

# **COMMUNITIES COMMITTEE**

Wednesday 14 January 2004  
(*Morning*)

Session 2

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## COMMUNITIES COMMITTEE

### 2<sup>nd</sup> Meeting 2004, 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:

Robert McKay (National Autistic Society Scotland)  
Angela Yih (Age Concern Scotland)

#### CLERK TO THE COMMITTEE

Steve Farrell

#### SENIOR ASSISTANT CLERK

Gerald McNally

#### ASSISTANT CLERK

Jenny Goldsmith

#### LOCATION

Committee Room 2



## Scottish Parliament

### Communities Committee

Wednesday 14 January 2004

(Morning)

[THE CONVENER opened the meeting at 10:00]

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

**The Convener (Johann Lamont):** Welcome to the meeting. We have received apologies from Tim Hopkins, a policy worker from the Equality Network, who is unable to attend owing to illness.

I welcome our first witness, Robert McKay, who is the national co-ordinator of the National Autistic Society Scotland. Thank you for coming along. I am sorry that you have ended up here absolutely on your own and I hope that you do not regard that as too threatening. Members will ask questions, but if there are any that you think it inappropriate for your organisation to answer, feel free to say so. Equally, if at the end of the meeting you think that there are points that you were not able to make fully, we would welcome further written submissions from you.

I will kick off with a question that we have asked all the witnesses, which is on the effectiveness of the consultation process. You might be aware that the Scottish Executive has stated that the consultation process leading to the Antisocial Behaviour etc (Scotland) Bill was unprecedented in relation to the number of communities, organisations and individuals that took part in it. Will you comment on the effectiveness of the consultation from your organisation's perspective? Perhaps you could say something about the consultation process within your organisation that has led to your being here to comment on the bill.

**Robert McKay (National Autistic Society Scotland):** Certainly. The National Autistic Society is a United Kingdom-wide organisation. I represent the Scottish headquarters, which are based in Glasgow. In Scotland, the society has almost 1,000 parent members. When the consultation process began, we were keen to consult not only our staff working on projects and providing services throughout Scotland, but our parent members. As a UK-wide organisation, we were able to work with colleagues in England who were going through a similar phase of scrutiny of antisocial behaviour legislation. We were keen to play a full and active part in the consultation process and we think that we have done so. We

responded to the initial consultation, prepared a briefing paper for the pre-legislative scrutiny and wrote to a number of MSPs outlining our concerns. We certainly welcome the consultation process, which has been full and in which all sides have been active.

**The Convener:** Does your organisation acknowledge that there is an issue with antisocial behaviour in our communities? We will explore in a moment any caveats about how the bill might impact on young people with autism and their parents, but is there an acceptance or understanding of why the bill has been introduced?

**Robert McKay:** Yes, without a doubt. We understand fully the Executive's rationale for introducing the bill. Obviously, we have specific concerns about the population group that we represent, but we recognise the need for some form of legislation in this area.

**Stewart Stevenson (Banff and Buchan) (SNP):** Good morning. The bill's definition of antisocial behaviour—which was also used in the Crime and Disorder Act 1998—is behaviour where a person

"acts in a manner that causes or is likely to cause alarm or distress"

or

"pursues a course of conduct that causes or is likely to cause alarm or distress".

That is moderated by the requirement on sheriffs to consider whether action is reasonable under the circumstances. Is that definition adequate? Might it present special difficulties for people with autistic spectrum disorder? Do you prefer another definition, or are definitions not the core issue?

**Robert McKay:** Although we recognise that there is a need for antisocial behaviour legislation, for the population group that we represent—families affected by autism in Scotland—the definition is by far the biggest problem. It is too broad. The definition of behaving

"in a manner that ... is likely to cause alarm or distress"

will draw in a large number of children and young people who are affected by autism.

Autism is a developmental disorder and most notably presents in a triad of impairments in relation to social communication and understanding. Those impairments mean that young people are vulnerable to the mechanisms of everyday life that we take for granted. A definition that is as broad as the one in the bill will mean that young people with autism, who to the casual observer sometimes behave in bizarre ways, may be drawn in.

We would like the definition to be tighter and to be based on intent rather than on the likelihood of

causing alarm or distress. For the vast majority of children and people with autism, there will be no intent, which should exclude them from being drawn into a system where they would be vulnerable.

**Stewart Stevenson:** Local authority housing officials have given us evidence that, in fulfilling their responsibilities, they would take into consideration section 4(3) of the bill, which states:

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

Would adequate protection be afforded to people with autistic spectrum disorder if agencies of one sort or another followed the good practice of having regard to that direction to sheriffs?

I am sure that other committee members—I am not expressing a personal view on the subject—might have concerns if the definition were changed, because it might exclude people whom it is the Executive’s policy intention to include. That is a complex question, so you may unpick it, if you wish, in any way.

**Robert McKay:** The concept of reasonableness is interesting, but it poses difficulties for children and young people with autism, who may not be able to prove that their behaviour was reasonable according to the definition. They may need someone to prove on their behalf that their behaviour was reasonable. As I understand it, that is not possible under the bill. Therefore, although the concept of reasonableness is interesting, it may not support children and young people with autism.

**Stewart Stevenson:** Let me move on to another issue that has been raised with us, although I am not sure whether you can comment on it. The committee has received evidence that crimes that are motivated by hatred or malice towards a social group are being bracketed within the definition of antisocial behaviour. Do you have a view on that?

**Robert McKay:** Yes. We noted with interest the response from the Disability Rights Commission on that issue. The matter could be better dealt with by hate crime legislation than by the Antisocial Behaviour etc (Scotland) Bill. Certainly, children and young people—and, indeed, adults—affected by autism are vulnerable to prejudice, bullying and a range of antisocial behaviour. However, we feel that their rights would be better served by measures other than the bill.

**Stewart Stevenson:** This is my final question for now. Are you saying that the bill could provide protection for people who are autistic?

**Robert McKay:** Yes, that is possible. We are aware of cases in which vulnerable people with autism have been the subject of attacks in the

local community. I know of a young man who was subjected to taunts and whose home was graffitied. The police were called initially, but because of the nature of the individual’s condition, he was unable, as a lone individual, to find the communication skills to articulate his views in a way that would secure him protection. Therefore, I am not sure that the bill would support that individual or people like him.

**Stewart Stevenson:** I suspect that my colleagues will develop that point.

**Donald Gorrie (Central Scotland) (LD):** I want to pursue the question of defining antisocial behaviour in a way that does not involve autistic people whose behaviour may unintentionally upset others. I was sent a copy of the House of Lords *Hansard* of the committee stage of the Anti-social Behaviour Bill. Lord Clement-Jones tabled an amendment on a matter similar to the one that we are discussing; he tried to introduce the phrase “wilfully or recklessly” into the bill, but his amendment was defeated. It seems that the word “reckless” has a long legal pedigree—certainly in England—but I would not use that sort of word in such a context. Can you suggest a wording for the bill that would protect autistic people but not allow, for example, a youth from a gang to claim, as an excuse to get off from something, that he did not realise that what he had been doing would cause trouble?

**Robert McKay:** We observed with interest when Lord Clement-Jones proposed his amendment at the committee stage in the House of Lords. The idea of using the phrase “wilfully or recklessly” was to try to separate knowledge of an act from intent, to make it clear that there was intent. We feel that that definition, or something similar that indicated an individual’s intent, would safeguard children and young people with autism. We have not given wider thought to other client groups, but we would be happy to reconsider the matter and suggest alternative wordings or to listen to the committee’s suggestions on the matter.

**Donald Gorrie:** Amendments and their wording come at a later stage of the bill, but what you said is helpful. However, I will display my ignorance by asking you to tell me what the Latin words “mens rea” in your written submission mean in the legal sense.

**Robert McKay:** I am afraid that you will have to ask a lawyer. I apologise for that.

**Donald Gorrie:** That is fine. I will do that.

**The Convener:** I want to pick up on your example of the young man who was targeted in the community. I assume that it is the National Autistic Society Scotland’s experience, as it is that of broader disability groups, that such incidents are a big issue for people with disabilities, who are

sometimes targeted and harassed. Your example was a serious one, where property was damaged. However, the young man was unable to explain what had happened. Rather than suggesting that there is a problem with the bill, does that case not suggest that there is an issue about ensuring that the victim of a crime gets appropriate support to explain what happened? The issue is about appropriate support for victims in such circumstances. The police should be geared up to ask questions of somebody who is vulnerable in the way that you described.

**Robert McKay:** There are issues with the bill, but I agree that there must be better support and protection for vulnerable people who are affected by autism. There must be wider understanding and training across all statutory agencies, whether the police or any other agency that is involved in the criminal justice system.

**The Convener:** If organisations were given the necessary training and awareness at an early stage, perhaps some of your concerns that people on the autistic spectrum might be swept up into the ambit of the legislation would at least be partially addressed.

**Robert McKay:** Yes, without a shadow of doubt that would partially address our concerns. If such training took place, that would be a welcome step forward.

10:15

**The Convener:** Young people with learning disabilities use Glasgow's internal transport service and there is a big issue about their buses being identified and targeted. For anyone sitting on that bus, or for their families, the key issue is not the intent of the people who are harassing them, but stopping the harassment. We may at some point want to address whatever ignorance has created a situation in which targeting or harassing somebody is regarded as a reasonable act. However, it is reasonable to ask for such acts to be stopped.

**Robert McKay:** It is undoubtedly reasonable to ask for them to be stopped. However, the issue of intent is crucial; in dealing with such matters, we would have to show that there was clear intention. Many young people and adults with autism will, by the nature of their condition, behave in a manner that is likely to cause harm or distress. At the most recent meeting of the cross-party group on autistic spectrum disorder, a parent of a child with autism gave a good example of such an incident, in which an individual went into a local shop and, because of the literal, black-and-white understanding that many people with autism have of the social rules around them, saw what they regarded as offensive literature on a shelf and started to make a great fuss. Other customers and the shopkeeper would

undoubtedly have found that behaviour distressing. Under the bill as it stands, it is possible for such an individual, without understanding why, to be drawn into the legal measures against antisocial behaviour.

**The Convener:** Such a situation could be sorted out quickly with an explanation of what the behaviour was about. The point that I want you to address is the situation where vulnerable people are deliberately rather than accidentally targeted. Regardless of what causes people to want to target somebody with a learning disability, the first priority for the targeted person is having the harassing behaviour stopped.

**Robert McKay:** Absolutely. The best way for that to happen would be the alternative measures that the Disability Rights Commission—

**The Convener:** So you would make a distinction between the targeting of vulnerable people with learning disabilities and the targeting of other vulnerable groups and communities, such as elderly people.

**Robert McKay:** Yes. The Disability Rights Commission was spot on when it talked about alternative provisions for people with disabilities. Autism is neither a learning disability nor a mental health problem; it is a developmental disorder, which deserves particular consideration.

**The Convener:** In that case, what is the protection for straightforwardly identifiable vulnerable groups in the community? We understand why you want crimes against the range of groups to which you referred to be dealt with as hate crimes. However, if someone is simply vulnerable because they live in the wrong place, have made a fuss about someone's behaviour in the past, or are elderly or just a bit different, what would be their protection?

**Robert McKay:** Our view is that the bill is clearly intended to protect a wider population than people with autism. Clearly, we are biased because we have come to the meeting to talk about our client group. I am sure that there will be measures in the bill to protect the wider population. However, we believe that, to protect vulnerable people affected by autism, alternative provisions would be preferable.

**Donald Gorrie:** The bill will require councils to draw up an antisocial behaviour strategy. You made a point about educating public officials, children's panel members and other such people about autism. How should that best be fixed into the strategy? Are you realistically in a position to deal with, for example, councils who might be instructed to consult your organisation? What is the best mechanism of ensuring that your views are taken into account?

**Robert McKay:** The idea of having a strategy at local authority level is excellent. The National Autistic Society would certainly welcome participation with any local authority in Scotland. However, beyond our perspective, the involvement of families and individuals affected by autism who are willing and able to take part in any consultation is crucial. We would like all statutory and voluntary agencies to be involved in the process, because that is the only way in which there will be wider understanding and appreciation of some of the sensitivities.

**Stewart Stevenson:** We have opened up the subject of support for victims. I was struck by the fact that, when an antisocial behaviour order is taken out, lots of people get a copy of it, but the victims of the antisocial behaviour that the order is supposed to stop do not get a copy by right. This is a leading question: do you think that that is right?

**Robert McKay:** We have not considered that in great detail. It would be inappropriate for the victims not to receive the information that others have. If they do not get the same information as has been circulated to others, that seems to be an inequality in the system.

**Stewart Stevenson:** Do you have experience of the existing system of antisocial behaviour orders and how they help, or fail to help, victims?

**Robert McKay:** We have experience in a number of ways. However, given the way in which ASBOs are currently made in Scotland, there are no data to elaborate on the circumstances of the individual, particularly if they have a disability, so we cannot comment in great detail on the current system.

We have an example of an order that was issued to the parents of a child under the existing legislation in England. The child, who had autism, was trampolining in his back garden and the neighbours complained because he was making a considerable amount of noise. An understanding of autism would lead one to know that such perseverant and repetitive behaviour is quite common among and, in some ways, therapeutic for children, young people or adults with autism. In the case of that child, trampolining for some time calmed him down. However, the parents were subject to an ASBO, which was wholly inappropriate in the circumstances. We are concerned that similar cases might occur in Scotland.

**Stewart Stevenson:** The example that you have given was not of the autistic person as a victim, in relation to the way in which the system operates. In that case, the child was perceived as the cause of other people's distress. You are arguing, therefore, that the system does not take

account of people's conditions. As it is not clear to lay people—as I presume the neighbours were in that case—that an autistic person is causing their distress, how can we help them to understand?

**Robert McKay:** The problem is huge and will require education, training and awareness raising across all statutory agencies. The National Autistic Society Scotland undertook a piece of work with the Scottish Executive over some years to try to reach out to staff in social work departments throughout the 32 local authorities. We worked with 31 authorities and reached 4,000 social work staff, which is about 4 per cent of the social work population in Scotland. That indicates the scale of the issue, but the fact that the problem is so big is not a reason not to tackle it. To make the system work, we have to provide education and awareness raising for social work staff, for children's panel members, for reporters and, indeed, for sheriffs. If we do not, people in the system will have no understanding of autism and they will not deal appropriately with situations involving autism.

**Stewart Stevenson:** Are you aware of existing guidance that places on the various authorities an obligation to establish whether developmental, health or other conditions are associated with the person who is perceived to be causing antisocial behaviour? Do you support the introduction of such guidance?

**Robert McKay:** We are aware of a few examples. Some police forces operate a responsible adult system and prepare guidance for their police officers on special needs for people whom they take into custody or deal with in other ways. That is commendable; we would like to see much more of that kind of approach. Social work departments have clear guidelines and, if they are working with a child or young person, they are meant to take into account the full range of that person's needs. We know anecdotally from many hundreds if not thousands of families throughout Scotland that, when they meet their social workers for the first time—and, indeed, for the 10<sup>th</sup> or 11<sup>th</sup> time—the parents are the primary educators for the social workers on their children's needs and on what autism is.

**Stewart Stevenson:** What proportion of people who suffer from autism have contact with social workers? I do not automatically assume that such contact would necessarily happen or need to happen.

**Robert McKay:** I do not have any figures with me, but I can pass figures on to you.

**Stewart Stevenson:** Do you have any anecdotal evidence?

**Robert McKay:** A large number of families have access to social work departments because they



need help with the disability living allowance and a range of community supports, such as accessing local facilities. A large number of families need to access social work to get some of their child's basic needs met.

**Stewart Stevenson:** Because I still have not got my mind around it, I must come back to the issue of people who suffer from autism and are perceived to be the source of antisocial behaviour. The agencies involved are working with those who are perceived and perceive themselves—no doubt reasonably—to be the victims of antisocial behaviour, but how can the person who is the source of that perceived antisocial behaviour be recognised as having a condition that leads to that behaviour, which would be viewed as a problem if it was exhibited by someone who was not suffering from the condition? It seems to me that the agencies are outside the problem, so to speak. A couple of police forces are doing well, but how can we get everybody to do well and not take the legalistic route to resolution?

**Robert McKay:** That is the crux of the issue for us. All agencies and all staff in those agencies need to have an understanding of the condition. When families, parents and carers, who know their child or young person exceptionally well, say, "My child has autism," that must be understood immediately or as quickly as possible, so that we can avoid the legalistic route. A family in which someone is affected by autism suffers a great deal of pressure; bringing such a family into a legal forum adds greatly to that pressure and can result in additional problems for the family. We want those families to be dealt with in a more supportive and caring environment, rather than to be brought into the legal system.

**Stewart Stevenson:** In the case in England to which you referred, was the court aware that the family that was going to be subject to the antisocial behaviour order had an autistic child?

**Robert McKay:** I do not have that information with me, but I can get it to you; I would not like to say yes or no at this stage.

**The Convener:** You talked about a young person being pulled into the legal system. Is there potential for the children's hearings system to be supportive of a vulnerable young person who has perhaps become caught up in group behaviour or has been wound up to be involved in inappropriate behaviour from which, because of their condition, they find it difficult to extricate themselves? That would avoid the hostile court system. If the children's panel members were properly trained, the children's hearings system could be supportive, which might allow some of the issues to be addressed rather than hidden.

**Robert McKay:** I agree with you. The children's hearings system is an excellent vehicle. I am

actually a former children's panel member, so I am aware of some of the practicalities of the system. I would welcome the children's hearings system having a role, but under the current arrangements, any child or young person can be referred to the children's hearings system by any individual in Scotland. I am not clear why additional measures would be required in the bill to refer a child.

10:30

**The Convener:** But the point that I was making was that there would not necessarily be a threat to a young person who was being referred for causing a problem in their local community, because systems would be in place to identify that they had a problem. At a very simple level, if the police wrote a letter to a family because a young person had behaved in what the police deemed to be an inappropriate way, the family could intervene at an early stage and say, "Actually, this is why that happened." The police would then be able to address the situation appropriately. Alternatively, the school could be involved. There are lots of ways to identify the needs of individual youngsters before the system takes over and tramples on all that information.

**Robert McKay:** As I said, children and young people with autism can be referred to the children's hearings system under the present arrangements. We would rather that that happened than that they be drawn in under the antisocial behaviour legislation.

Undoubtedly, the children's hearings system is preferable to the juvenile justice systems that exist elsewhere in the country. We have a number of examples, which we would be happy to pass on to the committee, of children and young people not being dealt with appropriately, despite the fact that the child or young person has been identified as having autism. One example concerns a young man who was referred to the hearings system because of physical abuse against him. The panel proceeded with the hearing and asked the young person whether he understood the grounds for referral and why he was there. He was asked lots of questions, to which the young man politely nodded throughout the hearing. At the end of the hearing, someone else asked him whether he understood what was going on, and he said, "No, I haven't a clue."

That is a sad indictment of the system. The system is excellent, but that example flags up to us the fact that the reporter, the panel members and the other people there did not put in place the correct support during the hearing to ensure that the young person understood and was fully aware of the process.

**The Convener:** But if caveats are in place to identify at an early stage that a young person has been inappropriately referred and so should not be dealt with in the same way, could not it be argued that the provisions are appropriate for some young people who do not have the condition that you identify? If that is the case, and the ones who are inappropriately referred are pulled out, the ones who have been appropriately referred can be dealt with. You seem to be suggesting that because of your fears that somebody might be pulled into the system and dealt with inappropriately, we cannot take the risk of dealing with the people who are causing the problems that you have already accepted are an issue.

**Robert McKay:** We must be clear: we are not against the proposed legislation per se. We are concerned about the definitions, which will draw in people with autism. We do not have a particular view on the wider population. We understand that the Executive needs to make a move with regard to the wider population. Our concerns are about the vulnerable people who are affected by autism.

**Patrick Harvie (Glasgow) (Green):** If we assume that some children and young people with autism may still be involved in the youth justice system at some point, do you agree that the children's hearings system would have a better chance of adapting and improving its procedures to meet their needs than the court system would have? Do you also agree that if ASBOs are applied to under-16s, it should happen through the children's hearings system, so that there is less chance of young people with autism—who are your specific interest—going through the court system?

**Robert McKay:** If it has to happen at all, there is no doubt that the children's hearings system would be by far the best vehicle. We would like training for children's panel members to take place on a much more comprehensive scale than it currently does. We have been working with a number of children's panel training units to offer basic autism awareness training to a small number of children's panel members in Scotland. The response that we have had from the training units indicates that people would like much more such training. We are simply giving people a tiny flavour of what autism is, rather than a comprehensive understanding.

**Cathie Craigie (Cumbernauld and Kilsyth) (Lab):** In your submission, you express concern that the extension of ASBOs to 12 to 15-year-olds might

"criminalise some vulnerable ... young people".

ASBOs are already used for under-16s in England and you gave an example of a case in which an ASBO was taken out against the parents. Are

there any cases in England that indicate that vulnerable people with autism or Asperger's syndrome have been affected by those measures?

**Robert McKay:** The example to which you refer certainly demonstrated how a vulnerable young person was drawn into the system in England.

**Cathie Craigie:** Was the ASBO in that case taken out against the young person or against their parents?

**Robert McKay:** I think that the mechanism is slightly different in England and that ASBOs are taken out against the parents, but I can seek clarification on that. The bill proposes a system that is different from the English one.

**Cathie Craigie:** I have come across a few cases of young people with autism or Asperger's syndrome and I have appreciated the assistance that I have received from the National Autistic Society Scotland. I understand your concerns and take your point about the need to educate the people who are involved in the children's hearings system, the police and the courts.

Section 4(3) states:

"For the purpose of determining whether the condition mentioned in subsection (2)(b) is met, the sheriff shall disregard any act or conduct of the specified person which that person shows was reasonable in the circumstances."

Does that provision give you any comfort? Is it sufficiently strong?

**Robert McKay:** The provision does not give us a great deal of comfort. I touched earlier on the principle of reasonableness; I think that it would be incumbent on the individual to prove that their behaviour was reasonable. Our knowledge of children and young people with autism and the nature of the condition is such that we are not convinced that the child or young person would be able to prove that their behaviour was reasonable. Much of the behaviour of children and young people with autism comes across as quite irrational and unusual, so if it were incumbent on the child to prove that their behaviour was reasonable, I do not see how they would be able to do so.

**Cathie Craigie:** On your reading of the bill, would it be for the individual to prove that their behaviour was reasonable, or could the individual be supported, for example by someone from the social work department or their family?

**Robert McKay:** It would be much better if the wording in section 4(3) were changed slightly, so that the responsibility to prove the reasonableness of a person's behaviour could lie with someone who was supporting the person as well as with the person themselves. I am concerned that the bill would place the responsibility on someone with a disability.

**Cathie Craigie:** Perhaps we can bring that to the minister's attention when she appears before the committee. My reading of the bill is certainly that the individual themselves would have to prove the reasonableness of their behaviour.

**The Convener:** I assumed that the provision simply requires the case to be made. In the legal system, a case does not have to be made by the individual who is in the system. I assume that it would be acceptable if advocacy and local community mediation projects, of which there are many examples, became involved in such cases. We can certainly ask for clarification.

**Cathie Craigie:** I would have assumed that, too, so perhaps we have misunderstood that section.

Would it be acceptable if the bill provided that someone could be present to act as an advocate for the individual?

**Robert McKay:** That would be a much better system.

**Cathie Craigie:** As I said, I have had some local experience of young people with Asperger's syndrome or an autistic spectrum disorder, but I have never experienced a situation in which a neighbour complained about the behaviour of a young person with such a condition, so I am in unfamiliar territory. I accept that people with learning disabilities who are different in some way can be harassed or deliberately annoyed by other people. I know about the work that your organisation does and the contact that you have with parents. Other than the trampolining incident, can you provide the committee with examples of parents coming to you for advice and support because they have been harassed by neighbours or because the local authority has been heavy handed and has not taken into account a young person's needs?

**Robert McKay:** Yes. We can communicate a range of examples to the committee in writing. Shelter Scotland gave an example of a housing situation in Scotland in which a family—a mother and child—were involved in a dispute with a local authority because the child was affected by autism and was very active. The family lived in a flat and the neighbours in the flat below complained to the council about the noise that the child made running round the flat. Such a situation is incredibly difficult to manage in a child who is affected by autistic spectrum disorder. The council refused to transfer the family to another property, but it stopped the mother's housing benefit, in small part because she had some rent arrears, but largely because the neighbours said that she was not using the flat as her main address. Because the mother was trying to stay out of the flat with the child as much as possible during the day to stop the child from upsetting the neighbours, the

neighbours assumed that she must be living elsewhere. The mother was trying to be as quiet as possible and to look after her neighbours' needs.

**Cathie Craigie:** Can you say which authority that was?

**Robert McKay:** I can certainly provide some of the details. That is only one example—we have many other examples of such disputes.

**Mary Scanlon (Highlands and Islands) (Con):** I have a question on the back of Cathie Craigie's point. Is not it the case that many people with an autistic spectrum disorder do not receive an accurate diagnosis?

**Robert McKay:** I agree that diagnosis is an issue.

**Mary Scanlon:** We heard that point last week from the chairman of the Glasgow children's panel. He spoke about a child who had been involved in persistent offending for years before a diagnosis was made. Cathie Craigie's point is that there may be instances in which a person has an autistic spectrum disorder that is not diagnosed.

**Robert McKay:** I very much agree with that.

**Cathie Craigie:** That was not the point that I was making, although I know that a lot of education about autistic spectrum disorder is required. When I came to the Parliament, I knew little about it; I had never in my life come across anybody with Asperger's syndrome. Members have to learn, as do other people. However, that was not the point that I was making and education is not covered in the bill, although I know that Robert McKay and his colleagues will do everything that they can to make people more aware of the issues. I simply wanted examples of people who go to his organisation for support. Local authorities have perhaps taken out antisocial behaviour orders without recognising that there is a problem with the health of a young person in the family. If you have any examples of such cases, I would be pleased to receive more information about them.

**Robert McKay:** In response to both the members' points, I can give an example of a young person in the children's hearings system whose diagnosis was not fully understood by members of the system. At the hearing, the child became exceptionally distressed to the point that the members felt that the child should be placed in secure accommodation. For any child or young person with autism, changes of routine are not met with open arms; they are a great problem.

The child became exceptionally aggressive and violent as a result of being told that they were going to secure accommodation and the police were called to remove the child, at which point, the

child became wild with fear and distress. Ultimately, someone had to intervene and explain that the nature of autism means that change is a great problem, that there was a great need for the child to have a calm environment and that taking them to the secure unit in a police car was not the best idea. After some negotiation, although the ultimate decision still stood, it was arranged that the young person would be taken to the secure unit in a support worker's car. We understand that secure accommodation is often the last resort, but it is not appropriate for someone with autism.

10:45

**Patrick Harvie:** I did not see anything about the dispersal of groups in your written submission. Clearly, you have read the bill and, as there has been quite a bit of media coverage as well, I assume that you understand what that provision is about.

**Robert McKay:** I do.

**Patrick Harvie:** If you do not think that the matter is relevant in relation to the group of people about whom you are here to talk, that is fine, but do you have any comments on whether the power will be beneficial? Do you think that there should be specific facilities for young people?

**Robert McKay:** I would approach the issue from the point of view of the vulnerability of people with autism. Many young people with autism are easily led. They can be influenced by their peers in positive ways, quite successfully in some cases, but we understand that they could easily be drawn into becoming part of a group of people who are engaging in antisocial behaviour. Our concerns would relate to their needs being recognised if the police were attempting to disperse a group.

**Patrick Harvie:** Do you have any comments about whether the power would be of benefit in those situations?

**Robert McKay:** No, we have no comments on that.

**The Convener:** Earlier, we spoke about the man who was targeted by young people and had graffiti painted on his property and so on. If groups of youngsters were to gather regularly outside his home, knowing that they could wind him up if they behaved in certain ways, and he found it difficult to negotiate with them or to seek help from other people, the police could move them on, but they could come back again. He would not be able to say that crimes were being committed, but clearly he would be distressed by the young people. In such specific and limited circumstances, would you agree that we must say to those young people that they must not gather there and that we should use the power to disperse groups and inform them that that is an inappropriate place for them to

gather as it is causing distress to someone who cannot deal with the situation in a way that someone without that condition could? Do you see the logic of the power of dispersal in that sort of circumstance?

**Robert McKay:** Yes, without a doubt. Like you, we would want to protect the person with autism who was being harassed in their own home.

**The Convener:** If I were to say to you that the motive of the provision related to other vulnerable groups who might be more easily wound up or too frightened to negotiate with the group, would you understand why a power that prevented the group from returning and made it clear that they must not gather at that place was a rational one for the police to have?

**Robert McKay:** Yes, but as I say, we did not form a strong opinion on the provision, which is why we did not write about it in our submission.

**Scott Barrie (Dunfermline West) (Lab):** Your submission has three or four paragraphs on part 9 of the bill, which relates to parenting orders, and details your concern about youngsters who suffer from autism. The example that you gave related to the danger of criminalising parents for what might be an education problem.

As the situation stands at the moment, the law clearly says that the ground for referral to the panel would be failure to attend school without a reasonable excuse. If the education authority was failing to provide adequately, it could be argued that that was a reasonable excuse.

If a parent is unwilling to parent their child appropriately, would you accept that attaching a parenting order could be appropriate, rather than attaching a supervision requirement to the child, which is the only power that is open at the moment if the parent is failing to fulfil parental duties?

**Robert McKay:** I have yet to meet any parents of children with autism who would be unwilling to parent their children appropriately. However, I can understand why you would wish to have that wider provision for other vulnerable children and young people. Parents of children with autism are often crying out for any and all sources of support to improve their parenting and their caring for their children. I would certainly have concerns about parenting orders being applied. What we desperately do not want to see is our families being punished for having a disabled child.

**Scott Barrie:** I am not entirely clear why they would be punished. As I understand the bill and the explanatory notes, the test for a parenting order is when a parent is deemed to have been offered substantial support but has failed to accept it. The parenting order route would not be the first option.

**Robert McKay:** The provisions talk about offering parents guidance or counselling. I am not sure whether that could be autism-specific. If not, it would be worthless, because the nature of the condition is that the parenting interventions required need to deal with the autism. Unless resources are available through provisions in the legislation to ensure that particular disabilities are covered by the guidance, counselling or support, the danger is that parents will be seen to be failing. What they need are appropriate early interventions and support to deal with the autism.

**Scott Barrie:** The explanatory notes state that no parenting order can be sought unless appropriate support has been made available but not taken up. That test makes this scenario quite different from the one that you mention in your submission.

**Robert McKay:** If appropriate support is available, that might be a different matter; but we know that appropriate support for parents of children with autism is not available now. There are a number of examples of early intervention, one of which is called EarlyBird and is run by the National Autistic Society. We offer training and support to staff within local authorities, who can then work with families when the children are at a very early age to improve communication skills and behavioural aspects. We know of a number of local authorities in Scotland who do not have the money to run EarlyBird groups in Scotland. If that is the case now, my concern is that, once legislation is implemented, support will still not be there and we may find ourselves in a situation in which people are drawn into parenting orders.

**Stewart Stevenson:** It seems unlikely, but could parents who are autistic be subject to inappropriate parenting orders?

**Robert McKay:** Absolutely. I do not know what the likelihood is, but it is a distinct possibility. There are parents who are affected by autistic spectrum disorders. The literal understanding of social rules and the rules of caring for children may mean that their parenting does not appear to be within the normative range of behaviour. Therefore, we could penalise individuals.

**Stewart Stevenson:** Does that have implications for the bill?

**Robert McKay:** It might do. In our submission, we talk about improved understanding and awareness, which may help to allay some of the concerns.

**Mary Scanlon:** On Scott Barrie's point, you mentioned services. Section 141 of the policy memorandum says:

"effective services must be available before any orders can be made."

Scott Barrie also made the point that parents have to refuse to engage voluntarily in support. Under the bill, the court must be satisfied about the conditions on behaviour, conduct and welfare in an application for an order. Finally, under section 78, parents can express their views before a parenting order is made. Are you not satisfied that all those provisions will take into account the fact that services must be available, will take account adequately of the parents' view, as well as the view of the child, and will ensure that autism is identified and is not discriminated against?

**Robert McKay:** I am not satisfied and the National Autistic Society is not satisfied that the provisions in the bill will make that support automatic. From existing systems such as the children's hearings system, we know that when a child is identified as having autism, the support is not there for them. I appreciate the point that the proposed legislation says that the support must be there, but legislation already exists that says that when a children's panel makes a disposal, the resources have to be there for that disposal to happen.

I know, and we know from the cases that come to the National Autistic Society, that cases are referred back to the children's hearings system because resources are not available. Therefore, we have grave concerns about another level being set up. We are relying on a piece of legislation to provide support, but we know that it is not going to happen.

**Mary Scanlon:** So you do not have confidence in the current system and it is difficult to have confidence in a future system.

I point you again to section 141 of the policy memorandum, which states:

"Prior to national roll-out, the Executive intends to pilot the use of parenting orders in areas where services/programmes are available."

Does that reassure you?

**Robert McKay:** Perhaps it would if it was piloted before it was put into legislation. However, to pilot it as part of the implementation of the legislation is not reassuring.

**Mary Scanlon:** If you were satisfied that the support services were in place and that the parent had expressed their views, would there be circumstances in which a parenting order might be beneficial and helpful?

**Robert McKay:** There might well be, in a small number of cases, if—and this is crucial—the support and resources were in place. I appreciate that the bill cannot determine what support will be in place and that is our principal concern. Because the legislation cannot make provision for the support to be in place, we would prefer that

vulnerable parents and families were not drawn into it at this stage.

**The Convener:** Is that a case for not having parenting orders? What if the motivation behind parenting orders was not to punish parents for not solving their youngster's truancy, for example, but to ensure that they were willing to participate, to come to the table and to talk about what they could do and to show evidence that they had at least tried? I have worked with families in which no one could get the youngster out of bed despite everyone's best endeavours. I have also worked with families who would not engage in the process—they did not respond to police letters or anything. If we put in the caveats that deal with autism, is it reasonable for us to expect families like that to come to the table and to engage in trying to solve the problems? We do not want them to be sent to jail because their child is a truant, but we want them to know that they have a responsibility to participate in considering solutions. Is that reasonable?

**Robert McKay:** It is always reasonable to expect a parent to take responsibility for negotiating and working with others to support their child. The provisions are already there in existing measures and, to the best of my knowledge and that of my colleagues, I do not believe that there are parents of children with autism who refuse to engage.

**The Convener:** No, but there are parents who cannot be brought to the table and the supervision order has to be put on the youngster rather than on the adult.

On parents with autism, would there be a benefit in a system that brought out into the open the fact that there are families who are vulnerable because the parents themselves have a disorder that makes it difficult for them to seek help, or in an organisation or agency promoting a parenting order that could bring that out into the open, so that the needs of the parents could be addressed? Such an order need not necessarily have to be a threatening thing. At a distance, it might look like there is lack of co-operation, but the fact that the order is being promoted would force an exploration of the circumstances, which might be of benefit to the parent who is wrestling with their own difficulties and the needs of their child.

11:00

**Robert McKay:** If the parenting order were about providing support for an adult with autistic spectrum disorder who is also a parent, that would be very welcome. From our reading of the bill, I was not clear that that would be a possibility. If a parenting order helped an adult in those circumstances, we would welcome that.

**Campbell Martin (West of Scotland) (SNP):**

There is provision in the bill to extend electronic monitoring—or electronic tagging—to people under the age of 16. In general terms, is that a good or a bad idea? You have given a couple of examples of cases in which it seems that a young person's autistic spectrum disorder has not been taken cognisance of when they have been dealt with. Might there be scope under the bill for young people with autism to find themselves being tagged?

**Robert McKay:** Yes. There is certainly scope for young people to be electronically tagged.

We recognise and appreciate that the measure is provided for a wide population. Our concern for children with autism is that, because of their condition, a lot of them do not understand cause and effect and they certainly do not understand action and consequence. If you were to say to such a young person, "You must not go to such and such a place," they may remember that today, but tomorrow they may go to that place. If they are electronically tagged and it is found that they have gone to the place that they are meant to be restricted from going to, they could find themselves in a sticky situation and not understand why.

The issue is about literal understanding and the impairment of social communication and understanding in general. We would have concerns about ensuring that children and young people with autism were widely supported. I think that electronic tagging is by far preferable to placing a child with autism into a secure residential establishment—it is the lesser of two evils, as far as we are concerned.

**Campbell Martin:** From your experience, is there no standard procedure to flag up to children's hearings or to the courts that a person has been diagnosed as suffering from autism? Is there nothing in place that flags that up automatically?

**Robert McKay:** There is nothing that does that, unless the young person already has a diagnosis of which the social work department is aware, or the parents or the young person identify the matter to the reporter or to the children's hearing. If you are talking about mechanisms, I guess that those are the only ways in which the person's autism would come to light.

**Campbell Martin:** Should there be provision for that in the bill? If a child is referred to a hearing or to a court, surely there should be a background report that would say that the child suffers from autism and that that should be taken into consideration when they are being dealt with.

**Robert McKay:** Yes. There are background reports for the children's hearings system. There

should be background reports and one of the criteria should be that there is a compulsion to determine whether the person has special needs and whether they are affected by certain conditions.

Picking up on an earlier point, a lot of young people are awaiting diagnosis and the condition might not come to light through a background report if they are still waiting for diagnosis.

**Elaine Smith (Coatbridge and Chryston) (Lab):** As one of the co-conveners of the cross-party group on autistic spectrum disorder, I am aware of some of those issues and I have been asking other witnesses questions on the matter. I am pleased that Robert McKay is here today to enable the committee to concentrate in more detail on some of the issues, which are of great concern to parents and society.

The convener mentioned certain caveats being included in the bill. My understanding is that when the law is being changed, it is necessary to be careful and precise about exactly what it says and exactly what it means.

I have listened to your evidence and to the answers that you have given to my colleagues round the table. Would it be fair to say that one of your main concerns about the bill concerns the issue of intent? Your written evidence states:

"the NAS would like to see the definition used in the Bill amended to reflect intent in anti-social behaviour."

If the bill were to be amended to reflect intent, would that allay most of your members' fears about it?

**Robert McKay:** For us, intent is the single most important issue. If the definition were to be rewritten to include an element of intent, that would be exceptionally reassuring to our members.

**Elaine Smith:** Other members have asked you about ASBOs. Your submission states:

"Children with autistic spectrum disorders could fall into this category because some have difficulty in learning from their mistakes, they have a tendency to do things repetitively, and may become involved in repeat occurrences of anti-social behaviour."

Will you expand on the part about children learning from their mistakes? Have you had any dealings with the Scottish Executive on that point? Have you expressed concerns to the Executive about the problem and, if so, does it grasp the point?

**Robert McKay:** Learning from mistakes is an issue for children, young people and indeed adults who are affected by autism. Many people with autism have an inability to generalise behaviour from one context to another. If a child with autism breaks the rules in a French class this morning,

they will not know that they are not meant to repeat the behaviour in a history lesson this afternoon. They can understand the rule literally at that moment in time, but they cannot generalise it to other situations. That is why the issue of learning from mistakes is crucial.

It takes a great deal of support and education for a young person to learn how to make connections and for them to try to generalise. The general population does that automatically—we know that when we come to a meeting such as this one, we should dress smartly, sit down and respond to the questions. Someone with autism would have to write all that down and think about it mechanically to ensure that they did that instead of turning up in their pyjamas or whatever.

**Elaine Smith:** ASBOs involve our saying to a person that their behaviour is not appropriate and that an order is being placed on them to change their behaviour. That is not an appropriate disposal in dealing with people with autism.

**Robert McKay:** Yes. An antisocial behaviour order will not in itself change the behaviour of a person with autism.

**Elaine Smith:** I have put the following point to other witnesses during the past few weeks. The Scottish Executive says that it understands the concerns that have been expressed by people who work with children with disabilities and special needs and by the parents of such children. The Executive is confident that the bill ensures that young people's circumstances would be taken into account and it thinks that the children's hearings system would, in almost all cases, be the appropriate forum in which to discuss the best interests of the young person.

As I have said to other people, the Scottish Executive has spent a lot of time on equal opportunities and it has put in place a lot of systems during the current session of Parliament. Does that give you any comfort that the Executive is aware of the issues and that it will ensure that young people with disabilities and special needs are not discriminated against via the legislation?

**Robert McKay:** There is some comfort in the fact that there is awareness. We are reassured that the Executive is aware of the problem. As I mentioned earlier, there are problems with the current framework, in the children's hearings system and elsewhere, for the vulnerable children who are affected by autism. On that basis, we have concerns about the bill. We have not got things right with the current framework and adding in another piece of legislation will only muddy the waters. We must improve the level of support in the current system.

**Elaine Smith:** Finally, I want to press you slightly on what you said about electronic tagging

being preferable to secure accommodation. Last week, I think, witnesses said that there was not much of a choice and that it was a false premise to say that there is a choice between electronic tagging and secure accommodation and that tagging is better. They said that secure accommodation is often the last resort and that taking a child into secure accommodation can often be in the interests of that child. I am curious about the matter.

You mentioned a child at a hearing, the distress that was caused by the child's being taken off to secure accommodation and the fact that putting the child in secure accommodation was not the best or most appropriate disposal for the child. Obviously, you know a lot about that case. Would tagging have been a better option?

**Robert McKay:** I do not want to discuss individual cases, but that is an ideal example. Allowing a child to remain at home in a safe and consistent environment rather than placing the child in a secure unit would allow community-based support to be made available, if it existed, and would be preferable. I emphasise that consistency is crucial for people who are affected by autism. Such an approach would mean young people with autism getting community-based support.

**Elaine Smith:** In general, is electronic tagging appropriate for young people with autism?

**Robert McKay:** The issue is about communication, how one would make a young person understand why they had to wear an electronic tag and what the consequences of wearing such a tag would be. A great deal of work would be required to support that young person through the process.

**Patrick Harvie:** I want to understand your answer to that question and to a previous question that was asked about electronic monitoring. Am I right to assume that you are arguing that the support that you mentioned might make a difference rather than the tag itself?

**Robert McKay:** Yes, if support was available. That is the caution that I would give.

**The Convener:** Finally—to use a nice word that Elaine Smith used; we have not really learned what the word means in the committee so far—on your reservations, I would be reluctant to see ASBOs or electronic tagging being used against a person who displayed a condition. I do not see ASBOs and electronic tagging as a way of managing behaviour that is caused by autism. Am I right in thinking that your concern is not about ASBOs for under-16s or electronic tagging for the general population, but that young people might have such a disposal attached to them inappropriately as a result of their autism?

Therefore, is the thrust of your evidence that you seek reassurances that people with autism would, in effect, be screened out of the system and that, if assurances were given about that, you would not be hostile to the provisions for other young people?

**Robert McKay:** I should be clear. We are not hostile to the provisions in the bill as it stands; we are trying to be as constructive as we can be. Our prime and key concern is the definition of antisocial behaviour. We think that changing the definition would take many people with autism out of the system and allow them to be dealt with more appropriately outwith the system. That said, if young people are to be brought into the system, the issues that we have raised about parenting orders, antisocial behaviour orders and so on still come into play and we would still have concerns.

**The Convener:** You are not going as far as to say that, as a result of such reservations and because issues must be looked out for, you could not imagine the tools in question being used elsewhere against other young people.

**Robert McKay:** Absolutely. We recognise that the tools can and may well be used against or on behalf of other people.

**The Convener:** You said that you would come back to the committee with further examples relating to a couple of issues. We look forward to hearing from you.

If you have no more points to make, I thank you for your evidence, particularly as you have been left abandoned on your own. We are grateful for your attendance.

11:14

*Meeting suspended.*

11:21

*On resuming—*

**The Convener:** Our second witness is Angela Yih, who is a policy officer from Age Concern Scotland. I appreciate your coming along and I hope that the fact that you are here on your own does not cause you additional difficulties. As I said to the previous witness, please let us know if you think that it is inappropriate for you to answer particular questions. If you want to expand in writing on anything that you say, we would be more than happy for you to do so.

I will kick off with the same question that I asked the previous witness; it concerns the quality of the Scottish Executive's consultation process, which is described as unprecedented in terms of the number of communities, organisations and individuals who took part in it. How effective was



that process from your organisation's perspective? Did your organisation carry out consultation other than that which is identified in your paper, which relates to a specific conference? Was there broader consultation with your local groups and organisations in response to the bill?

**Angela Yih (Age Concern Scotland):** We carried out consultation, but it was not easy for us to consult broadly our member groups, which, on a policy level, tend to be more interested in issues of community care, income benefits and health. However, when we speak to individual older people we find that they are interested in the subject. I notice that quite a lot of forums for the elderly responded to the consultation and I read many of their responses.

We were impressed with the effort that the Executive made to consult widely on the issue. Interesting points were thrown up. It is not easy for me as a policy officer to get many people interested in aspects of housing law, such as the Title Conditions (Scotland) Act 2003 or the law of the tenement, but everybody is interested in antisocial behaviour and everybody wants to talk about it. Even if people have not experienced it, they know about it and they know how it has affected their neighbours. We have an elder abuse project, which deals specifically with the types of abuse to which older people are subjected, much of which is hidden.

It is easy for the subject of antisocial behaviour to confuse and bemuse people, particularly in relation to the bill's proposals. For instance, some MSPs sent questionnaires to their constituents, but asked different questions from those in the consultation paper. A couple of west of Scotland tabloid newspapers conducted surveys with leading questions.

It is not difficult to see why most people support an antisocial behaviour strategy. Age Concern Scotland welcomes an antisocial behaviour strategy because we agree with probably all the organisations and individuals to whom we have spoken that the subject is serious. Our organisation's difficulty is with how the bill will deal with the problems that some older people have suffered because of antisocial behaviour by groups or individuals.

**The Convener:** Are you suggesting that the consultation process amplified the problems inappropriately?

**Angela Yih:** No. I am saying that the subject is difficult to deal with in one piece of legislation.

I listened with interest to Robert McKay's discussion of the legal definition of antisocial behaviour, which was never an issue for our organisation or for any of the people to whom we spoke. It is difficult to define legally behaviour that

encompasses littering, which is a serious problem, as well as serious harassment and abuse of an older person because of their age or vulnerability.

I do not suggest that anybody deliberately confused the public, but producing legislation on the subject is complicated. Much of the public consultation related to the consultation document, which was a discussion paper and not the bill.

**The Convener:** Would it be reasonable to say that people are good at describing the problem? That reflects my experience and gives the lie to the idea that the problem was got up by politicians. That is a separate issue from the questions of how such behaviour should be tackled and whether the provisions in the bill are appropriate. Your organisation and the groups to whom you speak do not dispute the fact that the problem is real and not imagined.

**Angela Yih:** Older people perceive the problem as serious. The research that we and the police have conducted into older people and crime shows that even when crime statistics show that the level of crime has dropped, older people's fear of crime tends to increase. Our discussions with groups rarely centre on the detailed aspects of punitive measures; they tend to concern disappointment or a perception of a moral void in society, rather than insufficient powers to tackle the problems that people are causing. That is the tenor of our discussions. When we brought together a group of older and younger people in Edinburgh's city chambers, many of the older people said that they perceived a lack of discipline, moral values and family interaction. Much of that causes antisocial behaviour.

The consultation covered a raft of scenarios, but the bill tends to concentrate on extreme antisocial behaviour that in many cases could be crime.

**The Convener:** In your experience, does the general feeling of a moral void and a lack of discipline arise from anecdotal evidence or direct experience? Do people draw the conclusion that discipline is lacking because of what has happened to them?

**Angela Yih:** Quite a lot of the older people to whom we spoke had not experienced antisocial behaviour, but had heard of it. To an extent, people's experience depends on the area in which they live. We are aware that the problems of vandalism, litter and abandoned properties are much more serious in some areas than in others. Depending on who one speaks to, what is perceived as antisocial behaviour can range from rudeness in the bus queue, jostling or pushing, rudeness in the supermarket and disruptive behaviour in libraries—which used to be places of absolute silence but now have children running around and playing games on the computer—to

the shouting of abuse at vulnerable older people in housing estates by groups of young people, and the behaviour that the Executive must have had in mind when it decided to extend ASBOs to children under 16.

11:30

**The Convener:** People in my constituency have experienced a range of difficulties, but no one has ever come to me to complain about folk being noisy in the library; I will have to watch that space.

**Elaine Smith:** In your submission—under the heading, “The causes”—you say:

“A final cause noted was dissatisfaction due to the effect of poverty and deprivation combined with the power of advertising.”

It has been argued that poverty and deprivation are not a cause of antisocial behaviour. I would like you to expand on why you thought that they were a cause of such behaviour. Was your reference to advertising about the rise in the consumer society and the “I’m all right, Jack” attitude? Were you talking about capitalism? I invite you to take us further on that.

**Angela Yih:** That was not my opinion; it was a general feeling. The discussion that I mentioned was about younger people and how they can become disaffected with society. It centred on the idea that schools and parents were not seen to exercise the sort of discipline that older people were used to in the past. We discussed why the situation was so different today. Some older people said that they were poor and came from deprived backgrounds, but that that was not a cause of antisocial behaviour.

Poverty and deprivation were not considered to be the cause of antisocial behaviour in its extreme form, but there are people in a certain section of society who are so marginalised that they do not have access to the things that many of us take for granted. If it is consistently portrayed—in quality newspapers and magazines, not just the tabloids—as the norm for people to have three holidays a year, to change their car every year, to change their furnishings when the colour has gone out of fashion, or to spend £90 on a shirt or £100 or £200 on trainers, for example, that all creates a picture of a high-quality life that is not available to many people. That causes younger people in particular to feel a great loss. In our experience, people of an older generation generally accept that budgeting is what one does and that one should live within one’s means. In today’s society, we do not expect anyone to live within their means. Like most people, I get offers through the letterbox every week to invest in blue chip companies—those who make such offers obviously have not looked at my bank account.

**Elaine Smith:** Do you think that the people who were involved in your discussion were saying that the change in the fabric of society over recent years is part of the underlying cause of antisocial behaviour?

**Angela Yih:** During the discussion day, the older people said that they had observed antisocial behaviour such as buses being vandalised, which the younger people also described. It was said that that was because the kids had nothing else to do. We are not saying that advertising is the root cause, but the general tenor of the discussion on the subject was that people today—not just very young people—seem to be less easily satisfied.

**Stewart Stevenson:** The subject of definitions of antisocial behaviour has been introduced, but I want to develop it a little further.

I preface my remarks by saying that I have received a complaint from somebody about noise in a library, but that might be because I hold one of my surgeries there and I might have been the cause of their distress.

The definition of antisocial behaviour that the bill generally uses concerns a person who

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

You suggest that antisocial behaviour might be different in different parts of the country. Committee members are clear that some areas in the west of Scotland and elsewhere have instances of real and sustained antisocial behaviour that require to be addressed. In other parts of the country, antisocial behaviour is of a different character. Does the definition cover too broad a range of behaviours, with all the risks that that might entail, or is the definition as good as it gets?

**Angela Yih:** I thought about that only when I listened to Robert McKay and read Shelter’s response, because they took two different angles. Anything that I might say would be a personal opinion, so I should perhaps not say anything. The older people in our member groups were not hooked up on discussing the definition of antisocial behaviour. They knew what such behaviour was to them and the effect that it had on them. They had their own understanding of it.

**Stewart Stevenson:** Is it a fair comment to say that antisocial behaviour is considered differently in different parts of the country? The issues that relate to a sheltered housing complex where 100 kids gather every night at the front door are different from the issues that might arise in a relatively rural setting, for example, although people might still regard both as antisocial behaviour under the definition in the bill. Is that your organisation’s experience?

**Angela Yih:** Yes. I was trying to say the same thing earlier. We are discussing behaviour. We have a definition of antisocial behaviour elsewhere in housing legislation. For example, housing managers in the social rented sector have a definition for antisocial behaviour of tenants.

The definition does not seem as great and pressing a problem to us as it did to the previous witness, who was concerned that it would encompass his organisation's client group. For Age Concern Scotland, antisocial behaviour is dealt with through local strategies and local responses to the situation. Having a legal definition in an act does not seem to us to be a step forward in dealing with the problem.

**Donald Gorrie:** Are you aware of any ways in which Age Concern and local old people's organisations have been able to get involved in work to prevent or tackle antisocial behaviour or to help victims of antisocial behaviour?

**Angela Yih:** We have not been made aware of any such projects through our member groups. Having spoken to organisations that have developed projects to help families that may be, or have been, subject to antisocial behaviour—or which may even have participated in such behaviour—we know that, if local projects work, they do so because they bring together different age groups. There can be difficulties if people have been bullied or harassed or intimidated—organisations such as Safeguarding Communities-Reducing Offending have examples of that—but bringing together different age groups is a positive way forward.

Age Concern has not been made aware of projects in which our members have become involved that we could highlight as good practice. We could say only that local projects involving the community in general seem to work. That applies to mediation projects in particular.

**Donald Gorrie:** You have produced an interesting paper based on the meeting that took place between older people and younger people, which I managed to attend for a short while. Some very good points were raised in that paper. To expand on your last point, about mediation, what do you think the older people whom you represent believe to be the solutions for dealing with antisocial behaviour? You described the perception of a moral vacuum in society. Do you think that older people have an idea of how to fill that vacuum? Have they come up with ideas about how to help prevent or tackle antisocial behaviour?

**Angela Yih:** I have not heard any suggestions as far as the moral vacuum is concerned. It came out from our research into crime and from our elder abuse project that most older people, as well as other age groups, want more police on the

streets. I am sure that you will have heard that from both individuals and communities. It seems that people are asking for more community police—that is, more police with whom the community is familiar. That would engender trust within the community and between the community and the police. That trust is lacking nowadays in Scottish society, or at least it seems to be, because of the lack of resources and of police time.

A common theme in the discussion between older and younger people was that there is no point in calling the police. Lack of police response was a big issue. Calls and complaints have not been taken seriously and, when the police eventually arrived at a location, nothing was seen to be happening. We would need to have discussions with the police to ascertain why that story has been coming across so strongly. Those findings did not arise specifically in relation to antisocial behaviour; we got the same response from our research on crime. Community policing can work, as long as it is a priority for the police.

Recent research from England described how the Joseph Rowntree Foundation had funded a community police project, through which money was ring fenced for a particular post. The project was evaluated as having been a failure. After we looked into that more closely, we found that the community involved was, for various reasons, not one that was particularly blighted by antisocial behaviour or crime, so the expectations of the community were even higher than they might otherwise have been. People expected the police to deal with almost everything that was a nuisance to them, not just crime. Although the post was ring fenced, the community work was not a priority when a more serious crime took place elsewhere, so the policeman would be taken away from the community post and disappear.

We have to go back to the powers, measures and strategies that the Executive has already put in place, but which are either not adequately used or not adequately resourced.

**Donald Gorrie:** Will you elaborate on your suggestion about mediation? How do you think older people would envisage mediation happening? If they are sitting in their house being terrorised, and if there is a group of youngsters doing the terrorising, how could the two groups be brought together to deal with the problem at an early stage?

**Angela Yih:** It is obvious that mediation will work only if the parties are willing to discuss the issues. I have heard anecdotal evidence about things working in relation to a lower level of antisocial behaviour, for example noise nuisance, which might be coming about because of ignorance or poor sound insulation. It could be to

do with children making a noise, because they have to. Noisy children are not a statutory nuisance, but they are certainly a nuisance to many older people.

Older people who are hard of hearing can be a nuisance as well. For example, I do not need to put my radio on to listen to Radio 4 in the morning as I can hear my elderly neighbour's radio through the bathroom wall. She has it on extremely loud because she is extremely hard of hearing. That is not a problem for me, but such situations can become a problem for people and mediation can provide a solution.

Mediation can also work in situations in which there are more serious problems and which perhaps involve dysfunctional families, but there needs to be quite a lot of support to enable both sides to come together. I know that mediation projects are valued in the areas that are fortunate enough to have them and I know that there has been a general plea that there be more of them.

11:45

**The Convener:** Often, a problem has been identified but the police are not around to deal with it. What do you think that the people whom you represent would want the police to do about it if they were there? There is a dichotomy. Old people might want young people to be moved on, but young people's organisations are telling us that the police already have the power to move on young people but do not do so because they say that they have the right to be on the streets.

**Angela Yih:** That raises an interesting point. The reason why older people feel that having more community police on the streets would lead to the creation of a safer environment is the same as the reason why young people think that. There would be less intimidating or annoying behaviour if there were more police around. The bulk of the population pay attention to the police and will do as they are told. Not all young people will swear at the police if they are told to stop doing what they are doing. Usually, they run off and go somewhere else.

When we think about giving more powers to the police, we have to ask why the powers that they already have are not being used. That is what we found quite difficult about the bill. If the measures that local authorities, housing organisations, environmental health officers, noise teams and the police have are not effective, why is more legislation seen as the way round that problem?

**The Convener:** How do you get those bodies to exercise the powers, in that case?

**Angela Yih:** Have you spoken to the organisations that are not exercising the powers,

such as those local authorities that you do not believe are using ASBOs appropriately?

Some older people thought that the Criminal Justice (Scotland) Act 2003, which introduced interim ASBOs, was a great step forward because the period of time that it takes to get an ASBO is a problem for anyone who is suffering serious intimidation or bullying.

You asked me how we could get the police to exercise their powers. Would they be comfortable dispersing a group that was loitering but not doing anything wrong?

**The Convener:** We will come to the dispersal of groups in a minute.

Elderly people might say that they want the police on the street because they want them to be tougher and more proactive. Other groups, however, would argue that the police are already too willing to use their powers against young people. Is it the feeling of your members that greater police presence would increase their activity against the groups that have been identified as a problem?

**Angela Yih:** The issue of a greater police presence relates to the fear of crime in general, which is much wider than the question of how to deal with groups. The fear of crime is a big issue for older people, even though they might not have been victims of crime. The media is quite determined to tell them what happened to an old person who was the victim of a violent or horrific crime.

Older people want to be secure in their homes. Security measures, such as window locks, are important to older people, and they value the community crime prevention police. However, older people are more likely to want to know that there are community facilities for the groups of children that we have been discussing—somewhere where they can go and have something to do and enjoy themselves. They want the younger people to have something to do other than loitering.

**The Convener:** So, your membership has said that the key to the issue is young people being busy in activities elsewhere, rather than hanging about.

**Angela Yih:** Antisocial behaviour is much more than young people hanging about in groups. However, someone might have feelings of fear and intimidation when they see a group of younger people looking as though they have nothing to do and as though they might get up to something harmful. When older people know the young people, there is no problem.

**Mary Scanlon:** Despite saying that older people's fears of crime are increasing, the

solutions that you offer on page 2 of your written submission focus on the preventive and community solutions that you have discussed. Does your organisation have a view on the proposal to extend antisocial behaviour orders to children who are aged 12 to 15?

**Angela Yih:** Our members have not expressed a view on that. The only evidence that I can give you is evidence from the day on which we got the groups together. The older people did not express the opinion that that would improve matters. They saw that serious problems with children—people under the age of 16—have wider implications. The children's hearings system was cited as an excellent measure that is particular to Scotland and that we do not want to lose. We do not want to go down the road of criminal or legal responses, but should strengthen the children's hearings system and perhaps train more older people to sit on the panels.

**Mary Scanlon:** That was not quite what Stewart Stevenson and I heard in Lossiemouth. What we heard was, "Hang 'em and flog 'em."

**Angela Yih:** Older people are not a homogeneous group. I am an older person and you are an older person. Other older people are in their 70s and 80s. There are affluent older people, well-educated older people, poorer older people and older people with learning difficulties. We cannot get a single response from older people.

**Mary Scanlon:** That is the benefit of our wide-ranging experience and the fact that we have been out to meet groups.

Let us stick to the views of the older people with whom you have discussed the issue of the 12-to-15 age group. Was the view expressed that there should be more preventive work and community involvement and less punitive action, as you state in your submission?

**Angela Yih:** That was the general view of the people to whom we spoke on that day. However, I have spoken to older people who would be quite happy to see lots of people locked up in a secure unit. The problem is that many members of the public want a simple remedy, whereas people who are familiar with the children's hearings system, the social work department and educational psychologists, who know the problems of poorer or dysfunctional families and disruptive children, know that the problem cannot be solved by taking more punitive measures. If it could, the solution would be simple and we would welcome more legislation.

**Mary Scanlon:** Are there any specific measures in the bill that Age Concern welcomes as a means of addressing antisocial behaviour in the younger age group?

**Angela Yih:** The necessity for an antisocial behaviour strategy to be drawn up by the police and the local authority seems a positive step forward. We welcome the discussion about antisocial behaviour. We also welcome the Executive's recognition that we, as a society, must tackle it and that we need a range of measures to do so, as has been suggested. I cannot say that our organisation has reached a consensus of opinion as to whether we welcome or dismiss any of those measures.

**Patrick Harvie:** Before I move on to address the dispersal powers, convener, I want to touch on some of the intergenerational issues. I want to share a conversation that I had with a group of older people, the first half of which was dominated by reflections on how serious a problem antisocial behaviour is and how it impacts on their lives. The second half of the conversation was characterised by reminiscences about how all of them did the same thing in their day. Was that viewpoint reflected in the discussion that you held, which you told us about earlier? Is that a fair description of older peoples' views?

**Angela Yih:** No. That is another example of the range of discussions that can be held. On that day, nothing like that was said. There was no talk of those older people doing similar things, because they had not. We have held discussions with one of our member groups, however, in which one member who had been in care talked about the problems of children in care. He could understand a range of issues that other older people perhaps do not understand.

The group of older people who were involved in the discussion I spoke about earlier included people who were not born in Scotland. One of them had worked in his home country dealing with younger children with serious problems. He had a background and history from a totally different part of the world. The general feeling on that day was an understanding of younger peoples' boredom. That said, the older people tended to talk more about the parents—they said that it was the parents' fault. The young people took a different view. They said that it had nothing to do with their parents; it was their own fault if they got up to something.

Although we have anecdotal evidence of older people reminiscing about some of the things that they did, the problems that we are debating really arise from serious behaviour by large groups.

**Patrick Harvie:** What I am driving at is whether the problem has changed or worsened over the years or whether people are responding and reacting to it differently.

**Angela Yih:** That is a very difficult question for us to answer. Without any hard research

evidence, my instinct tells me that I regularly hear older people saying that things were better. That said, some of those older people are not over 60; they are 40.

**Patrick Harvie:** I will move on to address the dispersal powers. You touched on the issue earlier. Would the power to designate an area where the police can disperse groups of two or more people and make it an offence for them to return be a useful addition to police powers? One of the criticisms of the provision is that, if the group cannot meet in the designated area, they will go somewhere else. Will the provision simply move the problem around or will it help to solve it?

**Angela Yih:** As I understand the provision—please correct me if I am wrong—the bill introduces a power to designate an area where two or more people cannot congregate.

**Patrick Harvie:** That is correct.

**Angela Yih:** At the moment, the police can disperse a group of people who are loitering or causing a problem. My first response is that two or more people would seem to be a strange description of a group. If an area is designated would the provision include me and a friend?

**Patrick Harvie:** I think that if you and a friend were in an area that had been designated it would be down to the individual officer to decide whether the dispersal power should be exercised. The provision gives the police the ability to use the power as a positive step. It can be used to change antisocial behaviour into better behaviour.

12:00

**Angela Yih:** Our main fear would be where the group would go. Would a different area have to be designated every so often? Would the police view it as feasible or practical to use the power at all? There needs to be more discussion about the power.

We want an assurance that areas will be designated for sound reasons. For instance, will an area be designated because it is in an estate where the community has reported persistent problems of antisocial behaviour and criminal activity, such as stealing cars and driving them around, or will it be designated because it is a certain area in a city where young people congregate and hang around looking rather awesome, and although they are not being a nuisance to anybody, some groups of people do not like the look of them?

**Patrick Harvie:** The police will be required to demonstrate that there is a persistent problem in order to designate an area, but not to demonstrate particular forms of behaviour before dispersing people. Presence alone will be sufficient. It has

been suggested that there should be a link between exercising the power and the availability of facilities or other provision. In other words, if you designate an area where people are not allowed to be, you have to demonstrate that there is somewhere where they are allowed to be and where they are welcome. How would that change the situation?

**Angela Yih:** It will not change the situation until we address the fact that the facilities do not exist in the community in the first place. Until we address the lack of affordable and accessible leisure facilities, we cannot expect the police to solve the problems by moving people somewhere else.

**Patrick Harvie:** What should those facilities be?

**Angela Yih:** Are we talking about younger people? The focus seems to be on them.

**Patrick Harvie:** Technically, I suppose we are talking about groups. The perception seems to be that young people are being tagged as the problem.

**Angela Yih:** Younger people have reported to us that some areas have no youth clubs at all—I know that they are not necessarily always called youth clubs. In rural areas and smaller towns there are certain facilities for young people, but they have to travel long distances to them. It is the same issue for many older people: there is a lack of affordable and available transport and facilities to take them safely and securely to a place.

Issues faced by younger people are the same as those faced by many older people. Day centres and recreational and leisure facilities are organised by people who structure them around what is easy to deliver at a specific time. They are not structured around what people themselves want, which is drop-in centres where they can go when they feel like it, not just between 6 and 7 on a Thursday or between 1 and 2 for bingo for older people. We have to ask groups, such as vulnerable older people and younger children in poorer areas, what they would like and what would work for them, and try to design facilities around that.

**The Convener:** I will describe a circumstance where a dispersal power could be used and you can tell me whether it is reasonable.

In a sheltered housing complex, 30 or 40 young people gather regularly. They are chapping on windows. Elderly people say that they are unable to sit in their living rooms; they are unwilling to go out to local clubs because they are afraid on the way home, as they have been harassed by young people hiding behind trees and jumping out on them. The young people are deliberately, not accidentally, scaring people. When the police are

called they come round and the group goes, but when the police go away they come back.

In those circumstances, there is evidence that the behaviour is causing fear and alarm; there is evidence of vandalism, graffiti and smashed bottles, and evidence of people who are being frightened, but who are reluctant to give their names. Because of the consequences of such behaviour for the people in that sheltered housing complex, is it reasonable to have the power to tell those youngsters that that place is inappropriate as a gathering point and to move them on?

**Angela Yih:** That seems reasonable on the face of it. However, before we reach that stage, we need to ask a million questions about what has been done to address the problem. For example, I would want the housing managers in the sheltered housing complex, the families of the children involved and so on to try to tackle the problem first. Moreover, do we simply move the youngsters on so that they can harass another group of people?

**The Convener:** That is a separate issue. These measures would be taken because it had been demonstrated that the problem had reached a certain level of persistence over time and that young people were even travelling to that place to meet others from a wider area. For example, they would not be using the free swimming facilities down the road, but would choose instead to gather in that area. In those circumstances, is it understandable or reasonable for such a power at least to be considered?

**Angela Yih:** Yes, it should be considered, particularly if the older people suggested it.

**The Convener:** And on a balance of needs, it would then be reasonable to enforce that power. In other words, the needs and rights of youngsters to gather in a certain place would have to be balanced against the needs and rights of people to be able to sit in their living rooms or to go out to a club and come back home.

**Angela Yih:** Is there any evidence of groups of 30 or 40 young people harassing someone in a sheltered housing complex? I have certainly had inquiries about people being intimidated by smaller groups of children.

**The Convener:** Why do you think that someone would advocate a policy to meet a need that has never been articulated? Why would anyone propose a power in a bill to address the scenario that I have just described if it were only a figment of someone's imagination?

**Angela Yih:** Oh, no. I am not suggesting that it is a figment of someone's imagination; it is just that you have described a very extreme scenario. As I said, I have evidence of incidents involving a

lower level of annoyance. For example, younger children might be disrupting older people's peace of mind by playing and making noise. To deal with such situations, we need to bring in social measures and housing management skills.

I presume that, given the scenario that you have described, your constituents—or a councillor's constituents—have come and asked for some kind of protection or for something else to be done to deal with the problem. As a result, the Executive has included such a provision in the bill. However, I am concerned about what we are doing to address the causes of such behaviour and where the youngsters go once they are moved on.

**The Convener:** Well, a free swimming class might be a reasonable start.

If I or anyone else could give your organisation compelling evidence that this problem exists, would you accept that the power to disperse would be one of a range of reasonable measures that could be applied in relation to the limited circumstances outlined in the bill?

**Angela Yih:** Yes, if we had found no other way of addressing the fears of bullied and harassed older people. It would seem to be a last resort.

**The Convener:** But it would be a reasonable last resort.

**Angela Yih:** With such a measure, we would be designating no-go areas for groups. That might temporarily solve the problem in one area. However, I cannot say that Age Concern Scotland has a strong view that the measure should not be introduced. It would seem to be reasonable if we had tried everything else.

**The Convener:** But it would happen in the context of other measures. After all, the police would not just go and tell youngsters that they could not be in a certain area without reflecting on the broader picture and where they might disperse to.

So it is reasonable to say that, where a group continues to gather and scare people—not accidentally, but because noising them up by tapping on their windows and so on is part of the evening's sport—such behaviour creates public disorder and genuine fear and that the way of managing the situation is to disperse the youngsters and tell them that they cannot come back.

**Angela Yih:** Yes, if no other measures are available, but I would have thought that the police would already have powers to deal with such a situation, although I do not want—

**The Convener:** I would have thought that too, but it is my experience that they have not.

**Cathie Craigie:** I will give you an example, Angela, although the bill is too late to deal with the situation, because it has resolved itself. In my constituency, a set of steps leads from a public footpath to a sheltered housing complex. For about two and a half years, the elderly people and the warden were annoyed and harassed by young people congregating at those steps every night. They were annoyed by the noise and had to get up in the morning and clean the steps of litter and broken glass. The police were involved: when they came, the young people would go away but would come back when the police left, and it is not possible to instruct a police officer to sit on the stairs all night. The local councillor also got involved, went out and spoke to the young people and got the community education department involved. Youth workers went out and tried to encourage the young people to come to the community education centre, which had a youth club two nights a week and the opportunity to play badminton and five-a-side football at other times. That centre was the same distance from where the problem occurred as we are from Edinburgh city chambers.

If the police had had powers to designate that area as one in which those young people could not gather, that would have helped. The only thing that stopped the behaviour was the young people reaching the age at which they did not want to hang about any longer—the ringleaders got older. The young people did not want to engage with any of the community education officers or youth workers; they wanted to sit there on their own and cause annoyance. People in that community in my constituency were suffering a lot, and the police did not have the powers to change that. I give you that as an example of when the power of dispersal could have been useful, because you asked for one.

**Angela Yih:** Yes, and I can see why the older people would have been relieved by and welcomed the power. However, as an individual, I would have wondered what would happen next and where the young people would go, although the problem might have been solved for one group in society. The issues in that situation are to do with young people's lack of understanding of the issues that affect older people, who are vulnerable and need peace and quiet. I accept that, in such a situation, the power of dispersal would be used as a last resort and that everything else would have been tried.

**The Convener:** Do you have evidence of the situation that I described, which is not one of a lack of understanding about older people's needs for peace and quiet, but a more deliberate strategy than that? I cannot think of any young person whom I know who does not work out that, if they chap somebody's door or window, ring their bell or

buzz their buzzer at 10 o'clock or 11 o'clock at night, they get a reaction. I can almost more easily understand somebody breaking into somebody's house and stealing something because they desperately need the money as they have a drugs problem, but I do not understand why young people chap somebody's door at 10 o'clock. I think that most young people who do that do it to get a deliberate response. It is not that they do not understand that elderly people do not like their window being chapped at 10 o'clock—they certainly understand that—but the sport has become getting a reaction to it. Do you have examples of people talking about that kind of experience?

**Angela Yih:** Yes, we have had complaints from people about unruly children running into their gardens and messing them up or, as you said, ringing the bell and harassing older people just because they are older people, which definitely happens. As I said, we have an elder abuse project, and we get lots of inquiries about that sort of antisocial behaviour, as well as the other sorts of elder abuse crime, financial abuse and neglect. I am not saying that all problems that younger children cause are down to a lack of understanding, but they often are, and intergenerational work is important.

**The Convener:** I am interested in your conference. How many people were at it and were they drawn from throughout Scotland?

**Angela Yih:** There were about six older people and 12 younger people and we mixed the groups up.

**The Convener:** Where were those people drawn from?

**Angela Yih:** They were drawn from rural areas and cities.

**The Convener:** Did your organisation identify the people, or did they identify themselves?

**Angela Yih:** We wrote to our individual members, rather than to our groups. Many of our groups, which are totally independent from us although they use our name, had already responded to the consultation. We wrote to individual members to allow them to speak for themselves.

12:15

**Scott Barrie:** Does Age Concern Scotland have any views on part 9 of the bill, on parenting orders? Your submission states that the older people who attended your consultation event felt that, in general, parents should be held more accountable for their children's actions. Do you have any views on the specific proposal in the bill?



**Angela Yih:** The older people to whom we spoke identified lack of parental control as a serious problem. I am not familiar with the present system of dealing with families, but there will be extreme cases in which parents simply cannot cope with their children and need support. The bill slightly amends the proposal that went out for consultation, in that parenting orders will be used only if parents refuse to accept support that is offered to them, which is more sensible than the original proposal.

The consensus is that the measure seems sensible; it is what older people want. The reservations are about the range of support measures that exist to help parents who cannot look after their children but who do not want their children to be taken into care.

**Scott Barrie:** One of the grounds of referral to a children's hearing is that the child is beyond parental control. In fact, that ground has existed since the system was established. Parenting orders are aimed at the minority of parents who are unwilling to accept the support and advice that are offered to them. With the previous witness, we explored the issue of the range of services that should be made available before such an order is sought. However, for the minority of parents who have not accepted advice and help, the parenting order will put responsibility where it is due, rather than place a supervision requirement on the child, which is the only alternative that hearings have at present. You seemed to say that Age Concern Scotland sees merit in the measure and supports its use in those circumstances.

**Angela Yih:** We support it as long as proper measures are put in place to deal with situations in which parents breach an order. What will happen then? The worry is that we may criminalise parents.

**Elaine Smith:** I assume, although I am not 100 per cent sure, that parenting orders will apply to people who have guardianship of children. For example, research last year highlighted that around 50,000 children in Scotland—I cannot be sure of the exact figure—are looked after by people such as grandparents because of social problems in the family or for other reasons. Have your members considered the point that parenting orders may be given to older people who are guardians, such as grandparents? Anecdotally, many older people have a suspicion of what they see as social services. For example, they may not claim benefits that they are due because they do not want to be seen to be dependent on those services. Older people who are not a child's parents might end up being fined.

On the same theme, the Executive's proposal for ASBOs for under-16-year-olds, which Mary Scanlon mentioned earlier, will be linked to

provisions in the Housing (Scotland) Act 2001. Where an ASBO is granted, a social landlord can convert the tenancy to a short Scottish secure tenancy. That may also affect old people and grandparents who are looking after children. Have your members considered those circumstances?

**Angela Yih:** They have not said that they have. The scenario that you portray is frightening, but we need assurances that there is support for people who are in difficulties. It would be dreadful if grandparents or older people were criminalised in some way because they were unable to cope with children who exhibit problem behaviour. It is because of the lack of resources in social work departments, and even in educational psychology in schools, and because of the low number of social workers who are able to monitor what is happening in society that we might face those extreme scenarios. That is not why the bill was introduced.

**The Convener:** Would you accept parenting orders if they did not punish parents for being unable to get their youngster to school, but addressed their reluctance to engage in the process of supporting their child in going to school? An area social worker told me that he could see the argument for what he called a "huv-tae" case, which would get someone into the room to start talking, rather than have them not respond at all. Parenting orders would not necessarily be simply punitive; they could make people support their children and accept their responsibilities, rather than jump in saying, "This is your fault and we're going to punish you," which is what some provisions in the system do at the moment. The attendance system can be highly punitive because it merely makes the connection between the person and the truancy. A parenting order is about trying to get people to co-operate. If that were the way in which the orders were presented, would you find that reasonable?

**Angela Yih:** That sounds reasonable to me. I assume that older people would also see it as reasonable. However, it will be interesting to wait for the results of the pilot projects.

**Campbell Martin:** My question is about the bill's proposals for extending electronic tagging to people under 16. From experience, would older people believe that that is a valid sanction? Do they believe that it would benefit society and the individuals who might be tagged?

**Angela Yih:** That proposal seems to be quite extreme; most people to whom we spoke think that electronic tagging is extreme. I do not know enough about the subject to comment in detail, but when we spoke to older people, concerns were expressed.

There is sometimes confusion among the public about what the children's hearings system is for

and about the circumstances in which secure accommodation is used. Concerns were expressed about how some younger people are sent to the hearings system or even, in extreme cases, placed in secure accommodation for their own safety. Fears were raised about such measures dealing with the problem without considering the more serious aspects of cases or the root causes of children's behaviour. Younger people thought that the extension of tagging would be of no real value because leaders in gangs that display antisocial behaviour would see tags as badges that they could boast about.

Tagging is not a subject on which my organisation would want to say more. In our response, we said simply that we think that tagging is a rather extreme measure. We would like to consider all the other ways of addressing problem children and to facilitate that process better.

**Cathie Craigie:** I do not recall reading that in your submission. Did you say that to us or to the Executive?

**Angela Yih:** We put that in our response to the Executive's original consultation.

**Elaine Smith:** Stewart Stevenson mentioned problems with definitions in relation to the dispersal of groups from a place that had been made a no-go area. You asked about that earlier. Do you have concerns that intent will not be taken into account? For example, let us consider the scenario of a post office that is next to an off-licence that has been deemed a no-go area for groups because large groups have caused problems by gathering there. The bill does not say whether the groups that may be dispersed are groups of youngsters or groups of older people. This may be a theoretical example, but I cite it because it brings us back to the issue of intent. Could a younger person decide that a group of older people who were gathered there was causing, or was likely to cause, nuisance or annoyance? The younger person might do that just to noise them up.

Intent is not taken into account in the definition in the bill. Is that an issue, given your earlier question about whether a group could mean you and a friend? Obviously, any change to the law or any new law that is introduced must be precise as to what it means. Do you have any concerns about that? Also, do your members have concerns about an area being stigmatised if it has been designated as a no-go area for people gathering?

**Angela Yih:** You raise an interesting point. Legislation must be precise. The Executive's policy memorandum is clear about why the measures have been introduced, about how they will be used and about what mechanisms are

expected to be used, but once the legislation is in place, those powers may be abused. We need to be careful about that when we introduce legislation.

I can think of many older people who are very politically active and who could cause a real nuisance as a group. I would not like them to be told that an area was a no-go area because they were causing a nuisance.

**Elaine Smith:** Finally, your written submission mentions the meeting between older people and younger people. Could a number of the issues perhaps be resolved by meetings and discussion to promote understanding and mutual respect?

**Angela Yih:** As I said at the beginning, a bill that has been introduced to deal with antisocial behaviour must deal with a vast range of issues. On the one hand, some of our suggestions would work for low-level antisocial behaviour and indifference or neglect. On the other hand, the bill has been introduced to target the much more serious problems that Johann Lamont mentioned. That may be where the Executive and the legal team need to look quite carefully at what will go into the final bill. Those two areas could easily become confused.

**The Convener:** I want to pick up the point about persistent problems. If a group was persistently drinking in the street, smashing bottles, swearing, intimidating people as they went past and threatening youngsters who were trying to go about their business, it would be reasonable in such circumstances to challenge that behaviour. The dispersal measures would be taken because the behaviour was persistent and extremely difficult. They would not be used simply because someone was a kind of awkward cuss, as you have characterised the issue.

Has your organisation received evidence, such as we received when we went out to meet communities, to the effect that no-go areas already exist in our communities? Are there shopping areas that older people and younger people are unable to use because the areas have, in effect, been taken over? Far from addressing the problem, leaving such an area as it is would end with that area being stigmatised. Such a situation was described to us in one area that we visited in Glasgow; we were told that we had no idea what it feels like to have fought for a house in an area where you wanted to stay only to find that all you want to do now is to get out. That is the impact of not doing anything about communities in which no-go areas have been created.

**Angela Yih:** I accept your point entirely. Perhaps I have not been strong enough in agreeing that that sort of behaviour is a dreadful indictment of our society. Older people suffer

disproportionately from being unable to move to areas where they would like to be and where they feel safe.

Our comments are more about all the different issues that need to be addressed, such as the lack of affordable housing, the lack of housing choice and the lack of pleasant environmental facilities in some areas of Scotland. I absolutely agree that we need to deal with antisocial behaviour, but we are a little concerned that the Executive sees the bill as the way in which to deal with it; many other matters need to be addressed.

**The Convener:** What the people whom I mentioned identified was that they had chosen to live in their community, but that that choice had been destroyed by the community's inability to address the problems that made it more vulnerable than it had previously been. The problem was not that there were no houses elsewhere to which those people could go, but that the area in which they had chosen to stay had been affected by those problems.

**Angela Yih:** The issue is a serious housing management issue, as well as a police issue.

**The Convener:** Unless there are any final questions, I thank Angela Yih—she almost looks as if she is in the spotlight because of the way in which the sun is shining. I appreciate that giving evidence is always slightly more difficult when one is alone before the committee, but we appreciate the time that you have taken. If you want to develop any issues further with us, we would be delighted to hear from you.

12:31

*Meeting continued in private until 12:55.*



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