

EQUAL OPPORTUNITIES COMMITTEE

Tuesday 9 June 2009

Session 3

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EQUAL OPPORTUNITIES COMMITTEE

10th Meeting 2009, Session 3

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

Marlyn Glen (North East Scotland) (Lab)

COMMITTEE MEMBERS

*Malcolm Chisholm (Edinburgh North and Leith) (Lab)

*Willie Coffey (Kilmarnock and Loudon) (SNP)

*Bill Kidd (Glasgow) (SNP)

*Hugh O'Donnell (Central Scotland) (LD)

*Elaine Smith (Coatbridge and Chryston) (Lab)

*Bill Wilson (West of Scotland) (SNP)

COMMITTEE SUBSTITUTES

*Jackie Baillie (Dumbarton) (Lab)

Mary Scanlon (Highlands and Islands) (Con)

Margaret Smith (Edinburgh West) (LD)

Shirley-Anne Somerville (Lothians) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Johann Lamont (Glasgow Pollok) (Lab)

THE FOLLOWING GAVE EVIDENCE:

Colin Brown (Scottish Government Legal Directorate)

Chris Hawkes (Lothian and Borders Community Justice Authority)

Alex Neil (Minister for Housing and Communities)

Anne Pinkman (Fife and Forth Valley Community Justice Authority)

Yvonne Strachan (Scottish Government Equalities, Social Inclusion and Sport Directorate)

CLERK TO THE COMMITTEE

Terry Shevlin

ASSISTANT CLERK

Rebecca Lamb

LOCATION

Committee Room 2

Scottish Parliament Equal Opportunities Committee

Tuesday 9 June 2009

[THE CONVENER *opened the meeting at 10:03*]

Interests

The Convener (Margaret Mitchell): Good morning, everyone, and welcome to the 10th meeting in 2009 of the Equal Opportunities Committee. I remind all those present, including members, that mobile phones and BlackBerrys should be switched off completely, as they interfere with the sound system even when they are switched to silent.

We have received apologies from Marlyn Glen, and I am pleased to welcome Jackie Baillie to the committee—she is substituting for Marlyn. I invite Jackie Baillie to declare any interests.

Jackie Baillie (Dumbarton) (Lab): I have no relevant interests to declare, but I refer the committee in any case to my entry in the published register of interests.

The Convener: Thank you.

Decision on Taking Business in Private

10:03

The Convener: Under agenda item 1, I seek members' agreement to consider in private at a future meeting the appointment of a budget adviser to assist us with the budget process for 2010-11. Are we agreed?

Members *indicated agreement.*

Female Offenders in the Criminal Justice System Inquiry

10:03

The Convener: Agenda item 2 is oral evidence in our inquiry into female offenders in the criminal justice system. The remit of the inquiry is to

"assess the prison experience for, and background of, female offenders, particularly the extent to which prison helps to prevent women from re-offending."

Today, we are taking evidence on community justice authorities. It is my pleasure to welcome our witnesses: Anne Pinkman is chief officer with the Fife and Forth valley community justice authority, and Chris Hawkes is chief officer with the Lothian and Borders community justice authority.

I invite the witnesses to explain in a little more detail exactly what the powers of the community justice authorities are. In particular, how do they fit in and connect with the work of other key stakeholders such as the Scottish Prison Service, local authorities, social work and the Cabinet Secretary for Justice?

Chris Hawkes (Lothian and Borders Community Justice Authority): Good morning. The community justice authorities came out of the Management of Offenders etc (Scotland) Act 2005. The purpose underpinning that act was to achieve a reduction in reoffending, and the principles underpinning the act and the national strategy that flowed from it are very much based on the concept that no single agency can be responsible for achieving a reduction in reoffending. Previously, it had been considered that the police, the Scottish Prison Service or the local authority was responsible in isolation for reducing reoffending. The 2005 act was important in making the statement that no single agency can achieve that.

Section 1 of the 2005 act established a very important principle—the duty to co-operate—which was placed upon the Scottish Prison Service and local authorities. Sections 10 and 11 are on the management of high-risk and sex offenders, with the duty extended to the national health service and to police forces.

The community justice authority is made up of locally elected politicians. In my example of Lothian and Borders, there are five local authorities in the region, and five elected members—one from each local authority—sit together as the community justice authority. That captures local accountability; it captures people who have access into each local authority, and they are required to exhibit the duty to co-operate.

In the first instance, the community justice authority was required to establish an area plan, which had to demonstrate how the outcomes that had been set by Government would be delivered. It is a three-year area plan, and we are now one year into it. The plan stemmed from a requirement among all the duty-to-co-operate agencies to work together and to say how they would deliver, individually, on the prescribed outcomes. Plans are submitted to Government for scrutiny, and they are eventually signed off by the cabinet secretary. The CJA is then required to ensure that the resources that are paid to local authorities for the provision of criminal justice social work services—known as section 27 payments—are aligned against the priorities that are set out in the area plan that has been signed off by Government.

All agencies are required to deliver against the plan. Failure to comply with elements of the plan could ultimately mean referral back to the cabinet secretary. Sections 6 and 7 of the 2005 act contain a description of the powers that the cabinet secretary has should any individual agency fail to comply with the work that it has agreed to undertake under the plan.

Like local authorities, the Scottish Prison Service has a duty to co-operate. Meetings of the board and the CJA conveners have now commenced. On a regular basis, the conveners of the eight community justice authorities in Scotland meet the board of the Scottish Prison Service. In addition, the Scottish Prison Service has created the role of a liaison officer, which means that an SPS employee is located in each community justice authority.

I hope that that gives you a good enough preamble regarding where the CJAs fit into the agenda.

The Convener: Yes—that was helpful. Does Anne Pinkman have anything to add?

Anne Pinkman (Fife and Forth Valley Community Justice Authority): Chris Hawkes mentioned the duty-to-co-operate agencies in relation to the CJAs. He mentioned local authorities, the Scottish Prison Service, health services and the police. However, we have several other statutory partners that are required to work with us—the Crown Office and Procurator Fiscal Service, the Scottish Court Service and Victim Support Scotland. Any other voluntary organisation that receives a sum in excess of £100,000 per annum from a CJA is also regarded as a statutory partner.

The Convener: That gives us a clear picture of where the CJAs fit in. All committee members found the written submission from the Lothian and Borders CJA helpful.

What progress have the CJAs made on implementing the national strategy? Given the focus on females and women offenders, what progress has been made in improving services for female offenders?

Chris Hawkes: I speak for the Lothian and Borders CJA, but that does not mean that I speak for all eight CJAs, each of which is an independent public authority.

The Convener: I understand that.

Chris Hawkes: However, because I meet my colleagues from the other authorities regularly, I can give an impression of the work that is being developed. It is important to realise that we are 12 months into the first three-year area plans. I can say pretty fairly that, in each of the eight CJA areas, services for women were not developed adequately prior to the formation of the CJAs. I will demonstrate that by speaking about the local authorities in the Lothian and Borders area. The preponderance of offenders in the area are men. I have worked in Scotland for 17 years, so I know that, over the years, services have been developed for men. Whether we talk about pre-sentence assessments or probation, community service or supervised attendance programmes, they were designed originally for men.

One early piece of work that the Lothian and Borders community justice authority did was to recognise that fact. The next step was to put in place a women offenders group, which is a group of professionals from all the agencies—the Scottish Prison Service, the five local authorities, the health boards, third sector providers and the police. Those professionals were required to consider how women's issues could be taken forward. The consequence of that work is the publication of our document "Chaotic Lives—A Profile of Women in the Criminal Justice System in Lothian and Borders", which is based on research that was undertaken by Professor Gill McIvor and Dr Monica Barry. The report confirms the basis on which we established the women offenders group, as it says clearly that the needs of women in the Lothian and Borders area are not being met adequately by the partnership of agencies and the current delivery of services.

One specific consequence of the report, which was published on 1 December 2008, was the establishment of the willow project, which is run by the national health service in partnership with the community justice authority and the third sector provider Safeguarding Communities Reducing Offending. The project meets the needs of women who come out of custody and those who are arrested for street prostitution. The service is designed around working with a group of women and is as much about meeting their underlying

health needs as it is about dealing with their offending behaviour.

10:15

To respond to your question about how work on the agenda is progressing, I can say that the profile of women has been raised significantly. That has resulted in a publication that was published and launched nationally, which then resulted in the development of a specific service for women in Edinburgh and Midlothian. The next step—for which the CJA has realigned some of its section 27 budget—is to put in place a specialist worker whose task in the next 12 months will be to work in each of the five local authorities on new models of intervention that can be applied equally in each of those areas. That is as far as the work has progressed in Lothian and Borders.

The Convener: The short synopsis that we had of “Chaotic Lives” and its findings was certainly helpful. When was the willow project established? Our information was that the report was published on 30 January 2009, but you say that it was actually in December 2008.

Chris Hawkes: I might be at fault with my dates. A few things happened around the turn of the year, so it could have been in December or January. I will get back to you with a specific date.

The Convener: You say that the willow project was established on the back of that report.

Chris Hawkes: Yes. I mentioned the women offenders group, which is a group of agencies working together with a particular focus on women's needs. The willow project emerged as the work of that group developed. The report and the project were the two products from the women's group.

The Convener: When was that group established, roughly?

Chris Hawkes: November.

The Convener: Does Anne Pinkman have anything to add? One reason why we wanted to have a representative from the Fife and Forth valley CJA was that Cornton Vale is in your area. What progress have you made?

Anne Pinkman: Each CJA has been encouraged to work with partners to develop services for a range of priority groups of offenders, including women offenders. However, as Chris Hawkes mentioned, we have only just completed the first year of our three-year area plans. The CJAs have taken different approaches to the priority list of offenders. Not all of them have considered women offenders to be the number 1 priority in developing services. However, the south-west Scotland CJA has considered women

offenders to be its first priority and it, too, has developed a specific service. The CJA recognised that, proportionately, south-west Scotland had the highest number of women imprisoned of any area in Scotland.

One of the main causes for short sentences being imposed on women from the area was breach of community disposals—either probation or community service. The south-west Scotland CJA therefore established a project that involves working with a voluntary sector provider to provide a mentoring service that supports women who are on community sentences. That is done in conjunction with supervising officers from criminal justice social work services. The project has been extremely successful in its first year, as breach rates have been reduced from more than 30 per cent to about 14 per cent and the number of women going to prison has fallen as a result.

The convener is correct in saying that Cornton Vale is in the geographical area of Fife and Forth valley CJA. However, it is important to note that only 8 per cent of the women in Cornton Vale, which is a national facility, are from the Fife and Forth valley area. We work closely with Cornton Vale. In some respects, that is much easier for us because the prison is in our area. Other CJAs and criminal justice social work departments—in Aberdeen, for example—have to provide services at a distance. We have worked closely with NHS Fife, NHS Forth Valley and housing services from the four local authorities to develop throughcare services for women from our area who are in Cornton Vale.

The Convener: Lothian and Borders CJA's priority has been women offenders. What priority has Fife and Forth valley CJA had?

Anne Pinkman: In recognition of the fact that there are three prisons in our area—Polmont young offenders institution, Cornton Vale prison and Glenochil prison—our priority has been to improve the position in relation to the rehabilitation and reintegration of all prisoners from our area on their release to Fife and Forth valley. As I said, that has involved bringing together partners from housing, health, voluntary agencies and local authorities.

The Convener: You have put the emphasis on throughcare.

Anne Pinkman: Yes, absolutely.

Bill Wilson (West of Scotland) (SNP): We have heard about problems to do with ensuring that there is throughcare, for example in relation to housing. I was interested when you said that that is easier for Fife and Forth valley CJA because you are closer to prisons. Can you give specific examples of the issues that make it difficult to organise some of the services?

Anne Pinkman: Often the issue is simply the physical distance. There are women from all over Scotland and further afield in Cornton Vale. As the committee has heard, many of them are serving very short sentences. It can be difficult for the housing service from a local authority area that is some distance from Cornton Vale to provide a regular service to the small number of women from its area who are resident in the prison for a short period.

In Fife and Forth valley we have attempted to ensure that a worker goes into Cornton Vale regularly to engage with the women from our area and to help with simple things such as submitting housing application forms and housing benefit claims. The voluntary organisation Four Square (Scotland), which is based in Edinburgh, goes into Cornton Vale regularly to help with such matters, as do housing officers from Glasgow City Council. However, there are problems for women from other local authority areas.

Bill Wilson: Is it the distance between the local authority area and the prison that makes the difference?

Anne Pinkman: Yes.

Chris Hawkes: If we acknowledge that women offenders have specific needs, many of which result from problems to do with mental health, dual diagnosis and relationships, we must ensure that there is smooth continuity between the community and the prison so that they get the support that they need, in particular if they are suffering from victimisation or are at risk of self harm.

Three quarters of the women from Lothian and Borders CJA's area who go to Cornton Vale are sentenced to less than six months, which equates to 12 weeks in prison—or less. No specialist service can supply the amount of input that is needed in that time, although it has been argued that on occasions prison provides sanctuary.

Women go from the community into custody and then return to the community, so their ability to access community-based services with a degree of continuity and consistency is important. That is made incredibly difficult by the distance between the place where services are delivered and the locality of the offender. It is understandable that the resources are not available to ensure that housing colleagues in Scottish Borders Council, East Lothian Council and the City of Edinburgh Council can provide an adequate housing service to women who are in Cornton Vale.

We are trying to address such issues—although we are not addressing housing in particular at this point. We are sponsoring local organisations and using section 27 moneys to pay local third sector providers to provide a service for offenders from Lothian and Borders who are in some of the more

far-flung prisons. That approach is not a solution; it is expensive and bad value for money. Instead, we need to be able to meet the needs of women offenders as near to their communities as possible.

There must also be a recognition that the specialist needs of some women who are serving extended sentences probably cannot be met in small community prisons and must be met from a national resource. We must make that distinction. I read the evidence that the Scottish Prison Service gave to the committee and noted that the service doubts whether community prisons could develop resources for women that were sufficiently sophisticated to meet their needs.

The Convener: We will come on to that issue.

Hugh O'Donnell (Central Scotland) (LD): Anne Pinkman said that only 8 per cent of women in Cornton Vale are from Fife and Forth valley. What percentage of men in Glenochil prison and Polmont YOI are from the area?

Anne Pinkman: About 27 per cent of adult male prisoners in Glenochil who are serving a combination of short sentences—that is, sentences of up to four years—and long-term sentences are from our area. I am afraid that I do not know the percentage of young offenders in Polmont who are from Fife and Forth valley, but I can provide that information later.

Hugh O'Donnell: That would be helpful. In effect, your plan covers all prisoners, so it would be interesting to know what proportion of the plan applies to men and not to women.

Anne Pinkman: It absolutely would. Fife and Forth valley CJA is fortunate in comparison with other CJAs in that all our women offenders are in Cornton Vale and almost all our young offenders are in Polmont—a small number might be in Friarton prison. The number of short and long-term adult male prisoners from Fife and Forth valley who are accommodated in Glenochil is increasing, but it is not as high as we would like it to be and it has not met the target that the SPS set itself. That is primarily due to increasing and record prisoner numbers.

More than 50 per cent of our offenders are in prison in our geographical area, but that means that almost half of our prisoners are located elsewhere in the prison estate. We must provide a service to males in Peterhead prison and to the proportion of our male prisoners who are in the open estate and down in Dumfries prison. We also have a remand population of male prisoners in Barlinnie prison and Edinburgh prison. That presents particular challenges for our partners in the provision of services to all our prisoners.

Bill Kidd (Glasgow) (SNP): We have talked a great deal about the number of women who serve short-term sentences, which is an important issue. However, in "Chaotic Lives", the researchers said that women are suffering from "harsher sentencing practices". Baroness Corston made the same point when she gave evidence to the committee a few weeks ago. How has such a situation come about? Have the implications of the research been discussed with sentencers?

10:30

Chris Hawkes: It is recognised in the research that women appear to be sentenced to custody disproportionately compared with men for the same offences, and it appears that financial penalties are used less. The cause of that is a complex issue that we need to address. Work has not yet been done with sentencers because that is a complex task. I will come back to that.

The stage before sentencing is prosecution, and before prosecution procurators fiscal have the opportunity to make decisions about how an individual offender will be treated. Under the Equality Act 2006, the requirement on the procurator fiscal service is straightforward—it is to recognise that the offence, rather than anything else, must determine due process. I respect that and believe that fiscals comply wholly with the legislation in making their decisions, but there is some confusion about what equality means. I understand equality as equating to fairness, but it is also the recognition of difference, and some fundamental issues pertain to women offenders but not to male offenders.

From my experience, I do not believe that Scotland has taken the opportunity to develop women-focused programmes of intervention. When a woman appears before a court, two things have not happened. First, women's specific needs have not been recognised at the pre-prosecution stage. Secondly, courts have not been provided with the range of women-focused programmes that sheriffs need to give them any confidence in using community-based disposals. As a consequence of those two things, custody is used.

There is also evidence—anecdotal, to an extent, but now fairly well shared—that prison is used as a sanctuary for women. That is particularly true in the case of remand. The research found that a significant proportion of women who are remanded to custody do not subsequently receive a custodial sentence. During their period of remand, they receive the sanctuary, care, support, health provision and nurturing that they need so that, when they go back to court for sentencing, they are very different individuals from the people who originally appeared before the sheriff. That may lead sheriffs to remand women to custody.

We are talking about a complex issue that is to do with diversionary policy, prosecution policy and sheriffs not being satisfied that there are sufficient women-focused disposals in the community.

Bill Kidd: Do you think that some sentencers, for the best reasons, might think about removing a woman from the circumstances that have contributed to her problems?

Chris Hawkes: Like other public agencies, sheriffs recognise that they have a duty of care. That may be uppermost in their mind when they remand a person to custody. I would not wish to comment on whether that would ultimately influence the sentencing, but with regard to remand it appears, from anecdotal evidence, that Cornton Vale is used as a sanctuary.

Anne Pinkman: I echo that. From conversations with sheriffs, I know that they continue to be impressed by the success that Cornton Vale has in caring for women who are on remand. Sheriffs often initially see before them damaged young women who look dreadful. The women are remanded—often for reports—and, when they reappear before the sheriffs two or three weeks later, the physical difference in their appearance is remarkable and cannot fail to impact on sentencers. That difference is due not only to the sanctuary that Cornton Vale can provide for those women but to the access to treatment services that they get in that two to three-week period.

My only other comment relates to reports. As Chris Hawkes has said, many women are remanded to custody for the preparation of reports. Social inquiry reports play a valuable role, and I know that the committee has heard evidence on the benefits of family impact assessments. I support the inclusion of family impact assessments in social inquiry reports, to be taken into account before sentences are imposed on women.

Elaine Smith (Coatbridge and Chryston) (Lab): I think that you said at the beginning that one of your aims, if not your main aim, is to reduce reoffending. I am interested in hearing what progress is being made towards that. However, if offences are still occurring—which, obviously, they are—is one of your roles to reduce the number of custodial sentences, given what we have been talking about? If so, how does that tie in with the independence of sentencers?

Chris Hawkes: There are three bits to that. I will start with the second bit—sorry, but I have immediately forgotten what the second bit was.

Elaine Smith: You are addressing reoffending, but are you trying to reduce the use of custodial sentences for those who continue to offend? If so, how does that tie in with sentencers' independence?

Chris Hawkes: There is a presumption that custody is, in some way, influential in reducing reoffending, but all the evidence suggests that that is not the case. Our starting point is the position that the inappropriate use of custody does not lead to a reduction in reoffending.

On your first point, the national strategy on which CJAs were founded was based on the assumption that offenders have a range of health, housing, employment, literacy, addiction and learning disability needs. The idea was that if adequate services were provided when required, that would address the needs that lead to offending. The argument—it is almost a hypothesis—is that what sets offenders apart, broadly, is the fact that they are a group of people who are excluded from opportunities within their communities for a variety of complex reasons, which we understand. Offenders are hallmarked by the oversignificance of that list of needs. The hypothesis says that if we address that range of needs, we will, in turn, address offending behaviour.

I think that we are in the middle of testing that. We will need to wait and see whether there is a 2 per cent reduction in reoffending by 2011, which is what the national strategy requires. We also know that offending is very much related to the economy. When there is a dip in the economy, there is an increase in crime, and vice versa.

At this point, I would not begin to say that the strategies that we have put in place will ultimately reduce reoffending. However, in the two years in which I have done this work, I have seen a significant change in the range of authorities that recognise that they have a role in dealing with offenders. Just two years ago, it was unusual to have health care providers working with offenders as a specific group, but that has been a significant development.

Elaine Smith: One key aspect of your submission, which leads on from what Bill Kidd asked about, is the suggestion that

“If a risk assessment ... were to be conducted at the point of referral to the procurator fiscal rather than at the point of disposal, arguably such input could aid in the marking process of whether to prosecute, divert or take no further action.”

Given that we are taking evidence from you because we are inquiring into the situation of women offenders, should that key change be proposed?

Chris Hawkes: The Equality Act 2006 is critical. In no way do I wish my evidence to undermine the role of our partners in the Procurator Fiscal Service, who recognise the fundamental point that in applying the 2006 act will base decisions on offence type. I have spent a lot of time thinking

through the issue. The only instance in which it can be argued that a woman should be treated differently from a man is when the woman is pregnant when the fiscal makes a decision, because the fiscal must think about the impact not only on the woman but on the child. That is an exception.

Perhaps the committee can help us all with the complex issue of understanding whether, in acknowledging the 2006 act and the responsibilities that flow to local authorities and all authorities from it, a distinction can be made on the basis of need. It could be argued—I am sure that it would be and that it would make an interesting test case—that women’s needs are not significantly different from those of men when a prosecution decision is made, but I argue that women’s circumstances appear to be different. That relates largely to victimisation, abuse and self-harm, which seem to characterise that group of offenders. However, a group of male offenders could make an equal claim.

We need help with the question. We do not understand clearly enough whether the prosecutory process could be used to address need earlier. That goes to your question. I said in our submission that an assessment appears to be required pre-prosecution to assist the fiscal in determining which route is appropriate. However, that might fall foul of the 2006 act.

Elaine Smith: Your submission raises the question

“whether ... prosecution policy is ‘gender blind’”,

to women’s disadvantage. It is clear that the committee must consider and explore the issue further.

Chris Hawkes: I cannot offer evidence today that provides an answer. However, I can raise the issue, which sits in the middle of the room and is critical to how women offenders are treated.

The Convener: The analytical approach that you have taken is welcome. It will give us food for thought when we consider the issue in producing our report.

10:45

Malcolm Chisholm (Edinburgh North and Leith) (Lab): Chris Hawkes has already touched on dispersal from Cornton Vale, which I would like to deal with in a bit more detail.

Lothian and Borders CJA’s submission refers to the greater use of community-based women’s prison units, which I have touched on before. I think that you also referred to the Scottish Prison Service’s evidence. Sue Brookes of the SPS has flagged up the possibility that there might be equal

opportunities issues in not providing the kind of specialist support that exists at Cornton Vale. Obviously, there is a bit of a dilemma. What discussions have you had with the SPS about women prisoners not being sent to Cornton Vale? Are you convinced that any concerns that it has expressed can be overcome?

Chris Hawkes: That matter has been continuously discussed with the SPS, which has understood one of our other key priorities: to increase the number of community-facing prisons, which is a shorthand description of prisons that are close to communities and families. The SPS's ability to meet that criterion has markedly improved across the whole population in Lothian and the Borders. At the outset of the CJA plan, 64 per cent of Lothian and Borders prisoners were held locally. We have just finished our annual report for the first year, and the figure has now increased to 74 per cent, which I think is largely due to the opening of HMP Addiewell. The majority of those from West Lothian who go into custody are at HMP Addiewell. The main collection area for Addiewell prisoners is Lanarkshire, but the capacity in Lanarkshire prisons has been taken up by West Lothian prisoners.

However, that takes us away from women. The SPS has not been able to progress the community-facing prisons agenda for women, because doing so would require significant investment in the development of local community-based prisons, which has not happened.

Malcolm Chisholm: What percentages do you have in mind? You have said that some women still ought to be in a specialist centre. What percentage of the current women prison population should be in a Cornton Vale-type prison? What percentage might be in women's prison units? I presume that you think that a large number of women should not be in prison units at all.

Chris Hawkes: Anne Pinkman and I will share a response to that question.

Three quarters of the women from Lothian and the Borders whom we are talking about receive sentences of less than six months, which equates to 12 weeks. I think that the chief inspector of prisons made the point in evidence that it is plain that the 12-week experience is not sufficient to deal with the broad range of complex needs that those women have. Using the argument that a specialist resource is needed to deal with those needs and then not dealing with them in three quarters of cases does not stand up.

I am heartened that, in announcing the development of HMP Grampian, the Cabinet Secretary for Justice and the chief executive of the

SPS specifically referred to the fact that it would have a separate unit designed to meet the needs of women and a separate unit designed to meet the needs of young offenders. I see some progress on thinking and on recognition, but I do not think that the SPS has yet adopted a community-facing prisons policy at board level.

Anne Pinkman: I echo those comments. We have already heard that, typically, 25 per cent of the prison population at Cornton Vale consists of remanded women and that many women who are remanded to custody go on to receive non-custodial sentences. In fact, many more women than men who are remanded to custody go on to receive non-custodial sentences. For women who are remanded and women who serve short-term prison sentences of up to six months—which is the majority of the prison population at Cornton Vale—there would be significant benefit in holding them in community-facing prisons closer to home, primarily to maintain contact with families, particularly children, and address health needs and accommodation.

Willie Coffey (Kilmarnock and Loudoun) (SNP): The evidence that I have heard today and in previous sessions is clear in telling us that we should do something different for women who are sentenced to six months or less. As Chris Hawkes said, we are talking about 12-week sentences.

Anne Pinkman mentioned a south-west Scotland CJA women's project that seems to be having some success in reducing reoffending rates and breaches. Is that the way in which we should go? Are we doing more damage than good by putting women into prison for short periods of time? Ultimately, how do we ensure that, once evaluated, projects such as the south-west Scotland CJA project are recommended as the way forward? How can they become a model for the future?

Anne Pinkman: I agree whole-heartedly that we are damaging women by imposing short-term sentences on them. Sentencers have said that, often, those sentences are imposed for no reason other than to offer respite to communities and/or sanctuary for the women. The damage that the sentences do can be greater than the good done by the respite for communities—which is very short term—and the sanctuary for the women.

The south-west Scotland CJA project that I mentioned is a new project. It will be evaluated, but the preliminary results are extremely encouraging.

One requirement on community justice authorities is to promote and share best practice within and across CJAs. The chief officers and conveners of the CJAs meet on a regular basis. We share best practice, an example of which is

the protocol for homeless offenders that Tayside CJA has developed and which it is running with the respective local authorities, Tayside prisons and Shelter Scotland. The protocol is being customised for use across the other CJAs in their respective prisons. There is also Chris Hawkes's willow project in Edinburgh, which the other CJAs will look at. We await with interest the outcomes, as we do the outcomes of the south-west Scotland CJA project.

Given women offenders' extremely complex needs, we are not about promoting a uniform or single approach to working with them. At the moment, the resources that are available to us differ across local authority areas. We are about taking the best from what has been developed and implemented and then customising it for use in areas where there are no such resources.

Willie Coffey: We heard earlier about damage to the individual woman offender and to society. Is there clear evidence that the rate of reoffending is higher for women who come out of prison who have not had access to training or intervention programmes?

Chris Hawkes: If the underlying causes of offending are based around unmet need—I refer to the range of complex needs that we have described—it is pretty self-evident that there is no reason why the prison experience will stop further offending. The prison experience, especially in the case of very short-term sentences, causes disruption to lives, removal from family and children, and a range of complex issues within the community in order to meet the needs of the family. There is nothing positive about the experience, other than the short-term health provision that Anne Pinkman referred to earlier, which seems to have a marked impact.

From an equality perspective, I suggest that that range of services should be available within the community. Services delivered by NHS boards should directly address the needs of that excluded group of women. Part of the reason why the women go into Cornton Vale is that they are excluded from accessing normal provision. I wonder to what extent those normative community-based services are compliant with the Equality Act 2006.

Elaine Smith: Is that an example of differences between men and women? You seem to be saying that sentences of less than six months are never really appropriate for women, but for a man who has been violent to his wife or children, for example, might a sentence of six months or less be appropriate? Are there differences between men and women that mean you cannot have a blanket policy?

Anne Pinkman: I would not support the imposition of a six-month sentence on a man convicted of domestic abuse; I would much rather impose a lengthy probation order with a condition that the offender attends a domestic abuse programme. That is far more effective at reducing the likelihood of that man reoffending than is serving a 12-week custodial sentence, whereby he will have no access to interventions to address his offending behaviour. Indeed, if that same man is placed on a programme for perpetrators of domestic abuse, not only will he be challenged about his offending behaviour but his partner will be provided with support. If that individual serves a custodial sentence, the partner might receive no support.

Elaine Smith: But why can such interventions not happen in prison? I am trying to work out whether things should be different for men and women. Prison would perhaps provide respite for the family. There is the argument that if women go to prison they will be provided with services, although we know that that does not happen in practice. Are you suggesting that it is better to leave the man in the home, and to try to address the issue that way?

Anne Pinkman: Not necessarily. An assessment of the risks would be undertaken. There are opportunities to add conditions to probation orders, such as electronic monitoring, which can restrict the offender to staying away from the home. There are opportunities to work in ways that address the offending behaviour and minimise the risk to the victim at the same time.

Elaine Smith: No gender difference, then. In the opinion of both of you, sentences of six months are not appropriate for anyone.

Chris Hawkes: The level of reoffending that results from short sentences is so high that they cannot be justified in terms of reducing reoffending. There might be other sheriff requirements in relation to punishment and restitution, but short sentences do not meet the criteria for reducing reoffending.

11:00

Hugh O'Donnell: As you know, the Criminal Justice and Licensing (Scotland) Bill is at stage 1. In "Chaotic Lives—A Profile of Women in the Criminal Justice System in Lothian and Borders", of which we have edited copies, you mention the alternatives to custody that are available. Have you made any submissions on the bill or engaged with its progress in relation to the recommendations that you have made?

Chris Hawkes: Yes. The Government has put in place a management of offenders framework, which has five specific work streams that deal with

young offenders, pre-sentence and sentenced prisoners, and social inclusion. We are involved with each of the work streams. The Government has ensured that not only the CJAs but our partner agencies are involved, so the Scottish Prison Service, health, the police, local authorities and CJAs are reflected in each of the work streams.

In developing community payback orders, which are at the heart of the bill, we would like additional requirements to be tailored to meet the needs of all offenders. Specifically, we would like local authorities to develop models of intervention and supervision for women that can be used as additional requirements to community payback orders.

Anne Pinkman: The conveners and chief officers of the CJAs submitted written evidence on the Criminal Justice and Licensing (Scotland) Bill and gave evidence at a meeting of the Justice Committee.

The Convener: That completes our questions. Are there any other points that you would like to make in summation? They would have to be brief.

Chris Hawkes: No.

Anne Pinkman: No.

The Convener: If you think in retrospect that there is something that you would like to add, please do not hesitate to submit it to the committee. Thank you for appearing. That was a very worthwhile evidence session.

Chris Hawkes: Thank you.

Anne Pinkman: Thank you.

11:02

Meeting suspended.

11:05

On resuming—

Equality Bill

The Convener: Agenda item 3 is evidence on the legislative consent memorandum on the United Kingdom Government's Equality Bill, for which the Equal Opportunities Committee has been designated lead committee.

To help inform the committee's consideration, I am pleased to welcome from the Scottish Government Alex Neil MSP, the Minister for Housing and Communities; Kay Blaikie, a principal legal officer; Colin Brown, a senior solicitor; Mike Gibson, head of the support for learning division; and Yvonne Strachan, head of the equality unit, who is certainly no stranger to the committee. I invite the minister to make an opening statement on the LCM.

The Minister for Housing and Communities (Alex Neil): I thank the committee for giving me the opportunity to explain the provisions of the Equality Bill for which we seek legislative consent.

We very much welcome the Equality Bill and the important message that it will send out about tackling prejudice and discrimination across our communities. The overarching aim of the bill is to consolidate, simplify and—where appropriate—harmonise the different pieces of equality legislation that have been introduced over the past 40 years. The bill will also create a new single equality duty on public bodies to eliminate discrimination, to advance equality of opportunity and to foster good relations. I am very pleased that we will have the single equality duty.

The bill currently triggers the need for legislative consent in five areas: the public sector duty to promote equality; the hearing of disability discrimination school education cases by the Additional Support Needs Tribunal for Scotland; the arrangements for educational endowments; qualification authorities; and transitional arrangements for single-sex educational establishments to become co-educational.

The new public sector duty to promote equality will replace the current race, disability and gender duties with one duty that extends across all equality strands. Public bodies that will be made subject to the general duty will be listed in a schedule to the bill. I make it clear that the general duty will also apply to public functions, so any organisation that is carrying out functions of a public nature will be subject to the general duty in relation to those functions.

The bill will give Scottish ministers the power to make an order to amend the schedule to ensure

that Scottish public bodies are covered by the general duty. In our view, the list of Scottish public bodies that is contained in the schedule to the bill as introduced at Westminster is not adequate, so I shall take steps to make an order at the earliest opportunity to amend the schedule to ensure comprehensive coverage of Scottish public bodies.

We plan to consult during the autumn on the specific duties and how they will operate in Scotland. I am keen to involve stakeholders in our discussions about the specific duties. I am pleased to say that the equality unit has already had a number of meetings with equality groups and public bodies to discuss the questions and issues that should be covered by the consultation.

A legislative consent motion is required for the public sector duty because the provisions will confer new powers on Scottish ministers. The bill also contains a number of education provisions that require the legislative consent of the Scottish Parliament, as they will give Scottish ministers additional powers to make regulations or rules on a range of specific issues.

I understand that the bill is going through its committee stage, which will last until 7 July. The Equality Bill is a carryover bill, which means that it will be carried over into the next session of the Westminster Parliament. I understand that royal assent is anticipated around the spring of 2010.

I invite the committee to support the measures that I have outlined and which are addressed in the legislative consent memorandum. I am more than happy to provide further information and to answer any questions.

The Convener: Thank you very much for that comprehensive opening statement. The LCM contains a draft motion, which invites the Scottish Parliament to agree that the relevant provisions of the Equality Bill be considered by the United Kingdom Parliament. The draft motion says that the bill will

“make provision within the legislative competence of the Parliament and ... alter the executive competence of Scottish Ministers”.

The LCM clearly sets out how the bill will alter the executive competence of Scottish ministers but does not explain how it will make provision within the legislative competence of the Scottish Parliament. Will you explain that to ensure that it is on the record?

Alex Neil: That involves a very legalistic issue, so I will ask the lawyer to explain it in some detail, because I know that we need to get the explanation on the record and it needs to be precise.

Colin Brown (Scottish Government Legal Directorate): The explanation is fairly dry, I am afraid, but I hope that it will explain the point.

The matter is connected with the public sector equality duty. In general, equal opportunities are a reserved matter but, as members appreciate, there are exceptions to that. There is quite a bit of legal underpinning and some complexity beneath it. Section L2 of schedule 5 to the Scotland Act 1998 provides a definition of equal opportunities. That definition has certain restrictions within it, such as

“the prevention, elimination or regulation of discrimination”

on specific grounds. The public sector equality duty includes a list of protected characteristics that does not coincide exactly with the list that is in the Scotland Act 1998 and refers to various needs that, again, do not coincide exactly with what is in the 1998 act. Therefore, we consider that elements of the duty could be created within devolved competence. It does not really make sense to do that—it clearly makes sense to create everything within one bill as a unit—but, because certain aspects could technically have been created within devolved competence, it is appropriate to recognise that.

The Convener: So, for the avoidance of doubt, the legislative consent motion will make provision not only for the alteration of Scottish ministers’ executive competence, but for the legislative competence of Parliament.

Colin Brown: It makes provision that could be seen to be within the Parliament’s legislative competence. It does not alter that competence. There is a legal distinction.

The Convener: Will that be explicit in the motion, or do you take it to be explicit in the draft motion?

Colin Brown: That is the thinking that underlies the wording of the draft motion.

The Convener: I take it that your opinion has not altered on that and that you are content with it.

Colin Brown: Yes.

The Convener: Why does the Equality Bill not simply impose the public sector duty on all Scottish public authorities? That would seem a more sensible approach than listing the relevant authorities.

Alex Neil: We are sympathetic to that point, but the bill is a Westminster bill and, therefore, the list of bodies to be covered is determined by Westminster. We have been, and still are, in close consultation with our Westminster colleagues because we want to ensure—and we will ensure—that all Scottish public bodies will be covered. For example, at the moment, the Scottish

Parliamentary Corporate Body, VisitScotland and Scottish Natural Heritage would not be covered but all, in our view, should be. It is possible that they could be added during the current committee stage or future stages of the bill in the House of Commons or the House of Lords and we will ensure that they are covered.

Rather than listing the public bodies, a general duty could be imposed on all public bodies throughout the UK, including devolved bodies, but a list of exemptions would then be necessary. For example, certain defence and national security organisations would be exempt from the duty.

Whichever way it is done, a list is necessary. The issue is whether it is a list of the bodies that are covered or of those that are exempted. Obviously, the list of exempted bodies would be a much shorter list. Quite frankly, if the bill had been our bill, I think that we would have gone down that route. However, we are working closely with our Westminster colleagues to ensure that all the relevant bodies will be covered.

11:15

The Convener: One of the stakeholders' submissions says that the approach in the bill would be more restrictive because the arrangements for the existing gender equality duty—under section 76C(3) of the Sex Discrimination Act 1975—are wider. Will you comment on that?

Alex Neil: The bill is intended to harmonise and simplify existing legislation, so our view is that all existing guarantees are incorporated in the bill. If there is a legal question about what the bill does, that should be directed to our Westminster colleagues. Our view is that it does what it is intended to do, but, since it deals with a reserved matter, the primary responsibility lies with our Westminster colleagues.

Willie Coffey: I was pleased to hear you say that the Scottish Government is already trying to identify ways of extending the list. However, is the issue to do with getting the list right or getting the principle right? Some have said that it seems a bit cumbersome to go back and forwards like yo-yos to seek powers that we might wish to have in relation to some body that might emerge from the shadows at some future point. Is there any merit in trying to persuade our Westminster colleagues to alter their thinking slightly so that legislative competence can remain in Scotland with regard to certain matters?

Alex Neil: It would need to be transferred here; it could not remain here, as we do not have it at present.

Obviously, I would like the Scottish Parliament to have responsibility for this entire field and, indeed, for all fields that are currently reserved to Westminster—perhaps, at some point, we will be able to persuade Westminster that that should happen.

We do not anticipate a great deal of problems arising from any desire to add to or subtract from the list—I cannot think of why we would subtract a body, apart from when a body is abolished or merged. The process for altering the list is simple and already exists in relation to other pieces of legislation. Scottish ministers would negotiate with our Westminster colleagues in the expectation that they would accede to our request to add a body to the list. The change would require statutory instruments in Westminster and the Scottish Parliament.

Initially, we would consult people in Scotland about the change to the list. We would then consult our Westminster colleagues on what we wanted to do as a result of that consultation. Once agreement had been reached, we would lay a statutory instrument that would lie for 40 days in the Scottish Parliament, and Westminster authorities would initiate a parallel process in London. At that point, we would be in a position to implement any changes.

We do not anticipate that being a cumbersome process. However, as I said, my preferred option is to have total responsibility for this currently reserved area of policy.

Willie Coffey: The process might not be complicated, but might it be time consuming?

Alex Neil: It might be. There would be a period of consultation, which might last a month, then a period of negotiation with Westminster—we do not know how long that might take, as we have no way of knowing who our Westminster colleagues might be at that time or how sympathetic they might be to any suggestion of ours—and then the 40 days for which the statutory instrument must lie. Therefore, the process could take up to five or six months. However, I hope that, with good will on all sides, we could shorten that timescale.

Jackie Baillie: Did you or your predecessor ask at any point whether the general duty could be applied to all Scottish public authorities as opposed to having the listing approach?

Alex Neil: Our view is that the general duty will be applied to all Scottish public bodies. From day one, our policy objective in negotiations with our Westminster colleagues has been that it should apply to all public bodies in Scotland. I understand why the likes of defence organisations should be exempt south of the border but, like my predecessor and officials, I cannot think of any

public body in Scotland that we would want to exempt.

Jackie Baillie: My question is based much more on practicalities than policy. I understand the overall approach. However, given that your policy intention is as you have set out, did you or your predecessor ask the UK Government to include in the bill a single definition of a Scottish public authority, instead of listing organisations?

Alex Neil: We have asked for a general provision, rather than listing, if possible. So far we have been unable to persuade our Westminster colleagues of that approach, but we will continue to ask the question.

Jackie Baillie: That is fine. When was the issue raised in discussions?

Alex Neil: I will need to ask Yvonne Strachan, as she has been involved since day one. The process started during my predecessor's time.

Yvonne Strachan (Scottish Government Equalities, Social Inclusion and Sport Directorate): I cannot answer without checking the exact timing. The issue of listing will have been raised in discussions that officials have had about the bill, but I will need to check at what point that occurred.

Jackie Baillie: The matter is of interest, as there is merit in the approach that I have described. I wonder whether it was suggested at a point when it could have been reflected in the bill.

I come to the nub of my questions. The bill lists the public authorities to which the duty will apply. You think that more should be listed. Should the bill be passed as it stands, are you intent on using the powers that you have to list more?

Alex Neil: Yes. I have already mentioned three public bodies that are excluded—the Scottish Parliamentary Corporate Body, Scottish Natural Heritage and VisitScotland. If that is still the case after the bill has been passed at Westminster, I intend to lay an order to add in every Scottish public body.

Jackie Baillie: Will you impose specific duties on all the Scottish public bodies that you list?

Alex Neil: Around September, we will consult on specific duties. We can already envisage circumstances in which we would impose specific duties. We have already laid down specific duties under current legislation—for example, in relation to gender and reporting of equal pay. It is my intention to ensure not just that the bill is passed and that all bodies are subject to a general duty but that the duty is realised in practice and properly implemented.

Jackie Baillie: I welcome the fact that you will consult on the detail of specific duties; I heard your

comments on the steps that are being taken. Which stakeholders are you likely to consult?

Alex Neil: One statutory stakeholder—the Equality and Human Rights Commission—must be consulted before we make any suggestions or enter into any future negotiations with our Westminster colleagues. We will consult a wide range of people and try to ensure that all stakeholders, as well as the Parliament and the committee, are properly consulted, depending on which organisations are to be covered by a specific duty. When—not if—we come to impose specific duties, we will consult widely and take our time in doing so, because we want to get our approach right and to ensure that the public sector equality duty becomes a reality, not just an aspiration.

Jackie Baillie: What kind of specific duties do you envisage? What duties would you place on the health service, for example?

Alex Neil: Some specific duties relating to equal pay already apply to the health service. As far as any future specific duties are concerned, if any sex discrimination, sexual orientation or race issues emerged, we would place a duty on the health service to bring forward a scheme to implement the requirements of the legislation, setting out a timescale, how it would organisationally go about implementation and so on. Indeed, there might be a simple specific duty to report regularly on how it is implementing the general duty.

Jackie Baillie: So do you envisage equality schemes and equality impact assessments of key strategic and spending decisions becoming the norm?

Alex Neil: Mainstreaming equality has been an aspiration of the Parliament from day one, and we need to move much closer to what was an original aspiration—indeed, a guiding principle—of the Parliament. The answer to your question is yes, particularly for really crucial public services such as education, health and transport.

Jackie Baillie: You seem to be suggesting that there will be a distinction between general and specific duties and that, although you would like to include more public bodies within the general duty, you are not offering the same commitment with regard to specific duties. However, the Scottish Trades Union Congress feels that such a move would be particularly helpful. Why are you making such a distinction?

Alex Neil: The bill makes a distinction between general and specific duties; indeed, that distinction already exists in law. However, I believe that you are highlighting the STUC's recommendation that we place specific duties on all bodies. We have not ruled that out; it will be part of our consultation in September. It might well be that certain specific

duties would cover all the bodies that are listed—I do not see why that should not be the case—but now is not the time to make that decision, given that we have not yet consulted properly on the issue and that we need to look at exactly what specific duties we would be talking about in that respect. In principle, we have not ruled that out—in fact, far from it.

Malcolm Chisholm: Although most people are generally happy with the public sector duties that you have been talking about, you must know that there is considerable concern about the absence of a socioeconomic duty in Scotland. For example, Engender has said:

“Our main area of concern is the fact that Scotland is not covered by the Socio-Economic Duty as outlined in the Bill.”

I know that you have been a critic of many things that have emanated from the Westminster Parliament, but I would have thought that you would have commended clause 1 of the bill, which refers to the “desirability” of public bodies exercising their functions

“in a way that is designed to reduce the inequalities of outcome which result from socio-economic disadvantage.”

You will understand why many people are concerned that that is not covered in the LCM, and I am sure that they would be interested in hearing your explanation.

Alex Neil: It might be useful to make two points. First, with regard to the intention behind and the impact of that provision, it is clearly very central in mainstreaming equality in Scottish Government policy, and our targets on solidarity and the accompanying frameworks are designed to achieve that objective.

Secondly, the provision was added fairly recently to the bill at Westminster and was not widely consulted on before its introduction. We are of course free to introduce the provision at any time, but our view is that, instead of simply inserting it in the current LCM, we should probably consult on it first.

The important point is that we are tackling the issues referred to in that clause. Indeed, that is what our policies on solidarity, reducing inequality in Scotland and so on are all designed to do.

Malcolm Chisholm: Given your responses to Jackie Baillie’s questions and, indeed, everything that we are doing with regard to equalities, you appear to think that duties on public bodies are a good thing. Do you think in principle that the provision in clause 1 is a good idea, and are you objecting mainly to the fact that there was very little consultation on it? In other words, are you guaranteeing that the Scottish Government will

bring in this provision in due course, or are you saying that it is not necessary?

11:30

Alex Neil: I am saying two things. First, we have not had a proper opportunity to consult on the socioeconomic duty; secondly, there is a difference between it and the other duties, in the sense that the others are about legal enforcement.

I suppose that we could pass a law that said that we were going to abolish poverty but, unless we had the resources to do it and applied them, such a law would be meaningless. The issue for us is where the added value is in the provision, and at the moment it is frankly difficult to see where the added value is without a plan to abolish poverty and unemployment in the UK.

We are not ruling out the provision for the future. We will be happy to consult on it at some stage, but we do not think that it adds a great deal because we are already trying to implement the aspirations that are outlined in it through mainstream Government policy.

Malcolm Chisholm: It is important for us to get some clarity on the issue. I am looking through my papers for something that the cabinet secretary said on the matter, but I cannot find it. My understanding has hitherto been that there was an objection to the absence of consultation, but you seem to be saying something different: that the provision is either unnecessary or not going to add anything. It is important, in terms of clarity, for us to know which is the fundamental reason that you are putting forward.

Alex Neil: Those two things are not mutually exclusive. One of the reasons why we would want to consult before we included the duty is to identify whether it brings something to the table in real terms—we would want to consult on that issue.

As you know, consultation—and pre-legislative consultation and scrutiny—is a key part of the process in the Scottish Parliament much more than it is at Westminster. If we build in the provision, it could, if it is properly applied, have—in one interpretation—potentially huge ramifications. In another interpretation, it could sit on the shelf and nothing would happen. Either way, we think that it has to be properly debated and consulted on before we insert it into our own LCM.

Malcolm Chisholm: I will ask one final question, as I am sure that other members will want to pick up on the issue. Given that the bill will not be finalised at Westminster until several months down the line, and certainly not before October, why can you not issue a three-month consultation during the summer? It would not be too late to include the provision in an LCM before

the bill went through Westminster. If you do not do that, we will lose the legislative opportunity to do it—and who knows when that opportunity may arise in the future?

Alex Neil: We are considering what to do in relation to the provision, if there is anything that we should be doing. At the moment, we do not see any great benefit in adding the provision, as we are not convinced that it brings anything to the table in real terms, but we have not absolutely ruled out the possibility of doing so.

Johann Lamont (Glasgow Pollok) (Lab): I am intrigued by your response, minister. It seems to suggest that the problem is not, as the cabinet secretary explained, the issue of consultation but that you are sceptical about whether or not the provision will make a difference.

Do you agree that inequality is grounded not just in gender, race, disability, age and sexual orientation but in class? If you do, why do you think that it is necessary to have a duty for all of those things except the issue of socioeconomic difference and the question of class?

Alex Neil: First, let me clarify: there is no contradiction between what I am saying and what the cabinet secretary said. My point is that there has to be consultation beforehand and that one of the issues that we would want to consult on is whether the provision brings anything to the table and adds value to what we are trying to achieve, given all the Government's other policies about improving equality and reducing class divisions in housing policy, education policy and across a wide range of other policies. I would like to hear the consultation before I said absolutely, "Yes, we should have it" or, "No, we shouldn't".

Johann Lamont: So are you having a consultation on it, and could you do that before October?

Alex Neil: We have not said that we are having a consultation. We have said very clearly that we are considering the matter and we will make a decision on whether it is something that we want to consider. If we want to consider it, we will have a consultation.

The Convener: I have allowed quite a lot of latitude on the matter, considering it is not within the competence of the LCM, so I will allow Johann Lamont one further question.

Johann Lamont: This is significant because the equality legislation is not just about what people say they are doing; it is about testing that against the public duty and what that reveals. Why should we have an equality impact assessment?

Alex Neil: Well—

Johann Lamont: Let me finish the point. We have an equality impact assessment to establish whether what we think we are doing in relation to equality is actually what we are doing. You are now saying that you are considering consultation; you could make a decision to consult before October so that we do not miss this legislative opportunity. Will you at least agree to that? Then you will know whether the duty is worth while and you will not have missed the opportunity that is provided.

Alex Neil: Do not try to put words in my mouth. I have made it absolutely clear that we are considering whether we should consult on including the provision. At the moment, we have not made a final decision. If we go to consultation, one of the key issues to be consulted on is what added value such a provision would bring. There is no point in our building in legislation that is not backed up by resources. We have seen a major increase in inequality in the UK in the past 12 years. The best way to reduce inequality is to apply resources and take people out of poverty.

The Convener: The point that Johann Lamont is making is: if you do not take this window of opportunity, how can you put the provision in the bill after the period has passed and after the bill has been passed? It is a UK bill.

Alex Neil: That is why we are considering whether or not we should do it. At the moment, we have said that there is an issue around consultation. We will make a final decision and we will certainly make it timeously.

The Convener: Okay. I think that we have explored this as far as we possibly can.

Johann Lamont: Can I ask one small question on that?

The Convener: Yes, if it is very small.

Johann Lamont: Have you consulted your colleagues in Wales, who have agreed to impose the duty and who have had the same level of consultation as we have had in Scotland? Would you consider discussing with them the way in which they have managed the process with the UK Government to ensure that they will take the opportunity of the legislation?

Alex Neil: We are happy to talk to everybody, but we do not necessarily follow the crowd. We will do what we think is in the interests of Scotland.

The Convener: Thank you for that, minister.

Hugh O'Donnell: I will turn to the qualification authorities. It is clear from the bill that the system of qualification authorities and regulation in England is entirely different from in Scotland. Given that you have nominated the Scottish Qualifications Authority as both the regulator and

enforcer in Scotland, is there not a conflict of interest? Does that not create a situation where access to independent arbitration in Scotland is being denied?

Alex Neil: No. We do not believe that the bill changes the current position, which is that people can revert to the sheriff court when they require arbitration in relation to a dispute with the SQA. That is the position at the moment, and it will be the position if and when the bill is passed.

Hugh O'Donnell: You are saying that paragraph 24 of the LCM will not have a negative impact on people's ability to take any dispute through the legal system.

Alex Neil: That is our belief.

Bill Kidd: We have had submissions from the Equality Network and the EHRC regarding the disability discrimination cases in school education, which currently go to the sheriff court but will be transferred to the ASNTS. There are worries that that will result in legal aid no longer being available for those cases. Is that the case, as far as you are aware?

Alex Neil: First, the point of taking those cases out of the sheriff court and into the tribunals is that the whole ethos of tribunals is that they are not primarily legalistic bodies; their primary centre of attention is the needs of the child. Having said that, during the passage of the recent Education (Additional Support for Learning) (Scotland) Bill, one issue raised by a number of the advocacy bodies was the fact that local authorities are increasingly hiring Queen's counsel and professional advocates to come to tribunals to argue the case against children and their parents on legal matters. As a result of the passage of the ASL bill, my colleague Adam Ingram is considering what additional advocacy support will be made available by Government to those children and parents who are going to a tribunal, not just in the cases that Bill Kidd mentioned but in any case, particularly when they are up against a professional, highly paid advocate from the local government side. If anything, the situation should be enhanced.

In a constituency case that I dealt with in South Lanarkshire, the case went to the sheriff court and the sheriff made a decision that was based on the law rather than on the needs of the child. The council threatened to sue the parents for the costs of the action in the sheriff court—the council's costs as well as the parents' costs—and then put a gagging order on them as a condition of not charging them the council's legal costs. That is outrageous. That could not happen when the LCM is implemented and the bill goes through.

Bill Kidd: Paragraph 33 of the LCM suggests that changing the way in which such cases are

dealt with so that they go to the ASNTS rather than to court might lead to savings to the public purse. Will it still be possible for parents to seek legal advice and for that to be paid for?

Alex Neil: Absolutely. Adam Ingram is considering that at the moment, in relation not just to the kind of cases that we have discussed but, more generally, to whenever a case goes to the tribunal and the child and/or their parents require legal support and representation. The funding regime for that is under consideration, but we are committed in principle to providing advocacy funding for children and parents who are in that situation. It is always much more expensive to go to the sheriff court than to work through the tribunal, and the other benefit, which is the whole point of the ASL legislation, is that the tribunal will make its decisions based on the needs of the child rather than from a purely legalistic point of view.

Jackie Baillie: I was intrigued when you said positively that equality schemes and equality impact assessments will feature in the specific duties. Can we therefore look forward to equality impact assessments of all the single outcome agreements, which are key strategic and resource documents that guide all of local government?

Alex Neil: I envisage that the impact assessments will be primarily of public bodies that discharge their duties. The single outcome agreements have underlying assumptions about what local authorities do. Local authorities have a host of requirements above and beyond single outcome agreements. Just as each local authority will be subject to the legislation, each local authority body will be subject to it.

Jackie Baillie: I asked whether that will be a specific duty simply because single outcome agreements are the key strategic documents that measure what matters in local government. The Government has clearly set that out previously. I would have thought that, if you are serious about equality, there should be equality impact assessments of the single outcome agreements so that, in the areas that matter, it is measured appropriately.

Alex Neil: That would be a valid point to make during the consultation. We have not made a decision on the matter.

Jackie Baillie: So you have no thinking in principle about that.

Alex Neil: The principle is that we want to apply the specific duties, and we will consult on exactly how to apply them. I am not going to prejudge that consultation.

The Convener: I think you made that plain in your opening statement, minister.

On the specific duties, there is a section on simplifying and standardising the definitions of discrimination, and there is some case law in respect of that. *Coleman v Attridge Law* clarified that disability discrimination protection extends by association in the case of a mother who cares for her disabled child. Do the specific duties open up the possibility of examining discrimination through less favourable treatment in relation to concessionary fares for the companion of a deafblind person or when an unpaid carer who seeks promotion is considered unfavourably?

Alex Neil: Yes, absolutely. You gave the example of a carer, but that issue also touches on non-public bodies that carry out public functions. Kilmarnock prison is a good example. In carrying out a public function, a non-public body will be subject to the specific duties as well as the body that contracts it, which in the case of Kilmarnock prison is the Scottish Prison Service. Specific duties can therefore be applied to any body that carries out a public function, which would include the case of the carer, for example.

The Convener: Thank you, minister—that was helpful. That concludes our line of questioning, so I thank you for attending today—it was very worth while.

Alex Neil: Thank you.

11:45

The Convener: We move to item 4, which is consideration of the content of our report on the legislative consent memorandum. I invite comments from members.

Malcolm Chisholm: I will follow up the point on which I asked questions. There are other issues, but I think that the public sector socioeconomic duty is the most substantive one. I expect that committee members will have different views on it, but I hope that we can all unite around at least arguing that there ought to be consultation on the issue, which should satisfy both those for and those against the duty. Obviously, I would prefer us to say that we support having the public sector duty, but I think that we could unite around the reasonable recommendation that the Government consult on the issue over the summer so that it does not lose the legislative opportunity. Even if the Government ultimately decides against the duty, it will at least have gone through the proper process before arriving at that decision.

Elaine Smith: I was going to say exactly what Malcolm Chisholm said. I agree that, while there is a small window of opportunity, it makes sense to consult and then decide whether to include the public sector duty.

Johann Lamont: I think that we got two separate things from the minister. First, I am not clear what level of consultation would be required to say that it would be a good idea to impose a socioeconomic duty on public bodies. I would have thought that, if they recognised that there is socioeconomic discrimination, most people would think that the duty is a good idea. It would therefore be a question of testing it later on.

Much has been said about the consultation. I tried to get details through freedom of information legislation of what contacts had taken place for the consultation, but interestingly I was told that my request went over the maximum cost threshold. Clearly, there was significant consultation between Westminster and the Scottish Government on the matter.

I think that the consultation question has been overstated, but I agree with Malcolm Chisholm that, even if that is so, there is an opportunity to sort it through consulting over the summer and working with the UK Government in the same way as the Welsh Assembly Government, in order to ensure that Scotland is not the only bit of Great Britain that does not have the socioeconomic duty imposed on its public bodies.

Bill Wilson: I reject the view that the minister was in any way inconsistent: I thought that his answers were perfectly consistent. It is reasonable to note that the public sector duty would require greater resources. We have had a considerable increase in inequality between socioeconomic classes over the past 11 years. Scotland has limited powers but does not have unlimited resources, so it is reasonable to consult on this issue. I think that the minister was perfectly clear on the requirement to make a decision on the consultation. I do not think that there was any inconsistency at all.

The Convener: I remind members that we are supposed to be considering the content of the LCM. The issue of the consultation is outwith that consideration. Of course, as Malcolm Chisholm said, we can recommend or suggest that it would be good to consult, but can I get feedback first on whether, given the evidence, members are content with the content of the LCM? Do we want to make any comments about legal aid, for example? Are we content with the explanations about legal aid in relation to the Additional Support Needs Tribunals for Scotland and about the SQA's different roles with regard to qualifications? Is there any comment on those issues? We will return to the socioeconomic strand after this.

Hugh O'Donnell: Notwithstanding what the minister said, I am personally still not entirely comfortable about the SQA being both poacher and gamekeeper, if I can use that expression. In addition, notwithstanding the minister's

observation on access to courts, he seemed to say different things on disability discrimination cases for schools. On the one hand, he said that tribunals are cheaper; on the other hand, he said that the courts remedy would still exist. I am just not convinced that we are clear about how that will work.

The Convener: Would it be sufficient for us to say that we raised that issue and sought further clarification on it?

Hugh O'Donnell: Absolutely.

The Convener: Is there anything else about the actual content of the legislative consent memorandum that we want to highlight?

Members: No.

The Convener: Finally, we can say that, in taking evidence, we raised the possibility that the consultation might include the issue of the public sector duty regarding socioeconomic inequalities. That will allow the Parliament to take cognisance of the issue when it considers the motion. Is everyone satisfied with that approach?

Jackie Baillie: Sorry—perhaps it is just me—but I just want to be clear. Are we specifically recommending that the Scottish Government consult on the issue now? I take the point that such a duty should not be included in the LCM without consultation, but Malcolm Chisholm's suggestion was that the Scottish Government consult specifically on that issue so that it can take a decision timeously and in advance of the final consideration of the bill in the UK Parliament. I had thought that members were fairly comfortable with that suggestion, which takes on board the need for consultation.

The Convener: Do members have any other opinions on the issue?

Willie Coffey: Whether such a consultation takes place immediately is perhaps a wee bit outside the scope of what we came here to discuss.

Elaine Smith: The convener made the point that we are discussing what is in the LCM, but it is also appropriate to discuss matters that could be included within the LCM. Therefore, we could recommend that the Government consult on the issue so that it can decide whether the provisions should be included within the LCM.

Malcolm Chisholm: An important procedural point is that an LCM is amendable, so our discussion is not limited to what is in the LCM but can extend to what it potentially could contain after amendment. In that sense, an LCM is unlike a statutory instrument.

The Convener: Is it the committee's feeling that we should recommend that the Government

consult on the socioeconomic provision so that it is possible for it to be included in the LCM? Is anyone otherwise minded?

Hugh O'Donnell: Is it appropriate to provide a timeframe for that consultation so that it takes place within the window of opportunity to which Jackie Baillie referred?

Jackie Baillie: As I recollect, the convener's formulation of the wording referred to the consultation being concluded in time for the final consideration of the bill.

The Convener: We clarified with the minister that there would be little point in consulting on the issue after the window of opportunity had closed.

Is everyone content with the suggestion that has been made?

Bill Kidd: I want to ask what influence we can hope to have in making such a recommendation. The minister said that the process would need to be consulted on and that consideration was being given to what the consultation would contain. Given that the minister said that the prospect of including the socioeconomic provisions in the LCM would need to be considered in the consultation, what influence will we have by making such a recommendation today?

The Convener: It would just mean that the Parliament could take cognisance of our discussion today and of the views that have been expressed about the inclusion of the socioeconomic strand. The issue is as simple as that. Just as the Subordinate Legislation Committee made a recommendation on the regulator aspect of the bill, we could make a recommendation.

Bill Kidd: Would our recommendation include a reference to the consultation timescale as well?

The Convener: We could make it clear that, if the socioeconomic provision is to be included in the LCM, any consultation on that issue would need to conclude before the bill is passed at Westminster; otherwise, that opportunity will no longer exist. However, the issue will be for the Parliament to decide.

Bill Wilson: If the consultation were held later, would it not be possible to amend either the LCM or the bill at a later date? Are we saying that, if the consultation does not take place now, that will never be possible? I would like to be clear about that.

The Convener: The provisions could be included in separate legislation, but the opportunity to use the provisions in the bill would be missed.

Johann Lamont: I apologise—I am not a member of the committee—but I just want to make

the point that the cabinet secretary's explanation in correspondence with Westminster was that the Scottish Government could not agree to include the socioeconomic duty provisions in the LCM because they had not been consulted on. However, as Malcolm Chisholm pointed out, it would be possible for the Scottish Government to consult on the issue, given that the timescale for the bill extends to October.

We all agree that, if there needs to be more consultation, it should take place. The minister says that he is considering consulting, but it is reasonable for the committee to say that, if the Government's objection to the socioeconomic duty is a lack of consultation, it should take the opportunity to consult ahead of October. If the Government is saying that it cannot include that duty because there has been no consultation but it now has the opportunity to consult, it is reasonable for the committee to suggest to the minister that it should go ahead and consult.

Bill Kidd: That seems reasonable, except that the Government has said that it is considering consultation—it is not as though it is avoiding consultation.

Jackie Baillie: Well, in this case it should be easy to recommend that.

The Convener: Through the chair, please.

Bill Kidd: It is reasonable to suggest that consultation is a good route to go down. The minister has said that he is considering consultation—not that consultation will not take place. We would, therefore, be advising him to do something that he is already considering doing.

Hugh O'Donnell: That is absolutely right.

Bill Kidd: We can do that, but, judging by the answer that the minister gave, I think that we would be pushing at an open door.

Hugh O'Donnell: Well, that is—

The Convener: Through the chair, please.

Hugh O'Donnell: Sorry, convener.

The Convener: All that we would be recommending is that the minister follow his instincts and ensure that the consultation is done timeously; it would then be for the Parliament to decide. Can we agree that approach to the legislative consent motion?

Members indicated agreement.

Mainstreaming Equal Opportunities

11:56

The Convener: Item 5 is the mainstreaming of equal opportunities in the work of the committees of the Scottish Parliament. We have an approach paper from the clerks on the committee's mainstreaming equal opportunities participation event. Are members content with the approach as laid out in the paper?

Elaine Smith: Paragraph 5 proposes:

"The attendees should include the convener and/or members of each subject committee along with the committee clerk".

It is perhaps obvious, but would that include the convener and the members of this committee who were available to attend?

The Convener: Absolutely. We can make that explicit in the paper. If any committee members want to add a submission, there will be the opportunity for them to make that submission to the clerks in advance of the event. It is important to clarify that members of this committee are included in that statement.

Hugh O'Donnell: It would be helpful if we got a list of who else will be invited, apart from the members of subject committees.

The Convener: That list can be circulated. If members have any ideas for additions to it, that will be fine.

Jackie Baillie: I am content with the approach, but it strikes me as an opportunity not to be missed to include the influence of equal opportunities on budget scrutiny. I know that the Finance Committee is looking into that. Perhaps we could invite the committees' budget advisers to the event—that might be helpful.

The Convener: Yes. It is assumed—and it should be stated in the paper—that they have an interest and will be there to make a vital contribution to the event. Thank you for that.

Do members agree to delegate authority to the convener and clerk to take forward the detailed arrangements for the event?

Members indicated agreement.

The Convener: A paper will be drafted for the Conveners Group, seeking approval for the event.

11:58

Meeting continued in private until 12:13.

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