

FINANCE COMMITTEE

Tuesday 20 January 2004
(*Morning*)

Session 2

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FINANCE COMMITTEE

2nd Meeting 2004, Session 2

CONVENER

*Des McNulty (Clydebank and Milngavie) (Lab)

DEPUTY CONVENER

*Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP)

COMMITTEE MEMBERS

Ms Wendy Alexander (Paisley North) (Lab)

*Mr Ted Brocklebank (Mid Scotland and Fife) (Con)

*Kate Maclean (Dundee West) (Lab)

*Jim Mather (Highlands and Islands) (SNP)

*Dr Elaine Murray (Dumfries) (Lab)

*Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD)

*John Swinburne (Central Scotland) (SSCUP)

COMMITTEE SUBSTITUTES

Mr Adam Ingram (South of Scotland) (SNP)

Gordon Jackson (Glasgow Govan) (Lab)

David Mundell (South of Scotland) (Con)

Iain Smith (North East Fife) (LD)

*attended

THE FOLLOWING GAVE EVIDENCE:

Bill Barron (Scottish Executive Justice Department)

Rachel Gwyon (Scottish Executive Education Department)

Michael Kellet (Scottish Executive Development Department)

Alisdair McIntosh (Scottish Executive Development Department)

Sarah Morrell (Scottish Executive Finance and Central Services Department)

Andrew Rushworth (Scottish Executive Finance and Central Services Department)

CLERK TO THE COMMITTEE

Susan Duffy

SENIOR ASSISTANT CLERK

Jane Sutherland

ASSISTANT CLERK

Emma Berry

LOCATION

Committee Room 1

Scottish Parliament

Finance Committee

Tuesday 20 January 2004

(Morning)

[THE CONVENER *opened the meeting at 10:00*]

Antisocial Behaviour etc (Scotland) Bill: Financial Memorandum

The Convener (Des McNulty): Good morning. I welcome members, the press, the public and our witnesses to the second Finance Committee meeting of 2004 in session 2 of the Parliament. I remind everybody that pagers and mobile phones should be switched off. We have received apologies from Wendy Alexander, who has an engagement in her constituency.

The first item on the agenda is further consideration of the Antisocial Behaviour etc (Scotland) Bill. We have with us officials from the Scottish Executive. Alisdair McIntosh is head of the antisocial behaviour division, Michael Kellet is the bill team leader, Rachel Gwyon is head of the youth justice and children's hearings division and Bill Barron is the head of the police, regulation and resources branch. I welcome them to the meeting, especially Michael Kellet, who has been here before, for the Water Environment and Water Services (Scotland) Bill.

Members have a copy of a submission from the Scottish Executive officials. We also have submissions from various other organisations, including the Convention of Scottish Local Authorities and the Scottish Children's Reporter Administration, which follow up on oral evidence that those organisations gave before Christmas. I ask the Executive officials to make an opening statement if they wish, after which we will move to questions from members.

Alisdair McIntosh (Scottish Executive Development Department): I will make a few short points about the financial memorandum to the bill and the wider issue of resources to support the Executive's strategy for tackling antisocial behaviour.

First, it is important to say at the outset that the figures that are detailed in the financial memorandum represent our estimates of only the new expenditure that will arise directly from the bill. They do not cover action or commitments for which no legislative change is needed, such as the doubling of restorative justice places in the

children's hearings system and the wider youth justice programme, the £30 million funding for community wardens and other local initiatives to tackle antisocial behaviour, and the further £30 million that was announced in September but that has not yet been allocated. Nor do the figures include funding for wider community regeneration and youth work.

Secondly, the figures in the memorandum are all new funds that are in addition to those that were previously included in the Scottish budget. Figures are given only for the two years to 2005-06, because funds for future years will depend on the outcome of this year's spending review.

Thirdly, the bill will introduce a number of new tools to improve the range of interventions that are available to agencies to tackle antisocial behaviour. For the most part, those are new powers for agencies to consider in the light of local strategies, local circumstances and the available alternatives, rather than new duties imposed on the agencies. We have made assumptions about uptake based on the available research and evidence. The information that we have used is drawn from data that are in the public domain and has largely been sourced from local authorities and other public bodies.

Finally, although the focus of today's discussion will of course be on the costs of implementing the bill and, to a lesser extent, the costs of the Executive's wider strategy, it is worth commenting that failure to tackle antisocial behaviour effectively also has substantial financial, economic and social costs that affect public agencies, local and central Government and society as a whole. Of course, it is difficult to quantify those costs, but the Executive believes firmly that they far outweigh the substantial additional investment that we are discussing today.

The Convener: The Finance Committee's role is to probe the estimates that have been produced, not the policy issues.

The Association of Chief Police Officers in Scotland's submission suggests that the additional cost for the police might be £2.2 million and perhaps £1 million in the first year. As the witnesses have had an opportunity to read ACPOS's views, I ask them to respond specifically to them.

Alisdair McIntosh: The vast majority of ACPOS's estimate of the cost—about £2 million—is the cost of seconding police officers to antisocial behaviour units in local authorities. However, as ACPOS points out, ministers have not yet decided on the detail of the additional £30 million to which I referred that is aimed at tackling antisocial behaviour. We expect that an element of the £30 million will be available to local authorities and

their community planning partners to develop and implement antisocial behaviour strategies. Local authorities and their partners will have to decide whether to use some of those funds to second a police officer to the antisocial behaviour team. Some local authorities already do that and some have applied for funding from the first round of £30 million for that purpose, but other authorities may want to use their allocation in other ways. At best, ACPOS's figures give a misleading picture of the funding position.

The Convener: An issue of interpretation is probably involved, but we are charged with considering the financial implications of the bill as written. Clearly, that should include consideration of an estimate of the range of implications of the bill. It is not entirely reasonable for you to say that that point should be set on one side. Given our role, it would be consistent for us to expect you to give an estimate of the costs of the bill's implementation, taking out policy decisions but recognising that they might be made. An estimate that took account of that point would be helpful to us.

Alisdair McIntosh: The cost that ACPOS gives of seconding police officers to local authorities does not arise from the bill—the bill does not require that to happen. I ask my colleague Bill Barron to address the other elements of the police costings.

Bill Barron (Scottish Executive Justice Department): ACPOS's estimate of the additional administrative costs that will arise from the bill's measures on fixed-penalty notices is provisional and tentative. ACPOS's submission does not mention the savings that will result downstream because of the reduction in the police work load that will result from the fact that officers will not have to give evidence in court in cases that are dealt with through fixed-penalty notices. The whole submission is a bit of a first shot and it misses some fundamental points.

The Convener: One fundamental point is that the Executive's financial memorandum suggests that the operation of the fixed-penalty notices will result in defined net savings, whereas ACPOS states clearly that additional costs will fall on the police. Far from there being savings associated with the measure, net costs will be associated with it.

Bill Barron: I do not think that that is right. ACPOS states that there will be costs and savings; the submission suggests, if one reads between the lines, that the fixed-penalty notices will result in savings. ACPOS has not said which will outweigh the other, but I do not think that it would argue with the view that it is too early to say and that the balance could well be that the savings outweigh the costs.

The Convener: You say that it is too early to say whether the savings will outweigh the costs, but our concern is that your financial memorandum is clear that you expect net savings.

Michael Kellet (Scottish Executive Development Department): I have a number of points to make on that. The evidence on savings that we have gathered and, I think, included in the financial memorandum stems from published evidence on pilots of fixed-penalty notices south of the border, in England and Wales, which have been going for some time. The evidence from the pilot in the west midlands shows that, on average, when police officers use a fixed-penalty notice rather than a full report to the Crown Prosecution Service—the equivalent of procurators fiscal—that saves them somewhere in the region of two hours and frees them up for business that is more important than filling out forms. That evidence allows us to say that we expect a net benefit. We fully understand that we need to ensure that the system in Scotland is designed to realise those benefits and we have said that we will pilot fixed-penalty notices. We will work with the police and the Crown Office to ensure that the system is so designed.

In giving evidence to the Justice 2 Committee, Chief Constable David Strang said in response to a question from Nicola Sturgeon:

"The fixed-penalty notice is an alternative to full reporting to the procurator fiscal. If it stays at that high level, that should save time and bureaucracy."—[*Official Report, Justice 2 Committee*, 6 January 2004; c 432.]

That backs up what we are saying. Even a senior police officer who gave evidence—I think that he is the same police officer who signed the ACPOS submission—accepts that, if we design the system properly, there should be net savings to the police.

The Convener: Yes, but the ACPOS submission says:

"when Conditional Offers and the Vehicle Defect Rectification Scheme were introduced to deal with road safety and traffic offences, the workload of officers actually increased, the additional spare time being put to good use to self generate additional work."

Michael Kellet: Exactly. That backs up what we are saying, because ACPOS is suggesting with that comment that the time saved by using a fixed-penalty notice system will free up the police to do better and more effective work and to improve productivity. That is exactly what we seek to achieve through the fixed-penalty notice system. The evidence that you quoted backs up what we are saying about a net saving. We would not accept that it is a criticism, because ACPOS is saying that conditional offers and the vehicle defect rectification scheme freed up time for police officers.

The Convener: I follow the logic of what you are saying, but I am not sure that freeing up time necessarily equates to a cost saving, because the additional costs are associated with the mechanism through which the penalties are to be introduced. I am not sure whether fixed-penalty notices will result in a net saving to the police in terms of time. They might lead to increased efficiency, but they will not necessarily produce a saving as such.

Bill Barron: That is a false distinction to draw, because police time accounts for the vast proportion of the costs to the police force in Scotland, so a saving of time is a saving of cost, which can be redeployed into whatever the chief constable deems his highest priority.

John Swinburne (Central Scotland) (SSCUP): The ACPOS submission says:

"Figure used is salary costs per ... Constable. This takes no account of involvement of higher ranks and the associated support costs."

There is therefore a huge element missing from your estimates.

Michael Kellet: As I understand that part of the ACPOS submission, the figures relate to the assessment of the resources that Lothian and Borders police already put into dealing with antisocial behaviour. Although we would not dispute any of that, the ministers' position would be that, if the bill is successful in cutting antisocial behaviour, Lothian and Borders police and other police forces should realise some savings, because they will be spending less time dealing with antisocial behaviour. The figure of £3,047,148 is an estimate of the cost of what Lothian and Borders police currently do on antisocial behaviour and not a reflection of any extra work that they would need to do under the bill.

Fergus Ewing (Inverness East, Nairn and Lochaber) (SNP): I am having difficulty understanding the curious line of argument that we are hearing for the first time from civil servants. Our job is to examine figures in the financial memorandum and the civil servants' job is to provide those figures, but we are hearing today that some of the costs that the police and other bodies say will flow directly from the bill are allocated by the Executive in another pot of money, about which we have heard only this morning. That seems completely the wrong approach to providing the Parliament with an estimate of how much a bill will cost.

On what the witnesses have said is the main cost element in the ACPOS submission, ACPOS states:

"It is believed that some Local Authorities had budgeted for"

the secondment of a police officer to an antisocial behaviour unit

"and as such the costs were included in earlier bids to the 'Building Strong Safe Communities' fund. However this is not the case for all and whilst unable at this time to be more specific, some officer secondments will be covered by mainstream budgets. Based on one officer per Local Authority the total estimated cost would be £960,000".

It seems odd to me that Western Isles Council and Clackmannanshire Council should second the same number of police officers—one—as the City of Edinburgh Council or Dundee City Council, which might require more than one police officer to be seconded, particularly if antisocial behaviour orders are to be used a great deal, as I presume the Executive anticipates. I would have thought that £960,000 could be a serious underestimate, but the point is that some local authorities have budgeted for secondment and some have not. The antisocial behaviour units in North Lanarkshire Council, Renfrewshire Council and Fife Council have particularly good records, but other councils' units do not. Surely you accept that the involvement of the police is imperative to make ASBOs work—to be frank, if there is not a policeman in every antisocial behaviour unit, the proposals will not work. The conclusion is therefore that you should have put that cost, or some provision for it, in the financial memorandum. Why have you failed to do so?

10:15

Alisdair McIntosh: On the additional funds that do not flow directly from the bill, as the financial memorandum makes clear, the £65 million total, including the money for youth justice, will be used to take forward initiatives under the bill and those that do not require new legislation. In the letter that we sent to the committee on 7 January, we explain the relationship between the moneys in the financial memorandum that flow directly from the bill and those funds that support wider action to tackle antisocial behaviour.

On police secondments to local authorities, the £30 million for 2004-05 and 2005-06 from the building strong, safe and attractive communities fund allows local authorities that wish to do so to bid for money to support inward secondments from the police at neighbourhood level for antisocial behaviour teams. Some local authorities have indicated that they wish to follow that route and final decisions on funding from that first £30 million will be announced shortly. The second round of £30 million of funding will also be used to support action at a local level to support antisocial behaviour strategies. If local authorities and the police conclude that they wish to spend part of that money on secondments of police officers to local authorities, they will be able to do so.

On police involvement in local authority activities, it is worth saying that the police are already full participants in community planning structures. For example, they are already full participants in community safety partnerships, which will be the main mechanism for preparing antisocial behaviour strategies.

The Convener: One of the problems for us is that, in policy terms, the Executive is emphasising the importance of the bill and the associated delivery, whereas you are saying that the cost of the bill's implementation will be limited but that other moneys that will follow from the bill and other legislation will deliver the desired effect. There is not a contradiction but a disjuncture between those two approaches, which gives us a bit of difficulty.

Alisdair McIntosh: The Executive sees the bill as part of the wider strategy to tackle antisocial behaviour. The bill is, as I said at the outset, primarily about providing the agencies with additional tools to tackle antisocial behaviour in certain sets of circumstances, but it needs to be seen in its wider context. It is against that background that we wanted to explain how the financial memorandum and the figures in it sat within the overall amount of money that is available for antisocial behaviour. I apologise if, in so doing, we have caused confusion rather than enlightened you.

Fergus Ewing: With great respect, I must say that the answer that I received was about as clear as mud, except that it indicated that the Executive has not directed that police officers should be seconded to every antisocial behaviour unit, which seems to me extraordinary.

I will move on to another aspect of fixed-penalty notices. There are references to fixed penalties on pages 29 and 54 of the explanatory notes. However, there seems to be rather more information—not for the first time—from those who have submitted evidence to us. I refer again to ACPOS, which said:

"During the first six months of the project, officers in the West Midlands issued 1,854 Penalty Notices for Disorder for crimes such as threatening behaviour, drinking in a designated public place, being drunk in a highway and throwing fireworks."

You have said that you have extensive information about that project. Indeed, it is on the basis of that information that you have concluded that there will be a net saving. I think that it was Mr Barron who painted that resounding prediction in a particularly roseate hue.

Given that you are armed with all the facts and that we do not have them here—unless I have failed to pick them up from my papers—could you tell me the answers to the following questions?

First, what has the income been from the 1,854 penalty notices? Secondly, what is the cost in police time of dealing with them? Thirdly, will you specify any other factors that are of particular relevance to the detailed work that you say you have carried out?

Michael Kellet: I shall try to answer as many of those questions as I can. If there are others that we can follow up in writing, we shall endeavour to do that as quickly as possible.

I do not have the information on the total income from the fixed penalties. The fixed penalties in the pilot south of the border are priced at two levels, depending on the seriousness of the offence—some at £40 and some at £80. I am not sure about the balance between the two, but we can seek that information from colleagues down south. However, I can refer the committee to a Home Office publication produced in July 2003, which states:

"Research in the West Midlands has shown that a penalty notice saves at least two hours in preparation of case papers—resulting in a likely cost saving to the force of more than £170,000 a year."

That evidence is based on the pilot in the west midlands.

Fergus Ewing: With respect, I specifically mentioned the fact that we had heard—from Mr Barron, I think—that you are relying on evidence on the west midlands pilot scheme in concluding that there will be savings. However, you are unable to tell us even the most basic components of that computation, so how can I have any faith in your evidence? Will you now take steps to provide a detailed computation of that work? Might we also have comments on it from ACPOS's counterpart body in England, just in case it, like the Scottish body, has reservations about whether the scheme is effective?

It seems to me that you have not answered the point raised by the convener—and put to us by ACPOS—that it is not always the case that dealing with fixed-penalty notices frees up time. Anyone who is acquainted with dealing with those rather bureaucratic procedures knows fine well that they can take a huge amount of time for the police, particularly when something goes wrong, something is out of the ordinary, people cannot be traced or forms have been completed incorrectly, or because of myriad other bureaucratic matters.

On the radio this morning, I heard the bill described as the Executive's flagship policy. This must be the first case in recorded history in which the flagship has hit the rocks before it has left the harbour.

Michael Kellet: As I have said, there is research evidence that shows a saving for the West Midlands police of £170,000 a year. That evidence is in the public domain and it is evidence that we

have relied on. I shall certainly endeavour to get the information that Mr Ewing seeks. However, it might be useful to say that it is precisely in order to quantify and ensure that we can realise net savings in Scotland that ministers have decided that we should pilot fixed-penalty notices in parts of Scotland before attempting to roll them out nationally. ACPOS supports that position.

Jeremy Purvis (Tweeddale, Ettrick and Lauderdale) (LD): Before we leave the subject, I have a question on strategies. In the past, the committee has looked at some of the structural flaws in the financial memoranda that we receive. However, when a bill is coming to the Parliament at the same time as other strategies are being developed or guidance is being prepared that may incur costs or involve deciding how costs are to be divided up, we have difficulty in scrutinising those costs. In this case, some local authorities are ahead of others in putting together antisocial behaviour strategies. In the context of the bill, do you expect those local authorities that are behind to shape their strategies differently from those that have already put their strategies together? If so, the bill will inevitably have an impact on the cost of their strategies, because the authorities will shape them differently.

Alisdair McIntosh: It is worth pointing out that all local authorities already have community safety strategies and action plans and a framework for tackling antisocial behaviour, albeit in a specific format. Although the strategies as defined in the bill represent a new duty, local authorities, in approaching that duty, will be building on existing mechanisms that have been developed to take forward their statutory community planning duties, so they will not be starting from scratch.

It is also important to emphasise that we will be producing guidance for local authorities on strategies, as we will on various other aspects of the bill. In both the first and second rounds of funding to which I referred—the initial £30 million and the further £30 million—some support will be available to local authorities to help them when they approach their strategies.

Dr Elaine Murray (Dumfries) (Lab): You will be aware that the Convention of Scottish Local Authorities strongly disputed the Executive's calculations on antisocial behaviour orders. COSLA has subsequently given us evidence based on the City of Edinburgh Council's experience of ASBOs, which indicated that one of the ASBOs cost almost £8,000. The majority of that cost was for solicitors' time. It is interesting to compare that with the ACPOS figures that show a police constable's time coming in at £17 an hour, whereas a solicitor's time comes in at £110 an hour.

Fergus Ewing: Shocking!

Dr Murray: Do you have any comments on that? In particular, I would be interested in hearing where you obtained your figures, because they seem to be distinctly different from the figures that COSLA has provided.

Michael Kellet: As we said in the financial memorandum, the figures that we have cited and used in estimating the cost of an ASBO come from research. That research, which is referred to in the financial memorandum, was on the role of mediation in tackling neighbour disputes and antisocial behaviour. It was published in March 2003 and produced by researchers at the University of Stirling. We relied on that evidence in the financial memorandum and we stand by it.

Costs in Edinburgh are estimated, as Elaine Murray says, at around £10,000 for an undefended case. We have to say that the main reason for the discrepancy is the cost per hour that the City of Edinburgh Council attributes for its solicitors. Since we saw the COSLA figures, we have done some work and spoken to other local authorities. It is plain that Edinburgh's assumption of the cost for a local authority solicitor of £110 per hour is on the high side. Dumfries and Galloway Council's figures are somewhere in the region of £35.20 or £44 per hour, depending on the seniority of the solicitor involved. That explains the discrepancy between the costings that we have used, based on the research done by the University of Stirling, and the figures that COSLA put to you in respect of two cases in Edinburgh.

Dr Murray: The comparison is interesting. The figure of £110 an hour seemed rather high for a local authority.

The Convener: Even for Edinburgh.

Dr Murray: There has been some reluctance to take out ASBOs in the past; councils have argued that the procedure was difficult and costly. Do you feel that some of the issues that surrounded the early use of ASBOs have now been resolved and that councils will be more comfortable with the procedures? Is there evidence to prove that?

Michael Kellet: There is evidence for that. The committee will be aware that interim ASBOs were introduced under the Criminal Justice (Scotland) Act 2003 and have been effective since 27 June last year, if I remember accurately. There is evidence that interim ASBOs have helped local authorities to expedite the granting of an ASBO to control a person's behaviour. It is early days, as the measures have been in place only since June 2003. Obviously, we will further update the work that is being done by the Chartered Institute of Housing on the use of ASBOs, but ministers hope that the use of interim ASBOs will help to solve some of the problems that local authorities have experienced in relation to the time delay that is involved in securing a full ASBO.

10:30

Dr Murray: COSLA also raised concerns about the difficulty of estimating the cost of intensive support programmes. Again, COSLA based its information on evidence from the City of Edinburgh Council, which estimated that there could be 60 to 70 applications for such programmes each year. Will you clarify how the Executive calculated its figures?

Rachel Gwyon (Scottish Executive Education Department): Members will be aware that there is a wider youth justice programme. Since 1992-93, we have put money specifically into youth justice teams to plan a range of interventions for people under 16 in their areas. We are enhancing that support; for example, funding for programme development has increased from about £5 million in 2002-03 to around £15 million in 2005-06. We expect each youth justice team to develop its own hierarchy of interventions and to strike the correct balance between mediation, reparation and intensive programmes, which will depend on the audits of the crime in the area for which it receives funding.

The estimate in the financial memorandum of around 600 to 700 programmes per year nationally refers to the totality of intensive support programmes for all those who are caught up in offending. The small subset of those who might require an ASBO that would also come with intensive support represents a potential additional requirement that might arise from the bill, which would be funded separately. We do not intend to fund all youth justice activity through the bill.

Mr Ted Brocklebank (Mid Scotland and Fife) (Con): Virtually all those who submitted evidence to the Finance Committee appear to take the view that the Executive has considerably underestimated the costs that will be involved. As I understand the argument that has been put forward this morning, there will somehow be money in the kitty to cover additional costs that might arise. That seems to be a fairly novel way in which to do an overall costing for a bill.

The Scottish Legal Aid Board claims that ASBOs might lead to a need for legal aid grants for appeals to the sheriff

"regarding any supervision requirement imposed by the children's hearing."

SLAB estimates that 50 to 100 such cases per year could cost the legal aid fund between £80,000 and £160,000. Have such costs been taken into account?

Alisdair McIntosh: I understand that the paper from SLAB refers to the potential costs of cases that are referred onwards from children's hearings to the sheriff. That option is, of course, available to those whose cases are going through the children's hearings system, regardless of the bill.

However, we have estimated that up to £200,000 might be required from the legal aid budget to deal with ASBO cases that involve under-16s.

The SLAB submission also raised a point in relation to the Vulnerable Witnesses (Scotland) Bill. It is worth pointing out that our advice on the estimate of the legal aid costs that might arise from that bill has erred on the side of caution. The costings assumed a high level of uptake of special measures.

Against that background, and bearing it in mind that the legal aid fund currently stands at about £150 million per year and that ministers are committed to funding any expenditure that arises from grants of legal aid, we are reasonably comfortable with our estimates of the legal aid costs.

Mr Brocklebank: SLAB claims, however, that those 50 to 100 cases, which arise from "onward referral" by the children's hearings, could cost between £80,000 and £160,000, and that those costs

"have not been included in the financial memorandum."

Alisdair McIntosh: The costs in the SLAB paper refer to onward referral from the children's hearings system to the sheriff court. As I said, the proposals in the bill do not add anything new to the children's hearings system in that respect. ASBOs will be granted by the courts, not by children's panels.

Mr Brocklebank: What about the legal aid costs of, for example, restriction of liberty orders? According to the SLAB paper:

"The Financial Memorandum estimates there will be 80 RLOs granted in any year. If all 80 resulted in breach proceedings, this could cost the Fund a further £21,000."

Has that been taken into account?

Alisdair McIntosh: Were all RLOs to result in breach proceedings, there would clearly be a cost. However, the Executive does not believe that the breach rate will be anything that remotely approaches 100 per cent. As I said, given the provision for the legal aid fund as a whole and the rather cautious estimates that have been attached to the legal aid implications of the Vulnerable Witnesses (Scotland) Bill, we are comfortable that, overall, the estimates that we have made are reasonable.

Mr Brocklebank: On electronic tagging, the financial memorandum does not provide any legal aid costings, but it estimates that representation by legally qualified people will cost up to £100,000 per year. I presume that there would be some appeals to the sheriff against RLOs, for which children's legal aid would be available, but the financial memorandum gives no estimate of the number of such cases.

Alisdair McIntosh: I am afraid that I must refer you to the answer that I gave about the state of provision of the legal aid fund and the cautious estimates that were made in respect of the Vulnerable Witnesses (Scotland) Bill, and also to the additional funds that have been identified in respect of ASBOs.

Mr Brocklebank: Is SLAB wrong to suggest that the Executive has not taken into account certain unforeseen costs?

Alisdair McIntosh: I do not say that SLAB is wrong. However, there is no basis on which to anticipate that, for example, all 80 RLOs would be breached. Similarly, I have no information that supports the assumption that 50 to 100 cases would be referred onwards from children's hearings. There are uncertainties around the figures that can be expected and much will depend on the uptake of the new measures that the bill introduces, but we are comfortable, overall, with the estimates that we have produced in relation to legal aid.

Jeremy Purvis: On tagging, will you clarify a matter about which there has been a wee bit of confusion? Paragraph 155 of the policy memorandum says:

"As well as extending the provision of electronic monitoring to children's hearings, we also propose to extend the options available to the courts by providing RLOs (with electronic monitoring to monitor compliance) as an alternative disposal to detention for offenders"

under 16 years old

"in appropriate cases."

For the record, does that refer to measures that are alternatives to custody, rather than additional?

Michael Kellet: I am sorry; I did not follow your question. Additional to what?

Jeremy Purvis: Would those measures be used as an alternative to custody, rather than in addition to custody?

Michael Kellet: The bill makes it clear that there will be circumstances in which the electronic monitoring of a child will be used as an alternative to a secure placement. However, the bill does not provide that that would necessarily happen.

Strict criteria must be met before a children's hearing can order a child to be detained in secure accommodation. The bill does not require those criteria to be met before a hearing could consider electronic monitoring as a disposal. I hope that that clarifies the position.

Jeremy Purvis: Unfortunately it does not. The implications are twofold. One aspect is beyond the remit of this committee, which is that to use the measure as an alternative to custody is to take a liberal approach, whereas the alternative would be

fundamentally illiberal. That is for a different committee to consider in more detail—

The Convener: We are just here to count the money.

Jeremy Purvis: There is also an impact on the financial aspect of the bill. If electronic monitoring is used solely as an alternative to custody, the impact might be positive, but if it is used in addition to custody, the impact might be quite negative.

Michael Kellet: The principles behind the measure were discussed clearly and in an up-front manner when Hugh Henry appeared before the Justice 2 Committee last week, so I refer the committee to the minister's explanation. Rachel Gwyon might want to say something about the funding of the measure.

Rachel Gwyon: The issues relating to tagging and the children's hearings system were costed in the same way as additional intensive support for ASBOs because they are new provisions. To an extent, there may be an additional saving. If a young person can leave secure accommodation earlier than would otherwise have been the case, that will save the authority £3,000 a week. We have funded the programmes through the financial memorandum.

Michael Kellet: Having read paragraph 155 again, I see that there is something else that could perhaps help the committee and I apologise for not picking it up before. We are talking about electronic monitoring in two separate contexts. The explanation that I gave earlier applies and is correct in respect of a disposal by the children's hearing. However, Jeremy Purvis is right that the courts will also be able to give a restriction of liberty order as an alternative disposal to custody for an under-16-year-old in the same way as it can be given to an adult. I apologise if I confused the committee on that point.

The Convener: That is a helpful clarification. I rushed away from local government issues, but Kate Maclean would like to return to that subject.

Kate Maclean (Dundee West) (Lab): My question follows on from Elaine Murray's questions but it is more general.

When Michael Kellet was asked how the costs of antisocial behaviour orders were arrived at, he said that the figures were reached by commissioning research from the University of Stirling. Why did the Executive commission research when it could have got factual information from each local authority or from COSLA? From the written submission and oral evidence that we received from COSLA, the extent to which COSLA was consulted seemed unclear. How much was COSLA consulted on the cost

implications for local authorities? To what extent were individual local authorities consulted?

I am concerned that, for a quite a few of the proposals, local authorities will be at the sharp end. The Executive might tell the public that local authorities now have powers to deal with things such as noise nuisance and littering but if local authorities do not have the resources or if they have to make cuts elsewhere, they will be unfairly subjected to criticism, which should be directed at the Executive if it has not funded the proposals adequately.

My question is about consultation and where the figures come from. Those issues have not always been entirely clear in other financial memorandums. That worries me. I do not have confidence in figures if it is unclear where they have come from. Why did the Executive not go to a more obvious source rather than commission research from the University of Stirling?

Alisdair McIntosh: We did not formally consult COSLA on the financial memorandum beforehand. The Executive does not normally consult in advance on financial memoranda. However, we had a number of discussions with local authorities and with COSLA on our proposals before, during and after the consultation period. We also briefed COSLA officials on the financial memorandum before their appearance at the Finance Committee in order to explain our assumptions on the costings.

Moreover, most of the information underlying our estimates was based on returns from local authorities, the Scottish Children's Reporter Administration and so on. For the ASBO costs, we used the figure in the research report because it was an available published figure that had been produced reputably and with the involvement of local authorities. As such, we thought that it was a reasonably reliable estimate.

Following our sight of COSLA's written submission and oral evidence to the committee, we went back not just to Dumfries and Galloway Council but to a large number of local authorities to check whether the assumptions that arose from the published research were reasonable. As Michael Kellet said in response to an earlier question, although the figures varied among local authorities, the clear message was that our figures were reasonable estimates.

10:45

The Convener: I want to pick up on your statement that the Executive does not consult local authorities. The previous financial memorandum that the committee considered was that produced for the Education (Additional Support for Learning) (Scotland) Bill. It was

produced by a working group that the Executive set up with COSLA. Immediately after this session, we will take evidence on our next financial memorandum, on which I understand COSLA was consulted before that bill was introduced.

I am a bit surprised at the firmness of your statement that the Executive's practice was not to consult COSLA on financial memoranda before they are produced. I think that such consultation should take place, especially in areas in which local authorities are very much affected. The practice in other parts of the Executive for other bills seems to have encompassed prior consultation on financial memoranda with COSLA in particular.

Alisdair McIntosh: I will make two points in response. First, when that point about prior consultation arose, we checked with our finance colleagues in the Executive. Their advice to us was that, according to the Executive's most recently published guidance on financial memoranda, there is no requirement on the Executive, and it is not the Executive's policy, systematically to consult on financial memoranda before they are published.

Leaving that to the one side, I think that a simple practical reason why we did not consult on a draft financial memorandum relates to the circumstances in which the bill was prepared, because we did not publish a draft bill for consultation beforehand. The measures in the bill were finalised only after the close of the summer consultation on the policy proposals. Therefore, we did not have, as it were, a set of published draft proposals for which it would be possible to publish an accompanying draft financial memorandum for consultation.

The Convener: I understand the circumstances behind the bill, but if there is a defined approach that does not involve prior consultation, I would not want to let that rest. That would be unacceptable to the committee.

Alisdair McIntosh: Let me clarify that I was not saying that the Executive should not or would not consult beforehand. I was simply answering the question about prior consultation by explaining what I understand to be the practice on financial memoranda more generally.

Kate Maclean: My question was not about consultation on the draft financial memorandum but about consultation prior to the drafting of the financial memorandum, so that the information that is used in it is based on facts that I would have thought are easily available.

My other question is about the Executive's recommended practice on consultation, but my question should probably be targeted at ministers rather than at officials.

Rachel Gwyon: We may have managed inadvertently to leave the committee with a slightly misleading impression. There is no suggestion that we were not talking to officials from COSLA. I have a list somewhere of the range of stakeholder groups—of which there were literally dozens—that we met even before the written consultation document was issued. COSLA was in on those meetings. That was certainly the case for the meetings that I held and I think that that was common across the Executive. In those meetings, we went through what the measures might be and tried to discuss what their implications would be. That partly informed our discussion before the financial memorandum was produced. Although we did not have a draft financial memorandum the exact wording of which we could share with COSLA, we discussed the policies with COSLA from straight after the election.

Michael Kellet: I back up what Rachel Gwyon has said. Many of the responses to the consultation paper mentioned the issue of resources and many of those were based on discussions that we had already had. In October, we published the University of Glasgow report that provides an analysis of the consultation responses. Included within the conclusions of that report is a paragraph that stresses the fact that several agencies highlighted the issue of resources in their consultation responses and in our meetings. Obviously, we took account of those points and discussions in preparing the financial memorandum.

Kate Maclean: It seemed strange that the figures for the costs of antisocial behaviour orders were obtained from research. If I was going to buy something, I would ask somebody who had already bought it how much it cost rather than commission research.

Michael Kellet: I understand that the research was done by asking a number of local authorities across Scotland for an estimate of their costs for obtaining ASBOs.

Dr Murray: I have a slightly more general point. Comparisons have already been made with the Education (Additional Support for Learning) (Scotland) Bill, the financial memorandum to which considers ranges of costs. Ministers have given an assurance that, should the financial memorandum underestimate that bill's costs, there is sufficient unallocated resource in the budget to be able to cover that. Is the same true of the Antisocial Behaviour etc (Scotland) Bill—in other words, if it turns out to be more expensive than you have estimated, is there sufficient unallocated resource in the justice budget to be able to cover additional funding?

Alisdair McIntosh: Some of the funding to support the bill and the wider strategy comes from

within the justice budget and some of it comes from within the budget for the communities portfolio—notably the £30 million for community wardens and other local initiatives, which I mentioned, and the further £30 million, which is as yet unallocated. The precise allocation of that £30 million will build on the first round, but it will also be possible to reflect the assessment of the current position on resources for the bill's provisions and the strategy as a whole.

I should also say that future funding will be the subject of the discussions on the spending review that will get under way later this year, which will determine funding for the years beyond 2005-06. We will keep the overall position on the resource implications, not just of the bill but of the wider strategy, under review and will discuss it with COSLA and others over the coming months, as we proceed with the bill and the strategy.

The Convener: I want to pursue the wider funding issues, but we will hear from Fergus Ewing first.

Fergus Ewing: In my view, Dr Elaine Murray's question was apposite, so I will pursue it. What is your worst estimate of the highest amount of the unallocated £30 million that might be used up by what you call the bill's indirect consequences?

Alisdair McIntosh: I do not think that I can give you an answer to that today, for the simple reason that the final decisions on the allocation of the first £30 million have not been taken—although they will be taken very soon. It will be important to ensure that the second £30 million goes towards addressing any gaps in core services in local authorities and other agencies and that it contributes to the whole range of activities—including prevention and early intervention, which are themes of the strategy—rather than to just the enforcement angles. I cannot give an answer in the terms in which you asked the question.

Fergus Ewing: I hear what you say, but the reason that you gave for not being able to give me an answer was that ministers had not yet taken the relevant decisions. That is not really what I asked you; I asked what your worst-case-scenario estimate was on the basis of your computation as advisers rather than as ministers, but I do not think that I will get any more on that.

I want to raise a question that arises from today's revelation that on what is a major bill—some people would say that it is the Parliament's most important bill—you did not hold a consultation on how much it was going to cost; in other words, you told us that you did not have a formal consultation on the financial memorandum. You explained that by saying that you contacted your colleagues in finance, who advised that it was not mandatory to have a consultation on the

financial memorandum. Did those colleagues express a view that to do so might be prudent or did they express any other view on that?

Alisdair McIntosh: No, they did not express a view but, as I explained earlier, we had a number of discussions—before, during and after the consultation period—with COSLA, local authorities and other bodies that would be affected by the bill's provisions on the range of policy issues and the proposals' implications, including those that informed the estimates. We did not have a formal consultation on the financial memorandum as a document, but that does not mean that we did not consult those who would be affected by the policy proposals' implications.

Fergus Ewing: I understand that as well but, with hindsight, given that the bill is such a major piece of legislation that is so controversial and has so many strands, surely it was essential that you had a proper consultation—not discussions and chats—on your estimate of how much it was going to cost. It is hardly surprising that the police, Shelter Scotland, the Scottish Legal Aid Board and housing people have criticised your figures, because they were not properly consulted in the first place. Will you spit it out and say that you were wrong and that you should have had a formal consultation on the financial memorandum? If you had done so, we might have been in a better position than we are in now; we certainly would not have had the total uncertainty that you have described this morning.

Michael Kellet: We would not accept that there is total uncertainty or that there have not been consultations on the costings. As Rachel Gwyon explained, we had a series of very detailed meetings with a range of stakeholders over the summer, during which the resources were discussed repeatedly.

It is my understanding that the guidance on the preparation of financial memorandums is prepared jointly by officials in the Executive and the Parliament. I have a copy of a letter of 4 December from Andy Kerr to the committee's convener, which included a copy of the up-to-date guidance on financial memorandums. That was the guidance that we tried to follow in preparing the bill's financial memorandum.

The Convener: The guidance says:

"Financial Memoranda should also include relevant cross-references to any consultation exercise as summarised in the Policy Memoranda".

It does not say that there should not be consultation on financial memoranda in any shape or form.

Michael Kellet: We would accept that; it is fair to say that we are not saying that the guidance tells us not to consult on financial memoranda.

The policy memorandum contained cross-references to the consultation.

The Convener: I appreciate that not every bill will go down the same route. I do not necessarily agree with all that Fergus Ewing said, but the kernel of it was that, the more precise the consultation that one can do and the more detailed the figures, the better the responses that one will get.

I want to pursue the issue a bit further. One of the aspects of COSLA's evidence that the committee was disappointed about was its apparent lack of preparedness and focus on the bill's implications. Is that not evidence that you should be concerned about how well the consultation process has gone?

Alisdair McIntosh: There are two points to make. First, it was precisely so that COSLA officials would be prepared for their appearance before the Finance Committee that we invited them to a briefing on the estimates and the assumptions that underlay them. It is also important to say that, as I understand it, there has recently been a considerable restructuring within that organisation, as a consequence of which a number of people are now in posts that they were not in previously—their responsibilities have changed. That might have been a factor, although I would not like to speculate.

The Convener: We would certainly hope that local authorities are better prepared on the ground than COSLA appeared to be when it appeared before us.

Jim Mather (Highlands and Islands) (SNP): On the basis of today's exchanges, I am wondering whether we have reached a point at which we should be moving on from the way in which financial memoranda are produced. We live in the era of spreadsheets in which it is simple to model costs over time, to show a decrease in costs as processes and policies bite in. The fact that both direct and intangible savings over time can be shown in a constructive way means that we can move on from having an exclusive focus on expenditure. Surely the current approach, which is purely about the allocation of cash in return for intangible and unquantifiable benefits, is unsatisfactory.

To tie in with that more modern, robust way of doing things, surely it would be much better to use the consultation to get a committed buy-in from the various stakeholders involved to agreed minimised costs and to get a similar commitment to agreed maximised savings.

The Convener: I think that the officials can respond to that only in relation to the specifics of the bill; it is probably for other officials to deal with the generalities.

11:00

Alisdair McIntosh: On the specifics of the bill's delivery and the wider strategy, we decided to set up an implementation advisory group—composed of officials from the Executive, COSLA, local authorities, the Scottish Federation of Housing Associations, the Association of Chief Police Officers in Scotland and SCRA—as a forum for discussing issues in the context of the delivery plan that the Executive intends to draw up, which will be ready when the bill becomes law. The group's work will be overseen by a ministerial and COSLA steering group, including the minister, the COSLA president and his colleagues, to ensure that there is a venue for discussing implementation and wider delivery issues surrounding the bill and the whole strategy. That is not a complete answer to the question, but we are certainly considering the issue.

Jim Mather: I trust that you appreciate the disquiet on the members' side of the table: we seem to sit here sanctioning additional costs with no real confidence that savings will be forthcoming, and we repeatedly hear stakeholders such as SCRA suggesting that the costs that are set out in the financial memorandum are lower than the costs that it feels that it will bear.

Rachel Gwyon: I am surprised by that summary of SCRA's evidence because we found that the cost for direct funding of that organisation—for which it asked—tallies almost exactly with the estimates that we included in the financial memorandum. SCRA did go on to say that the training costs for panel members in the financial memorandum might be too low. However, the Executive, rather than SCRA, pays those costs. Therefore, we used the evidence of what we actually pay and what we have paid in other pilots such as fast-track hearings. We are confident that we have estimated the costs accurately.

The only other point that SCRA raises is on information technology. We have invested about £11 million in the past few years in SCRA and we must have a wider discussion with it about the children's reporter administration as a whole. We will have a continuing discussion with SCRA on that.

Jim Mather: When was SCRA consulted?

Rachel Gwyon: It was consulted even before a Government was formed. We started consultation with SCRA on the back of the manifestos. SCRA has been in on the discussions since the beginning.

John Swinburne: I have sat and listened to the evidence, which has been interesting. However, we are not interested in the bill. We are interested only in the bill's financial aspects. Your presentation is as unclear as any I have heard. I

am not a financial genius, but when we get the Executive providing estimated costs of between £500 and £6,500 for applying for an ASBO, and COSLA coming up with an estimate of between £5,000 and £20,000, the disparity in the figures is totally unacceptable. I do not see anything concrete on which we could base approval.

Michael Kellet: All I can do is point out that the difference relates to the charge per hour for solicitors' time. That explains the discrepancy. There is not much more that I can do than to reiterate that answer.

John Swinburne: That bears out the point that I made. I am happy to leave it at that.

The Convener: Did you want to ask a question about noise?

John Swinburne: How was the financial assumption made of the £2.5 million budget for noise nuisance—which COSLA says will be insufficient—and the new power that local authorities will require?

Michael Kellet: I will deal with that. I think that we made it clear in the financial memorandum that we estimated that if all 32 local authorities decided to implement a noise service for 24 hours a day seven days a week, the additional annual cost would be a maximum of £3.84 million per annum. I understand that COSLA estimates that the figure would be £5 million. As we said in the financial memorandum, we estimated a local authority take-up rate of 60 per cent and costed that at £2.5 million.

That take-up rate was based on the experience of the Noise Act 1996 in England and Wales, which indicates that a night-time noise service is likely only in the main cities and conurbations. We spoke to environmental health officers who said informally that it is impractical to provide a night-time noise service in many parts of Scotland, particularly in the more rural areas. The new night-time noise service in Glasgow and the experience of Belfast, which also has a night-time noise service, indicate that even in concentrated urban communities a full 24-hour, seven days a week service might not be necessary.

Therefore, I think that we have been up front about our assumptions. COSLA thinks that there will be more uptake of the night-time noise service than is the case. I think that ministers are committed to providing a night-time noise service and will ensure that the funding is provided for the services that local authorities want to deliver.

John Swinburne: So you are saying that only a 60 per cent service will be guaranteed in Scotland.

Michael Kellet: That was the assumption that we made in putting together the financial memorandum.

John Swinburne: Sixty per cent is not a very high success rate.

Kate Maclean: COSLA reported in its submission that the Society of Chief Officers of Environmental Health in Scotland said that all its members envisaged take-up, though some of the more rural areas might do so in a limited way in partnership with other local authorities. If there is a higher take-up than 60 per cent, will funding be made available for that? If that is the case, there will be a £1 million difference between your estimate and COSLA's estimate.

Michael Kellet: I acknowledge that Kate Maclean's facts are correct. The answer is yes—the funding would be made available. The minister is committed to providing a night-time noise service. If there is more take-up, money will be provided to ensure that the service can be put in place.

Kate Maclean: I know that things such as noise and litter are not headline grabbers in terms of the bill. However, from my postbag for the past 15 years or so, it seems that those matters are huge issues in some areas in Scotland. Therefore, it would be unfortunate if funding was not made available for the less sexy parts of the Antisocial Behaviour etc (Scotland) Bill.

Mr Brocklebank: Among the organisations that submitted written evidence to us, the most critical of all was probably Shelter Scotland, which said that

"it is very concerned about the 'guesstimation' in the Financial Memorandum."

Shelter also said that

"lack of clarity could impact on the finances required to implement the bill, and ultimately on the effectiveness of the bill."

Shelter believes that there is too much concentration on legal measures and that

"there is a potential for non-legal measures to lose out financially, despite their proven successes. If the bill turns out to be more expensive than originally planned because of a lack of transparency ... non-legal measures will suffer."

How do you respond to that criticism?

Alisdair McIntosh: First, as far as the estimate—or guesstimate—is concerned, we based our estimates, as we have tried to explain during the meeting, on available information and evidence. In some cases, such information is not great. However, we took the information that informs the estimates from the public domain. It is a question of judgment as to whether the estimates are highly accurate, but we have not seen or heard anything to suggest that alternative information is available or that there are more robust estimates than those that are in the financial memorandum.

As far as non-legal measures are concerned, it is important to emphasise again that the bill is just part of a wider strategy that includes financial and other support for non-legislative measures, particularly in diversion of young people away from offending behaviour, for support for parenting and for early interventions, which are not a direct consequence of the bill, but are an important part of the policy mix. Ministers are clear that a strategy to tackle antisocial behaviour cannot be about only enforcement: it must also be about prevention and early intervention. Ministers have ensured that plans, programmes and funding are in place to support all those elements.

As far as the argument that there is a trade-off between support for legal measures and support for non-legal measures is concerned, we reject it. There is no sense that there will be a diversion of funding away from one activity to support another, as the Shelter submission suggests there will.

Dr Murray: I want to return to noise nuisance. Under what circumstances do you envisage the noise nuisance powers being used?

Michael Kellet: In some respects, the bill is an enabling bill and it will be for local authorities to determine how to structure a noise nuisance service in their areas. I apologise if that does not fully answer the question.

Dr Murray: Do you envisage that, for example, if people were annoying their neighbours by having noisy parties, the local authority might be able to use its noise nuisance powers?

Michael Kellet: Potentially, yes. As I understand the system, the scenario will be that two environmental health officers, using a sophisticated machine that monitors precisely noise levels, will be able to go to premises and check whether the acceptable noise limit that has been set is being exceeded. They will be able to take appropriate action if that is the case.

Dr Murray: Is it not strange to assume that no one in rural areas, small towns and villages has a noisy neighbour?

Michael Kellet: I agree that it is, but examination of the situation south of the border and in Belfast and Glasgow might lead one to the view that there will be a need for a greater service in more concentrated urban areas.

Colleagues from local authorities in COSLA have made us aware that one of the ways in which they might approach the matter is by providing a noise nuisance service on a partnership basis. For example, the Lothian authorities might come together to fund jointly a service that will be available to all the Lothian communities.

Dr Murray: Like Kate Maclean, I hope that the service would be available in my local authority

area, which is fairly rural. I get plenty of complaints about noise in my postbag.

Jeremy Purvis: There might be only four environmental health officers to cover Dumfries and Galloway and the Borders—the entire south of Scotland. We would need additional support to have the same kind of cover as urban areas. I would have expected the financial memorandum to acknowledge that rural areas need a degree of consideration that is different to urban areas.

Michael Kellet: I accept that the travel distance in rural areas will be a major factor for the teams and I accept your general point. I think that I have explained that we made an assumption in the financial memorandum that we thought was justifiable, based on precedent. We accept that, if there is greater uptake than we predicted, it will be funded by the Scottish Executive.

Jeremy Purvis: Over the summer, you engaged in discussions with COSLA and others. Did those discussions include the Scottish Federation of Housing Associations?

Alisdair McIntosh: We have had a number of discussions with the SFHA over the course of the consultation period. However, I do not recall the assumptions about uptake being the subject of any specific discussion.

Jeremy Purvis: In its submission, the SFHA talks about the guidance that will allow sheriffs to consider whether it would be reasonable to issue repossession orders if landlords have not first applied for an ASBO. The submission says:

“rightly there will be an increasing expectation that social landlords should apply for an ASBO before seeking a repossession order.”

Will the bill apply in that context to social landlords, or does the SFHA have the wrong end of the stick?

Michael Kellet: The bill applies to social landlords. We have kept the situation that was previously provided for by the Criminal Justice (Scotland) Act 2003, which was that responsible social landlords were given the power on 27 June 2003 to apply for ASBOs. The bill will not change that.

Jeremy Purvis: I will come back to that point, but I was asking about whether a sheriff would be able to order repossession of a property if the social landlord had not first gone through the ASBO process.

Michael Kellet: As I understand it, the bill does not make a provision for that because it involves a procedure that sheriffs would have to take in relation to repossession and evictions. Guidance will be issued, but it will be for the sheriff to make a decision as to whether a repossession order was

justified in any particular case. The factor that Jeremy Purvis mentioned might be one that would be taken into account. I understand that there is no statutory requirement for an ASBO to have been sought before a repossession is carried out. I will check that and get back to the committee.

11:15

Jeremy Purvis: I would value clarification of that matter because it is a matter of some consequence. Furthermore, it would be important to know whether the position as regards ASBOs and repossession orders would apply to social landlords as well as to private landlords. I cannot tell what the answer is from the papers before me but, if that is the case, it would put a de facto obligation on social landlords to go down the ASBO route rather than the mediation route, which they might prefer, even though the ASBO route might be cheaper and less burdensome.

Michael Kellet: On cost, the Stirling University study to which I referred earlier examined the cost of mediation versus other legal measures. It came to the general conclusion that mediation is usually a more efficient and cheaper option than any legal remedy, whether it be an ASBO, an eviction or whatever. The obvious reason for that is that no lawyers are involved.

The ASBO guidance would apply in the context of your question to an RSL as well as to a local authority. However, it is only guidance and I think that any sheriff would make a decision on issuing a repossession order on the basis of information that was available to him.

Jeremy Purvis: You said that the situation that was established by the Criminal Justice (Scotland) Act 2003 in relation to ASBOs will not be changed, but am I right in thinking that housing associations would not receive some of the funding for the process that you said earlier would be available to local authorities? Is it true that they will not receive equivalent support?

Michael Kellet: Alisdair McIntosh might have more to say on how the money might be used with regard to the wider issue of funding. We see ASBOs as being another housing management tool that RSLs will have at their disposal. In the context of the Criminal Justice (Scotland) Act 2003, which introduced the provision, RSLs lobbied hard to have the power and Parliament decided to give it to them. They are a legal remedy like any other legal remedy, such as eviction. We do not fund RSLs specifically in relation to any other legal remedy, which is why we thought that it did not make sense to fund them separately for this new legal remedy.

Jeremy Purvis: The power will be extended to people aged under 16, which is what we have

been talking about in the context of the financial memorandum. That will increase the number of ASBOs that might be applied for.

In my area, the housing stock has been transferred to the Scottish Borders Housing Association. If that association applies for an ASBO and does not receive the support that a local authority would receive, the tenants will in effect be paying twice. They will pay once through their taxes for a local authority ASBO and again through their rent for a housing association ASBO, as the housing association cannot access any other kind of funding.

Alisdair McIntosh: The money that has been made available in the first round of funding does not include an element of funding for local authorities to pursue ASBOs any more than it includes an element of funding to pursue eviction or other tools of housing management. Among other things, it provides additional money for mediation services, which we hope will be available on a cross-tenure basis in local authority areas. In the context of their first-round bids for funding, 19 local authorities are using part of their allocation for mediation services.

It is important to remember that, for RSLs, ASBOs are one of a range of tools for dealing with antisocial behaviour. It is for the landlord, be it the local authority or an RSL, to decide whether an ASBO is the best way in which to bring about the kind of change that there needs to be in the properties that they own.

It is also important to remember that, during the passage of the Criminal Justice (Scotland) Act 2003, RSLs pushed very hard to be given the power to apply for ASBOs.

Jeremy Purvis: With respect, the table of estimated costs shows that a £9 million cost estimate is made for local authorities. It is obvious that costs are associated with the bill and that, although local authorities will be able to draw down funding for ASBOs, RSLs will have no equivalent funding. RSLs take part in putting together antisocial behaviour strategies—they have done so in my area. RSLs also take part in mediation services, but they cannot recoup any of the money that is involved in their staff attending meetings, which local authorities can recoup. If RSLs look at the financial memorandum, they can see clearly that £9 million is to be made available to local authorities, but diddly-squat will be available to housing associations.

Michael Kellet: We would answer that by saying that the £9 million, which is about the provision of the intensive support programmes that Rachel Gwyon talked about earlier, would apply to an under-16-year-old on an ASBO, irrespective of who made the application for the ASBO. The

mechanism that we have provided for that in the bill is that, irrespective of who has made the application for an ASBO, in cases in which a sheriff has granted an ASBO, the sheriff has the power to refer the child to a children's hearing in order to ensure full consideration of all the circumstances of the child, and that wider support is put in place. The £9 million is designed to support those intensive support programmes. As I said, the programmes would be made available to a child who was on an ASBO irrespective of who applied for the ASBO.

Jeremy Purvis: So, you are quite comfortable that housing associations will be taking part and working with the local authorities in this process. If the person on the ASBO lives in a housing association property, the housing association is the landlord and will be involved in the duty of care and in all the other procedures that will flow from the bill, but cannot draw down any support for that work. It seems extraordinary that housing association tenants would have to pay for that work. Housing associations have no income other than the revenue that they raise from rents.

Rachel Gwyon: I want to make some wider points about people under 16 who might be behaving antisocially, who might be beyond control or who might be behaving illegally. It does not matter to us whether the behaviour is done on the street or in a housing scheme, because what happens next should be the same. It is open to any person at any point to make a referral to the children's hearings system. If a young person has got into trouble or is causing trouble in a home environment, the referral could be made directly to the reporter at a much earlier stage.

I would not want to give Mr Purvis the exact assurance that I think he seeks that all housing bodies are involved in planning and services. I am not convinced that everything on the ground is as joined-up as it might be, but that is partly what lies behind these policy developments. We have certainly encouraged NCH Scotland and others who have come to talk to us—because they are concerned about the link that has been made to housing—to make known to housing bodies the services that they are able to offer and the added support that is available through the children's hearings system.

Jeremy Purvis: From joint meetings that I have attended between Scottish Borders Housing Association and Scottish Borders Council, I understand that SBHA is doing very good work in co-operation with the council. I hope that you are not suggesting that SBHA will have to wait until all housing associations meet that standard before the issue is addressed. Why should housing association tenants have to wait until then?

You have not addressed my suggestion that housing association tenants will pay twice. Tenants will pay out of their rent for the dedicated work that their association undertakes throughout the process with the local authority, in terms of joint meetings and so forth. At the same time, those tenants will also pay out of their taxes for the local authority to undertake its part of the process. Why should the tenants of social landlords pay twice for an antisocial behaviour strategy?

Alisdair McIntosh: One of the reasons why we provided in part 1 of the bill that housing associations will be involved at local level in drawing up strategies to tackle antisocial behaviour was that housing associations should have a voice in the process—

Jeremy Purvis: I am sorry to interrupt, but the point is that if a local authority undertakes the work, we can see that it will receive the money for doing so from the Executive. Housing associations, however, will not receive equivalent support: their tenants will pay for it.

Alisdair McIntosh: We need to be clear that the Executive is not going to give local authorities money to apply for antisocial behaviour orders.

The Convener: We understand that.

Alisdair McIntosh: The Executive is providing funding to local authorities to support the strategies that will be drawn up by community planning partners, including housing associations and registered social landlords. There is no reason in principle why—in the discussions on the next round of funding—it should not be decided that the allocation for the local authority should be passed on or shared with other agencies in a particular area.

It is also important to emphasise that, in supporting mediation services, the Executive is determined to ensure that mediation will be available irrespective of tenure. That means that housing associations and their tenants will also benefit from the provision of mediation. The Executive's view is that RSLs will benefit from the package of proposals in the bill and from the financial support that it has provided for local strategies.

Jeremy Purvis: I am sorry, convener, but I am in the process of being frustrated. Of course, housing association tenants will benefit, but they will also benefit if the local authority takes part in the process. The point is that housing association tenants will pay twice. If I am not a tenant of a social landlord, I will pay for the measures once because the local authority will provide the services.

As you said, there is £60 million to support all antisocial behaviour strategy work, and I agree

that housing associations will benefit from taking part in the process. However, when their staff take part in order for the association and its tenants to benefit from the process, who will pay for that input? The answer is that it will be the association's tenants who will do so—the association's staff costs will be paid for out of the revenue that accrues from tenants' rent. The double hit on social tenants seems to me to be fundamentally unfair.

I have asked the question in many different ways and I am not getting an answer that satisfies me. Perhaps special grants for housing associations will be accommodated in future. Perhaps, in the next funding round, the table that shows the breakdown of allocated moneys will include a Communities Scotland element. There was, perhaps, some encouragement for me to hope that that might be the case.

The Convener: There is an issue about community planning and about how resources are routed into dealing with the issue. That is perhaps something that could be looked at in the context of the next funding round to which Alisdair McIntosh referred.

Dr Murray: I have similar concerns to those that Jeremy Purvis raised; I, too, have no council tenants in my constituency. All of the council stock has been transferred to Dumfries and Galloway Housing Partnership. If a DGHP tenant behaves antisocially, whose responsibility will it be to pursue an ASBO? Will it be the responsibility of Dumfries and Galloway Housing Partnership or Dumfries and Galloway Council?

Michael Kellet: I think that the answer to the question is that that decision would be made at local level. That is precisely why we provided for the antisocial behaviour strategy: it is to bring together local partners including RSLs, the police, the local authority and others. A clear decision would be made about who would pick up the responsibility. We think that that is precisely the type of issue that should be decided at local level so that people do not fall between stools in the way that was described.

Dr Murray: In circumstances in which an authority had not transferred its stock, the responsibility would be the council's. As was referred to earlier, we discussed with COSLA the costs of raising an ASBO. Are you now saying that none of the funding relates to the cost of raising an ASBO and that the council, housing association or housing partnership would be expected to raise such orders without additional funding?

Alisdair McIntosh: It is important to remember that the position at the moment is that local authorities pick up the cost of ASBOs, as do the RSLs that use ASBOs. The bill does not change

the position in that respect and neither does the funding package. The essential point is that, in extending ASBOs to under-16s, it is the intention to give both local authorities and RSLs an additional tool among the various housing management and other measures that are available to them, to deal with specific cases that affect their responsibilities and the properties for which they are responsible. That is why the position has not changed in respect of funding.

However, in the context of the delivery discussions that I mentioned briefly, I can say that we will involve the SFHA, local authorities and others in consideration of respective responsibilities and the practical burdens on those who are charged with taking forward such matters. That is certainly something that we will have to come back to.

11:30

Dr Murray: If a housing association pursued an ASBO and used the solicitor from a council's antisocial behaviour unit, for which the council charged the social landlord £110 an hour, do you accept that considerable funding issues could be faced by the housing association and by tenants, who are the only people who can contribute to such an organisation's finances, as Jeremy Purvis said?

The Convener: Instead of answering now, it would help if you sent us a letter on the issues that have arisen in the discussion. Perhaps you could clarify further how those matters might be dealt with in principle. Obviously, the precise details will be dealt with in discussions about delivery that have still to take place.

Could you also send us further information to address the discrepancy between the expected costs of ASBOs according to COSLA and the costs according to the Executive? John Swinburne mentioned that large discrepancy. To unpick that, surely we can be supplied with firmer evidence that is based on experience.

We are moving towards the conclusion, but I still have two or three questions to ask. One set of criteria against which the performance of local authorities and housing associations is judged is housing management criteria, such as the number of voids and other related statistics. Have you considered how the bill's implementation should impact on the key housing management statistics and perhaps other matters on which public authorities are judged? If people work with clear criteria that do not relate properly to the overall policy intentions, perverse outcomes could be produced. Has that been considered systematically throughout the Executive?

Alisdair McIntosh: We have worked closely with our colleagues who are responsible for

housing and housing management in the run-up to, during and since the consultation. They are policy leads in the Executive on the bill's housing elements.

Indicators, performance measures and targets are on the agenda for the implementation advisory group in the context of the delivery plan. The group will have its first meeting in about three hours. At the earliest opportunity, we intend to table for consideration what indicators are appropriate and necessary and what antisocial behaviour indicators, targets and performance measures exist across the waterfront, to ensure that the package is internally consistent and that when the delivery plan has been drawn up, we will have a basket of relevant performance data that will enable us to see one year, two years or three years hence what difference has been made and in what way.

The Convener: I presume that the performance data will take account of the fact that some measures that the bill will introduce are relatively expensive to implement. If other measures are equally effective but less expensive, the indicators that are produced should promote the use of those approaches rather than the approaches in the bill. In the management of public finance, we want careful attention to be paid to that.

Alisdair McIntosh: We certainly want to address that issue in the discussions about delivery.

The Convener: Your submission says that £60 million has been allocated to tackling antisocial behaviour in 2004-06 and that the Minister for Justice announced a further £35 million on 8 January. How do those figures relate to the £65 million to which the financial memorandum refers?

Alisdair McIntosh: The £30 million for community wardens and other local initiatives to tackle antisocial behaviour was announced last year and is in the final stages of allocation.

The £35 million from the justice portfolio for the two coming years was announced by the Minister for Justice in January. In addition, as I said at the outset, a further £30 million has been earmarked for the years 2004-06; that was mentioned in the budget statement that was made by the Minister for Finance and Public Services in September, but it has not yet been allocated. It is that £30 million that will build on the first £30 million to support local action.

The Convener: I have a question on funding after 2006. You will respond by saying that there is a process of examining financial projections for the future, but can you give us any commitments in relation to funding after 2006, and how that will be handled within the Executive?

Alisdair McIntosh: The commitment that I can give you is that ministers will be looking closely at the real resource needs to support action to tackle antisocial behaviour, both for the coming two years and for the longer term. That issue will be addressed head on in the spending review discussions that will take place later next year. I am afraid that I cannot give you a more precise commitment than that.

The Convener: In terms of information about the actual costs, as opposed to the anticipated costs, there might be a gap between the implementation of the measures and the spending review process. Have you given that any consideration?

Alisdair McIntosh: Ministers are absolutely committed to ensuring that the strategy and the bill are adequately resourced. They are also committed to ensuring that its implementation is monitored and evaluated in all respects, including the financial one, and they will take account of any discrepancies that might appear in the course of implementation of the bill, in the course of the current spending period, and in the course of the spending review discussions.

The Convener: Bearing in mind the submissions that we have received, will you engage in further discussion with the various agencies that we have talked about today so that the figures can be bottomed out, not just in relation to this year and next year, but in relation to subsequent years?

Alisdair McIntosh: Indeed. One of the key themes of the work of the delivery group—the implementation advisory group, if you will forgive the jargon—will be the resource implications and the service provision that exists at local authority level to support the strategy. That discussion will be on-going, certainly for a year and possibly beyond then.

John Swinburne: Do you anticipate that spending will remain static year on year, or will it go up or go down? What is your estimate?

Alisdair McIntosh: It is difficult to say, because while we are providing tools that should deliver benefits for dealing with existing cases, we cannot predict the amount of activity out there in the outside world. We hope that as prevention and early-intervention measures bear fruit, less will have to be spent on the enforcement aspects—that is certainly the policy intention. However, it is difficult, sitting here today, to give you a rock-solid prediction.

John Swinburne: That is the first hopeful note that I have heard all morning. The continual escalation of costs would have been totally unacceptable. If your measures are effective, the costs should plummet rapidly in a few years, and

antisocial behaviour should become just that—something that is totally unacceptable and antisocial—and its incidence should reduce. I am pleased that you made that last statement, because until now I had received no reassurances whatever.

The Convener: On that positive note, I thank the witnesses for coming along this morning and giving us such comprehensive answers.

If members have issues that they wish to highlight from the evidence that we have received, I ask them to communicate with the clerk before the end of the week, because we will have to write a report on the matter in due course.

11:40

Meeting suspended.

11:46

On resuming—

Local Governance (Scotland) Bill: Financial Memorandum

The Convener: Agenda item 2 is further consideration of the Local Governance (Scotland) Bill, for which we have witnesses from the Scottish Executive. Andrew Rushworth is head of the local government finance and constitution division, and Sarah Morrell is the local democracy team leader. I welcome them both to the committee.

Members have a copy of a submission from the Convention of Scottish Local Authorities, which follows on from the evidence that COSLA gave us on 16 December. Members should also have before them a submission that has been lodged by the Society of Local Authority Chief Executives and Senior Managers, which was sent out by e-mail yesterday. I invite our Executive representatives to make a brief opening statement, after which we will move to members' questions.

Andrew Rushworth (Scottish Executive Finance and Central Services Department): We are very grateful to the committee for giving us the opportunity to explain the Executive's position on the financial implications of the Local Governance (Scotland) Bill, as set out in the financial memorandum, and we wish to be as helpful as we can be in this respect.

The financial memorandum seeks to identify all the areas in which the bill, or secondary legislation that is made under it once it is enacted, could lead to increased costs over those of the present arrangements. We recognise, however, that the financial memorandum does not provide detailed information on all the costs that could flow from the bill.

It might be helpful to the committee if I were to set out the reasons for the approach that we have taken. Where the parameters and factors that govern the costs are already reasonably identifiable, the financial memorandum includes estimates of the possible costs. Examples of that are voter awareness campaigns on the introduction of the single transferable vote and the setting up of the Scottish local authorities remuneration committee.

We wrote to the committee before Christmas, with an indication of the costs to the Local Government Boundary Commission for Scotland of carrying out the necessary ward boundary review. Those are costs that the boundary commission would incur in any case when carrying out its regular review.

There are three areas in which some of the factors that determine the potential costs are not clearly identifiable at this stage. The first of those areas is the cost of running an STV election in comparison with the costs that are incurred by local authorities when running a first-past-the-post election. The STV count might take longer, and it will be more complex than has been the case for first-past-the-post election counts.

Until the recent estimates that were produced by West Lothian Council as part of the SOLACE submission, which we welcome, local authorities had not undertaken detailed assessments of the possible implications for their election procedures of introducing STV. Authorities would have some difficulty in doing that with any certainty before the order that will be made under section 9 of the bill, on the conduct of the election, has been made. Until then, the possible increase in the costs of running local government elections under the STV system cannot be estimated with any degree of confidence.

Secondly, there are the potential additional costs to local authorities—for example, councillors' travelling costs—of operating with larger, multimember wards. So much of that will depend on the detailed arrangements that each council makes that it is virtually impossible to quantify what the authorities' running costs might be, compared with the present situation. We think that there will be wide variation in those costs, according to local circumstances.

Thirdly, the bill seeks to establish an independent remuneration committee and includes broad enabling powers that will allow for the establishment of a new system of remuneration for councillors. However, the Executive's position is that it is not possible to cost the new remuneration scheme ahead of the remuneration committee completing its work, and ahead of the necessary regulations that will be made under section 17 of the bill. Details of the remuneration, pension and severance schemes will be set out in secondary legislation and therefore will be subject to consideration by the Parliament. Information about the costs of the schemes, which will be produced at that point, will be made available at that time.

I hope that those remarks have helped to explain why, although the areas of possible increased costs are identified in the financial memorandum, it has not been possible at this stage to make meaningful estimates of costs in all cases. We will be glad to discuss that and other matters that the committee wishes to raise.

The Convener: You referred to the SOLACE submission, which the committee asked SOLACE to provide. Like you, I believe that it is a useful piece of work. I would like to hear your comments on the conclusion of the submission, which is

"that it would be ill-advised to assume an additional expenditure of less than £6m".

The submission recommends

"that SOLACE, CoSLA and the Scottish Executive collaborate in producing a firmer estimate based on calculations conducted within each Council area."

What is your response to those two points?

Andrew Rushworth: The SOLACE estimate is based on a range of assumptions, which are set out in the paper; that is helpful. Although we have not managed to clarify this—like you, we received the paper only yesterday—we think that the figure of £6 million includes the £1.5 million for the voter awareness campaign, for which we have already made provision in the financial memorandum. The figures are a helpful first attempt at calculating what the costs might be but, inevitably, they are speculative and we would not like to comment further on the figure of £6 million. However, we would be pleased to work with SOLACE and COSLA—indeed, we very much welcome the suggestion—to work through the figures and try to establish a firmer estimate based not just on a sample of one council, but on a range of councils.

Fergus Ewing: I appreciate your candour, Mr Rushworth, in explaining why you have not been able to produce an estimate of the cost of the bill. However, it is the duty of the Executive—that is, ministers—to do precisely that. There is an unacceptable contradiction in the Executive's introducing legislation when, as you have admitted today, it simply is not possible to estimate with any precision the actual cost of that legislation in practice, because of lack of detail. However, ministers, and not you, must answer that question, which perhaps is one of politics. It is a point of principle. If we get more bills like this one, and civil servants cannot say how much they will cost, where will it end? That is a casual and irresponsible attitude to public expenditure.

My reading of the papers suggests that the £1.5 million will cover two elements, unless I have misread them, for which I would apologise. It would seem from page 11 of the explanatory notes that the £1.5 million is to cover

"the costs of a major voter awareness campaign and training for elections administrators".

If that is correct, could you provide a breakdown of those two categories? How much will the awareness campaign and the training of election administrators cost?

Sarah Morrell (Scottish Executive Finance and Central Services Department): You are quite right to say that the £1.5 million that is mentioned in the financial memorandum is intended to cover training and voter awareness. The figure is based on expenditure that we and other bodies have incurred on training and voter awareness in the past.

As we do not know at this point the exact costs of voter awareness and training for the 2003 elections, that £1.5 million is an estimate. However, when the additional member system was introduced for the Scottish Parliament elections, we know that the cost of the design and delivery of training for returning officers—which was funded by the then Scottish Office—was about £115,000. We believe that some elements of election expenditure in local authorities' returns to the Scottish Office also covered training.

We know what the Scottish Executive spent on voter awareness in the run-up to the local government elections in May 2003. I think that the financial memorandum indicates that the figure was a little more than £370,000. Moreover, we know that when the additional member system was introduced, the Scottish Office spent about £2.5 million on voter awareness. However, that campaign also covered, in part, the role of the Scottish Parliament. If it will help the committee, we have additional information on what has been spent on voter awareness in other elections or in STV elections.

Fergus Ewing: Perhaps I did not make my question as clear as I should have done. You have said that the £1.5 million is a combination of estimates for an awareness campaign and for training. Can you split that figure for us? How much of that £1.5 million is the estimate for the major voter awareness campaign and how much is for the training of election administrators?

Sarah Morrell: I cannot split that figure, because the detail of both activities has not yet been resolved. However, I can tell the committee that the costs of the voter awareness campaign are likely to be significantly more than the costs of training.

Fergus Ewing: If you cannot split the figure into the two elements that you have said it comprises, how are we to make any sense of the provision? The £1.5 million is the sum of two factors. Why can you not tell us what those factors are?

Andrew Rushworth: The figure is a relatively broadbrush estimate based on figures that we already have for the cost of voter awareness and training campaigns in other elections. Sarah Morrell has mentioned some of those figures. However, until we have the detailed specification for the two components, we cannot break down an overall estimate.

Fergus Ewing: I understand that, and I suspect that you are not responsible for this particular matter. However, the ordinary person watching these proceedings—if indeed they are watching—will be thinking, "Here we have one and a half million quid, which is more money than I am ever likely to see in my life. It is composed of two

elements, but the Government does not know what they are". That demonstrates the extraordinarily casual approach that has crept into the compilation of financial memoranda. I am certainly not saying that that is the responsibility of the witnesses before us. It is plainly not; instead, it is the responsibility of Mr Kerr and Mr Scott to ensure that the committee has proper information if it is to safeguard the public purse. As the witnesses have been candid enough to admit, we do not have that information before us today. Even the information that we have received is plainly inadequate.

The Convener: I think that that is a rhetorical point.

Kate Maclean: Did the witnesses say in response to Mr Ewing's question that the public information campaign for the additional member system cost £2.5 million in the run-up to the 1999 elections?

Sarah Morrell: Yes.

Kate Maclean: In that case, why would an awareness campaign for STV cost less? After all, it is a more complicated voting system.

Sarah Morrell: For two reasons. First, as I said, at least part of the £2.5 million for the campaign in advance of the first Scottish Parliament elections was aimed at explaining the functions of the Parliament to members of the public and therefore did not relate to the electoral system.

The second point is that there tends to be an assumption that when we are raising voter awareness about the introduction of STV, we will be explaining all the intricacies of the system to the voter, including the intricacies of the count. The decision on whether we will be doing that has not yet been taken, but I suspect that we will be concentrating more on what the voter has to do to express their preferences on the ballot paper.

Another assumption that is made about voter awareness campaigns is that they use some of the more expensive ways of getting the message across to the voter, such as TV advertising. Again, decisions on that are still to be made, but we are not saying that TV advertising is necessarily the only way in which we will be trying to get the message across. We might want to produce and make available to every household in Scotland a leaflet that explains the STV system so that people can examine how they can express their preferences on the ballot paper. They would be able to read the leaflet at home when they have time to study it and think about any questions that they might have.

12:00

There are other small but practical things that we argue are to do with voter awareness but

which might happen on the day at the polling station. For example, I suspect that returning officers will want to provide a helpdesk or extra staff whose role is to answer questions about practicalities, so that doing that does not take up the time of the people who are doing the processing. Returning officers are also beginning to consider the option of handing out the three ballot papers separately along with an explanation of how the voter should mark their preference on each. We regard all those ideas as being about voter awareness. Some of them will involve additional staff in the polling station and they could mean that the process will take longer. However, they are not necessarily as expensive as a television campaign would be.

Kate Maclean: If any measures to help people express their voter preferences are funded, presumably additional funding will be available to help people who are disabled or visually impaired and have to use a postal vote or need specific assistance at the polling station.

Sarah Morrell: We are considering what will be required for people who have disabilities. Returning officers and the STV implementation group established by ministers are considering the practical implications of the STV system. Some people have already commented that the device that is designed to allow people who are visually impaired to vote in the polling station might not be suitable for an STV ballot paper and we will have to examine that.

Dr Murray: In your initial statement, you indicated that there were three main areas where it is difficult to estimate the costs of implementing the bill. Why, therefore, does paragraph 61 of the explanatory notes state that

"The Scottish Executive does not therefore expect there to be significant additional costs to local authorities arising purely from the introduction of STV for local government elections."?

Andrew Rushworth: The Executive's position is that, all other things being equal, the introduction of STV arrangements is likely to increase costs. The difficulty is in assessing what those additional costs will be. The Executive does not think that those additional costs will be significant, but it accepts that there will be additional costs.

Dr Murray: I contend that the statement is therefore somewhat misleading, given the lack of knowledge about those three particular areas. As STV elections are run in the Republic of Ireland and Northern Ireland, it might be possible to compare the cost of running STV elections for similar electorates with the cost of running elections in this country at present.

Sarah Morrell: We have some information about the cost of running STV elections in the

Republic of Ireland and in Northern Ireland. We know what the size of the electorate is. I can give that information to the committee if that would be helpful. We understand from Irish officials that they do not keep precise data on the cost of running an STV election. However, they estimate that an STV national election, whether that be a local government or national Government election, costs around £5 million to £6 million. The Irish electorate is 3 million, which is a little smaller than the Scottish electorate. We have established from the Northern Ireland Office that its estimate of the cost of the recent Northern Ireland Assembly elections was about £3.5 million. The Northern Irish electorate is also smaller than that of Scotland; it is 1.1 million, which is less than a third of the size of the Scottish electorate.

Dr Murray: So, estimates could be made from that information.

I am sure that you will accept that there could be significant increases in travel costs—especially in rural areas such as my constituency, where the council wards are already fairly large—if the three or four councillors who are elected in multimember wards are not of the same political persuasion and are not terribly keen to divvy up the work between them. It is likely that all of them will go to every school board, community council and tenants and residents group meeting. The costs will have to be borne by the council's finance department, either from council tax income or from external Scottish Executive finance. The moneys involved will not be available for services but will have to be used to meet the increased travel costs.

Andrew Rushworth: Perhaps I could answer the question first, after which Sarah Morrell might like to add to what I say. As I indicated in my opening remarks, we accept that additional travel costs could be involved, particularly in the more remote constituencies and wards. Much will depend on how councils decide to deploy councillors, for example by deciding to establish an arrangement whereby different councillors would handle different geographical parts of a ward. As you know, multimember wards are in existence in England. The evidence that we have from England along with anecdotal evidence about the Republic of Ireland shows that, although your point is valid in theory, it has not been an issue in practice.

Dr Murray: Some years ago, I lived in a multimember ward in England. I understand that the system there is one under which first-past-the-post elections are held every year. There is therefore a strong likelihood that the councillors returned will be of the same political persuasion as those who have served in previous years. Although it is difficult to estimate, I am sure that it is unlikely that councillors in multimember

constituencies under STV will collaborate and split up work.

The Convener: That is not really a financial issue.

John Swinburne: Has the apathy factor been taken into consideration? There was a 49 per cent turnout in the last election. Let us suppose that the present Government is totally successful and all of the people say, "Let's go out and vote." Would that make you double your estimates?

Sarah Morrell: It would certainly increase the cost of the election. A longer time would have to be taken to count the votes. In that case, the question would be whether the extra costs were the result of the introduction of STV or of other methods that had been designed to increase voter turnout.

John Swinburne: Yes, but what about the cost? Would an increased turnout have an astronomical effect on costs? Conversely, is it in the Government's interests for apathy to stay at its present level as that will keep overall costs as low as possible?

Sarah Morrell: I think that—

John Swinburne: Is the normal turnout in the local elections not something like 24 per cent?

The Convener: I do not think that that is a question for officials. On a cross-party basis, I think that most people would agree that everybody would be happy if we had to pay additional costs for counting votes because more people had voted. I presume that the costs that we are discussing are really those at the margins.

Sarah Morrell: The point that I wanted to make was that if the present turnout of 49 per cent doubled, I do not think that the cost of running the election would double. Obviously, in preparing for elections, returning officers do not know how many people will turn out. Ballot papers and so forth are not printed on the assumption that 49 per cent of the people will turn out. The count could take longer and the cost of it could increase, but the cost of the election would not double.

Mr Brocklebank: I would like to quiz you further on some of the figures that Dr Elaine Murray got from you. If I understood you correctly, you said that the cost of running elections was £6 million for 3 million people in the Republic of Ireland and £3.5 million for 1.25 million people in Northern Ireland—

Sarah Morrell: It was 1.1 million people.

Mr Brocklebank: Sorry. Are those total costs for the running of those STV elections?

Sarah Morrell: Yes, but they are estimates.

Mr Brocklebank: SOLACE suggests that an extra £6 million is needed to meet the cost of running STV elections in Scotland. Given the size of Scotland and the fact that we have a population of 5 million, do the Irish figures not suggest that we could be looking at something rather more significant than an extra £6 million? That tends to disagree with your view that there would be little significant additional cost. Is there not the potential for quite remarkable additional costs, given those Irish statistics?

Sarah Morrell: The first thing to point out is that the electorate in Scotland is 3.9 million people. Although the population is greater, the number of people who are entitled to vote is lower and therefore closer to the figure for the Irish electorate. There is a geographical issue in Scotland, but I suspect that the Irish would argue that there are geographical issues in some parts of Ireland. However, those issues are more extreme here, particularly in the Highlands and islands.

Part of the difficulty for us in trying to work out what the cost would be of a local government election using STV is that we do not have information about what a local government election costs at the moment—we certainly do not have that information on a Scotland-wide basis. The Irish are saying that it costs £5 million to £6 million to run their elections. SOLACE suggests £6 million for the additional costs. As Andrew Rushworth said earlier, we think that that might include the £1.5 million for raising voter awareness, so we are talking about £4.5 million. It is difficult to judge from those figures whether we can produce an estimate. We would have to have some idea of what a local government election costs to run at the moment before we could work out what the additional costs would be.

Mr Brocklebank: Mr Rushworth said that it would not be appropriate to guess what the remuneration costs will be before the independent remuneration committee has had a chance to assess those matters. However, surely there could have been a stab at a figure. You must be aware of what remuneration costs are in Ireland and of what some of the costs were in Scotland last time, such as those associated with staff in polling booths. Surely it would have been more helpful to give us some indication of the costs rather than simply say to us, "Trust us. Sign us a blank cheque and it will all come out right on the day."

Andrew Rushworth: It would have been possible for the Executive to produce illustrative calculations on a range of assumptions. However, ministers take the view that, although that might appear to be more helpful in the short term, they do not want to do that because it might send a signal to the remuneration committee about the sorts of figures that it should be looking at. They

wanted the remuneration committee to start off with a blank sheet and work out recommendations without any indication that might be taken as a steer from the Executive.

Mr Brocklebank: Would you not accept that it is extremely difficult for committees such as ours to make any kind of impartial judgment on the costings of the bill if we have no idea about such a major and significant costing as remuneration?

Andrew Rushworth: Under the circumstances, we would have to accept that. I return to my point that provision for the remuneration will be made in the secondary legislation. Parliament will have a full opportunity to look at the estimates of the detailed costings before it decides whether to approve the remuneration arrangements.

The Convener: Under normal practice, that would go to the Subordinate Legislation Committee. Would that allow the appropriate level of scrutiny to take place?

Andrew Rushworth: I am not sure that it is for us to answer that question. If that is the procedure—

The Convener: Perhaps we need to take that issue—the procedure against which the subordinate legislation will be scrutinised—into account as we look at the bill and see whether there are particular issues for us to consider in that context.

Kate Maclean: I return to the point about not being able to estimate properly the cost of the election. I presume that the Scottish Executive allocates to local authorities a certain amount of money to run elections?

Sarah Morrell: The current position is that the Scotland Office is responsible for funding elections to the Scottish Parliament and local authorities are responsible for funding council elections. There is no allocation from the Executive and no return is made to the Executive of expenditure on local government elections.

12:15

Kate Maclean: Surely it would be possible to find out from local authorities how much it cost to run the 1995 election, which was the most recent election that was purely a local authority election, to come up with a guesstimate of the cost of running a local council election that used the first-past-the-post system.

Sarah Morrell: The 1995 election was not a combined election, so we would not be comparing like with like. We have encountered difficulties in establishing the cost of running a local government election, because councils have quite some time in which to submit their returns to the Scotland Office for the cost of parliamentary

elections. Until the Scotland Office has approved those accounts, the costs of the local government elections cannot be finalised, because some costs are shared, whereas others are attributed to one set of elections or the other.

We have spoken to some councils at different times about the costs of running an election. Some councils can give an estimate of the cost in their area of the elections in 1999 or in 2003, but others appear to be unable to do so, either because the 2003 election took place too recently or because of the way in which the accounting was done in 1999.

Jeremy Purvis: I am disappointed that representatives from SOLACE are not here, as I am rather confused about how the figure of £6 million was reached—I am sure that the problem is that I do not understand the evidence, rather than anything else.

I assume that you have seen the table in SOLACE's submission entitled "summary of additional costs". If we consider the training and election day costs in that table and disregard for the moment the section on increased political groups, which represents costs that might not arise, the total cost is £2.2 million. If we exclude the £1.5 million that the Executive would allow for advertising, that figure represents about a tenth of the £21.6 million—or 0.2 per cent of spend—that COSLA estimated would be the cost of councillors' salaries, special responsibility allowances and so on.

On the basis of the SOLACE estimate, the total cost of the introduction of the STV system represents 0.02 per cent of spend. Do you therefore agree that paragraph 61 of the financial memorandum is quite straightforward, as 0.02 per cent of spend would not represent "significant additional costs" for local authorities?

Sarah Morrell: I have not done the calculations that you have done.

The Convener: To be fair, I think that that is a political issue.

Sarah Morrell: The question is: What is a significant additional cost?

Jeremy Purvis: Do you regard 0.02 per cent of spend as a significant additional cost?

Andrew Rushworth: I do not think that that is a fair question—

Jeremy Purvis: I thought that the quick answer would be no, as I am using the words in the financial memorandum.

Andrew Rushworth: The answer depends on whether we consider the cost in relative or in absolute terms.

Jeremy Purvis: I am quoting from your document, so I am a wee bit surprised that you have not confirmed your own words.

Andrew Rushworth: I think that ministers would probably agree that, in relative terms, 0.02 per cent is not a significant additional cost.

Jeremy Purvis: Thank you.

The Convener: You responded to Kate Maclean by suggesting that the amount that was to be set aside for the information campaign was less than the amount that was set aside for the information campaign in 1999. It can be argued that the changes that people were being asked to comprehend and respond to in 1999 were less significant than those that they will be required to respond to in the event that we move to a different electoral system. It was probably easier to explain to people in the 1999 election that the fact that the Scottish Parliament was coming into existence meant that they would have to vote three times than it will be to explain to people in a future election that they will have to vote in two separate ways, because of an entirely new system for local government—I am presuming that the Scottish Parliament and local government campaigns would be fused together, as has been the case in the past. Has that been factored into your estimate?

Sarah Morrell: It has been. Spending on the Scottish Parliament voter awareness campaign in 2003 was part of an overall budget spent by the Electoral Commission, which tells us that for the Scottish Parliament elections, the elections for the National Assembly for Wales and the local government elections in England, it spent a total of £2.5 million.

We are aware of concerns about the scope for voter confusion that using two different electoral systems on the same day will create; we are also aware that the returning officers and the one member of this Parliament who attended the count in Northern Ireland were concerned about the number of invalid votes that they saw on that occasion, which they think were caused by people putting an X where they should have put a number. Given the concern about that happening in future, ministers will want us to examine the issue closely. It has been factored in; it is one of the reasons why we think that the more low-key measures that I mentioned might make a difference. For example, if the person who hands out ballot papers reminds people to put an X on one of them and to put numbers on the other one, that may be of more help to the voter than seeing something on television that tells them that there is going to be a new, complicated electoral system.

Kate Maclean: What about postal voters?

Sarah Morrell: We will be talking to the Electoral Commission, which does the publicity campaign for the Scottish Parliament elections, about how to tackle postal voters and we might have to talk to returning officers about what material is sent to postal voters.

The Convener: It strikes me that we are talking about quite a substantial change. It is simple to trivialise the issue by saying that it amounts to putting a number instead of an X, but what is important for the people who vote is that they understand their options and the consequences of their action when they register their preference. That is a significant issue.

In general, people are accustomed to voting for an individual or a party on the basis that the outcome depends on a majority of people in that area supporting that preference. It strikes me that people will be asked to make a rather more difficult set of judgments on the way in which they express their second and third preferences, for example, which could have consequences for the outcome that even Professor Curtice sometimes has some difficulty in explaining. Given the importance of ensuring that people's intentions are reflected in outcomes during the transition process—particularly on the first occasion on which a new system is used—I wonder whether the proposed budget is adequate.

I have an additional question. It strikes me that, even after the new elections, there might well be some issues to do with constituent awareness of the representative system. When people have a multiplicity of elected representatives at local level, local authorities will have a continuing responsibility to explain to people who represents them and what they are entitled to expect. It is not simply a question of additional expenses for councillors; there will be a continuing obligation to explain to constituents how the system works and how they can access it fairly.

Sarah Morrell: I certainly do not intend to trivialise the issue, because it is important that people understand how they are expressing their preferences when they mark numbers on the ballot paper. The evidence that we have suggests that the budget is generous enough and we have considered what has been done elsewhere. Ministers are clear that they will fund the national voter awareness campaign. If, over time, the recommendations of the STV working group and other material that ministers receive were to suggest that more needed to be done, ministers would act to ensure that voters understood what was happening on the day.

I turn to multiplicity of elected representation. There are a number of issues around how multimember wards operate in practice. We and the STV working group, which ministers

established to consider the implementation of STV, have had difficulty finding information about how wards in other places operate. That is mainly because places that have multimember wards at present have had them for some time. When we ask councillors in the Republic of Ireland whether there are particular problems around multimember wards they tend to say no, because they and their electorate are used to them. Ministers acknowledge that that is not the case here; the system will be new to councillors, councils and the electorate.

The STV working group is looking at how multimember wards work in practice, on which it is considering commissioning specific research. It is also considering a protocol of principles that councillors in multimember wards would follow. Within that, it is considering issues such as how constituents know who their councillors are and how to contact them, and how to ensure that constituents know that they can go to any councillor in their area. If arrangements are made to divide work between councillors, those should be made clear to the electorate. All those issues are being considered.

The Convener: That work has not been quantified in the estimates for the bill. In a sense, you are dealing only with the mechanism of the election. Is it fair to say that you have not factored into the financial memorandum any continuing cost for local government?

Sarah Morrell: There is nothing specific in the financial memorandum about that. So much depends on the way in which councillors and councils choose to conduct their business in future. It goes back to what I was saying about there being a step change or culture change. At the moment, a lot of people are finding it difficult to see how the system would work, yet the anecdotal evidence from England and the Republic of Ireland is that that is not an issue—the system works. Nobody is saying that multimember wards are particularly expensive to run. There is an element of co-operation that varies from ward to ward or area to area, depending on the people involved.

The Convener: To be fair, I think that you need to maintain the distinction that Elaine Murray highlighted. You should not make assumptions based on multimember wards rather than multimember wards under an STV system. There is a fundamental difference based on the electoral system. Extrapolations based on multimember wards—

Sarah Morrell: Obviously, the Irish system uses STV. In evidence to the Local Government Committee the chairman of the Local Government Association was keen to point out that although generally one councillor in a three-member ward is elected each year, there are occasions when there

is an all-out election and people compete against one another. There are areas where the councillors are not all representatives of one party.

John Swinburne: You are talking about £1.5 million for public awareness. Do you agree that we are talking about typical politicians patronising the electorate? We heard our convener ask whether the people out there who are marking crosses or numbers are qualified to do so. The people out there know better than do the politicians how they are going to get people elected, and they will mark their crosses accordingly.

You also talked about multimember wards. If I was a Conservative voter and the three council members in my ward were not Conservatives, I would ask another Conservative councillor in my area to take up any case that I had. Therefore, the multimember ward argument does not come into it.

Do you agree that the £1.5 million could be done away with and that the public do not need any education on how to mark a ballot paper? If you want proof of that, I cite my experience. I was elected inside of 11 weeks and the Scottish Senior Citizens Unity Party did not have an awareness campaign or anything like that to back candidates up. Therefore, a lot of money could be saved just by letting the public get on with it. The electorate are not illiterate. The Government could save a lot of money if it got rid of the campaigns on television and elsewhere. Do you agree that people will get by without all that?

Sarah Morrell: Well—

The Convener: I think that that is a political question, to be fair.

12:30

John Swinburne: It is no more political than your own question, convener.

Sarah Morrell: I think that Mr Swinburne is right that we should not underestimate the intelligence of the electorate, who already use the additional member system when they vote for the Scottish Parliament. However, the view of professional electoral administrators in particular and of groups who lobby on behalf of the public, especially those with disabilities, is that there will have to be a significant voter awareness campaign.

We also have evidence from the Northern Ireland elections, in which the number of invalid votes was not large in absolute terms but was about twice the percentage of invalid votes that we had for the local government elections in May 2003. For the council elections in Scotland, 0.78 per cent of the vote was invalid, whereas for the Northern Ireland Assembly elections, 1.46 per cent of the vote was invalid. To those of us who were at

the count, it appeared that the invalid votes were a result of people putting an X on the ballot paper rather than a number. That is not to say that they were not expressing a preference, but they were perhaps confusing different electoral systems. The problem exists in Northern Ireland because different electoral systems exist there. There is not generally a similar problem in the Republic of Ireland because it uses only the STV system for every election.

John Swinburne: Do you agree that the low figures that you quoted for spoiled ballot papers and so forth are relatively encouraging, given the figures for numeracy and literacy that come from our education system? They are much higher than the figures for invalid votes. Even though some people cannot read or count, they can still put their votes in the right place.

Kate Maclean: That is outrageous.

Fergus Ewing: I think that John Swinburne has a point about the extension of the nanny state—perhaps we should call it the Tony state—with all its public education campaigns. What evidence is there that the campaigns are efficacious? How effective are they?

I was struck by Sarah Morrell's earlier comment—I hope that I pronounced her name correctly—when she said that it might be more effective to deploy resources to ensure that those who are at the polling stations have a written document that is a simple, idiot's guide to STV and, if asked for specific advice by people who—

Jeremy Purvis: Idiot's guide?

Fergus Ewing: I am not thinking only of Liberal voters, Jeremy.

People who want specific advice should be able to get it from the folk at the polling station. That is necessary anyway and I think that Sarah Morrell's earlier comments show that she recognises that. Would it not be better to do that than to have some sort of expensive, jazzy television campaign—no doubt fronted by a celebrity who would get a big cheque for it—that gives a pictorial representation of something that people forget when they actually go to do the job of casting their vote? That is when they will need the advice that, for example, they are not to use a cross but are to use the numbers 1, 2, 3, 4, 5 or however many numbers may be involved. Has John Swinburne not got a serious point—with which I agree—that we should not be throwing money around like confetti on all sorts of public education campaigns? Why is the minister so intent, as we have heard, on doing just that?

Kate Maclean: That question should be aimed at the minister rather than at the officials. They are here to give the Finance Committee evidence on the financial memorandum and on the accuracy of

information rather than to explain why decisions have been made. The questioning is straying from what we should be doing as the Finance Committee. Members are indulging themselves in quite ridiculous lines of questioning now.

The Convener: It is important that we focus attention on the facts that we have in front of us and on the submission. It is clear that officials cannot be expected to answer purely political questions. However, in factual terms, Fergus Ewing's question about the effectiveness of campaigns and supporting evidence for that is probably a legitimate one for the officials to respond to.

Fergus Ewing: On a point of order, convener, I asked a question that, as you have just said, is a relevant one. The relevant kernel was whether expenditure on public education for voter awareness was efficacious and what evidence exists for that. I resent Kate Maclean repeatedly interrupting me—and your permitting her to do so, convener. That interruption prevented the witnesses from answering the question, which you admitted is a perfectly valid one. I hope that we will have no more of such impromptu, irrelevant interruptions.

The Convener: To be fair to Kate Maclean, Fergus, I think that you did not ask the question in quite the way in which I asked it. What is important is that members refrain from placing officials in a position where, in a sense, they are being asked to respond to what are effectively political statements and political rhetoric. We are here to ask officials to respond to the detail of the submission that is before us. I can understand the temptation for politicians to try to make political points, but I do not think that it is reasonable to couch political points in questions to officials, to which they find it difficult to respond.

Kate Maclean: I did not interrupt Fergus Ewing. I waited until he had finished his diatribe. I reserve the right to comment on anything that he says at any point in meetings of the Finance Committee.

The Convener: Can Sarah Morrell respond to Fergus Ewing's specific question?

Sarah Morrell: I suspect that there is evidence elsewhere, but the most recent evaluation of which I am aware is the one that the Electoral Commission had academics carry out on its behalf of the voter awareness campaign for the Scottish Parliament elections in May 2003 and, at our request, the voter awareness campaign for the local government elections—the two were combined. I am afraid that I do not have the information here, but I can certainly arrange for it to be made available to the committee easily and quickly.

Andrew Rushworth: Perhaps I should add one

further point for clarification. I think that I am right in saying that there is no presumption that the figure identified for voter awareness will necessarily be spent—all or in part—on a television election campaign. The STV working group was set up to advise on the sort of issues to which Mr Ewing and Mr Swinburne referred. I think that ministers would want to consider the working group's recommendations before deciding how the centrally funded voter awareness campaign should be mounted.

The Convener: Okay. I do not see any other members indicating a wish to ask a question, so I thank, on the committee's behalf, our witnesses for coming along today.

Again, if committee members feel that particular points arise from today's evidence that they want to flag up for the clerks, who are compiling a report on the evidence that we have taken, it would be deeply helpful if they could get that to the clerks before the end of the week.

The next agenda item is consideration of a draft interim report on our investigation into Scottish Water. We agreed that that item should be taken in private, so we now move into private session.

12:37

Meeting continued in private until 13:10.

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