

# **COMMUNITIES COMMITTEE**

Wednesday 3 December 2003  
(*Morning*)

Session 2

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# CONTENTS

**Wednesday 3 December 2003**

	<b>Col.</b>
<b>ANTISOCIAL BEHAVIOUR ETC (SCOTLAND) BILL: STAGE 1</b> .....	221
<b>SUBORDINATE LEGISLATION</b> .....	272
Home Energy Efficiency Scheme Amendment (No 2) (Scotland) Regulations 2003 (SSI 2003/529) .....	272
Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2003 (SSI 2003/532) .....	272

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## **COMMUNITIES COMMITTEE**

### **10<sup>th</sup> Meeting 2003, Session 2**

#### **CONVENER**

\*Johann Lamont (Glasgow Pollok) (Lab)

#### **DEPUTY CONVENER**

\*Donald Gorrie (Central Scotland) (LD)

#### **COMMITTEE MEMBERS**

\*Scott Barrie (Dunfermline West) (Lab)  
\*Cathie Craigie (Cumbernauld and Kilsyth) (Lab)  
\*Patrick Harvie (Glasgow) (Green)  
\*Campbell Martin (West of Scotland) (SNP)  
Mary Scanlon (Highlands and Islands) (Con)  
Elaine Smith (Coatbridge and Chryston) (Lab)  
\*Stewart Stevenson (Banff and Buchan) (SNP)

#### **COMMITTEE SUBSTITUTES**

Shiona Baird (North East Scotland) (Green)  
Christine May (Central Fife) (Lab)  
Shona Robison (Dundee East) (SNP)  
Mike Rumbles (West Aberdeenshire and Kincardine) (LD)  
\*John Scott (Ayr) (Con)

\*attended

#### **THE FOLLOWING GAVE EVIDENCE:**

Karen Byrne (North Maryhill Corridor Community Safety Forum)  
Tony Green (North Maryhill Corridor Community Safety Forum)  
Barry Jackson (Victim Support Scotland)  
Inspector Alex Love (Cumbernauld Police)  
Superintendent Elliot McKenzie (Cumbernauld Police)  
Maggie Mellon (Scottish Consortium on Crime and Criminal Justice)  
Neil Paterson (Victim Support Scotland)  
Sergeant George Smith (Cumbernauld Police)  
Dr Sula Wolff (Scottish Consortium on Crime and Criminal Justice)

#### **CLERK TO THE COMMITTEE**

Steve Farrell

#### **SENIOR ASSISTANT CLERK**

Gerald McNally

#### **ASSISTANT CLERK**

Jenny Goldsmith

#### **LOCATION**

Committee Room 1



## Scottish Parliament

### Communities Committee

*Wednesday 3 December 2003*

*(Morning)*

[THE CONVENER *opened the meeting at 10:01*]

### Antisocial Behaviour etc (Scotland) Bill: Stage 1

**The Convener (Johann Lamont):** I welcome everyone to this meeting of the Communities Committee. I welcome Steve Farrell, our new clerk, and wish him all the best in his work with us. We have received apologies from Elaine Smith and Mary Scanlon. I welcome John Scott, who is here as Mary Scanlon's substitute.

The first agenda item is consideration of the Antisocial Behaviour etc (Scotland) Bill. The witnesses who make up the first panel of witnesses are: from Cumbernauld police, Superintendent Elliot McKenzie; Alex Love, who is the area inspector; and George Smith, who is the head of community policing; and from the Glasgow community safety forum, Karen Byrne, the chair of the north Maryhill corridor community safety forum and Tony Green, the development officer and secretary to the forum.

I thank the witnesses for coming. We might ask you some questions that you think would be more appropriately asked of those who are further up in the hierarchy—I say that to the police witnesses in particular. If you deem a question to be inappropriate, just say so, and we will pursue the matter elsewhere. We recognise that you are here because of your expertise in operational matters, and those are the issues that we wish to pursue. We would be happy to hear an opening statement before we move to questions.

If no one wishes to make an opening statement, I will start with a general question. The Scottish Executive has stated that its consultation process, which led to the bill, was unprecedented in terms of the number of communities, organisations and individuals that took part. Do you have any comments on the consultation process? Did it reach the areas in which you are involved?

**Superintendent Elliot McKenzie (Cumbernauld Police):** We believe that the consultation process reached the community. Two consultative forums were held in Cumbernauld and we, as the local police station, were invited to respond to the consultative document. We felt that

the consultation was fairly far-reaching. The responses from the police and from the public were similar.

**Tony Green (North Maryhill Corridor Community Safety Forum):** The community safety forums were extremely pleased to have the opportunity to input to the process. We felt that the questions in the consultation document covered all eventualities.

**Stewart Stevenson (Banff and Buchan) (SNP):** The definition of antisocial behaviour is already in the Crime and Disorder Act 1998, which introduced antisocial behaviour orders for the first time. The Antisocial Behaviour etc (Scotland) Bill defines antisocial behaviour as when someone

“acts in a manner that causes or is likely to cause alarm, distress, nuisance or annoyance”.

Does that accord with your understanding of antisocial behaviour?

**Inspector Alex Love (Cumbernauld Police):** I deal quite a bit with problem-solving policing in Cumbernauld and the surrounding areas. We get regular feedback about what constitutes antisocial behaviour. We deal with neighbour disputes, graffiti, vandalism and anything that causes a threat in the community. Problems are brought to our door regularly, but we also get third-party referrals from housing departments and other council sources, including elected representatives. All the matters that you mentioned are part of the antisocial behaviour that is brought to us.

**Stewart Stevenson:** I will develop that point a little, and I would like to hear from others on the panel after Inspector Love.

Does the definition catch too many people? Are you or the courts able to differentiate between people who are causing genuine distress to the community and people about whom there is a perception of antisocial behaviour? The definition is very wide, and I am concerned about whether its width is realistic in practice.

**Superintendent McKenzie:** The aspects of antisocial behaviour that caused concern in the consultation were matters such as dog fouling, litter and abandoned vehicles. That surprised me. Although there are more obvious types of antisocial behaviour—such as drinking in the street and causing annoyance—those other aspects are certainly high on the public's agenda.

**Stewart Stevenson:** That is covered in another part of the bill.

**Superintendent McKenzie:** The examples are part of antisocial behaviour, as it is defined.

**Stewart Stevenson:** How often have you been to court over antisocial behaviour under the existing legislation? I wonder whether the sheriff or

others have been able to consider what the bill states in section 4(3):

"the sheriff shall disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances."

Have you seen that in operation under the current legislation on antisocial behaviour orders?

**Superintendent McKenzie:** I was cited as a witness, although I did not appear, in an antisocial behaviour order application that concerned a neighbourly dispute in which a young individual was causing mayhem in a particular street. He failed to appear on two occasions and the sheriff made the order in his absence.

**Karen Byrne (North Maryhill Corridor Community Safety Forum):** I am an area manager for a housing association. We have taken two serious cases of antisocial behaviour to court. The criteria that are used by the court and by us are that the behaviour has to be continuous and consistent as proof of evidence. That often means that the neighbours have to put up with a lot before we have sufficient evidence to get a decree or repossession. We did that in the two cases that I mentioned, because they were particularly serious, but it took us considerable time to get those decrees.

**Stewart Stevenson:** Will you clarify that the behaviour has to be continuous and consistent? Please excuse my ignorance, but do those criteria come from the 1998 act?

**Karen Byrne:** That is the advice that our solicitors have given us in the past—that in order to demonstrate that it is reasonable to evict someone, there must be a burden of proof that the behaviour was continuous and consistent. Those are the criteria that we use in our organisation.

**Stewart Stevenson:** Later in our deliberations, I will ask the Executive this question: are such criteria generally applied?

**Karen Byrne:** I imagine so.

**Tony Green:** The general reaction that I get from the members of the community safety forum is that alarm and distress are subjective—what causes alarm and distress for an old person who lives alone in a street where kids play outside may well be different from what causes alarm and distress to somebody who is much younger. It could be argued that behaviour such as littering or failure to control dogs does not cause sufficiently high levels of alarm and distress to make it antisocial behaviour. However, if one asks someone to describe antisocial behaviour, they will give a long and personal list, which may well be made up of behaviours that cause gross inconvenience but not alarm or distress. There is a concern that the definition is not precise enough.

**Stewart Stevenson:** Like you, the committee is considering the specific words, but are our philosophical concerns about the words that are used in the 1998 act—and which are repeated in the bill—a problem in practice? In your experience, does that wording work well enough, particularly given that sheriffs, in considering antisocial behaviour orders, must decide whether the person can show that what they were doing was reasonable in the circumstances?

**Tony Green:** I do not have enough experience of how sheriffs deal with antisocial behaviour orders to answer that question.

**Stewart Stevenson:** I have a couple of other points, which I will attempt to cover relatively quickly.

The Executive has said that community planning will be the framework for tackling antisocial behaviour in local areas and that local authorities and the relevant police constable are the only bodies that will be under a statutory duty to be involved in community planning, although the Scottish ministers will have the power to direct registered social landlords to participate. Is that approach right or would you do things differently?

**Superintendent McKenzie:** That is what we practise at present—our community planning strategy is up and running with North Lanarkshire Council. I am not in a position to comment on whether the approach is right. We have covered all the aspects, but it would benefit the system to include registered social landlords, because of the amount of housing stock that they control.

**Inspector Love:** I am a great believer in community planning. We have introduced problem-solving policing in North Lanarkshire, which I oversee in the north of the area. In the 29 years of my police service, I have been involved both in criminal investigation departments and in community policing, in Easterhouse, in a previous life, and now in North Lanarkshire. The way forward in dealing specifically with antisocial behaviour is to have police officers in the community. The police are a major player in the multi-agency approach, which also includes local authority departments and community groups. It is vital that the police try to deal with antisocial behaviour at the grass-roots level.

We can talk about manning levels, resourcing and funding, but if we take a broad overview, the overriding comments that we get from many community groups are that they want to see police officers in the community dealing personally with issues at grass-roots level. It is great for people to get to know their community officer, to see his face and to be able to speak to him. That has been an ethos of policing since days gone by and that is the way that we should continue. I believe in that

process. Most community officers feel strongly that if they are given the time and resources to deal with and take ownership of problems, that is a great way forward and we will certainly go on with it.

**Stewart Stevenson:** How many community officers do you have today and how many did you have, say, five years ago?

10:15

**Superintendent McKenzie:** We are working on the ethos that there should be one community police officer per ward. We have 18 wards in Cumbernauld; that has been the case for the four years that I have been there. The beats do not mirror the wards—there are problems with computer gazettorisation, or something like that—but the ethos is to have one community police officer per ward. The officers work in pairs and take on two areas together.

There are an additional two police officers in the town centre, which gives us a total of 20. That is quite a significant contribution and commitment to community policing. As an experiment, we have bolted on two other officers for public reassurance. We look to them to back up the community officers; if the community officers are having difficulty in their areas, the two additional officers augment the service until the problem is resolved.

**Stewart Stevenson:** Does anyone else want to comment on community planning?

**Karen Byrne:** I agree with what has just been said. However, I believe in a multi-agency approach in local communities. That has proved to be effective in our area and I think that that might be demonstrated across the board. Community police are the lynchpin, but having community officers for all the different agencies, working together, has proved to be effective in our area.

**Stewart Stevenson:** I have a final question; the convener is being extremely tolerant with me.

Are there any problems with information sharing?

**Karen Byrne:** There have been in the past. However, in the Maryhill area we recently set up an information-sharing working group that includes all the housing providers in the area, the local police and any other agency that we think might be relevant. We exchange information about antisocial behaviour cases and other problems. The working group has started only in the past month or so, so it is early days, but it looks promising and we will be exchanging information a wee bit more freely.

The problem in the past was that each agency had a different interpretation of data protection

legislation. We had to go by our own advice and that made it difficult for us and the police to exchange information. Through the discussions that we have had during the past few months, we seem to be reaching a common agreement about the circumstances in which we can exchange information.

**Inspector Love:** In North Lanarkshire, we continue to roll out the problem-solving policing aspect of community planning. Once any small problems have been ironed out, we hope to roll it out to the rest of Strathclyde police. Once an area inspector has been identified—there are six in North Lanarkshire—it is our duty to work with the other partners and groups to pull things together. Those groups include housing service managers and those who are in charge of antisocial behaviour task forces. We all get together, share information and act upon it. It is early days in North Lanarkshire, but problem-solving policing is proving to be successful and we will continue to build on it.

**Cathie Craigie (Cumbernauld and Kilsyth (Lab):** What are your views on the bill's proposals to extend the application of antisocial behaviour orders to those who are aged between 12 and 15? What experience do you have of the current antisocial behaviour orders? Do they work and are they a useful tool in the toolbox?

**Superintendent McKenzie:** I have been working closely with the antisocial behaviour task force in North Lanarkshire, in a two-way process in which we recommend informally to the task force that it consider making an ASBO against a certain individual and the task force comes to us for evidence—in fact, it is obliged to do so when it applies for an ASBO. That is mainly how we are involved; we provide evidence so that the task force can apply for the ASBO.

ASBOs are in their infancy and the restricting factor for us has been that they have been too confined and too parochial. People have had orders taken out against them that apply to only two streets in which they have been drinking in public, so they have just moved two streets further up. The order is so watered down that we cannot arrest such people. We discussed that problem with the antisocial behaviour task force, which hopes that future orders will encompass a larger geographical area.

The system is in its infancy, but it is a useful tool to have in the toolbox. We have been involved in a big learning process, but it has certainly been positive.

**Cathie Craigie:** What do you think about the extension of ASBOs to children aged between 12 and 16?

**Superintendent McKenzie:** We once had to wait patiently for an individual to turn 16 before we could apply for an order, which probably was not right. I am comfortable with the extension of ASBOs to children from the age of 12, but we must ensure that orders that apply to children between the ages of 12 and 16 are made only in respect of the persistent offenders who cause alarm and distress in their neighbourhoods. I am in favour of lowering the age limit, if that is managed properly. It is ridiculous to have to wait for an individual to turn 16 before pursuing an ASBO.

**Inspector Love:** There is a train of thought that an age limit of 12 might not be low enough. We get reports of children as young as eight who continually cause problems for the neighbourhood when they get out of school. We have frequently asked the age of children who are involved in complaints and been told that they are between eight and 18.

In this country, the age of criminal responsibility is eight. That might seem a bit draconian, but if we can hold an eight-year-old responsible for committing a crime, perhaps there is some way of moving forward to make ASBOs applicable to children from the age of eight. I just throw that idea into the melting pot. After all, if a serious crime were committed by an eight-year-old, they would be charged and the case would be referred to the fiscal.

**Tony Green:** Our view, it has to be said, is very different. If ASBOs are extended to children under 16, there is a danger that we might create two parallel systems, with the children's hearings system on the one hand and the ASBO system on the other. However, in Glasgow we are pioneering a restorative justice service for children from the age of eight, so we have disposals that can be put in place for children who might attract ASBOs in other areas. We certainly have anxieties about how effective ASBOs would be for children under 16. If the extension goes ahead, it must apply only to cases at the high end of the scale of offending.

**Cathie Craigie:** Could you expand on the alternatives to ASBOs that you are pioneering in Glasgow? Some people have a perception that antisocial behaviour is a huge problem in their communities, and that can be the case, but we know that the problem is probably caused by a minority of people—the same thing applies when the problems are caused by young people. Would you be concerned if an ASBO were made against only one person in that younger age group, or do you have concerns across the board about lowering the age limit?

**Tony Green:** The concern is that action in relation to people who are under 16 must be seen in a wide context of need, support and supervision. In many ways, an ASBO is a blunt

instrument. An example was given that showed that ASBOs may be geographically restricted. Antisocial behaviour is a major concern to our communities, but it is a major concern to young people as much as it is to other age groups. Young people often feel that the approach that is taken stigmatises them.

**Karen Byrne:** I work for a housing association that welcomes the extension of the ability to apply for ASBOs to registered social landlords, because we could use that in some circumstances. Before, we had to go through the local authority and the procedures that we needed to follow to have the local authority solicitor apply for an ASBO were a bit problematic for us. We welcome the fact that we will be able to apply for an ASBO as another housing management tool.

I agree with everything that Tony Green said, but an ASBO may be an appropriate tool in some specific and limited circumstances for very problematic individuals who are under 16. I do not object in principle to the extension to under-16s as an additional tool, but an ASBO would be applied for in a small minority of cases. As I said, in Glasgow, we would probably use other measures first.

**The Convener:** I am interested in what has been said about having to wait until people are 16. I used to meet youngsters who stopped breaking into cars when they were 16 because new things would happen to them from that age, so they got their wee brothers to take over, because they were still under 16 and went only to the children's panel. That is the streetwise view of the world that some youngsters take.

You said that, if the measure were to be extended to the under-16s, it should apply only at the higher end of the scale for those who cause major problems. Do you not accept that in a world in which we do not have perfect choices, identifying youngsters who are causing problems for themselves, their community and other young people is better than moving on whole groups of youngsters, and that using an ASBO would make it possible to focus on the one youngster under 16 who is generating many of the difficulties?

ASBOs might operate as a preventive measure, because we would begin to engage with the young person when they were under 16 rather than waiting with bated breath for the police to deal with them when they were over 16, when more formal measures could be taken against them. In a world in which perfect choices are not available, do you not accept that that is a reasonable argument for extending the measure to under-16s?

**Tony Green:** I agree that targeting individuals is a more successful way of dealing with the issue than dealing with groups that may contain those



individuals but which are not causing bother to the same level.

Much as concern is felt about extending the application of ASBOs, if the balance of the decision is that that is the way in which things are going, we will follow that. We just put up the proviso that the situation must be handled with care and case by case.

**Stewart Stevenson:** I will pick up on Mr Love's observation that ASBOs could be appropriate for people as young as eight and on what is said in the written evidence from the Howard League for Penal Reform in Scotland—we will hear from that organisation in our second witness panel today. The Howard League focuses on the causes of antisocial behaviour by young children, such as

"inadequate parenting, family disruption and poverty"

and

"constitutional, genetically based, problems: neurocognitive disorders such as developmental delays, learning disabilities and reading retardation, an undercontrolled temperament and hyperactivity."

It is clear that you were speaking from experience in relation to eight-year-olds. What view did others form as to the causes of problems associated with eight-year-olds and what do you think of what the Howard League said, in quoting scientific research, about the causes being more likely to lie in the list that it provided?

**Inspector Love:** I certainly agree with what the Howard League is saying. The reason that I brought up the issue around eight-year-olds is that we frequently get complaints about children as young as eight causing problems. The antisocial behaviour order might well apply to some of them. There is no doubt that eight-year-olds and younger children suffer as a result of socioeconomic problems, bad parenting or peer pressure. I certainly agree that there are other reasons for antisocial behaviour. The question was asked whether we would be in favour of dropping the age limit from 16 to 12. If we have problems with a 12-year-old, we might have problems with the same type of behaviour from an eight-year-old.

10:30

**Stewart Stevenson:** I just wondered whether you thought that ASBOs were the appropriate response, given that an eight-year-old is, presumably, prepubescent, so the causes of their behaviour are rather different from those that derive from puberty. I am sure that the Howard League will tell us that they are not.

**Inspector Love:** I hear from some communities that eight-year-olds are involved in antisocial behaviour. We have to have further discussion on that.

**Stewart Stevenson:** I accept that.

**Superintendent McKenzie:** I am not particularly comfortable with taking the age limit below 12. In our consultation, the public were asked whether the age limit should be lowered to 12. You asked what the problems for policing are. The ASBO for which we had to wait related to a parenting problem. The parent took no cognisance of the misbehaviour until the ASBO was served when the offender was 16, which is when the individual's attitude changed dramatically.

**Donald Gorrie (Central Scotland) (LD):** I want to explore the practicalities of policing antisocial behaviour. I was interested in your description of your community police officers. At any time of day, what is the range between the highest number of police officers on the streets of Cumbernauld—on foot, in cars or on bicycles—and the lowest number?

**Superintendent McKenzie:** Are you talking about police officers?

**Donald Gorrie:** Yes. I am talking about police officers on the street in some way or other. What is the largest number, at your busiest time, and what is the smallest number?

**Superintendent McKenzie:** We have considered that as a force—all Scottish police forces have carefully considered demand policing. The least demand tends to be after 3 o'clock in the morning at weekends and after 1 o'clock in the morning on weekdays. Policing is scaled up and down to respond to those levels appropriately. At weekends, the maximum number of officers is on the streets between 4 o'clock and 7 o'clock in the evening until 3 o'clock in the morning. Community police officers do day shifts and late shifts, but those are extended at weekends to take them to 1 o'clock or 3 o'clock depending on the perceived demand.

**Donald Gorrie:** I know that nobody ever thinks that they have enough resources, but given the nature of Cumbernauld—it is not the sort of place one can drive around, so one needs to be on foot—do you have enough people to deliver the community policing philosophy?

**Superintendent McKenzie:** Our chief constable's philosophy is that we should have, or strive for, one community police officer per ward, which we have just now. We have bolted on two specifically for the town centre and, as an experiment, two to back them up, for public reassurance. We are fairly comfortable with that level of community policing at this stage.

You asked how we get about. We get about by a number of methods, helped by public sponsorship. Each of the officers has a pedal cycle. You are obviously very aware, sir, of the unique policing

challenges of Cumbernauld. The bicycles are essential to get about.

**Donald Gorrie:** So the bicycles are paid for and maintained by the force or your benefactors.

**Superintendent McKenzie:** Most of them are purchased by a matching of police funding and public sponsorship. Thereafter, they are maintained by the police. Equipment is provided by the police as well.

**Donald Gorrie:** I want to move on to the dispersal of groups. Some groups cause serious trouble and obviously must be dealt with, but many groups of young people who are wandering about are not doing anything illegal, although they may cause alarm and distress to oversensitive people. How should we deal with that? You have established a good rapport with the community, but will that rapport be damaged if your constables spend a lot of time chasing groups of young people who are not really doing any harm?

**Superintendent McKenzie:** We focus on an area of Cumbernauld called Carbrain. We have gone through a consultation process there and I have looked at the feedback from kids. Some say, "There are too many neds about"—forgive me for using the vernacular. Others say, "The police move us on far too often." Obviously, there is a balance to be struck.

Many of the kids who are hanging about mean no harm, but the mere fact of their number can be imposing and terrifying. We have to consider the public's perceptions of those kids and the public's tolerance levels. Our predominant aim is to speak to the kids, reason with them, and explain to them that they could gather at places and facilities elsewhere.

**Sergeant George Smith (Cumbernauld Police):** Community officers are there to interact with the public. The superintendent touched on that and Mr Gorrie mentioned it too. That public can include people as young as eight or as old as 80—people of all ages. In my experience in Cumbernauld and the surrounding areas, the community officers have a good rapport with all the local youths. It is not a case of kids saying, "Here's the beat cops on their bikes. We'll need to disappear." They hang about and speak to the officers. We want to build relationships with them so that they have no fear of the police and do not feel that they have to move on as readily.

**Superintendent McKenzie:** There is a distinct difference between policing such as that by community-based police officers and the policing that is necessary to respond to emergencies and serious crime. We are putting a lot of emphasis on community policing.

**Donald Gorrie:** May I ask our friends from

Glasgow for their views on dispersing law-abiding but troublesome groups?

**Tony Green:** Part of what the community safety forums are doing is working with organisations such as culture and leisure services, youth services and street-work teams to establish dialogues with law-abiding kids who are on the streets. The streets are their youth club, as it were. The forums try to put together initiatives that will attract those young people away from particular locales. In some areas, youth shelters are being built that young people can call their own. We would prefer positive measures such as those to be used to provide an alternative for children, rather than the heavy-handed approach of simply moving them on.

**John Scott (Ayr) (Con):** Part 4 of the bill proposes to give the police and the courts powers to seal off both residential and non-residential premises that have become a focus for antisocial or criminal activity. Some organisations believe that the power will have limited use as the problems could end up being moved to other areas. What are your views on that?

**Superintendent McKenzie:** I had better pick up the baton on that one.

Displacement is an issue in all aspects of policing. On youth displacement, I agree that we must consider providing options for young people. However, I do not understand exactly where you are coming from. Our reading of the provision is that it would allow us to deal with troublesome licensed premises, for example, which we would have the power to close down quite quickly. It will be necessary to apply to a sheriff, but people can appeal the decision and the order can be revoked. The power will be used sparingly, but it will be a useful tool should it be needed.

**John Scott:** I presume that that might reflect the views of your colleagues. Do Karen Byrne or Tony Green have a view on the matter?

**Karen Byrne:** We agree that the power of closure would be used sparingly, but that it would be a useful tool. I can think of houses that have been used for drug dealing or as drinking dens, where the tenant of the property is a vulnerable individual because of their age or because they have learning difficulties. People pick on such people and use their tenancies. It is often difficult to identify callers to the house. If we know who is coming and going, we can take action, but when we do not know who is coming and going and the situation is causing a lot of nuisance to neighbours, a closure order could be used to protect the resident and their neighbours.

**Superintendent McKenzie:** I will again draw on experience in relation to residential properties. When it becomes necessary to take action against

a property under the circumstances that you are talking about without the full co-operation of the landlord—and sometimes even with it—the process is pedantic, which frustrates local residents. They cannot understand why the process is so slow. This power would help to rectify that.

**John Scott:** It would perhaps focus the minds of landlords in particular if you had that power.

**Superintendent McKenzie:** I am sure that it would.

**Patrick Harvie (Glasgow) (Green):** I will take you back to dispersal. I am trying to get a handle on the situation that the Cumbernauld officers are dealing with. You seem to be comfortable that you have enough resources for community policing and that the officers are useful. How would you use the power of dispersal if you had it? Would you seek designated areas in which you could use the dispersal power? Are you experiencing situations in which you feel that you need that power? How do you respond to the statement in the Scottish Police Federation's submission that it feels that the police do not have sufficient resources and that that is the problem rather than insufficient powers? The SPF states that if the police used the power of dispersal, they would end up overstressing their resources and being unable to use the powers.

**Inspector Love:** We could all argue that there will never be enough resources—we hear that point regularly. We have to use the resources we have to the best of our ability. We would try to produce an action plan to arrange for the particular problem to be resolved and bring in resources to deal with it.

We do that already. If we find a problem in a particular area of Cumbernauld, or in a particular ward, we will perhaps draft in other community officers for a short period of time to produce and carry out an action plan. They will assist their colleagues and we will try to resolve the problem. That will mean using the normal powers of dispersal, and we will either arrest for offences or encourage people not to remain in a particular place. That happens regularly.

We put action plans into place regularly on a Friday or Saturday night. I am sure that that happens throughout Scottish police forces now that we have introduced the national intelligence model and carry out intelligence-led policing. We use our current powers of dispersal.

At grass-roots level, we must bear in mind the fact that we are talking about police officers being able to interact with the community. As we have already identified, most folk will take a telling and will move off when things are pointed out to them. We must put the situation into perspective and

bear in mind the fact that the vast majority of young people are decent young people. They may hang about areas and congregate in groups because there are few facilities in communities for them. That is the bigger issue that we must examine, instead of just policing and arresting people for committing disorder, because it is not always about that. We should consider other avenues. Troublemakers will be arrested, because local police officers will identify them and be able to take appropriate action.

**Patrick Harvie:** In short, are you saying that the major difficulty is not a lack of a power to disperse?

10:45

**Superintendent McKenzie:** Cumbernauld has its unique policing challenges. I cannot speak for other areas, which may have problems that necessitate prohibition orders. However, I was asked by the people of Condorrat, which is a village with a main street that attracts its own problems, to back North Lanarkshire Council in bringing back loitering powers that we could utilise. North Lanarkshire Council and I felt that the powers at the time were sufficient to deal with the situation. We drew up an action plan and it has been successful. From my own experience, I feel that I do not need powers on loitering, but I reiterate that I would not preclude their use in other areas, where commanders might need the powers as a tool, which they might use infrequently, when the circumstances dictate.

**Patrick Harvie:** Understood. Thank you. Do we have time to deal with fixed-penalty notices?

**The Convener:** Briefly.

**Patrick Harvie:** Another power that is proposed for the police is the issuing of fixed-penalty notices for noise, nuisance, fly tipping and low-level antisocial behaviour, which may coincide with what you described as gross inconvenience, rather than antisocial behaviour. What are the panel's opinions on that? You may wish to touch on the perception of the police dispensing justice, rather than enforcing the law, and the use of wardens, if you find that relevant.

**Superintendent McKenzie:** I will start off with fixed penalties. We have tackled disorder—and I am not talking about youth disorder; please do not think that I am focusing only on youth—violence and vandalism in a unique manner, in that we have legislation that prohibits people from drinking in public. We have spent a lot of time and resources clamping down on that. I am not singling out youth, because it is our experience that the majority of people who drink in public are in their 20s. It is a culture thing. We get noise when they drink outside and gross inconvenience,

litter when they smash their bottles or leave their cans behind, and the fear factor when elderly people have to walk past them. Once they are drunk, they will come out, cause more disorder and possibly wreck a car, and the situation may end in a violent assault.

By clamping down on that, North Lanarkshire submitted more cases than the rest of the force last year, the impact of which was that the Procurator Fiscal Service struggled to cope with the number of cases. In general terms, a fiscal fine is applied in such situations. I would welcome a fixed penalty for behaviour such as drinking in public—if we are talking about a £30 fixed penalty—and a 150 per cent increase in the fine for non-payment, which could be recouped by warrantry if it was issued by the courts. I would welcome fixed penalties for that crime and other minor crimes, and I am sure that the force would be comfortable with it.

**Inspector Love:** My understanding is that fixed penalties have been piloted in some forces down south, and the feedback is that they have cut down the number of hours that officers spend producing reports for the fiscal and other paperwork. That would have a positive effect on us, because it would allow us to have more officers on the streets for longer, as they would spend less time doing paperwork.

**John Scott:** I ask George Smith how that would affect his role in dealing at the sharp end with young people on the streets and the bond of trust that he hopes to build with them.

**Sergeant Smith:** The police will never lose their discretion, which plays a big part in community policing. My boss mentioned that he goes for fixed-penalty tickets for a variety of reasons. My community officers and I have spoken about them and we feel that they are probably the way forward for minor offences of a certain nature. The time that they would save means that we would be free to continue with other duties. We are talking about all police officers, not just community officers, because the problem is not unique to the community. The time that fixed-penalty tickets would save means that they would definitely be worth while.

**Superintendent McKenzie:** I am sure that we could draw parallels with how the system for road traffic offences is administered; conditional offers of fixed penalties seem to have been administered successfully in that area.

**The Convener:** I am interested in community trust. There is an issue about young people feeling that they can trust the police, but is there not also an issue about building trust in the community when people express concerns? I am not talking about trivial complaints and people who want to

complain for no reason or who indulge themselves by complaining to the police—I confess that I have not come across many such people. Do community police officers think that they have a role to play in building that link as well as the link with the non-offending young people on the street who might feel that they are being targeted?

**Sergeant Smith:** The officers feel that they are a link to the whole community, not just the offenders. With that in mind, they are in and out of the high schools and the primary schools every week and obviously they are in their areas when they are needed.

**The Convener:** When someone reports a concern about antisocial behaviour, as opposed to a fear of it, do you have a system for going back to them and speaking to them about what you have done, which would build confidence and assure them that they are taken seriously when they voice concerns?

**Sergeant Smith:** If someone reports an incident of an antisocial nature, that is passed to the community officer. Immediate police attendance will be afforded if necessary, but police attendance is often not afforded, because it is not required at the time. The incident might be part of a continuing problem that needs to be dealt with over a longer period and, if that is the case, it is passed automatically to the community officer, for their attention. If the case merits more police activity, that is what it receives. The officer concerned will contact the complainer by phone or will visit them and will see where that leads.

**John Scott:** You spoke about visiting schools. If you saw low-level antisocial behaviour in a school playground, whose jurisdiction would that be in? Would you be able to hand out fixed-penalty fines in a school playground?

**The Convener:** Only to the teachers.

**John Scott:** I am only asking the question; I do not know the answer.

**Inspector Love:** That would fall to the teachers. They have custody and charge of the children while they are at school and, initially, they would take responsibility for dealing with such behaviour. If the matter was of such a serious nature that they felt that they were unable to deal with it, they would bring in the police to deal with it.

**Superintendent McKenzie:** I want to go back to the public confidence issue. It is of paramount importance that we gain the public's confidence so that we can get community intelligence from them.

Every subdivision has its own initiatives; an initiative that we have been running for a long time is to telephone people who have concerns—we use officers who are not fit for full operational duties. They telephone those people daily. It is a

matter of reassuring them that they will get the backup that they need. They are asked whether their problem is a recurring one and whether we need to consider some form of action plan. The feedback that we get from that is also in the police response, so there is a quality issue there as well. I have found that that contact with the public has definitely enhanced the confidence that they have had in us locally.

**Cathie Craigie:** I want to move on to housing issues. The bill contains a proposal to give discretionary powers to local authorities to designate areas where private landlords would be required to be registered. It also seeks to give them the opportunity to impose sanctions on private landlords if they are not tackling an antisocial behaviour problem. In your experience, is antisocial behaviour a problem in the private rented sector? Do you have any tools that allow you to deal with it?

**Karen Byrne:** I do not have much experience of the private rented sector, but I am aware that there are significant problems with antisocial behaviour in that sector. Registered social landlords and local authorities have policies and procedures in place to deal with antisocial behaviour and there are regulations. Therefore, various bodies ensure that they adhere to regulations, but the private rented sector does not appear to have such regulations. As a result, I welcome the proposals.

The owner-occupier section of the community is another section with which we have significant problems in my area. Many properties in the area have been bought through the right to buy. Until ASBOs came into effect, we did not have any measures or sanctions at all to use if an owner-occupier or residents in an owner-occupier's property caused disturbances in the area or disturbed any of our tenants. At least now we have access to ASBOs in appropriate circumstances, but I definitely agree with the proposals for the private rented sector.

**Cathie Craigie:** I am sure that I know what your views are, Superintendent McKenzie. Will you share them with other members?

**Superintendent McKenzie:** Sure. My experience is not restricted to the area that I police, but there has certainly been a growing problem with private landlords in my area. I am not letting out any secrets by saying that the market is attracting unscrupulous individuals who try to launder the proceeds of crime through that market. Other unscrupulous individuals simply want to make money and do not necessarily want to launder the proceeds of crime.

Dealing with such people can be difficult. We have probably focused on drug dealers who have managed to secure private sector property and

whose money is paid through housing benefit. We have spent 10 months working closely with local communities to get an individual evicted from a property that he had no right to be in. The property was in the name of his allegedly estranged wife, who had secured it from a private landlord. The landlord was fearful of the expenses that would be involved in writing to them to quit, the appeals process and perhaps losing the case. If there was regulation and individuals did not meet the criteria, such inquiries could surely be short-circuited. It took 10 months to evict that person. He was an active drugs dealer and brought the local community down so much that house prices were affected and individuals vacated their houses without selling them. We have a growing problem in that respect. Therefore, I welcome the possibility that such individuals will be licensed and that there will be set criteria for how tenants should be dealt with.

**Cathie Craigie:** The bill proposes giving powers to local authorities to designate areas. I know that you cannot speak for the whole of Scotland, but how would that affect levels of antisocial behaviour and crime in the Cumbernauld and Kilsyth area?

**Superintendent McKenzie:** I suppose that if I were being pragmatic, I could name areas where I would like such powers to be given, but doing so would be unfair to them. I do not see why private landlords across the board should not have to face some form of licensing and meet the criteria that are proposed.

**Scott Barrie (Dunfermline West) (Lab):** Part 9 deals with parenting orders, which will be available for courts to introduce if parents are deemed to have failed to engage voluntarily with the appropriate support services. What are your views about parenting orders? Should they be welcomed?

**Superintendent McKenzie:** Our opinions vary. Probably the best answer I can give is that, in some instances, there is evidence of poor quality parenting.

Anything that could enhance the quality of parenting should probably be welcomed. The effect of some aspects of parenting orders might be dubious, in that fining people for their children's misbehaviour could compound the factors that started the misbehaviour. However, we have to look at the quality of parenting. If there is some way in which we can deal with individuals where that quality falls below expectations so that that quality can be enhanced, that would have an impact on the children. Obviously, I would welcome that.

**Inspector Love:** That is a good summation of our discussion on the subject. My view is that a lot of problems are down to bad parenting. Some

parents fail to discharge their duties and responsibilities. I am not sure about a parenting order, but we need something in place to bring such people to book and to get them to take on board their responsibilities in looking after the children they have brought into the world.

11:00

**Sergeant Smith:** My view is that such orders will give us a major headache or a major headache to families. The orders might work for a number of people, but I would say that they will not work for the bigger percentage. That is just my personal opinion.

**Scott Barrie:** What would your solution be to the issue that was alluded to earlier and just now? How would you deal with the poor parenting that exists?

**Sergeant Smith:** My fear is that if parents who do not comply are fined or given some other form of punishment, that will compound their problems. I do not think that that is the answer. There needs to be some other structure in place that will help them rather than hurt them.

**Scott Barrie:** If, for parenting orders to work, we need some other structures and some other assistance, it is clear that appropriate services will need to be in place. I think everyone agrees that we do not have adequate services in place at the moment. What sort of services do you think are needed to make the measures effective? Do we need services on a compulsory basis, such as parenting orders, or on a voluntary basis, which might be the step before parenting orders?

**Superintendent McKenzie:** There are areas in which parenting orders would perhaps be more effective. Truancy is one example. If the parents are not discharging their obligation to send their children to school, perhaps punitive measures could be imposed, such as fining the parents. Obviously, there is an education problem, in that some parents were not brought up particularly well themselves, so there may be an ignorance of what parenting is all about. Education is probably one of the most important support services that could be provided under parenting orders.

**Cathie Craigie:** The bill would provide the opportunity to introduce community reparation orders, under which offenders between the ages of 12 and 21 would be required to make amends in some way within the community. What is your opinion on that proposal? Will it work? How will communities and the perpetrators of the crimes respond?

**Inspector Love:** Responsible people in the community would like to see that happen. They would feel that the perpetrator was being made

responsible for his actions and was being required to put something back into the local community. That could compound the community and build it up as a good community. We would probably subscribe to the view that the measure could bring the community together. People would know fine well that the matter had been pursued and had been dealt with.

Community reparation orders could be viewed in a similar vein to restorative justice. The parties would be brought together to work out who is wrong and what must be done to resolve the matter. That resolution would then have to be carried out. The fact that it would be carried out would help to bring the communities together. That is the view that I hold.

**Cathie Craigie:** The committee received some consultation responses that suggested that community reparation orders would stigmatise the individual offender within their community. How would you respond to that?

**Inspector Love:** We have not had that sort of feedback from the people we speak to.

We take the view that, if someone was writing graffiti, they would be found responsible for that. It is usually reasonably easy to detect, because people tend to scrawl their own names when they write graffiti. Most folk know who the offenders are anyway, but they may not have been brought to the notice of the police. I do not think that I would take such responses as a true reflection. I think that most people in the community would like to see their property restored or brought back up to scratch by the offender.

**Tony Green:** Community safety forums support the measure very strongly. In general, we would like more reparation in disposals for the children's hearings system, for example. We feel that the design of programmes should take account not only of reparative tasks but of mediation, to address the initial problems. The feedback that we seem to get through our consultations is that the stigmatisation of a victim or perpetrator within the community is unlikely to happen. It is seen as a much more supportive measure and a much more positive way of tackling antisocial behaviour.

**Campbell Martin (West of Scotland) (SNP):** I have a question about restriction of liberty orders. The bill would extend the powers of courts to impose restriction of liberty orders on under-16s—that is basically electronic tagging. The issue of antisocial behaviour generally provokes strong opinions on both sides, as does the issue of electronic tagging. In the north of my home town, Ardrossan, we have substantial antisocial behaviour problems, and one senior citizen to whom I spoke about electronic tagging said, "It's not electronic tagging you need. It's electronic

chairs.” I hope that he was joking, but I would like to hear your opinions on extending electronic tagging to under-16s.

**Sergeant Smith:** I am a great believer in not punishing people on a monetary basis all the time or imprisoning them. I do not think that either of those punishments works particularly well in society. Electronic tagging, in my experience, does work—so much so that the people I have dealt with who have been tagged really understand what it is all about and what it is there for. If you were to apply electronic tagging to someone under 16 for antisocial behaviour, I imagine that they would be of the same mind. They would know what it was for and why it was there.

**Superintendent McKenzie:** Electronic tagging has really got to be used for the real recidivists, the people who are repeat offenders, and it can have an impact on them. There is a danger that, if it is more widespread, offenders will see it as a kind of trophy: it would be a real gang badge to say, “I’ve been tagged.” However, we know of a case in Cumbernauld in which electronic tagging has had a major impact on the individual involved. There is another case in Kilsyth where there is a bit of bravado and trophyism creeping in. Inspector Love can comment further on that individual.

**Inspector Love:** I will not comment specifically on the individual, but I am interested in the idea of electronic tagging as a badge of honour. I made some inquiries regarding the tagging of offenders and spoke to representatives from a company that monitors tagging. They told me that the feedback throughout Scotland is particularly good. After the event, they do a survey of the persons who are tagged, and most of the people who have been tagged say that it has brought them closer to their families.

I go along with the suggestion that it should be extended to under-16s, but I do not subscribe to the view that it is a badge of honour. I think that it is actually keeping offenders out the road. To a great extent, it keeps them away from the people with whom the tagging order says they should not associate. The orders may say that they must not associate with particular friends between certain times or in certain areas. Tagging is a worthwhile tool that we can use instead of fines or imprisonment. As George Smith said, tagging is an alternative that allows us to continue to monitor offenders in the community.

**Campbell Martin:** There is a line of thought that someone who has been tagged might deliberately trigger the tag to draw attention to themselves. Do you have any evidence to suggest that that might be happening?

**Superintendent McKenzie:** No, I am afraid that we do not have any such evidence.

**Campbell Martin:** Do you have any opinions on electronic tagging?

**Tony Green:** The community safety forum believes that tagging should be used as part of a package of measures; we would not support tagging for the under-16s on its own. Although we think that it would be valuable if it kept a child out of secure and residential accommodation, each case must be carefully assessed. After all, the home circumstances of the person involved might be such that tagging them would create more tensions and problems than it solved. As a result, although we support the measure, we have some reservations about it.

**John Scott:** The Scottish Executive has told the committee that it plans to put an extra £65 million over two years into its antisocial behaviour strategy. Given all the measures and proposals in the bill, do you think that that is enough?

**Inspector Love:** It is always difficult to talk about these matters in monetary terms. I would leave that question for another body to answer.

**John Scott:** Nonetheless, we invite your opinions on the question.

**Superintendent McKenzie:** It could be argued that the proposed legislation will in part be successful if it means that there are more officers on the street. Some might say that, as far as the police are concerned, the cake is not big enough; however, from a local perspective, I think that our slice should correlate with others’ slices.

I do not imagine that the money that you have mentioned will be spent on policing. In any case, I do not want to comment on whether it is enough. All I can say is that if we throw financial resources at it, the proposed legislation might well be successful.

**Tony Green:** The bill has many resource implications that must be met, but whether the £65 million that you mention is sufficient is certainly outwith my area of knowledge.

That said, if we are to reduce the level of antisocial behaviour, we need positive initiatives as well as the kind of reactive measures that the bill seeks to introduce. It is always very difficult to fund such initiatives. For example, we are aware that the level of antisocial behaviour in an area is directly proportional to the level of deprivation. As our area is one of the most deprived in Glasgow outwith a social inclusion partnership, we have found it extremely difficult to pull funding into it. As a result, I think that resources are required not just to implement the bill’s measures but to support current work to reduce antisocial behaviour through positive means.

**The Convener:** Are you suggesting that the people who offend in our local communities are

deprived and disadvantaged, or do you accept the evidence that suggests that it is not necessarily the most deprived people who behave in an antisocial way? In fact, they are very often the first victims of such behaviour.

**Tony Green:** I am sorry. Could you repeat that question?

**The Convener:** You seem to be creating the impression that people who exhibit antisocial behaviour are disadvantaged and deprived. Are you saying that only disadvantaged and deprived people behave in such a way in communities?

**Tony Green:** Not at all. However, there is a higher level of antisocial behaviour in disadvantaged areas than in other areas.

**The Convener:** But it is equally the case that people in deprived and disadvantaged communities can be the first victims of antisocial behaviour.

**Tony Green:** Indeed. If antisocial behaviour in a particular area is conducted by its residents, there will be a higher number of victims in that deprived area.

**The Convener:** It could also be conducted by people who come into the community, not simply by the people in the community.

**Tony Green:** Yes indeed. I am not trying to brand the people in more deprived areas as being more guilty of antisocial behaviour. The fact is that the level of antisocial behaviour is higher in those areas.

**John Scott:** Did I pick you up correctly? Did you say that in SIP areas it is relatively easy to channel funds towards proactively addressing a problem but that doing so in non-SIP areas is sometimes more difficult because the structure does not exist?

**Tony Green:** You will have to shift down on both aspects. It is not easy to secure money for initiatives in SIP areas, but it is a damn sight more difficult to do so in non-SIP areas.

**The Convener:** I think that we have drifted slightly over our time, but we are considering some major issues. I thank the witnesses for their evidence and appreciate their attendance this morning. We are more than happy to hear from them if they want to expand on particular points or raise other issues in writing. I suspend the meeting for two minutes.

11:15

*Meeting suspended.*

11:22

*On resuming—*

**The Convener:** I call the meeting back to order. We are running slightly late. I apologise for that, but I am sure everyone appreciates that it is for the best of reasons.

I welcome our second panel of witnesses. From the Scottish Consortium on Crime and Criminal Justice we have Dr Sula Wolff, who is a member of the Howard League for Penal Reform, and Maggie Mellon, who is head of public policy at NCH Scotland. From Victim Support Scotland, we have Neil Paterson, who is the director of operations, and Barry Jackson, who is the policy officer. We are grateful to the witnesses for the written submissions that they made available to us before the meeting. As we have those submissions, it is not necessary for the witnesses to make opening statements, but if any of them felt compelled to do so, I would give them that opportunity.

I will kick off the questioning. I ask you to comment on the "unprecedented consultation". Do you regard the consultation as effective? Also, I note that, in its written evidence, the Scottish Consortium on Crime and Criminal Justice says:

"In Scotland we are fortunate to have a system in place for dealing with the young that has worked, is humane, and has not increased the rates of offending."

How do you square that with the strong views that have been expressed in the pre-legislative consultation, by MSPs' constituents and by Victim Support Scotland, which reports that three quarters of offences might not even be reported? We can dispute how we solve those problems, but you suggest that the serious problem that some of our communities have highlighted does not exist.

**Maggie Mellon (Scottish Consortium on Crime and Criminal Justice):** We acknowledge that a problem exists, but the problem of unreported offences in communities is common to England and other jurisdictions in which criminal offences are recorded. Our point is therefore that offending by young people in Scotland is no higher than recorded offending in England and Wales; it is much the same. Indeed, it has been lower over the years and remains so. We are saying not that there is no unrecorded offending, or that there are no young people who are not proceeded against or caught, but that, on recorded offences, Scotland is in a better position than other countries in the—

**The Convener:** However, the substantial point is that while there might be a dispute over the solutions to the problems, a lot of people would say that the system is not working. For young people's offending, there is a sense among our community leaders in our local communities that there are not consequences to that.



**Maggie Mellon:** We are among the organisations that have said for a long time that the system is not working because it is not resourced. There is nothing wrong with the system itself. In fact, the Scottish legislation on children is potentially world beating. For a huge number of years, we have argued that the system is not working because it is under-resourced. It has not been able to move to deal with some of the problems of the time. Panel members themselves have said for a long time that they do not have the disposals or resources that they need.

**The Convener:** However, your written evidence says that the system has worked and is working.

**Maggie Mellon:** It is working as a legal system. The proposed legislation would be just another legal system. Our argument is that creating more laws will not solve a problem that is created by the under-resourcing of the strategies that are needed to solve the problem.

**The Convener:** So you accept that the current system is not working?

**Maggie Mellon:** You need to make a distinction between a system per se and how it is resourced. We would say that the system is certainly not resourced to work. It has been under-resourced. However, the system itself has absolutely no flaws in it. The system is absolutely able to cope with all the problems that are identified in the antisocial behaviour proposals.

**Dr Sula Wolff (Scottish Consortium on Crime and Criminal Justice):** Not just the reported crime figures have been going down; the figures in the Scottish crime survey, which deals with crime that is experienced by victims and which includes reported and unreported crime, have also been going down. I accept that there is a great discrepancy between the actual crime figures over recent years and public perception of crime. Public perception, particularly in deprived areas, is that crime is rising. People are increasingly afraid. There is also evidence of that from community surveys.

One possible reason for that is that the population is aging. Older people are more afraid of crime than younger people. Another reason is that the public media, especially the press, take great care to publicise fears of crime and to make large stories about crime. We have to accept that there is a great difference between the public perception of crime and actual crime rates.

**Neil Paterson (Victim Support Scotland):** Let me pick up on a couple of points that have been made by fellow witnesses. I hear what Dr Wolff is saying about the perceptions of crime in relation to the actuality. To an extent, I concur that the fear of crime is perhaps not directly linked to the reported crime figures, which we know are coming down,

but there is another issue. The incidence of crime remains high, particularly in deprived communities, so people's fears are not necessarily unrealistic. Their fears are based on things that are happening in the communities in which they live. One thing that the extensive consultation on the bill showed was that those feelings are held very strongly by people in communities throughout Scotland. From the work that we do in those communities, it is clear that those issues are of significant concern to people throughout the country.

I want to make another point about the adaptability of the legislation and systems that are in place to deal with young offenders. We are and will remain on the record as saying that we are confident that the children's hearings system is the best locus to deal with children who offend—although people who work within the system consistently report to us that it is under-resourced. However, a significant adaptation that could be made that would improve the workings and efficiency of the system would be to provide greater engagement with victims of young offending to explain to them how the system works and to give them a limited degree of information about what is happening in their case.

Some members may be aware of the pilot that is taking place in central Scotland, which, I hope, might be the way forward in developing and enhancing the system.

**The Convener:** Has the issue been raised by the press?

**Neil Paterson:** There is no doubt but that the press spends a lot of time flagging up crime issues, although I am slightly sceptical about whether that has the influence that some people say it has. Our people who work in communities would say that the press reflects the actuality and people's concerns and does not necessarily lead opinion. However, I appreciate that it is difficult to show that scientifically.

11:30

**Stewart Stevenson:** Maggie Mellon said that existing measures can deal "absolutely" with the problems. Was she saying that the powers on housing and landlords and those in other parts of the bill would be an unnecessary extension of the legal system? Was the comment about the whole bill?

**Maggie Mellon:** No. I was talking specifically about the measures on children and young people.

**Stewart Stevenson:** Are the witnesses content with the definition of antisocial behaviour in the bill, which, in essence, is the one that is used in the 1998 act, which introduced antisocial behaviour orders? Antisocial behaviour is defined as being

when a person

“acts in a manner that causes or is likely to cause alarm, distress, nuisance or annoyance”.

Are you content with that definition and do you have experience on which you can draw to inform your view on it?

**Maggie Mellon:** The consortium’s written evidence drew attention to the lack of a reasonableness test in deciding whether behaviour is antisocial. Given that behaviour affects people in different ways, it is wrong to use as a definition of antisocial behaviour, behaviour that causes or may cause distress, without including the reasonable person test.

**Stewart Stevenson:** Are you unsatisfied by section 4(3), which states:

“the sheriff shall disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances”?

That provision is also in the 1998 act.

**Maggie Mellon:** One experience that might help to illustrate the problem comes from our service for families who have been evicted or who are threatened with eviction for antisocial behaviour under existing legislation. They are the kind of families and children and young people who will be affected by the bill. On one occasion, we found that a woman who had been evicted, along with her three children, by the council for antisocial behaviour suffered from a psychiatric illness that had a sudden onset. The difficulty was that her behaviour could be called antisocial because she annoyed her neighbours, her children were running wild and she was up at 3 or 4 o’clock in the morning playing loud music. She turned out to be suffering from a psychiatric illness, which was quickly treated, after which she had to pick up the pieces of her life. That woman could not prove to the sheriff that her behaviour was reasonable—it clearly was not—but most people would say that it was not reasonable to evict her.

**Stewart Stevenson:** It is valuable that you have mentioned a specific case. You say that the sheriff, in considering the phrase,

“reasonable in the circumstances”,

which is used in the 1998 act and has been carried into the bill, disregarded evidence that had been given to him of the psychiatric condition of the person.

**Maggie Mellon:** No evidence was led to that effect because the housing officers who took the action merely noted the person’s behaviour and brought evidence about it. No psychiatric assessment had been carried out. That is why we say that the children’s hearings system is the best way in which to deal with concerns about children

and young people’s behaviour. As the hearings are multi-agency and would call for such reports, action would not be taken on the basis of limited evidence.

**Stewart Stevenson:** I do not want you to comment about specific individuals, as there might be dangers in that, but did the person who was being evicted have legal representation?

**Maggie Mellon:** I do not have enough detailed information about the case to be able to tell you that.

**Stewart Stevenson:** Surely it would have been the duty of the legal representative to ensure that the evidence was placed before the court? Clearly, a sheriff cannot make a determination that is based on information that he does not have.

**Maggie Mellon:** Your comment reflects the inadequacy of the court system in dealing with complex social problems and behaviours. Courts deal with crime and punishment in an adversarial system. The Kilbrandon committee recommended that we move away from such a system when we deal with children and difficult behaviours that stem from a complex range of reasons and personal situations. The courts are a blunt instrument when it comes to dealing with such matters. Lawyers might be duty solicitors who have not been fully informed about the case and the proceedings can take far too long. When people’s behaviour is disturbing and dangerous to themselves or to other people, we need a proper assessment and an informed response as quickly as possible. Overburdened courts cannot respond in that way.

**Stewart Stevenson:** I suspect that colleagues will return to the matter.

The Executive is pointing towards community planning as a framework for developing strategies for tackling antisocial behaviour, but only the relevant police constable and the local authority will have a statutory duty to be involved in that process. Will that be sufficient?

**Dr Wolff:** I presume that the involvement of the local authority would mean that directors of social work and education officers were included in the process.

**Stewart Stevenson:** I do not wish to mislead you by being over-prescriptive, and I assume that that would be the case, given that those officers are part of the local authority.

**Dr Wolff:** If those people are included, that would be acceptable.

**Stewart Stevenson:** Do you have any evidence that information sharing—or the lack of it—is causing problems in dealing with antisocial behaviour?

**Maggie Mellon:** I have drawn attention to one example and now I will give another. An evaluation of the Dundee families project found the service to be very useful in helping parents to regain control of their children or to get them out of care to be managed in the community. Neighbour evaluations of the service were also positive. However, the evaluation showed that the families concerned suffered from very poor health and that children had bad educational experiences as a result of moving around. It is not a helpful way forward if the only body that is tackling antisocial behaviour is the housing department, which deals with the problem by taking action against or evicting people. Dundee City Council therefore involved us—a child welfare agency—to bring together the different aspects of families' situations. However, that is a very unusual approach in Scotland. To regard such situations only through the prism of antisocial behaviour, and to make decisions and act on them only in that context, is a limited way of tackling complex and wide-ranging problems.

**Dr Wolff:** The children's hearings system offers an excellent forum for the interchange of information among the different agencies that are involved with individual young people and their families. I do not know what mechanisms exist for the interchange of information about adults who do not have children in the hearings system, but I imagine that information sharing in such cases is less formalised and perhaps more deficient.

**The Convener:** Does not the example that Maggie Mellon gave indicate a failure of the judicial system to hear all the evidence, rather than explain why the children's hearings system is good? Presumably, even if the adult had no children, it would be unfortunate, to say the least, were their mental health not taken into account. Do you agree that, in some circumstances, if a housing officer moved for an eviction, that might pull out into the open difficulties that might not previously have been confronted by anyone? Do you agree that the test then becomes people's capacity to deal with what has been causing the problem, and that it is not a matter of saying that we should not move against anybody in case they have a mental health problem?

**Maggie Mellon:** That is absolutely right. If a housing officer is called in because of a neighbour dispute, and if they discover other situations or problems—such as alcoholism, mental illness, prostitution, child abuse or simply poverty—in the course of gathering their information, we would like there to be multi-agency assessment and an action plan. It is not a question whether people can pick up such issues; it is a matter of what to do with them. The courts represent a very poor way of proceeding.

**The Convener:** If it could be a trigger in the way that you suggest, and if it peeled off all the people who had the difficulties that you have identified, would there ever be a role for an antisocial behaviour order for someone who did not have those difficulties?

**Maggie Mellon:** If the people concerned are being a nuisance or a danger to others, they are probably committing one of a range of offences. I do not know of any situation that has been described as antisocial behaviour that is not probably a crime in itself. For example, there is behaviour liable to cause a breach of the peace, menacing behaviour and being drunk and disorderly. I am not quite sure what constitutes antisocial behaviour that is not already an offence. I am not sure that that has been well established.

**The Convener:** Sometimes, a pattern of behaviour is not identified in court, despite the fact that it has been causing problems. The most obvious example of that is in cases in which women have been harassed: although individual breaches of the peace might not seem to be very significant, they tell a different story if they are taken together.

**Maggie Mellon:** That might be the case but, if such behaviour was just presented as antisocial behaviour, I do not know how seriously it would be treated.

**Barry Jackson (Victim Support Scotland):** My impression is that an antisocial behaviour order would very much address the persistent nature of the behaviour. Persistent behaviour in itself can heighten the impact on the victim who suffers from it. The alarm or distress caused can depend on a range of individual circumstances and is difficult to pin down. However, repeat or multiple victimisation can heighten the impact. An order that prohibits certain conduct will include the persistent nature of the conduct. We hope that such orders will tie up the understanding that a range of steps have to be taken to protect victims who are suffering as a result of that conduct.

**Patrick Harvie:** I have a few questions about the perception of crime. There has already been some discussion about the gap between people's fear of crime and the reality, and I do not want to tread over old ground. Will you expand on people's perceptions of different crimes, what behaviour should be considered to be antisocial and the various perceptions that people have of that term? Will you also expand on the role of the media? Can the persistent, simplistic and stylised portrayal of crime in the media—whether accurate or inaccurate—affect people's perception of one another in communities and streets in a way that distorts reality?

11:45

**Maggie Mellon:** That is a big question. In relation to people's views of one another, we are concerned about the portrayal of young people, particularly groups of young men. One of the pictures in "Putting our communities first" is of some young people chatting to one another on the pavement outside, while inside there is a trembling elderly lady. The young people were doing nothing that should have given rise to alarm. That is bad for young people. It is not just that they are being unfairly portrayed as threatening when two or more of them are gathered together and wearing hoodies; it is bad for their self-image. They are treated aggressively, for example by being put out of shops. My nephews have gone into shops with the pocket money that they have earned to buy Christmas presents only to be summarily ejected. Such incidents cannot be good for young people and they are not good for older people, either. A lot of intergenerational work could be done and younger people could be an enormous boon to older people. They could help to look after their houses, or guard them when they are coming back from the shops with their pension and their shopping, but they are never asked to do that. They are always seen as a threat.

**Patrick Harvie:** Are you arguing that if young people perceive themselves to be a threat to others, they might play that role? The fear of them can feed the problem.

**Maggie Mellon:** They might start acting like that. Adults are now much more afraid to intervene in situations involving young people and that is a shame. It happens partly because they get cheek from young people, but there is also a feeling that someone else should be responsible. It is shame that adults no longer feel able to intercede or intervene in a helpful way with young people and explain to them why it is not a good idea to be throwing things off the top of a 15ft wall, for example. Adults just stand back and allow behaviour to go beyond the bounds that it should.

**Patrick Harvie:** Is there anything in the bill that addresses the roots of the problems that you have identified?

**Maggie Mellon:** No. The bill addresses the real problems of social disorder, communities without hope and people in despair, but the remedies that it proposes are simplistic and do not fit with existing legislation. The bill is a series of legislative proposals that are not resourced and which are in conflict with a lot of established legislation that is based on research into what works.

**Neil Paterson:** It is unfortunate that the debate on the bill and on antisocial behaviour appears to have been tagged on to issues relating to young people. Our experience does not tally up with that;

antisocial behaviour problems are spread more widely than just one particular group of the population. The debate has not been helpful and the media has had a role in that.

The issues that were raised during the consultation that took place in the summer chime with the experiences of some of our people on the ground. It would be somewhat patronising to say that the media are leading people to conclusions that are not based on experience, as that is probably not the case.

**Barry Jackson:** It is my understanding that a breach of an antisocial behaviour order by a young person would be referred back to the children's hearings system, in which case the sanction would be in the child's best interests.

**Maggie Mellon:** On that point, we would say that children's hearings would be a much quicker solution. To get to a children's hearing for a breach, the child would have had to go to court several times. We know that that gives children very mixed messages because, by the time their case is heard, they are well distanced from their behaviour. At the moment, if the child admits the grounds for the referral, the hearing can move straight to disposal; it goes to court only if the child does not admit those grounds. The proposal in the bill would involve taking children to court and imposing perhaps two or three hearings on them, which could mean a gap of between nine months and a year before the child gets to a children's hearing for a breach.

It is possible to go straight to a children's hearing for antisocial behaviour, because that is already a ground for referral to a children's hearing; new legislation is not necessary. There is a whole range of reasons for referral that are not criminal—for example, a child who is beyond parental control. That is the beauty of the hearings system—it is not necessary for a crime to have been committed, only for there to be concern about the child. If the grounds for referral were admitted, one could go straight to a hearing and then straight into a compulsory supervision order, which would have the same effect as an ASBO. The hearing could impose any conditions that it wanted to—for example, that the child should not be in a shopping mall at 10 o'clock at night, or should not go out with particular friends. All those things could be part of a supervision order.

**John Scott:** I want to take you back to what you said a moment ago. You are very negative about the proposals in the bill. You are saying that, essentially, the only reason why existing legislation is not working is because it is under-resourced. Given the tenor of what you have just said, can you suggest some positive additions to the bill?

**Maggie Mellon:** A useful addition to the bill

might be an amendment to the effect that orders—or any of the remedies—would not be granted unless it could be established that the person had been offered services or a structure to their life that that they were refusing unreasonably.

The children's hearings system was established in the early 1970s. At that time, the rate of child poverty was one in 10; the rate in Scotland is now one in three. We know that the problem is sometimes not what happens at the hearing, but why the situation resulted in a hearing. Although a family might have been in need of, and might have asked for, help for years, nothing happens until the critical stages are reached. It would be useful if the bill said that no parent who is tearing their hair out and who does not know what to do should be banging on doors—whether those of the police, social work or education—to ask for help and not getting it. A useful approach would be to ensure that no order was granted unless there was clear evidence that people had not sought help or had refused to accept it when it was offered.

**The Convener:** I want to ask about adults who stand back. Do you accept that, to some extent, that is learned behaviour and that, because people have intervened, there have been consequences, such as slashed tyres, broken windows and harassment of their youngsters when they go out on the street? That involves the targeting not just of elderly people, but of young families. Do you accept that we are talking not just about a fear, but about a reality, which affects behaviour?

Secondly, there is the question of why people are concerned, about which Victim Support might have something to say. In my constituency, there are meetings on the subject, at the most notable of which more than 1,000 people turned up, even though the meetings are not publicised in the press and the press do not attend. Why do you think that people come to those meetings, when interest in them has not been generated anywhere? They want to talk about the problems reasonably; they do not want to lynch anyone. Those meetings are about what communities are saying, rather than what people are telling them to say.

**Maggie Mellon:** I acknowledge that there are problems. I have gone to such meetings to discuss the problem of local teenagers and children who are out of control and who do not have things to do. I am a member of the public who goes to community meetings, although I did not go to the one to which you referred. I know that there is a problem. I have friends who have had their houses or their cars targeted because they have taken action or complained about some children's behaviour. My point is that such social problems and intergenerational conflict to do with young people who are out of control are not amenable to

simple solutions, such as a new piece of legislation that has some orders attached to it. Such problems are amenable to resourcing—we need to put in some resources rather than treat the police as the front line for ending social conflict. We must take much more social responsibility and help people to take more control in their communities.

**Donald Gorrie:** What positive suggestions do you want to make? In your written evidence, you refer to measures such as acceptable behaviour contracts and formal warning notices. If the organisations that you represent were drafting amendments to the bill, what positive measures would they include in it? What measures would you take out?

**Dr Wolff:** I will be a little oblique, if I may. I want to pick up a point that was made earlier. In the draft bill, the distinction is not very clear between measures that are to be taken against adults who are guilty of antisocial behaviour and measures that are to be taken against children. One must be terribly careful in relation to children. All the proposed measures should work and should not make matters worse. Children are developing people—they have a future before them and are open to change. There is considerable room for more positive interventions.

The introduction of the children's hearings system was an extraordinary event in this country. It makes Scotland quite different from England and Wales and has been found to work. Although it is an informal and humane system, rather than a punitive system, delinquency rates among the young have not risen. I accept that the problem is very bad in some areas and that some communities suffer greatly from the effects of antisocial behaviour in the young. However, surely the committee will accept that when measures are introduced they should have a chance to work.

It has been established that criminalising children perpetuates antisocial behaviour. Warnings and coercion do not work. Children have already been coerced and warned—by their parents at home, by their schools and by their local communities. It is known that the very small proportion of seriously, chronically disturbed and antisocial children cannot respond to coercive measures. A great deal of largely Government-funded research has demonstrated that. There have been long-term studies of children who were antisocial and were exposed to different life circumstances and interventions. There is also the experience of voluntary agencies, which all agree that criminalising the young does not work. We need to strengthen the current system and to put positive resources into it, so that it can work more effectively.

**Maggie Mellon:** The committee may be

interested in hearing which positive measures we would like to be added to youth work. I have very little knowledge of this issue, but I know that in Norway a scheme called the youth police has been piloted. The youth police are not police—they do not have powers of arrest. The scheme involves investment in youth work. It is an attempt to respond directly to issues of concern, including concerns expressed by young people. For example, young people may enlist the help of the youth police when they are frightened to go home from school, when gangs are forming and when they are being bullied and attacked. Shopkeepers can say to the youth police, “There is this gang of kids that comes every day. They are like a swarm of locusts and half of my things go out of the shop, but I am scared of checking them.” The scheme is a form of youth work, but it is targeted at problem areas. Such resources might be useful and might help communities to feel that a response exists apart from the police. The police are in a very bad situation, as they must arrest people or move them on. Some police do really well on the community policing side, but such a scheme would be an added resource. Examples of positive approaches would be considering what youth work provision does and how it could defuse tensions in communities, identifying the young people who are the real problem and separating other young people from them and giving them other things to do.

12:00

**Neil Paterson:** I just want to concur with a couple of points that have been made. One relates to the reasons why crime is not reported. We began our evidence this morning by talking about the incidence of unreported crime; it might be going down, but it is still significant. The primary reason why people do not report crime is that they are afraid to do so—there is a lot of evidence on that. Any strategy to deal with antisocial behaviour will have to get to grips with why people do not report crime and how we can engage people so that they have the confidence in the system to bring crime to the attention of the authorities. I was fascinated to hear the convener’s points about the meetings in her constituency, because I am sure that some of the issues that were talked about there relate to why people do not report crime.

It is not too strong a point to make to say that many communities in Scotland have lost confidence in the system. Although I am confident that the children’s hearings system is a valuable way of dealing with young people who offend, I am not sure that that confidence is shared in communities throughout the country. It is incumbent on all those who work in the system—I include myself—to ensure that people understand how it works. The system is rather opaque at the

moment and that does not help people to understand it and feel confident about what is being done.

**Stewart Stevenson:** Under the existing legislation are victims informed adequately about when an ASBO has been taken out and its content? Do they think that the provisions of the bill are adequate in that regard?

**Barry Jackson:** In speaking to area services, I get the impression that victims’ perception of ASBOs is that they are rarely used in some authority areas, although that is not a consistent view, because we know that in other areas they are well used. The overall perception is that they are rarely used or are difficult to obtain. I noticed that in the bill there is no formal notification procedure to make victims aware that an order has been served.

**Stewart Stevenson:** That is exactly my point. We have had the Crime and Disorder Act since 1998, which similarly makes no such provision. Is there practical experience of victims being unaware that an ASBO that relates to behaviour to which they have been subjected has been served, or of their being unaware of what the order does in the way of restricting the perpetrator of the behaviour?

**Neil Paterson:** The one-word answer is yes.

**Stewart Stevenson:** Will you be specific? How widespread are such situations? Are they the exception or is it the generality that people do not know?

**Neil Paterson:** I apologise for the fact that I cannot be more specific than that. We are aware that there are instances of good practice in certain areas, such as Falkirk or Cumbernauld where there is a constructive partnership between the police, the housing authority and organisations such as ours to deal with antisocial behaviour. Good interagency communication systems have been developed to deal with a raft of issues.

**Stewart Stevenson:** Can I interrupt you? I understand that. I am thinking about the individuals who have been subjected to the behaviour rather than whether the agencies are working well.

**Neil Paterson:** I was just going to come to that point. Those agencies have worked out mechanisms by which individuals will be informed of the issues that they need to know about.

The critical point in the bill is the statutory duty on local authorities to put in place a plan to deal with antisocial behaviour. We urge strongly that it needs to be stated formally that in cases such as the incidents that you have described authorities should ensure formally that victims are notified of the conditions of the order. The order is rather

meaningless if that information is not conveyed to the victim.

**Cathie Craigie:** I will move on to the dispersal of groups. My questions are for Victim Support Scotland. There has been support for the proposal from communities throughout the country, but some organisations have voiced concern that if the proposal goes ahead, it could be used to deal with perceived behaviour problems—Maggie Mellon talked about a few young people gathering on the pavement—rather than actual behaviour problems. What is your view on that?

**Neil Paterson:** I will lead off and my colleague will comment after me.

It would be unfortunate if the power were to be used inappropriately. We spoke about the issue on the train as we came through and tried to make some sense of it. Again, the crucial point will be that the discussions that take place at local authority level when the strategic decisions are being taken about how to tackle antisocial behaviour need to look at the issues in the round. Dispersing young people will merely disperse them somewhere else. There are issues to do with having facilities available where young people can meet one another. It is important that the strategy to tackle antisocial behaviour considers all the issues.

**Barry Jackson:** My understanding of the bill is that there will not be a blanket power; it will be available only in areas where a senior police officer has decided that groups are convening and are causing a problem of antisocial behaviour. It might be fairer to view the power under the bill as the power to move somebody on in a situation where there is an overriding problem of antisocial behaviour.

Having said that, there is a secondary point that is quite closely related to Neil Paterson's point. In setting out a strategy with the local authorities, thought should be given to the facilities that are available for youths. They will not stay at home every night and watch television; they want to go out. That should be taken heed of at the beginning of the process and facilities should be made available for them.

**Patrick Harvie:** One of the concerns that has been raised about the dispersal of groups is that for some young people home is a less safe place than the street or anywhere else that they go to. Could you respond to that concern?

**Maggie Mellon:** That is a major concern for us. The related concern is that using dispersal orders means that the problem is just moved somewhere else. Before it went into partnership with Dundee families support services, Dundee City Council found that when it evicted antisocial families, they moved somewhere else. It is the same with groups

of young people.

Although the dispersal powers have not yet been introduced in England, there has been a push to get young people out of the shopping centres. The experience there is that the young people are exposed to more risk because they go to quiet, dark areas where nobody cares what they are doing—they are out of sight, out of mind. That is where they are very exposed to drugs, alcohol and sexual experiences that they should not be having, as they are not under anybody's supervision there. In some ways it is better if they are in front of us, so that we know what the problem is and the number of young people who are involved, and we can work with them to find something else that they could do. However, we also have to accept that it is part of growing up to gather aimlessly in small groups to talk and socialise. Sometimes that can be over-noisy and messy and some control is needed over that behaviour, but it is not abnormal in itself.

**Patrick Harvie:** My colleague Stewart Stevenson has just pointed out that the areas that could be designated as relevant localities for dispersal are not restricted to residential areas. I wonder whether you would like to clarify any of the points that you made.

**Barry Jackson:** We trust that the powers will be used appropriately by the police.

**Donald Gorrie:** May I clarify some points that are made in the written evidence and that have just been mentioned by the witnesses from Victim Support Scotland? Would it be helpful to include in the bill the provision that councils must demonstrate that they provide adequate, legitimate recreation facilities, especially for young people? Any evidence on home zones in Europe, which allow young and old people to socialise better, would be helpful, as would comment on local community mediation meetings. Those sometimes happen anyway, but would it be helpful to include in the bill the provision that people in communities where there is a problem will be brought together to discuss it before draconian measures are taken?

**Dr Wolff:** I support that whole-heartedly. All three suggestions are helpful.

**Maggie Mellon:** Yes, certainly. Any measure that is based on things that work and that makes situations better for people would be a useful addition to the bill. It would be useful for local authorities to have a duty to demonstrate that they carry out their functions properly in providing facilities and preventive family services.

**Dr Wolff:** May I return to a point that was made earlier, which was that children sometimes roam the streets because home is an unsafe place? Surely, if home is an unsafe place, the children

should not be there, unless some intervention can make the home safer. Often, the home is an unsafe place because of drugs, alcoholism, domestic violence or, in the case of girls, sexual abuse.

**Patrick Harvie:** All of which might go undetected, of course.

**Dr Wolff:** Yes.

**Maggie Mellon:** Many homes are unsafe or are full of tension. Young boys of 15 or 16 are big and noisy and flash-points occur when they are around, so they are better off out of it. However, we would caution against the removal of children just because their homes are unsafe—sometimes that involves domestic violence and sometimes it involves drug and alcohol problems. Services need to be in place so that young people can seek help about their home situation and help will be forthcoming. If we remove all children whose homes are unsatisfactory, the outcomes of that will not be good either.

**The Convener:** Do you have any points on Donald Gorrie's question?

**Neil Paterson:** The past three or four minutes' debate shows the criticality of the local authority community planning process—that criticality is a point that we want to emphasise strongly. I would be cautious about including in the bill an extensive list of duties that must be included in that planning process. I am not sure that legislation is the place to set that out; I envisage that the Convention of Scottish Local Authorities will have an important role in promoting good practice among local authorities, based on evidence of what actually works to address the issues in communities. We will then avoid the inconsistent levels of provision that we have at the moment under the current antisocial behaviour legislation.

**The Convener:** I want to pick up on the point about facilities for young people. If a local authority and community organisations have provided facilities that some young people are either damaging or preventing other young people from using, what should be done?

**Maggie Mellon:** There is no one single answer to that question. Existing legislation can tackle those problems. Obviously, children can be charged and referred to hearings if they have bullied other children, caused damage and so forth. If there is a general social problem in an area, sometimes it is not possible to deal with individual children in an individual way—social problems often need social solutions.

**The Convener:** Do you not accept that the simple equation of youngsters saying that they are bored and therefore they do things does not stack up in communities? Young people can be

excluded by the behaviour of other young people from using the facilities that could give them the opportunities not to be bored.

12:15

**Maggie Mellon:** I am sorry, but do you mean that some young people are excluded from facilities because their behaviour is so bad.

**The Convener:** No. They are preventing other young people from using the facilities. There is evidence in my own city that some young people will not let other young people into facilities. Youngsters therefore have to travel long distances to use other facilities because they cannot use the facilities in their local community. That is not because an adult is preventing them from doing so, but because other young people are stopping them from doing so. Those young people have no confidence that if they raise the issue, it will get sorted.

**Maggie Mellon:** I am sure that that happens, but I am not quite sure if you are asking whether the bill contains remedies or—

**The Convener:** You suggested that it would be reasonable to write into the bill the provision that it would not be possible to move on young people unless there were facilities for them to go to, but that suggestion does not address what is happening in local communities. Even where facilities exist, some young people cannot use them because the antisocial behaviour of other young people is not being addressed. Are there circumstances in which we should simply confront someone's behaviour and say that it is unacceptable?

**Maggie Mellon:** Yes, I agree with you on that point. Young people need to know what is acceptable and what is unacceptable, but I am talking about how that should be done. We agree with our colleagues from Victim Support that local authorities and other planning agencies need to put strategies in place and be able to demonstrate that they have them in place. Donald Gorrie made that point in talking about the need for facilities.

I have enormous confidence that if we were to get people together—the police, youth workers, councillors and other relevant people in the area, as well as the young people and the people who are affected—solutions could be hammered out. Those sorts of community resolutions are the way that we should be going.

**The Convener:** I have a final point on the dispersal of groups. You said that dispersal simply moves the problem on, which is clearly not acceptable. What if 40 youngsters were gathering very close to your home and they were not just talking but drinking, having under-age sex and



being violent—smashing bottles, painting graffiti and so on. Do you understand that just moving the problem on is a solution for the people who experience that behaviour?

**Maggie Mellon:** Yes. I do understand that. The police move young people along if they are keeping people up or whatever. However, the fact is that that does not remove the problem. We have to look at what solves the problem. Prostitution is the same sort of issue. I understand totally why people want prostitution moved away from their streets—everybody would want that—but the social problems remain of women's safety and of what needs to be done. Those are the sorts of problems that we need to address in this case.

**The Convener:** One thing that you do not do is tolerate it.

**Maggie Mellon:** No—well, they did with prostitution; they had tolerance zones, but that is a different issue. A range of provisions are required and a range of agencies need to look at solutions.

**Cathie Craigie:** You talked about communities and organisations working together and in partnership. Do you accept that that is happening in areas around Scotland? Some of the committee members took evidence in an area of Edinburgh where it is happening. Youth policing is also happening in Edinburgh—you do not have to go to Norway to find that. Although that is happening, a very small minority of people in those communities exclude themselves for whatever reason from the community partnership approach. They create a nuisance and commit crimes and vandalism. Stronger powers are needed to deal with those people.

**Maggie Mellon:** It is often said, and everyone seems to agree, that it is a very small minority. The number of persistent young offenders in the whole of Scotland is between 300 and 500, which is about 5 per cent of the total number of young people who are in trouble. That is a very small number. The same figures apply to persistent adult offenders, who are a nightmare to deal with, too.

The problem is that the bill seems to target whole communities and whole groups of young people and could criminalise behaviour that is not criminal. We are not saying that a problem does not exist with these young people; they are a huge problem for themselves and for other people. They will form the future prison population and we need to tackle them.

**Dr Wolff:** That group of young people is terribly difficult to help—there is no quick fix. They are a very small proportion of young people and they often start being antisocial before they are five years old. Many of them have neurological abnormalities or learning difficulties and they are often not so bright. They have all sorts of minor

handicaps and they are a terrible problem, but legislation will not fix that.

**Barry Jackson:** I am not sure whether I picked up correctly what was said earlier, but I think that the question was asked whether we should just tolerate some behaviour. Behaviour that can seem minor or that is in some circumstances minor behaviour whose criminalisation might seem problematic can have quite severe and wide-ranging effects on the victim.

Obvious minor effects can be immediate practical difficulties, emotional difficulties and the physical results of assault, but effects can also have much wider consequences for individuals and their families or acquaintances, such as work or family relationship difficulties or greater psychological difficulties that can continue for many years.

Such behaviour certainly needs to be tackled. From the victim perspective, the situation should not be that children outside should just be tolerated. An approach needs to be made to tackle the situation.

**John Scott:** Part 4 of the bill proposes to give the police and the courts the power to seal off residential and non-residential premises that have become a focus for antisocial or criminal activity. Some organisations believe that that power will have limited use, as the problems could merely end up moving to other areas. Will part 4 assist the tackling of antisocial behaviour?

**Neil Paterson:** Part 4 is relatively or totally uncontroversial from our perspective. We can envisage situations to which it would apply. I have talked to colleagues in the police service with whom we work closely who also feel strongly that the provision will assist them, so we are comfortable with that aspect of the bill. The displacement question arises whenever an attempt is made to deal with such matters. It is not in itself a reason for not doing anything.

**Maggie Mellon:** There are grounds for such powers to be available to deal with situations such as incorrigible drug dealing from some flats, of which we are aware. However, Shelter has drawn attention to the fact that if young children live in a domestic home that might be sealed and vacated, we must be concerned about where those children will go. Those children might need to be in care, and perhaps they should not have been in that situation. People who were not responsible for the behaviour might be affected by the powers and their needs will have to be considered.

One problem is that the bill does not mention the welfare and interests of children, which are central to the United Nations Convention on the Rights of the Child, the Children (Scotland) Act 1995 and the Social Work (Scotland) Act 1968. Powers to

close premises are fine, but those with the powers must be aware that they are dealing with more than just one person.

**Scott Barrie:** I will ask about parenting orders. When I worked in social work and with the children's hearings system, one of my great frustrations was that the children's panel did not allow us to do anything to anyone except a child. Some action involving the parents may have been implicit in that, but we could put a supervision requirement only on the child. You acknowledge that fact in your comments on parenting orders and, although you are critical of the court procedure, you say:

"There may however be a case for hearings being able to impose conditions on orders which are for the parent and not the child".

Will you expand on that?

**Maggie Mellon:** That was in NCH's response to the consultation, but Dr Wolff might like to respond.

**Dr Wolff:** I would be very much in favour of that. It would be a great help for children's hearings to have that power.

**Scott Barrie:** It would be. However, one of my other frustrations about the children's hearings system was the lack of recommendations from social work on conditions to be attached to supervision requirements. I think that it was Maggie Mellon who said that children's hearings can impose almost any condition that they wish. That is true in theory, but in practice it never happens. Almost the only condition that is ever attached to a supervision requirement is regular school attendance; the more innovative conditions that Maggie Mellon described are not used. The fact that something can be done in theory does not mean that it is happening in practice, and we need to know why it is not happening in practice. We need to consider whether the introduction of parenting orders is an appropriate road to take or whether we need other sanctions that might involve the court process for the presumably small minority of parents who are not unable to parent—those who are unable to parent require additional support in another way—but are blatantly unwilling to parent their children acceptably.

**Maggie Mellon:** We said that we thought such recommendations would be useful. At present, supervision requirements can relate only to the child. For instance, the hearing can order as a condition of supervision that the child attend a day nursery daily for reasons of child protection, but it cannot order the parent to take the child, so parents will often say to social workers, "He's to go there every day and you've got to make sure it happens." That is why we thought that it would be useful to be able to say to the parent, "The

requirement is for you to get up in the morning and take your child to nursery," which would enable social workers to demonstrate that somebody was not meeting the requirements.

We, too, are wholly in favour of clear prescriptions and of social workers making recommendations to which parents and children sign up. For example, if the supervision requirement was that the young person would attend anger management groups or a certain youth club, that requirement and the expectations for it should all be written down. Apparently, that was suggested a good number of years ago, but the Scottish Office resisted the suggestion on the basis that if all those conditions were written into the supervision requirement, the state would have to resource them. You should be aware of that resource implication if such conditions are attached to supervision requirements—as long as they are conditions to do with offering support and services as well as injunctions to do or not to do things.

**Scott Barrie:** Will you expand on your objections to the sheriff court procedure being used to impose parenting orders?

**Maggie Mellon:** The problem with using the sheriff court is that the decision making would be disjointed. The drift of Government policy is to have joined-up decision making and integrated services, which we are all seeking, and we feel that the children's hearing should be the place where parenting orders are made. The hearings might need more powers, and they certainly need more resources and to pay attention to more modern problems and issues, but hearings should be able to address parenting issues, rather than have to deal with the fact that a parent is on a parenting order that has been made by a court without the full awareness of all the circumstances. That is why parenting orders are best dealt with by the hearings, which is not to say that parents cannot be prosecuted, because they can be.

**Scott Barrie:** Yes, but the situation is not quite as straightforward as that, because the bill envisages that the principal reporter would make the referral to the court—it would not come out of the ether: it could only come through the reporter applying to the court for a parenting order—so surely there is a connection between the two.

**Maggie Mellon:** That is proposed because the hearing does not have the powers to require parents to do things, nor is it proposed to give it those powers. If the hearing had those powers, the reporter would not need to go to court unless the requirement on the parent came through the hearing's supervision order and the parent failed to meet it. In such circumstances, it would have to be decided whether there were grounds on which

to prosecute a parent for neglect or to remove the child, in which case there would be court proceedings.

12:30

**Dr Wolff:** My concern is that, if a sheriff court made an order that was breached, the consequences of that breach could be detrimental for the child. There might be a fine, which could impoverish poor families further, or imprisonment of the parent, which would not help.

We have become too reluctant to invest in residential care for children. There are situations—although not many—in which children are much better off, preferably with the agreement of their parents, in some kind of residential care, provided that that care or schooling is well resourced. That helps the children to develop their personalities free from all the tensions and the appalling conditions that pertain in their families. If one resorts to a sheriff court to deal with parents, the sanction should not be imprisonment or a fine, but a care order.

**Scott Barrie:** I do not want to begin to discuss residential care, because I might make some criticism of that comment.

**Dr Wolff:** I know, I know.

**Scott Barrie:** There is a conflict with the present legislative requirements, as the Children (Scotland) Act 1995 has a no-order principle quite high up on the agenda. It is believed that it is best that children, in the vast majority of cases, be kept within their families. There is a series of tests that people and hearings have to go through before a case eventually comes before the sheriff court under child protection procedures to change that situation. We do not yet have the early intervention and support services in place; however, if those services are to be there—the policy memorandum that accompanies the bill states that parents will have to use them—does not there need to be a greater sanction than currently exists for the small minority of parents who are unwilling to parent their children?

**Maggie Mellon:** When parents are not just unable or are not just in need of help, but are unwilling to take action, the main concern must be for the child.

I agree with Dr Wolff that, in such situations, some children need to be not with their parents, although I do not know what could be done with parents in such situations. The court could not just fine them or put them in jail then let them out to carry on with their awful parenting; the child should be the primary concern. The UN Convention on the Rights of the Child and the Children (Scotland) Act 1995 state that the best interests of the child

should be the priority. If that is to be the guiding principle behind parenting orders or the requirements on parents, that is fine.

If somebody fails to be a good husband, wife or parent, what happens to them as punishment is neither here nor there. The situation of the child is what is of concern.

**Scott Barrie:** In relation to the whole issue of support for families, you talked earlier about preventive family services and the lack of available resources for those. What sort of services need to be in place to enable us adequately to support parents, as the policy memorandum states?

**Maggie Mellon:** The general services that all parents can benefit from are now threadbare. Health visiting is so overstretched and undermanned—or under-personed—that the latest proposal is that health visitors' visits be restricted to high-poverty and high-deprivation areas. That is a warning sign: all the general preventive services should be available to everybody. Everybody should have a place to go to discuss any problems to do with children and child rearing. The services must exist so that good parents who are having difficulties with their children can get the help that they need easily and quickly in order that such situations do not become crises and so that families can get on.

Specialist services are also required, but they have been decimated. Dr Wolff will be able to talk about that. For families in which there are real and deep-seated problems for which the children and parents need specialist help, services do not exist. If a person's son or daughter is in trouble with the police, we would like the police, when they came to the door, to be able to give out the number of an advice service or a parent group. People have to be able to get advice and to talk to one another.

How do you stop a 16-year-old boy going out the door at night if he is determined to do so? Is physical force required? How do you deal with that? Advice on such situations is not really available to parents. It is easier to get help for an under-five than for an over-12, but the over-12s are much more challenging. They are out there in the world and their parents have much less control of them, yet they are the ones for whom parents have the least help.

**The Convener:** I know of good examples, especially in secondary schools, of joined-up working in which parents are very much involved—through the joint assessment teams, for example. There is a distinction between parents who are wrestling with out-of-control 15-year-olds and parents who are colluding in the problem or who are creating the difficulties that lead to the young person's being out of control. There may be examples of good practice—albeit small examples—that we could explore further.

**Maggie Mellon:** There are many examples of good practice. When a very difficult parent does not seem to want help, more intensive and probably compulsory involvement may be required.

**The Convener:** That is what a social worker called a "huv-tae". He said that sometimes a huv-tae helps.

**Campbell Martin:** We asked the previous panel of witnesses about restriction of liberty orders and electronic tagging for under-16s. Strong opinions are held on electronic tagging; some people certainly feel strongly that it is a good thing and that it should be extended to under-16s. An argument for that is that not only would it stop one person acting antisocially, but it would have an impact on the person's peer group if they saw that the person was restricted and could not be out with them at night. What is your opinion on extending tagging to under-16s? When we asked the police that question, they did not know of any evidence to suggest that some young people would treat tags as badges of honour or that they would deliberately trigger a reaction to attract attention to themselves. Do you have any such evidence?

**Maggie Mellon:** I heard the evidence from the police. They were talking about adults and I think that tagging has worked for some adults. It is a great alternative to imprisonment and it helps people to control themselves. However, children are not adults. Adults are mature and they think ahead. They know that if they do something on Monday, something else may happen on Saturday—they will not be at the match, for example, because they will be locked up.

For the kind of children for whom tagging would work—in that they would stay in and not get into trouble—tagging is probably unnecessary because what they really need is simply an adult to discuss things and supervise them. Tagging would be a technical means of controlling such children when what they really need is human relationships. For the kind of children who are out of control, tagging would fail immediately. If children have to be contained, they will not be contained by a tag. The kind of children whom people talk about when they talk about tags are the kind of children who set small fires in derelict buildings, wait for the fire brigade to come, and then stone them.

People have said that the option of tagging will be a tool in the toolkit of children's panels, but it might be a tool in the toolkit of the children. They are used to being bad and getting adult attention—the only way they know to get adult attention is to be bad, to cross the line and to flout authority. Giving children a tag will give them something else to flout and something that will cause adults—all the private security firms—to run around while the children laugh, run away and hide.

In our services, we have found that what children and young people need is not magic bullets or technical controls, but one-to-one discussion, commitment and engagement. If they do not get those from their parents, somebody else must step in and provide such things. A tag will not provide them.

**Dr Wolff:** I would like to make a small addendum. If children's hearings were able to use tagging, a small proportion of children with hyperkinetic disorder and attention deficit hyperactivity disorder might be helped, if they agreed to such tagging. Many children do not want to act antisocially, but are driven by impulse and might welcome anything that helps them to control such impulses. A small proportion of not terribly disturbed but hyperactive and impulsive children will accept a tag in order to help them to contain themselves, but tagging is totally inappropriate for seriously disturbed and chronically delinquent children, who require far more serious understanding and care measures.

**Campbell Martin:** Is there no scope for arguing that tagging would be a way of getting across to children that there are consequences to their actions?

**Dr Wolff:** Children know that already—most delinquent children are perfectly aware of the consequences of their acts.

**Campbell Martin:** Are you arguing that such children would accept tagging as a consequence of their actions and that, if they failed to behave in a socially acceptable manner, there would be further consequences that could eventually lead to jail?

**Dr Wolff:** You assume that the children whom we are discussing are rational, that they reason things out and that they act logically, but that is not so.

**Maggie Mellon:** There is a danger. If electronic tagging were used more widely as a sanction for children than in the particular application that Dr Wolff mentioned, sanctions would have to be imposed if there were breaches. A line would be set and if that line were broken, many more children would be taken into custody or care. Over 10 years, there was an 800 per cent increase in the number of 12-year-olds to 14-year-olds in custody when England and Wales went down a more sanctions-based route with children. That represents an enormous use of resources that could have been much better spent on community facilities and on providing one-to-one supervision for children. Every parent knows that a thing must be done if the child is told that it will be done. Sometimes, such sanctions are much worse and are more expensive and troublesome for the parent than would be the case if a better way of

dealing with the matter had been thought of. If one says that a person is going to be gated for a month or a year, that must happen.

**Scott Barrie:** I do not have a view one way or the other on the matter, but I would be interested in hearing what you have to say about it. Consider the success that has resulted from using electronic tagging with over-16s as an alternative to imprisonment. If one thinks of secure accommodation in the same way as imprisonment—although it is not a direct equivalent—can an argument be made that electronic tagging would prevent some young people from ending up in secure accommodation? Dr Wolff spoke about consequences: if people know that tagging is being done as a direct alternative to their ending up in secure accommodation, could not an argument for it be advanced?

**Dr Wolff:** I do not think that tagging is a viable alternative. Children who require secure accommodation are there because they are either a danger to themselves or to others. Often, they are suicidal risks or they can be chronic runaways. It is wrong to think of secure accommodation as a punitive sanction—everyone ought to regard it as an opportunity for treatment and care.

**Scott Barrie:** I agree, which is why I was careful to say that secure accommodation should not be seen as a direct equivalent of imprisonment. However, I contend that in the past and perhaps now some young people are in secure accommodation not on the grounds that you mentioned, but as a result of persistent offending.

**Maggie Mellon:** That would make them a danger to others, and possibly to themselves. Such persistent offending is usually associated with drug and alcohol use. Children who take cars and drive them are a danger to others. If we cannot stop them doing that, they must be secured. Dr Wolff's point is that they must be secured for intervention in their lives that will rehabilitate them into the community, rather than for punishment. The United Nations recognises that children are not adults. The simple equation of crime and punishment should not apply.

**Scott Barrie:** Do you believe that electronic monitoring should have no part to play?

**Maggie Mellon:** It should not be used as a general method of social control or control of children. I take the point that Dr Wolff makes—the key issue is that electronic monitoring should take place by agreement. A child's family might say that they would find it helpful and the child might also say that it would be good, because it would enable that child to tell his or her pals that he or she cannot go out. However, it would be necessary to have agreement about what the sanction would

be. If the sanction was to be removal from home, there would need to be a carefully graded response to events. We are moving too far in the direction of technical control of children, either through use of drugs or through use of curfews and electronic monitoring. We should be talking about much more prosocial human interaction with children. A tag will not make up for a bad parent.

12:45

**The Convener:** I want to pursue the point that Campbell Martin made. You are saying that a youngster who is in grave difficulty and has real problems is rational, although they might continue to have those problems. There are other rational youngsters involved in this process, including those who are on the fringes of antisocial behaviour. It is not enough just to deal with, work with and try to be successful with the really difficult young person, because if no one else realises that it is happening, new recruits will come in all the time. We may sort out someone's problems, but we do not give out the broader message to the community that some things are acceptable and others are not.

Is it reasonable to say that we support tagging or some other measure because it deters and stops others who have not yet become involved in antisocial behaviour? There are youngsters who will never stop short, but that is not an argument for not having a system that is targeted at the broader group and which seeks to deter that group from unacceptable behaviour.

**Maggie Mellon:** I accept totally that children and young people need guidance on their behaviour, that they need to know what is acceptable and unacceptable and that they need to feel shame. Shame helps children to be good. I do not mean public shaming, but children's feeling ashamed of their actions in front of their parents and people whom they respect. I am concerned about tags because children are brought up by adults, who help to socialise them, rather than by technical measures.

**The Convener:** You accept that peer pressure is very strong, so if we acknowledge that peer pressure can drive a person one way, we may want to use peer consequences as a way of getting someone to think about their behaviour. We are not dealing with a vacuum—children may be hugely impressed by someone by whom they ought not to be impressed. How would you break that link?

**Maggie Mellon:** I do not know whether tagging would be seen as being shaming in such situations. The only situation in which it might work is one in which children need an alibi. They need to be able to say to their pals, "I can't do that

because my dad will kill me.” However, it is the human element that matters. It is not enough for someone to say, “I can’t do that because of my tag,” because their pals might suggest that they hot-rod a car 20 miles away. Having technical controls rather than human controls is the wrong approach to socialising young people. Young people should be shamed by their having let down adults whom they respect, but for that to work, there must be adults whom they respect. If there are no such adults in their home situations, we need mentors and youth workers to make up for that.

**The Convener:** Would the representatives from Victim Support Scotland like to make some final comments?

**Barry Jackson:** Given the doubt that surrounds tagging, we would prefer to see a full evaluation of the scheme before we comment further.

**The Convener:** Thank you for your evidence. We were running late at the start of the session and it took longer than we expected, but I found it to be very useful. If there are other points on which you would like to expand, we will be more than happy to hear from you in the future.

## Subordinate Legislation

### Home Energy Efficiency Scheme Amendment (No 2) (Scotland) Regulations 2003 (SSI 2003/529)

### Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2003 (SSI 2003/532)

12:49

**The Convener:** With members’ indulgence, I move to the next item on the agenda. I am sure that everyone is keen to get away.

Item 2 on our agenda concerns subordinate legislation. The two statutory instruments that are before us are subject to the negative procedure and are therefore subject to annulment under rule 10.4 of standing orders. No motions to annul either instrument have been lodged with the chamber desk.

The committee will now consider the Home Energy Efficiency Scheme Amendment (No 2) (Scotland) Regulations 2003 (SSI 2003/529) and the Housing (Scotland) Act 2001 (Transfer of Scottish Homes Property and Liabilities) Order 2003 (SSI 2003/532). The committee has been sent copies of the orders and accompanying documents.

Members have indicated that they have no comment on the orders. Is the committee content with SSI 2003/529 and SSI 2003/532?

**Members indicated agreement.**

**The Convener:** Can we conclude that the committee does not wish to make any recommendation in its report to the Parliament?

**Members indicated agreement.**

**The Convener:** Do we agree to report to the Parliament with our decisions on the two orders?

**Members indicated agreement.**

*Meeting closed at 12:50.*

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