures would have to be in place to ensure that such matters were dealt with properly.

Dr Graham: I agree. That touches on a broader discussion that is worth having about whether we want the privatised model that is currently in place in Scotland and has been in place in England and Wales or whether to look at other approaches. That is a much bigger question than that of considering the bill. Electronic monitoring has been done with moderate success and

proportionality in places such as the Netherlands, Norway, Sweden and Denmark with a public service-led approach. My understanding is that the only involvement of the private sector might be in procuring the product but, after that, the approach is almost fully public service led—it is led by the probation service, which is the equivalent of our criminal justice social work. There are some really good questions to be asked in that regard.

The Convener: I have a question about compliance and enforcement. I think that there is a general feeling that, if electronic monitoring is to be successful, breaches have to be handled effectively. Is the bill clear enough as to what the consequences of a breach will be? Clearly, there is a balance to be struck between supporting desistance for the offender and a robust response to help to reassure the victim.

Dr Graham: There is a balance to be struck between what can be achieved in the bill and leaving some of the decision making to sentencers. That is about how much the bill confines sentencers or tells them how to make decisions and sets parameters around that.

There is a difference between a breach of an order and things that are considered violations and come to the notice of the authorising agencies but that may not mean a breach. Currently, with restriction of liberty orders and home detention curfews, which are the two most commonly electronically monitored orders in Scotland, we have moderately high order completion rates. We are not seeing drastic numbers of breaches, recalls or revocations, but that does not mean that there have not been violations along the way. For example, someone might be late getting home and get phone calls about that, or there might be a strap tamper alert when someone has touched or sought to remove a device in a way that results in the device telling the monitoring organisation.

It is about calibrating expectations on what will happen in the event of breach. At the moment, a restricted movement requirement using electronic monitoring can be imposed if someone is in breach of or is non-compliant with a community payback order, but there is a move to use electronic monitoring more widely with community payback orders. That is where it would be useful to complement the technology with a supervising officer who has the ability to inform breach decision making and to consider the human circumstances. I would not want to see order completion rates significantly falling and breach and revocation rates rising because of arbitrary decisions about technology, as that could lead to more people before the courts if not more people potentially being returned to prison, depending on the modality in which the system is used.

The conversation needs to be had, but there is variation in decision makers across the country. Some will act a certain way and others will leave notifications for a while—they will know about them but not say that it is a breach. There is a balance to be struck in relation to what the bill can achieve and how decision makers such as sentencers actually implement it, because they are not always favourable to too much incursion on their decision making and professional discretion. I defer to those who spend more time in the courts, but breach decision making is still just that: it is a decision on an individual basis.

The Convener: To turn that around, is it important that breaches are dealt with effectively? Will electronic monitoring not work so well if it is seen that breaches are not dealt with effectively?

Douglas Thomson: It is presumed in section 14 that evidence will be

"given by way of a document"

containing certain information, and that the document will in effect be self-proving. Obviously, it could be challenged by the offender, but the document itself would be the evidence of the breach.

In a past life, I was a member of the Parole Board for Scotland. When electronic monitoring of offenders was introduced as part of release conditions, we quickly became aware that the quality of the information that was being given to the panel that considered breaches under electronic monitoring was not of a uniformly high standard.

11:15

The bill says that evidence may be given in the form of a statement, but a statement is only as good as the information that is put into it. If somebody said that they did not commit the breach or that the breach had an explanation that was not in the document, some form of hearing would have to be built into the system, so the case would go back to the courts.

I recollect that the quality of the information to the Parole Board improved after a time, but it takes a bit of work for people to learn how to produce such information, and it is important, because the breach of an order commonly results in somebody going to prison.

Leanne McQuillan: Dealing with a breach quickly is also important. Dr Graham mentioned restriction of liberty orders. A restriction of liberty order can be imposed with a CPO, but those orders do not necessarily marry together well. If a restriction of liberty order is imposed to stand alone, any infringements of it are monitored by G4S. If someone was five minutes late home, they

might get a phone call from G4S to ask them where they had been. If someone had a lot of small infringements, G4S would decide on sending a report to the sheriff clerk's office that resulted in the order being returned to court. If the person disappeared or took the equipment off, that would be dealt with more quickly. However, the matter would still have to go through the sheriff clerk's office and be processed.

I will describe the recent experience of a client of mine who has multiple issues. He was recently made the subject of a restriction of liberty order at temporary accommodation. Those at the temporary accommodation said that he broke every rule there, so he had to be asked to leave. He told a support worker that he was no longer at that address, but she had nothing to do with the court system, so the equipment lay for weeks in the temporary accommodation. If the situation had been dealt with more effectively, the equipment could have been moved. My client moved about three months ago, but the matter has only now come to court. Such an approach is not effective.

It would also be helpful for the judgment on the breach to be made not just by G4S but by someone who is more aware of the person's particular circumstances.

Maurice Corry (West Scotland) (Con): Mr Thomson said that electronic monitoring is part of the solution. Given your comments, do you feel that the bill provides sufficient direction on how electronic monitoring should be used in practice, such as in tandem with other measures?

Douglas Thomson: The issue is very much for sentencers. In our submission, we drew attention to the fact that a lot of that will be more for the Judicial Institute for Scotland than for the bill. By its nature, the bill creates something that will operate across the country in sentencing in all fora for which it is competent. How that will operate in practice will be for individual sentencers who are dealing with individual cases. We created the Judicial Institute to deal with such matters, and we provide training for sentencers on electronic monitoring because we are looking to increase its use.

Courts must be aware that there is a genuine and useful purpose of electronic monitoring and that the idea behind it is that it will protect the public more and reduce the risk of reoffending. It is not for the Law Society to direct sentencers on when and how they should use electronic monitoring. We are aware that, once the bill becomes an act, the Judicial Institute will engage on the matter and will issue guidance to sentencers.

Maurice Corry: Should the matters that we have discussed be set out more clearly in the bill or in statutory guidance that goes along with it?

Douglas Thomson: Section 1, which starts the monitoring process, is clear enough to be understood by anybody who is sentencing. The question is how electronic monitoring will be used in practice. I see nothing in the bill that is a difficulty to the Law Society.

Maurice Corry: That is fine, but what about giving sheriffs an understanding of how the bill is to be implemented?

Douglas Thomson: Implementation is a matter for the individual sentencer. Nothing in the bill creates difficulties for a sentencer.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I have a number of questions about part 2, which is on the disclosure of convictions. The submissions from Leanne McQuillan and Douglas Thomson make the practical point that the bill will make arrangements easier for everyone—for laypeople and those who are involved in the system—to understand. Will you elaborate on that? Douglas Thomson is nodding.

Douglas Thomson: The bill replaces and amends provisions in the Rehabilitation of Offenders Act 1974, which is not the easiest piece of legislation to navigate. The bill is a considerable improvement. We have observations to make about how it deals with road traffic matters but, in the round, it will create more clarity.

However, we suggest adding a glossary of terms in a schedule to it. Our submission draws attention to the fact that a great many people do not understand the difference between admonition and absolute discharge or what their implications are. Although no penalty is imposed in either case, each outcome has different consequences. In road traffic matters, legislation could make clear the differences between endorsement and disqualification, as the terminology might not be understood by those who are trying to work out how the bill will affect them in the future.

It is important that the public understand the new measures, because they deal with a wide range of sentences—we have covered a considerable number of different sentencing orders this morning. The public need to know exactly where those fit in and where the bill deals with them. Going through the new provisions to see how they will work in practice is a slightly easier exercise, although it is still not easy.

Ben Macpherson: Thank you for that constructive suggestion.

Leanne McQuillan's submission says that clients find the current legislation difficult to understand and that the bill is an improvement.

Leanne McQuillan: The bill is a huge improvement, because I understand it, whereas I do not understand the 1974 act. Clients often ask when their conviction will become spent, although dealing with that is not part of our day-to-day job. We cannot give them an easy answer; we have to look up the position. Therefore, the clarity is very welcome.

When I looked again at the provisions yesterday, my only concern was about admonition and absolute discharge. My concern is not about the terminology but about the proposal to have no disclosure period for absolute discharge and admonition. People are routinely admonished for what the public would think are quite serious offences, such as assaults that involve injury. That usually happens after a period of good behaviour or if a sheriff has become aware of particular circumstances—I am sure that admonitions are all given for good reasons.

In road traffic cases, people are never admonished for speeding or for driving without insurance—they always get a financial penalty. Some employers might be less concerned about someone who drove once without insurance than about someone who was admonished for assaulting a person in a bar or being involved in an offence of dishonesty. The disclosure certificate could show that someone was fined an amount of money but make it clear that that was for a road traffic conviction. However, I am not convinced that an admonition should automatically be put in the same category as an absolute discharge, which is exceptional. I totally agree with the proposal to have no disclosure period for an absolute discharge, but I am not so sure about an admonition.

Ben Macpherson: I will come back to the terminology in the 1974 act shortly, but first I will talk about attitudes to previous convictions. The bill reduces the length of time that must pass before most convictions will be treated as spent. It also extends the range of custodial sentences that the provisions cover. As we evaluate the bill, we are asking ourselves whether the proposals will achieve an appropriate balance of those aspects.

Dr Louise Brangan's submission says:

"The amendments still allow for disclosure of spent convictions"

and that

"This Bill allows the continued demand for lifelong disclosure."

What are your concerns about that?

Dr Brangan: We welcome the reduction in disclosure periods—why would we not? However, the bill increases from 36 months to 48 months the sentence period for which somebody will have lifelong disclosure. Our concern is that people who serve long-term and life sentences can conduct themselves as model prisoners and take up all the education and other opportunities in prison but they know and say that, when they are released on parole, the stigma of being a prisoner and the shame that they will feel at having committed a serious crime will, inevitably, stick to them forever.

We have a prison service that, under Colin McConnell, is more interested than ever in developing desistance-led, rehabilitative and transformative penal policies. We have people in prison for longer than ever before and we still do not seem to trust those measures. We still require people to be held at arm's length and to be denied the reintegrative processes that SPS policy has promised them they can have—civic repair, re-engagement and becoming part of society.

Lifelong disclosure for sentences of 48 months or more seems unnecessarily punitive, particularly when the evidence—especially the recent evidence from the SCCJR—emphasises that, after seven to 10 years, a former prisoner's chance of reoffending is equal to that of someone who has never offended. The evidence supports allowing people to have spent convictions. It also supports social justice and reintegration. People should not always have to disclose a conviction when they apply to university or any new job. They already have a gap on their CV. We are shoring up the stigma and blocking people from re-entering society as full citizens, as we say they can after they have served their time.

Ben Macpherson: You would argue that the bill does not do enough to change attitudes to the employment of people with convictions.

Dr Brangan: No, it does not, because it permits people to be stigmatised. As far as I am aware, it does not do anything to address the existence of the box that allows employers to ask someone whether they have a criminal conviction.

Often, when someone applies for a university course, they will be asked whether they have a criminal conviction. I was recently at a prison education conference, speaking and listening to a young man who applied to do an architecture course. He applied to an elite university and, although he had done brilliantly in everything else, when the university found that he had a criminal conviction from when he was 18, it rescinded his place.

We should penalise employers and universities for acting as extensions of the justice system and keeping people out of society. Perhaps we should not penalise them—I am for penal parsimony—but we should create a legislative framework for what is and is not acceptable. It is not just about reducing the period for which someone has to

disclose their conviction but about reducing an employer's reach into someone's background.

Ben Macpherson: Some work is needed to change recruitment practices. Dr Hannah Graham touched on that in her written evidence, which says:

"We are of the view that while the proposed reforms are to be welcomed, they are limited in scope."

Do you want to add anything to what Dr Brangan has said?

Dr Graham: That part of our submission was authored primarily by Dr Beth Weaver from the University of Strathclyde, who is my co-author and a fellow researcher in the SCCJR. She recently conducted a moderately detailed review of issues surrounding disclosure, employment and desistance from crime, which considered time-to-redemption studies. She has come up with a number of suggestions, which I agree with, that could be advanced and that other countries have advanced in order to encourage a balance between the information that needs to be known for potential public protection reasons and that employers want to know for particular occupations and the needs of people with convictions. In Scotland, 30 per cent of men and 9 per cent of women have at least one criminal conviction, so we are not talking about small groups.

We are broadly supportive of part 2 of the bill. It is tricky to address the issue, because elements of it are reserved and not everything can be achieved through legislation. However, a piecemeal approach to the consideration of disclosure and its collateral consequences is not as helpful as a more sustained, overarching approach to who should disclose what and when. Beth Weaver makes a number of suggestions. I do not know whether you would like me to explain those now, as they might be the subject of another question.

11:30

Ben Macpherson: We will leave that for now, but perhaps you could submit those suggestions.

The Convener: Yes—it would be helpful if you gave those to the clerks, Dr Graham.

Ben Macpherson: Dr Brangan mentioned an 18-year-old, but will the current balance in the bill assist children to move on from previous offending behaviour?

Dr Brangan: It certainly will, but we should also protect adults. What about someone who is 20 years away from having committed a homicide and has spent 10 years in prison? The chances are that it would be much longer. The question that the bill raises is whether we allow people to move on. I wonder when we are willing to let go and to forgive, or even just to tolerate. So, yes, the bill helps young people, but we should not write off adults either.

Ben Macpherson: As I said, I want to ask about the terminology in the 1974 act. The bill amends and builds on parts of the 1974 act, but, in our evidence session last week, concerns were raised about the use of terminology in that act and, in particular, the terms "offender" and "ex-offender". Would it be desirable and/or practical to replace the 1974 act or is the bill, as it is currently set out, sufficient?

Leanne McQuillan: It would be desirable, but I am not sure whether it would be practical. The 1974 act is a difficult piece of legislation to understand, and it perhaps uses terminology that was more acceptable in 1974 than it is now.

Ben Macpherson: Are there any other thoughts on that?

Dr Graham: The points have been well made to the committee in previous evidence sessions about the overall resistance to the word "offender", particularly in a bill that deals with disclosure and that relates to people entering the labour market and accessing education. We must consider at what point we stop calling people offenders if that is not accurate.

The Convener: We are moving on to that point now, so I will bring in Liam Kerr.

Liam Kerr: I want to stay on Ben Macpherson's line of questioning on disclosure periods. Dr Brangan asked why we would not welcome the reduction of disclosure periods. From listening to the discussion, I presume that the answer is that an employer who was concerned about an employee or about public safety might be concerned. That raises a more basic question about the purpose of a disclosure period. What and whose interests are we trying to protect?

Dr Graham: Are you asking what the purpose of disclosure is?

Liam Kerr: What is the purpose of a disclosure period?

Dr Graham: There are multiple purposes to disclosure and having a period in which a conviction has to be disclosed, which I think the Government has referred to as a buffer period of time after the sentence has finished. One reason for it is that it minimises the risk of liability and loss. As you say, there are concerns surrounding public protection when the nature of employment involves working with particular groups. It could have something to do with assessments of moral character, in terms of honesty or trustworthiness, and the need to comply with statutory occupational requirements. Those are some of the reasons for the regulations on disclosure periods. There are also provisions to guide or limit practices of

disclosure in order to reduce unnecessary barriers to people with convictions accessing employment.

Disclosure periods exist for multiple purposes. The question of which purpose is the most important depends on whose perspective we look at the issue from—that of the person with convictions, the employer's perspective, the Government's perspective or those of others. I imagine that you would get some nuanced responses to that question.

Liam Kerr: If that is the purpose of a disclosure period, can you point to any research that shows that the length of time that is proposed for the disclosure period sufficiently relates to the crime and the propensity to maximise public protection or ensure rehabilitation?

Dr Graham: Beth Weaver has reviewed time-to-redemption studies, which look empirically at the amount of time that it might take a person with convictions to be considered to pose the same risk as a person who has no convictions. The studies are based on convictions rather than on offending, because it is entirely possible for some offending not to have been caught. There is also a caution against considering a non-convicted person to have a baseline risk level of zero for their probability of offending.

The research has shown that, in general, after an average of seven to 10 years without a new arrest or conviction, a person's criminal record loses its predictive value. That is an overarching finding of studies that have been done across a national cohort as well as studies that have been done for a single city. The period of seven to 10 years applies irrespective of the crime type, although there are a few subtleties—for example, it might take slightly longer for the criminal records of people who have been convicted of violent crimes to lose their predictive value. Nevertheless, overall, after seven to 10 years, the risk of reconviction of convicted people is not particularly different from that of non-convicted people.

Liam Kerr: Can I take it that you are comfortable that the proposed disclosure periods have been sufficiently plotted against what the evidence says is appropriate?

Dr Graham: That is by and large the case, but I support Dr Brangan's submission that the bill could go further. We could consider why the provision of a disclosure period, which gives the chance of something becoming a spent conviction, is not being extended to those who serve long-term sentences. Such an approach is not widespread in European research and practices; it is more unique to the United Kingdom. Elsewhere, employers do not routinely do criminal record and background checks as the norm.

Liam Kerr: That is interesting. Will you elaborate on that? You just said that what we do on disclosure is unusual, as a principle, from the European angle. Is that correct?

Dr Graham: I am talking about aspects of the European angle—Europe is a big place.

One option that is moderately common in a number of countries, which I can list, is expungement of criminal records. That means not revealing spent convictions. Under the European convention on human rights, and in challenges in the European Court of Human Rights, questions have been raised about why standard and enhanced disclosure and other forms of disclosure checking—although the bill relates to basic disclosure—can still provide information about spent as well as unspent convictions.

Expungement of criminal records and not revealing spent convictions are true for Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Spain and a long list of countries. That practice is moderately common. If the committee wishes to have more detailed information, I can ask Beth Weaver to correspond with it.

The Convener: We have asked specifically about disclosure. Does Liam Kerr have another angle?

Liam Kerr: I have one more line to explore. Leanne McQuillan made a distinction between different crimes. Is disclosure something of a blunt instrument? The bill gives a disclosure period for all crimes that attract a certain sentence. An assault might never reoccur; it might be a one-off and the individual might mature. However, the propensity to commit another sophisticated financial fraud might be greater. As an employer, I might want to know about the sophisticated financial fraud much more than about the assault. Is that a fair distinction to make?

The Convener: The witness can be brief.

Dr Graham: Is Liam Kerr saying that the disclosure of some crime types would be more relevant to particular occupations or to employers in general?

Liam Kerr: Perhaps. We have a blanket disclosure policy that, after X time, a person does not need to disclose their conviction, but I am suggesting that, if there is a distinction between crimes, the type of people who commit them and the state of their ability to do so, an employer might have a greater interest in knowing about a conviction regardless of the length of time that has passed.

Dr Graham: Indeed, but if we bring up the question of the person's ability to reoffend, there might be some complex and difficult conversations

to be had. Relevance of disclosure to the occupational role and propensity to reoffend or be reconvicted are separate considerations based on crime type. For example, shoplifting might have a moderate or high risk of reconviction but other types of crimes, such as sexual violence, might have a moderate to low risk. I urge caution about moving towards disclosure being about the risk of reconviction because there might be some difficult public conversations to be had.

Rona Mackay: We touched with Dr Graham on the higher-level disclosure checks. I would like to know the witnesses' views, as briefly as they can. Is it good that the higher-level checks are not included in the bill or should they be revisited and reformed at some point?

Dr Brangan: The Howard League Scotland absolutely recommends that the higher-level disclosures need to be addressed. The changes to disclosure periods that we discussed are welcome but, when we look more broadly at disclosure, we see that it is a two-tier system. In fact, for certain jobs and positions, the list of which is constantly expanding, a spent conviction, an arrest from which no conviction arose or a caution can be revealed. That is very serious.

If we are trying to base the system on reintegration, to encourage people into employment and education and to create a healthier Scotland, we need to address at some point the demand that people always disclose their convictions, no matter the length of period from whatever the transgression was. It slightly undermines some of the better ambition of part 2 of the bill.

George Adam (Paisley) (SNP): Good morning. I will ask about internet access to past convictions. We all know that local newspapers will camp outside the sheriff court and report on stories, as is their right. However, let us compare the situation to the early 1990s. At that time, if something happened, people would have had to go to the library to find information on previous convictions. Now, employers can just use an internet search engine and check whether there is anything on the person.

How do we deal with that? Is it a problem? Is it all about changing attitudes? Do we legislate against it or do we try to educate people to change their attitudes towards past offences?

Dr Graham: Perhaps one of the considerations is whether we can even legislate against it. The Google effect is moderately well documented.

You have received submissions from Recruit with Conviction and Unlock, a charity that works predominantly in England and Wales. A number of the measures that you highlighted are worth while doing in concert with one another. To try to tackle some of the systemic stigma, broader awareness raising is needed with employers about anti-discrimination measures and not only the buffer periods but the meaning of the information that might be yielded from disclosure—what might be relevant or irrelevant to them.

We need people with convictions to be able to access the labour market, work, have a routine and have a legitimate and legal income that contributes to the tax base and not to have the other options. Therefore, I very much support the calls for broader awareness raising about the benefits of the system and work that might have to be done with employers at the UK level as well as locally.

11:45

We also need to have some frank conversations about what might pose a risk and what might not. I would not say that all employers set out to be prejudiced against people with convictions, but some other jurisdictions, such as the US and Australia, have moved towards more guidance and have implemented measures to make it clear that unless the conviction is highly relevant to the occupational role, and depending on the crime type and the time since conviction, consideration of the conviction in perpetuity could be discriminatory and a barrier to people's employment and social integration. If we do not support the person's desistance from crime, along with social integration and access to legitimate sources of income, it poses a public protection issue, which would lead to an even bigger public conversation.

Dr Brangan: I have colleagues who research cybercrime and they are forever telling me about the dark net as a social movement. We can legislate for the Google effect, but it would be incredibly difficult to try to wrangle what goes on in those areas that are beyond legislation—social media is a bit like bandit country. However, the point about raising awareness and thinking about it more broadly is important because that is the longer game. I agree with Dr Graham that it is not something that can just be tackled with legislation; we need to have a robust conversation.

The Convener: Do any of the practitioners have a view on that?

Leanne McQuillan: Douglas Thomson mentioned the need to explain some of the terminology. If the bill is enacted, it might be useful to publish guidance for employers on what is meant by a summary conviction or an admonition. Some people have no experience of criminal justice and might assume that someone who has a conviction is a criminal. Making it clear what the powers of a summary court are and what those

disposals mean would show that a conviction is not necessarily as bad as it looks at first—for example, someone might have one conviction, which might be an admonition.

George Adam: If an employer googles the person in front of them, there is a problem. We could educate the employer, but in many—not all—cases, much of the information that they get is a sensationalised version of events in a newspaper report. Perhaps we need to educate the local press so that it understands what is happening in the local courts. How do we get to a place where we can have that mature discussion?

Leanne McQuillan: It would be extremely difficult to get the press not to report sensationalist stories.

George Adam: It would be impossible.

Leanne McQuillan: Yes. I cannot immediately think of a way to do that.

The Convener: That is perhaps a side issue from the bill that we are discussing today, but it might come up when we have a roundtable on the next bill.

George Adam: We were talking about education and I just wanted to add that there is more to it than just educating a group of employers; it is about society in general. That is the difficulty.

Mairi Gougeon: I have some questions about the role of the Parole Board for Scotland, which some of you discussed in your written submissions. Can someone explain how the board operates at the moment and what the changes will mean? I was interested by a few things in the submissions, particularly the Law Society's points about the recall of prisoners who are released on home detention curfew and how the limitation on that will change. I know that the Law Society does not have figures, but is anyone else on the panel aware of how that operates at the moment?

Douglas Thomson: I was a member of the Parole Board between 2001 and 2007, so I was on the board when the Management of Offenders (Scotland) Act 2005 came into force and when the re-release panel of the board first became involved in determining cases where a person had been brought back into custody for a breach of a home detention curfew.

As I hinted at earlier, the very early teething stages of that process were particularly difficult for the board, because the quality of information was not good and the period for information to become available was sometimes far greater than it should have been. We were dealing with—in respect of home detention curfew cases, we will still be dealing with—people who are subject to that for a maximum period of about 162 days; it is about five months. If there is an alleged breach during that period and someone's licence is revoked immediately, and if the matter is to be challenged, that person has an entitlement to have that challenge determined by a quasi-judicial body as soon as possible. Things have improved a great deal since I came off the board in 2007, but people can still sit in custody for some weeks when a very coherent and simple case could be put forward regarding the circumstances of their alleged non-compliance.

Mairi Gougeon: Can you tell us in a bit more detail about the general workings of the Parole Board and some of the other changes that are proposed, such as those on appointments? Have the proposed changes been welcomed?

Douglas Thomson: Some of the proposals seem to be good ideas. One issue that has proved controversial and is perhaps worthy of comment is the difference between the test for re-release of a determinant-sentenced prisoner—a life prisoner—and the test for an extended sentence prisoner. That difference is based on the decisions of the European Court of Human Rights and English appellate case law. When someone is serving a life sentence, the test is whether that is necessary for the protection of the public, and when someone is serving an extended sentence, the test is whether that is necessary for the protection of the public from risk of serious harm. It is perhaps a little anomalous that the two tests are slightly different, and I do not think that it would be likely to create injustice if there was a uniform test for when a person is fit to be released from custody when it is felt that the public would be adequately protected. Although there is a logic behind the serious harm test, I suspect that, in practical terms, the board continues to apply everyday common sense to cases, as it did when I was a member. If there is a concern that somebody is not yet at a position at which they can safely be released into society, the terminology is not really key and it is not necessarily helpful.

Mairi Gougeon: Dr Brangan, do you want to comment or respond to any of that? There was quite a lot in your submission that related to the Parole Board.

Dr Brangan: On the comments that we made about the Parole Board, one small section of the bill says that in cases of revocation to prison the time available to investigate or appeal a decision on a prisoner's case will be reduced from five years to six months. That seems to be an incredibly dramatic change—I am not sure whether that has been brought up anywhere else. The justification is about the retention of paperwork, but surely that would totally contravene the statute of limitations and someone's rights to appeal something.

Mairi Gougeon: Do you have any information on that? The Law Society's submission talked about the need for more figures. Do you know how many people that would affect at the moment?

Dr Brangan: No—I am trying to get data on temporary releases and recalls. Even if it relates to only a handful of people, it seems quite serious when we think that someone has gone to prison and has been through a certain amount of bureaucracy and settling in. The first six months can pass incredibly quickly and, all of a sudden, someone could still be amped up about what they feel is an unjust recall, but their right to appeal that decision would be gone. That change to parole is quite serious and needs to be highlighted. It needs to be justified much more strongly than it is by the reason relating to the retention of paperwork by the SPS.

Daniel Johnson: I will follow up on some of the things that Douglas Thomson said about the tests. The Parole Board's submission expressed a degree of dissatisfaction with the bill. Do you agree with the Parole Board's view that we could do with greater clarity? The role of the Parole Board is under increased scrutiny, following the Worboys case in England. Do you think that having greater clarity around these questions would help to ensure transparency, as well as it being useful for the Parole Board? Given the details of the Worboys case, do any panel members have any reflections on that?

Douglas Thomson: At the outset, I observe that it is unlikely that the Scottish board would have reached the same decision as the members of the English board did. Because of the existence of the risk management authority and the way in which the MacLean committee approached dealing with orders for lifelong restriction, our systems were considerably more robust and ECHR compliant than the English intermediate punishment programmes that became so discredited.

The Scottish board has been dealing with a much more robust risk management system than the English board, and has therefore had a much better quality of information. I have seen some old-style English parole dossiers that were very much in a tick-box format. There were pages and pages on which there was a series of boxes and it was a matter of whichever box had a black dot in it. Scottish dossiers have always been based on written information, which includes impressions of the prisoner, psychological risk assessments and so on.

Moving from the Worboys situation, it is important that the board becomes more transparent. I think that it could open its hearings to the public and make its decisions available to them, albeit in a redacted format. Formerly, the prisoner would receive a letter, but now the parole board issues a decision minute, and those minutes could fairly easily be redacted to avoid any reference to particular individuals or matters regarding the crime that are not for public consumption. If the board's decisions can be made known in that way, the public will have a greater understanding of how the board works, which may increase confidence in the operation of the board.

Daniel Johnson: That suggestion regarding publication of the minutes is an interesting one. Do other members of the panel have any thoughts around transparency? No? You do not have to answer.

The other critical question concerns the independence of the Parole Board. The Parole Board expressed concern in its submission about that at some length, the sentiment being that, while there are provisions around its status and independence, those could be more substantial, and it could be put on an equivalent footing to other parts of the court system. Does Mr Thomson, in particular, have a view on that? I am also interested in the views of other members of the panel.

Douglas Thomson: The Parole Board tribunal system is a very odd part of the Scottish legal system. It is called a tribunal, but it does not form part of the Scottish Courts and Tribunals Service, and there is no automatic appellate process for its decisions. It sits in a rather ad hoc position. It was created in 1967, in a very different world, to fill a gap that was perceived following some decisions or cases that took place in England. Scotland effectively tagged along beside England at that time, but we have moved on considerably since then.

The Parole Board for Scotland has had greater autonomy than the board in England. The appointment process for members was improved considerably in the 2001 act: members in Scotland had security of tenure, and although the Probation Service ran or funded the Parole Board for England and Wales, the Scottish board was never part of that. There has been a greater degree of independence, but because the Scottish board is not yet on a formal statutory footing, its position is not easy to understand.

There is no piece of legislation that sets out what the Parole Board does. Its rules are in the form of a statutory instrument, but, with the exception of the 2001 act and the current bill, there is nothing that sets out what it does. The tribunal system has effectively developed in increments and as a result of court decisions. There would be some merit in placing the board on a formal statutory footing, as the board itself says, and in considering whether to put the Parole

Board tribunal system on a statutory footing, so that it becomes part of the SCTS and perhaps has some form of appellate process. At present, if someone is aggrieved by a decision of the Parole Board, they have to go from the criminal system to the civil system by way of judicial review, which creates certain difficulties.

12:00

Daniel Johnson: Do any other panel members have views on that suggestion?

The Convener: Again, please do not feel that you all have to answer—I am conscious that the clock is ticking.

Daniel Johnson: No, you do not have to answer—I am just interested.

Dr Brangan: The only point that the Howard League Scotland raised about the matter in its submission is that the Parole Board is increasingly less likely to give parole, which partly explains the rise in prisoner numbers. In thinking about how we reconstitute the Parole Board, we should be thinking about how we get people out of the prison system. Right now, Scotland has the largest life-sentence prisoner population of any country in the Council of Europe, partly because our prison sentences are getting longer and longer, and people simply cannot get out of prison. I am trying to get statistics on that. Hundreds of prisoners are serving over tariff; that means that they are serving longer than the punishment part of their sentence because they cannot receive release. Thinking about the constitution of the Parole Board and its aims and agenda is a way for us to think about Scotland's staggeringly high imprisonment rate.

Daniel Johnson: Again, if the minutes were published and the Parole Board's root rationale was given, that would help us to delve into some of those issues.

Douglas Thomson: An issue that arises from what Dr Brangan describes is the fact that the large number of lifers is currently very much skewed by the number of prisoners who have been recalled for non-compliance with their licence, which has increased dramatically in the past few years.

I was at a Howard League lecture fairly recently, which was given by Dirk van Zyl Smit. He observed—I made some comments on this, too—that there are a number of prisoners who are now in custody not because of their original sentence but because of their non-compliance with licence conditions. That brings us full circle back to electronic monitoring and the question whether systems could be put in place that would better monitor risk and the compliance of such persons with their licence. That could, in reality, reduce the number of people going back into custody and very often spending two, three or four years there when they have not done anything particularly serious but have simply not complied with supervision.

Daniel Johnson: That is a helpful insight—thank you.

The Convener: That brings us full circle. Liam McArthur has a brief supplementary, and we will then move to final questions from Maurice Corry.

Liam McArthur: My question follows on from Douglas Thomson's earlier point about the way in which the Parole Board in Scotland takes decisions in comparison with its counterpart south of the border. You said that, in Scotland, there was a more substantive assessment and the input better reflected future risk. Do you have any concerns about the removal of the requirement for a psychiatrist on the Parole Board? One would assume that, despite the removal of the requirement for a High Court judge, the board would at least have legal expertise well covered, but psychiatric input would seem to be a fairly essential part of the assessment too

Douglas Thomson: A number of life-sentence prisoners, and some determinate-sentence prisoners, will be in hospital when they come before a Parole Board tribunal to be considered for parole so, in that respect, there is a benefit in having a psychiatrist present. During my time on the board, I chaired a few tribunals at the state hospital. It was always helpful to have somebody there who had a psychiatric background, because they would be the best person to question the doctor in charge of the prisoner about the management of certain issues. In that situation, we were concerned with somebody who would be potentially going from hospital back to prison or into the community. Issues would arise in cases in which the prisoner was also subject to the Mental Health (Care and Treatment) (Scotland) Act 2003. Although that involves a minority of cases, there is, in my view, merit in including on the board somebody who can give psychiatric input when a case has a psychiatric element.

Liam McArthur: So you would prefer to see that provision dropped from the bill as it stands.

Douglas Thomson: Parole Board members only serve part time, and having a psychiatric member of the board is a good thing.

Maurice Corry: Does the panel have any concerns about the proposed changes affecting the functions of the Parole Board with regard to prisoners themselves? I will leave it open to any of you to come back on that.

Douglas Thomson: Can somebody else speak now? [*Laughter*.]

Maurice Corry: I take it from your response that you have no concerns.

Douglas Thomson: I would not say that we have no concerns—I just do not want to monopolise the final part of the session.

Much of my work involves conducting tribunals as a representative, so I have day-to-day hands-on experience of how the board operates. I am a little reluctant to put my personal views to the committee, because I am here as a representative of the Law Society, and anything that I would say would be based on my private practice as opposed to a general Law Society view. In light of that, I would prefer not to answer the question on behalf of the Law Society of Scotland.

Maurice Corry: Okay. Does anybody want to add to that?

The Convener: Given the silence, I think that it is a no to that.

Maurice Corry: That is all right.

The Convener: That completes our questioning. It has been a long session. I thank the panellists for their attendance and their forbearance. The information that we have gleaned and the direction that it has taken us in has been extremely helpful.

12:05

Meeting suspended.

12:09

On resuming—

Justice Sub-Committee on Policing (Report Back)

The Convener: Agenda item 3 is feedback from the Justice Sub-Committee on Policing's meeting of 10 May 2018. Following the verbal report, there will be an opportunity for brief comments or questions. I refer members to paper 3, which is a note by the clerk. I invite John Finnie to provide the feedback.

John Finnie: As members will be aware, the Justice Sub-Committee on Policing took evidence on Police Scotland's proposed use of digital device triage systems, which the press refer to more commonly as cyberkiosks, and people may be more familiar with that term.

We took evidence from two individuals: Detective Superintendent Burnett, from Police Scotland, and Mr Kenneth Hogg, who is the interim chief officer at the Scottish Police Authority. We were interested in the acquisition of the equipment and what assessments had been done in advance of that. It turns out that, on 2 May, the Scottish Police Authority agreed Police Scotland's three-year implementation plan, "Serving a Changing Scotland: Creating capacity to improve". The plan includes a proposal to manage cybercrime with kiosks to triage data from devices.

In 2016, Police Scotland conducted trials of the Cellebrite digital device triage system in Edinburgh and Stirling. The sub-committee requested information on the analysis undertaken and whether any issues were raised. We heard that no human rights, data protection or community impact assessments were undertaken prior to the trials.

Police Scotland has selected the Cellebrite product and anticipates rolling out 41 kiosks across the force area later this year. It has assured us that those assessments will be undertaken, that officers will be trained and that issues will be addressed before the roll-out. The anticipated introduction date is autumn 2018.

There has been a cumulative spend of about £1 million, and the trials involved interaction with more than 600 devices, including SIM cards.

It is fair to say that members had a considerable number of questions as a result of the evidence, which have been included in a lengthy letter that has been sent to Police Scotland. We are seeking to be reassured; I certainly was not reassured by what I heard in the evidence-taking session—the evidence simply raised more questions.

The sub-committee also considered our forward work programme and agreed to schedule an evidence-taking session on Police Scotland's firearms licensing process. We will also be returning to Police Scotland's digital, data and information and communications technology strategy prior to the summer recess.

I am happy to take questions.

The Convener: Do members have any questions or comments?

Liam McArthur: I echo John Finnie's sentiments in relation to the conclusion of the evidence-taking session. As he rightly said, more questions were raised than were necessarily answered. I think that we all accepted that clear benefits from the use of the technology were outlined, but we all seized on the need to ensure that all appropriate safeguards are in place before national roll-out.

The Convener: It was the case that the witnesses were unable to answer certain questions. The committee was concerned that procurement seemed to have taken place before the organisations had looked at how data is stored and what any pitfalls might be. The subject was a good one to look at, and the sub-committee will pursue it.

That concludes the public part of the meeting. Our next meeting will be on Tuesday, 22 May, when we will continue our evidence taking on the Management of Offenders (Scotland) Bill.

12:14

Meeting continued in private until 12:16.

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