

COMMUNITIES COMMITTEE

Tuesday 3 February 2004
(*Morning*)

Session 2

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COMMUNITIES COMMITTEE **5th 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)

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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:

Ms Margaret Curran (Minister for Communities)
Michael Kellet (Scottish Executive Development Department)

CLERK TO THE COMMITTEE

Steve Farrell

SENIOR ASSISTANT CLERK

Gerald McNally

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Communities Committee

Tuesday 3 February 2004

(Morning)

[THE CONVENER *opened the meeting at 09:34*]

Antisocial Behaviour etc (Scotland) Bill: Stage 1

The Convener (Johann Lamont): I welcome everyone to this meeting of the Communities Committee. Agenda item 1 is oral evidence at stage 1 of the Antisocial Behaviour etc (Scotland) Bill. I welcome our witnesses. Margaret Curran MSP is the Minister for Communities, Alisdair McIntosh is the head of the antisocial behaviour division of the Scottish Executive Development Department, Michael Kellet is the Scottish Executive's Antisocial Behaviour etc (Scotland) Bill team manager, Gillian Russell is from the Office of the Solicitor to the Scottish Executive and Kit Wyeth is from the youth justice and children's hearings division of the Scottish Executive Education Department.

At the outset, I will say that I was concerned by reports in the Sunday papers about the Justice 2 Committee's report to the Communities Committee, which has obviously been leaked to the press ahead of our consideration of evidence from the minister and of the bill in general. I have asked the clerks to investigate whether anything can be done about that matter.

I invite Margaret Curran to make an opening statement before members ask questions.

The Minister for Communities (Ms Margaret Curran): I will say a few words by way of introduction, if that is okay. I am well aware of the committee's interest in the bill, the comprehensive manner in which it has conducted its evidence taking and the wide range of views that exist. It would be stretching a point to say that I am looking forward to this morning's evidence session, but I am sure that the meeting will be very valuable. The Executive genuinely looks to the parliamentary committees for consideration of details that we come forward with and we will pay due attention to what is said. I genuinely welcome the opportunity to be here.

Before we discuss the bill in detail, I will say something about its background. The bill is part of a wider strategy of how we aim to ensure that results are delivered on the ground. Over the past

year, three things have become crystal clear. First, antisocial behaviour is one of the main problems that communities throughout Scotland face. Secondly, effective action is not always taken to deal with antisocial behaviour. Thirdly, our hard-pressed communities are asserting the need for change and we are determined to deliver change for them. That is why we have made tackling antisocial behaviour our number 1 priority for the Parliament's second session and why we consulted and engaged with communities last summer on a scale that had never previously been seen about ways in which to tackle the issue. It is also why we have introduced the bill.

I am sure that members are well aware that the bill ranges widely. It aims to give agencies new tools to deal with the various forms of antisocial behaviour that our communities experience. Crucially, it grounds action to tackle antisocial behaviour firmly in a framework of local strategies, which will be drawn up in discussion with local communities and will deal not just with enforcement, but with issues such as prevention, support and early intervention—we emphasise those issues equally. I stress that the bill is only one part of a wider strategy, which we outlined in the consultation document. To see the bill in isolation from that strategy would be to miss the bigger picture.

Our strategy has four interlocking themes, the first of which is protecting and empowering communities. Communities face problems and must be involved in devising solutions to them. They must be supported when they report and respond to incidents. The bill encourages such things, but it will be supplemented by practical measures to ensure that community voices are heard, that people can easily report incidents and that victims and witnesses are protected and supported throughout any proceedings that follow incidents.

The second theme, which relates to children and families, is preventing antisocial behaviour. I cannot emphasise enough that we believe that prevention is better than cure—that is often missed from discussions of our policy. By providing targeted support for parents and their children, we can reduce the risk of people offending and provide a better future for the next generation. The bill provides for parenting orders to deal with the very few serious cases in which parental neglect has contributed to serious offending behaviour, but our wider strategy includes providing support to families and children, prevention and diverse initiatives. Sanctions are sometimes necessary, but support must always be offered, too. Our approach will deliver both.

The third theme is safe, secure and attractive communities. Antisocial behaviour is not always

about violent disorder or harassment on our streets. Litter, fly-tipping, abandoned cars, noise nuisance and graffiti are all forms of antisocial behaviour. The bill contains new tools to enable agencies to tackle such problems more effectively. The substantial funding that we are providing to support communities—whether for community wardens, better neighbourhood services or other quality-of-life initiatives—is also an essential part of our strategy.

The final theme is effective enforcement. So far, most of the debate—certainly the public debate—has focused on enforcement issues, but the broader context must be considered. Enforcement is an essential part of the response to antisocial behaviour, but we recognise that it is not enough on its own. Enforcement cannot be viewed in isolation from prevention, early intervention and voluntary measures. The bill will provide new sanctions, which will be targeted, tough and proportionate, for dealing with cases that cannot be resolved by other means. However, our strategy is not just to pick up the pieces; we want to change behaviour as well.

On resources, the bill will have direct financial consequences, which are set out in the financial memorandum. However, the total new investment in our strategy goes a long way beyond the sums that will be required to implement the bill. We have earmarked an additional £95 million over the next two years for a wide range of measures to support both the bill and our wider strategy—I am thinking of measures such as community wardens, mediation services, hotlines, antisocial behaviour teams, diversion activity and much more. Therefore, our strategy is underpinned by serious new money.

Legislation is not the end of the story. New legislation, though essential, will not by itself deliver the results that our communities want. A comprehensive framework for delivery on the ground must support the bill. We have begun that work with local government, the police and others and we are working on a detailed delivery plan, which is to be finalised by the time that the bill becomes law.

We have never pretended that success in this field is easy or that it can be established overnight, but we believe that we are laying strong foundations for the future. The keys to success will be committed and joined-up working by all the relevant agencies, supported by the Executive. We do not underestimate the challenge that we face and the considerable difficulties and complexities that will arise as we develop the agenda. However, to duck the issues would be to fail our communities. We must answer their call. In doing so, we can really improve the quality of people's lives and provide solutions for people and

communities who too often feel that that they have been abandoned.

The Convener: Let us kick off on the issue of the consultation process. You have said previously that the consultation is unprecedented and you have just said that it was done on a scale that has never been seen before. Obviously, it was important to get a balance between the different voices in the debate. Our evidence suggests that a number of people were content with the original consultation process. However, witnesses have raised issues around it, one of which is the speediness of the consultation and the swiftness thereafter with which the consultation report and the bill were published. There is a question about the extent to which the consultation could have impacted on the bill; it has been suggested that perhaps the haste of the process meant that the consultation did not influence the shaping of the bill. There were also concerns that there was not enough consultation of young people and that aspects of the Executive's consultation process, in particular the web-based survey, did not attract the views of many young people.

Ms Curran: There is quite a lot in that. I will try to work through the points in the order in which you made them. I am sure, convener, that you will come back and let me know whether I have answered properly—as is your style, I am told.

Ministers have to find a balance between implementing Executive policy and consulting, particularly when the policy has been before the electorate in a party manifesto and has been endorsed in an election—indeed, perhaps that is the best method of seeking the public's views. We gave a commitment to prioritise antisocial behaviour and to move swiftly beyond that. The Executive wanted to hit the ground running after the election. The popular view of us would not have been good if we had said, "We need to take two years to think this all through, folks, before we actually come forward with any details."

Clearly, when we have promised to do something and are returned to government, we must we do what we promised. However, a balance must be struck between effective legislative action and ensuring that we conduct effective consultation. Therefore, consultation was significant to us. We published the bill about seven weeks, I think, after the consultation concluded. I think that we can evidence issues that we addressed during the consultation. We made changes to things that were flagged up. Work on the bill had been on-going, so we believe that the seven-week period gave us sufficient time to prepare and publish the bill. We believe that we managed to carry out effective consultation.

People would expect the Minister for Communities to engage with communities—that is

my job. They would expect the Minister for Education and Young People to talk to teachers, parents and pupils. They would expect the Minister for Health and Community Care to talk to health professionals and patients. As I said, people would expect me to talk to communities and to professionals who support communities and that is what we did. We also wrote to MSPs and to all the major parties. I am not sure whether we wrote to every party but, at the request of all the major parties, we visited constituencies. We received many representations in the form of questionnaires and formal responses. I think that there were more than 340 responses to our consultation paper. Therefore, I feel that we got the balance right.

You mentioned young people. A number of young people participated in the community consultations. It is important when we refer to the community that we do not regard young people as being outside it—they are part of the community. That was evidenced strongly in the visits that we undertook. I certainly had discussions with young people on the streets who were, arguably, engaged in antisocial behaviour. I do not think that that formally constituted evidence for our consultation, but we certainly engaged with young people.

We commissioned YouthLink Scotland to hold a one-day conference. We also visited young people who had offended and who were involved in a variety of social work projects, for want of a better term. We asked for their views on what we proposed. I had meetings with people who had offended in their youth. They reflected on their experiences and gave us their views on our proposals.

Therefore, we had a package of formal consultations with organisations, formal written submissions, direct engagement in face-to-face meetings and conferences. We also used a variety of other methods of consulting. I believe that the consultation process was robust and that we adhered to our commitment to introduce the bill early. I think that Michael Kellet can tell you more about the web consultation.

09:45

Michael Kellet (Scottish Executive Development Department): We tried a web consultation by pitching questions to young people on the young people's section of the Executive's website. We received a number of comments, but it was difficult to tell whether they were from young people or from older people. We will bear that point in mind for future consultations that are aimed at young people. However, we certainly believe that the exercise gave us useful views from young people.

The Convener: Did you detect a shift during the consultation period, minister? Some people have the impression that the problem of antisocial behaviour is all got up and is not real. Was there consensus in your consultation that there was at least a problem, although people might have divergent opinions about how to deal with it? Some of the reporting that we are now getting suggests that antisocial behaviour is a fairly trivial issue and is being talked up again. Would it be fair to say that, in your experience of the consultation process, there was consensus that there is a problem? Was there at least an acknowledgment by all, regardless of what they thought about the individual powers that the bill proposes, that there is a problem, which in itself might suggest that there has been an advance?

Ms Curran: Some of the framework around the debate has changed. I recall clearly that, at the beginning of the consultation process, a number of agencies said that the Executive was exaggerating the extent of antisocial behaviour. I do not have quotes to hand, but I am sure that I could dig them out. Some commentators—I am not saying that they included any of the MSPs who are present—suggested that what we called antisocial behaviour was just young people's normal "high jinks", to quote one expression that was used. Another expression was "curtain twitching".

There was much coverage of the issues, but I was determined to go to local communities and to hear people speak for themselves. People vividly described their experiences and talked about the scale of the problems and the intensity of the difficulties. We can debate how we deal with antisocial behaviour, but I believe that most people now acknowledge that it is a serious problem that must be dealt with. I challenge anyone who does not acknowledge that to come to the many places that I know well and explain their view to the people who are seriously suffering. Perhaps we can explore that issue later, convener, when we talk about details.

The Convener: No problem.

Mary Scanlon (Highlands and Islands) (Con): Minister, you said in your opening remarks that prevention is better than cure and you referred to support services. In the evidence that the committee has taken, the view has been emphasised that simply not enough resources are put into support services.

Mike Mawby, who is from the Inverness office of NCH Scotland, and representatives of Barnardo's gave us evidence. As an MSP from the Highlands, I know that NCH runs excellent programmes—I am sure that you are familiar with them. However, I am concerned about the funding for that work, which comes from Barclays Bank and Lloyds TSB. NCH finds it difficult to recruit people in the long

term because it is known that the organisation has only short-term funding—it finds it difficult to make promises of long-term support. Does anything in the bill ensure that local authorities and the voluntary sector will provide services for young people as part of the wider strategy?

Ms Curran: There was a lot in that question, so I will take it bit by bit. If you want to come back for further information, you will be welcome to do so. It will take us a while to unpack the themes that run through the issue.

We have to categorise the different types of services and facilities. A number of committee members have legitimately made a point that I have a great deal of sympathy with: if we want to divert people away from difficult or serious behaviour at the beginning, we have to have a panoply of facilities for them. I am sure that we will come on to discuss the substance of that argument. Another argument, which is, I think, more the focus of your question, is to do with support services. I regard those services as a different issue from prevention.

Mary Scanlon: I meant you to consider prevention as well as support services.

Ms Curran: Let me talk first about support services and then come on to prevention. Somewhere along the line, we also have to have a detailed discussion about facilities.

We have to consider support services for people who may have difficulties with their behaviour and may be beginning to get into trouble or have certain needs—be they young people or adults. Forgive me, convener, for not making this clear earlier, but we have to be careful that, when we talk about antisocial behaviour, we do not talk only about young people. In my experience—the consultation bears this out—young people are much more likely to be the victims of antisocial behaviour. We cannot just assume that they are always the perpetrators. Many of the measures in the bill are designed to tackle antisocial behaviour such as neighbour disputes in the broader, adult community, for want of a better term.

Mary, you mention NCH Scotland and Barnardo's in Inverness. I know NCH Scotland well from my constituency, where there is an interesting project to target young people in need who may be getting into bother on the streets. That project is supported by youth justice money recently announced by the Executive. It is wrong to give the impression that organisations such as NCH Scotland and Barnardo's depend on private sector funding. They do not. They receive substantial funding from the Executive and local authorities. We regard such organisations as significant pieces of the jigsaw in the infrastructure of the support that is required.

I do not want to be rude to you, but it is interesting that that question came from a member of a party that has always said that the private sector should donate to voluntary organisations. I would have thought that you would have welcomed such support.

Mary Scanlon: I do welcome it, although I do not think that it is right to bring party politics into the discussion. I am certainly not doing that; I am considering antisocial behaviour and the long-term security and stability of services. I certainly did not bring party politics into the discussion and I am sorry that you have done so.

Ms Curran: I do not want to disrespect the point that you make, but I have to say that I will not be able to leave my party politics behind. It usually features in my analysis and my approach to things.

Mary Scanlon: I think that Lloyds TSB are short-term funders. The point is that the Government is a long-term funder. I welcome the money, whatever guise it takes.

Ms Curran: A number of voluntary organisations have raised concerns about short-term funding and I recognise the substance of your point. You will know that the voluntary sector is part of my responsibilities. The Executive has made substantial efforts to ensure that the voluntary sector has much longer-term and more stable funding. When funding voluntary organisations, we have established a three-year funding model. We have also engaged in a strategic review of funding for the voluntary sector so that local authorities begin to use that kind of model as well. We are taking significant action.

You will appreciate that a balance exists and that immediate, short-term funding may be required for one-off pilot projects. I would never say that that should undermine efforts to provide longer-term, more secure and more stable funding, especially as we know the track record of the organisations involved.

You also asked which parts of the bill will direct people towards support. The one to which we always try to draw people's attention is part 1 of the bill. In some ways, it is the most significant part, in terms of strategies. It sounds like the most boring part, but it is actually the most significant. It is about making sure that we have joined-up approaches and that services are there. Things cannot be left to chance.

The Executive spends more than £370 million per annum supporting children and families. That is a substantial amount of public resource. When we are spending that amount, it is not too much to ask that key services are put in place for families or communities who feel that their backs are against the wall.

Mary Scanlon: Given the large amount of money that is going in, I am sure that, like me, you would want to measure the outcomes. I was surprised by the fact that, as Children in Scotland's submission said, the bill makes provision only for a duty on local authorities to provide services. A duty to provide a service is quite different from an entitlement to a service. With all the money that the Executive is putting in for prevention and support services, can the bill not be amended to say that every child who is directed from the children's hearings system or wherever will be entitled to some sort of support service?

Ms Curran: The bill contains a duty to implement supervision requirements. The provision clarifies the statutory duty on local authorities in relation to supervision requirements that are imposed by the children's hearings system and it allows referral to the sheriff court when local authorities are failing in that duty in individual cases. As I understand it, people who work in the children's hearings system have strongly welcomed that provision; they see it as a significant step forward in ensuring that supervision requirements that follow on from a children's hearing are fulfilled.

Mary Scanlon: Central Scotland police have announced that they will recruit another 70-plus police officers to deal with the ned culture. I think that Lothian and Borders police have done the same. Evidence from many people has suggested that we simply need more police on the beat, in addition to the other measures in the bill. Are the police—who have the voice of experience—not saying to you that, regardless of the bill, they need more officers on the beat? The financial memorandum does not offer a penny more, but the police forces are employing more people. Why does the bill not provide for more money for the police? Do you welcome the fact that the police are using their own initiative to deal with ned culture by employing so many additional policemen?

Ms Curran: I very much welcome the police's increased emphasis on tackling antisocial behaviour. I know that the committee listens closely to all that the Association of Chief Police Officers in Scotland has to say. John Vine has said emphatically that antisocial behaviour has not previously been a priority in the police's deployment of resources. I welcome what is happening now. I have received a short briefing on Central Scotland police's initiative. From what I hear, Central Scotland police have said that antisocial behaviour is an increasing problem, which they have to focus on. ACPOS is on record as saying that it supports 95 per cent of what the bill proposes. It thinks that the work of the Executive is very significant.

I promise you that I will come to your question on policing, Mary, because I know that it is a serious question. However, I genuinely believe that we will never solve antisocial behaviour through policing alone. Everybody has a role to play in tackling antisocial behaviour. I think that the police would agree that they are not the only agency that can deal with antisocial behaviour. Nonetheless, policing is significant. I would not for a second underestimate the point that you make or the need for significant resources.

I have never yet met any agency, any profession or any organisation that would say no if they were asked whether they wanted more money. That just does not happen. We take police demands for resources seriously because, obviously, they undertake serious duties. The Executive has a strong record on that. By 2005-06, we in Scotland will spend £1 billion on policing. We have a record number of police officers and the number of police on operational duty is increasing. That is a significant contribution to policing in Scotland.

10:00

Mary Scanlon: Can I quote to you from—

The Convener: Wait a minute, Mary. I ask the minister to finish her answer to your question, after which a couple of other folk will speak. When we have time, we will return to you.

Ms Curran: I am sure that policing will come up as we go into other issues, but I believe that what we have done in policing is a significant part of tackling antisocial behaviour, which should not be considered to be just a policing matter.

Donald Gorrie (Central Scotland) (LD): I will make a couple of suggestions, minister. In the light of your response to the convener, could you and other people who took part in the consultation in the summer, which involved much useful informal consultation, put what you found in such a form that the Parliament can take account of it in its decisions? It is fair to say that there has been some difference in thrust between what you and others were told in the summer and what other organisations have told the committee.

Ms Curran: There is a different thrust between what some agencies say and what we believe because of the evidence that we heard directly and the knowledge that several of us have from our constituency experience. However, we should not suggest a huge cleavage on all issues, because many voluntary organisations that have significant disagreements with us, which I understand, recognise the scale of the problem, too, and hear communities' comments about it. It is important to bring voluntary organisations and communities together. Several organisations support what we are doing. I do not interpret the disparity in the same terms as you use.

We commissioned the University of Glasgow to compile all the evidence that we gathered during the consultation in a document, which was published in October. A dry document is no substitute for hearing people describe their experiences. The Communities Committee understands that better than anybody. However, we must strike a balance.

Donald Gorrie: I am not suggesting that a huge gulf exists, but the fact that the Parliament formally interviews articulate people from organisations raises a problem. If you have a chat with three or four youngsters in the street, that is just as important, but that never goes into the system.

Ms Curran: That is the point that I make and which I support strongly. We must come to terms with that politically and in the committees. When I was a committee convener, I acknowledged that appearing at a committee was second nature for some organisations, which knew immediately how to respond to a consultation document and knew the language for engaging in the debate. We must make an effort to engage with the body of people out there who are far away from that position. That can be done in a variety of ways. We made some effort to engage with them, but the Parliament must think about that issue. I accept your point and I will consider whether we can rearticulate those views.

Donald Gorrie: I will make one more suggestion. You have said often, and I am sure that you believe, that the bill is part of a package of support and other initiatives. We live in a society in which people are sceptical about politicians. It would help to defuse opposition to some proposals if the bill said more clearly what the support package was.

I know that your advisers go to great lengths not to include things in the bill, but it is worth considering whether the part of the bill on strategies should say that part of the deal is that councils must have proper mechanisms for mediation and show that they have undertaken that; proper arrangements for personal support of young people who are drifting into problems; and proper community consultation, especially in hot spots. The police gave us the new phrase "proximity conference", which is the same as community consultation.

The police, community partnerships and other organisations should be involved, and a commitment should be made to adequate youth work. That means not just facilities, but people, who are more important than facilities. Street youth work should be undertaken that makes more use of co-operation between teachers and the police. People who are concerned about the bill would find it helpful if such measures could be put in legal jargon at the beginning of the bill.

Ms Curran: That point is helpful. You flag up facilities and ensuring a connection between facilities and the young people who need them. Sometimes, we have facilities but do not have that connection. Often, they are disjointed, so somewhere along the line, we need to make that better. I was surprised to learn that some areas do not have mediation for support services and that people cannot easily trigger mediation. Those matters are important. I agree with Donald Gorrie.

I am sure that when my advisers suggest what should and should not be included in the bill, they do so from the best motives. They are good at legal jargon. If anybody can invent a wording, Michael Kellet can. I am sure that we will discuss such matters in detail at stage 2. We will consider what it makes sense to put in the bill, in guidance and in strategies. Obviously, we must discuss that with local authorities and the voluntary sector. I will return to the subject at stage 2.

The Convener: Is the balance of voices in the debate a particular issue for the bill? A balance must be struck between what communities and professionals say, but antisocial behaviour is under-recorded because of intimidation. The people who are at the sharp end are often the most silenced. When you went out to consult, did you meet people who felt that they were not being listened to and who were afraid to speak out?

Ms Curran: Absolutely. We had significant evidence of that. As Donald Gorrie suggested, the serious issue is that some people are not used to formal political dialogue—perhaps for good reason. The serious political point is that we must encourage engagement with people.

Your point is significant. Staff from a television programme wanted to accompany us to the first public consultation that we held, but they were refused entry to the meeting because people were too frightened to have them there. I have participated in several events in my constituency and I know that people will not attend if they think that there will be any public notice of their attendance. Significant hesitation is felt about having any public record; that was demonstrated when people insisted that the cameras were off for evidence that the committee took. We should not underestimate the significance of that feeling. I do not want to exaggerate, but when such fear is felt, it is real and serious.

Elaine Smith (Coatbridge and Chryston) (Lab): I thank the minister for coming to the meeting. Most people take the issue extremely seriously. As you say, the debate is about how the matter is tackled. The bill is large and contains much detail. The debate is about the detail. Perception and tolerance levels are also relevant issues; I will ask about them and about support services.

My question relates to the first point that Mary Scanlon made, before she moved on to policing levels. You are aware that we have heard concerns about equal opportunities issues from groups and from parents who have children with special needs. As I have said at committee meetings, I know that you are committed to equality issues. I commend the work that has been done on such matters since the Parliament's inception. However, we have evidence about antisocial behaviour orders, tagging and parenting orders from England, where a 13-year-old boy with autism was served with an ASBO and a sixth-form student with Asperger's was kept overnight in a cell. Those examples raise issues around training and support services.

On antisocial behaviour orders for under-16s, the policy memorandum says that although ministers are sympathetic to the concerns,

"they are confident that the requirements set out in the Bill to ensure that the circumstances of a young person as a whole are taken into account when deciding the best means of tackling difficult behaviour by that young person should ensure that ASBOs are not applied for or granted where that would be inappropriate."

We have received some evidence from England that inappropriate ASBOs may have been granted. The concern is that such ASBOs might be applied for in Scotland.

Ms Curran: I reassure Elaine Smith that I will examine the evidence from England to track the circumstances in which those ASBOs were applied for.

I hope that you will accept my reassurance that we do not wish disabled people in particular to suffer unduly. The provisions in Scotland should prevent such discrimination. The bill is more likely to protect people with disabilities than to cause them difficulty. We know what can happen to disabled people.

You make a significant point about training in granting ASBOs or in making decisions about electronic tagging. The full circumstances of the people who are involved must be understood and taken into account.

You also make a point about support services. I imagine that support services would already have engaged with anyone who was at that stage, so they should be alert to the situation.

Elaine Smith: That is part of the problem. We have heard that support services are not as robust as they should be. People are concerned that that will make matters worse when the bill's provisions come into force—those concerns have been expressed to the committee.

Ms Curran: I appreciate that you have heard that concern in evidence, but we can offer the

reassurances that people seek. We think that the bill contains enough checks and balances in the system to protect the needs in the broader equal opportunities framework. Equal opportunities are enshrined in the bill and we think that the checks and balances will give protection.

Elaine Smith: Do you think that the bill's overarching equalities statement adds to that?

Ms Curran: That is part of it, but we can also make it absolutely clear in the guidance. If the committee requires reassurance on particular concerns, we will make emphatic reference to them in the guidance.

Scott Barrie (Dunfermline West) (Lab): You mentioned that it is crucial to have joined-up approaches. We have some concerns about information sharing between and within organisations—for example, about different services in local authorities not sharing information. Recently, there has been public concern about data protection and confusion about what data can and cannot be shared under the Data Protection Act 1998. What plans does the Executive have to issue robust guidance so that we can achieve the joined-up approach that is, as you mentioned, crucial in proceeding with the strategy?

Ms Curran: As you know, the bill will facilitate information sharing and give greater clarity on what can be done under the provisions of the Data Protection Act 1998. I am sure that members will be glad to know that that act will not be abolished by the bill. Part of the problem is the hesitation on the part of some agencies, which are not absolutely clear about what they can and cannot do; agencies get varying legal advice, so some might take a cautious approach while others take a less cautious approach. The bill will give some certainty on the matter and some comfort.

We are working on the development of a model information-sharing protocol so that we can improve information-sharing practices. The bill will take that to another stage.

Scott Barrie: Assuming that the bill is enacted, will the Executive examine whether the strategies that you have outlined are being undertaken effectively? Concern has been expressed that we pass legislation but do not revisit it to ensure that it is achieving what we wanted it to achieve. It seems to me that adequate information sharing within and between agencies is crucial—you might want to return to that.

Ms Curran: I am sure that colleagues will agree that it is interesting how often that issue arises and how often people refer to the logjam in the current system. That is why we have focused on the issue. As I said at the beginning of the meeting, we must be clear that we are focused on the

implementation of the bill. That is true of all legislation; we should not just put it on the statute book and move on. We have to implement it. As part of the delivery plan, we will ensure that the bill's provisions are acted upon.

Campbell Martin (West of Scotland) (SNP): Some time ago, when we took evidence from Executive officials, some of whom are supporting you today, it was established that some local authorities do not use antisocial behaviour orders or the legislation that is at their disposal at present. The Executive officials knew which councils did not use ASBOs, but they did not know why. I take it that you have gone back to the councils that do not use ASBOs to ask them why. Can you tell us why some local authorities do not use the powers that they have?

10:15

Ms Curran: There is no obligation on local authorities to use ASBOs in all circumstances, or in particular circumstances, but we are making a strong effort to share good practice. Some local authorities will tell you that the process is too bureaucratic. From anecdotal evidence, I know that some people think that the process is too long. In dealing with an intense and serious situation, an ASBO is not the most immediate tool to use, so people use other tools instead. Interim ASBOs have changed that situation significantly and local authorities are changing their views. Some authorities were a little unsure about how effective ASBOs could be in practice; they wondered whether ASBOs were just legal instruments that would take a long time and which would not help. However, now that those local authorities have seen ASBOs being used effectively, they are beginning to reflect on them.

You would not want me to compel local authorities to do things, but we encourage good practice. People are beginning to understand that ASBOs, particularly interim ASBOs, are one of many useful tools in certain circumstances, and they have considered how they can be used effectively. I took evidence by talking to people about difficult and serious cases; in one particular case, a very good housing officer used ASBOs effectively and cured the situation.

Campbell Martin: My problem is that in my local authority area, there are parts of my home town—

Ms Curran: May I ask where that is? I do not know.

Campbell Martin: It is the sub-tropical paradise of Ardrossan.

Parts of the town have significant, long-term problems with antisocial behaviour, but North Ayrshire Council is one of the local authorities that

have never used ASBOs. Antisocial behaviour is a long-term problem and ASBOs are one of the tools that the council has in its toolbox. Why does it not use them?

The Chartered Institute of Housing investigated which councils use ASBOs. When it gave evidence to the committee, it said that the Executive had not asked it to find out why some local authorities do not use ASBOs. It was tasked with getting the statistics, but not the reasons behind them. I am concerned that the Executive seems to want to extend the use of ASBOs, but does not know the specific reasons for their not being used at present. Surely, therefore, we do not know how beneficial they will be if we extend their use.

Ms Curran: I am not sure that it is true that one cannot move forward just because one's evidence is incomplete. I do not know whether you are bidding for the Chartered Institute of Housing to get more research contracts from us, but perhaps we should consider asking for a more in-depth analysis that is qualitative rather than quantitative.

I know the field and I know that local sheriffs vary in practice. A sheriff will have a response in one particular area and a different sheriff will have a different response in a different area. Without being disrespectful to local authorities, I must say that I do not think that they have always seen the immediate value of ASBOs, which can be much more valuable than they have realised. I was in Ardrossan and I understand that there are challenges in various communities there. We encourage local authorities to use ASBOs, but we will continue with research into, and monitoring of, their use. Perhaps I will come back to you on that.

Campbell Martin: Another point that came out in evidence to the committee was the lower age limit for the targeting of ASBOs. Some witnesses stated that the age is too low and that people are not responsible enough at that age. Other witnesses thought that the age should be lower. There is evidence of children as young as eight being involved in antisocial behaviour. Will you outline the reasons why the Executive settled on 12 as the appropriate lower age limit?

Ms Curran: There is a balance to be struck between strengthening the range of interventions that is available and trying to avoid young people being involved in a court appearance. The age was deemed to be appropriate because children as young as 12 can instruct solicitors and because in other legislative frameworks they are deemed to be competent to understand civil proceedings. The answer is about consistency with other legal frameworks.

Elaine Smith: I have a short follow-up question on that. The City of Edinburgh Council seems to

make good use of acceptable behaviour contracts, which it says are an intervention tool that aims to stop problem behaviour rather than to punish the offender. The council did not say that acceptable behaviour contracts were less effective than ASBOs; in fact, it said that they had greater flexibility, perhaps because they do not involve the kind of legal process that you mentioned. Are you aware of any other councils that use acceptable behaviour contracts and do you think that they might be worth pursuing?

Ms Curran: Someone has just whispered to me that the contracts have different names in different areas. I know from our study of various models that acceptable behaviour contracts are used in Aberdeen and Fife and by a number of local authorities in England.

The City of Edinburgh Council's point is significant. We strongly encourage people to use tools such as acceptable behaviour contracts. All sorts of interventions can be used before the serious end of the spectrum is reached. The evidence shows clearly that, the sooner one intervenes, the more effective the intervention will be and the less likely it will be that one must go to the sanction end of the spectrum. We strongly encourage the use of such interventions.

In Scotland, we have not prioritised antisocial behaviour over recent years. I do not want to be too glib, but those who do not experience such behaviour do not understand what the experience is like. They do not realise that immediate solutions are necessary or that, if one is living with the problem, it is much more serious than if one is just responding to it professionally or considering it from a distance—it is not just professionals who consider such problems from a distance. In the past, we have not emphasised what needs to happen.

You mentioned different tolerance levels. Most of us would say that, if kids throw stones, that is not the most heinous crime on earth but, if that is happening night after night and if bricks or fireworks are used instead of stones, the crime becomes serious. There has been a culture of unacceptable tolerance of such behaviour. That is why part 1 of the bill, which deals with the strategies, the contracts and all the early intervention work, is important to success. We do not want people to get to the sanctions end of the spectrum and, the more that we implement an early intervention strategy, the less likely it is that that will happen.

Elaine Smith: The bill was successful even before we began considering it, in that it raised awareness, focused minds and concentrated efforts. As we have heard, we have additional police. Are you saying that, for under-16s, ASBOs would be a final resort and that interventions such

as acceptable behaviour contracts should be pursued first?

Ms Curran: Yes—we would always strongly encourage voluntary interventions before compulsory interventions. I regard ASBOs and the other interventions that we propose at the sanctions end of the spectrum as being very serious measures, which we hope would be used very irregularly. Those sanctions are there to ensure that people respond to the proposed voluntary measures.

Elaine Smith: That might help with some of the issues that I mentioned in relation to children with special needs.

Ms Curran: Absolutely. I think that the voluntary measures are there for that.

The Convener: Do you accept that, to encourage people to engage voluntarily, the voluntary measures that you highlight often need a backstop of something that is not voluntary? In evidence that we received, the point was made that a young person who has an ASBO and breaches it may end up in the criminal justice system, whereas if they had not received an ASBO but had behaved in a similar way, they would not have gone into the criminal justice system. How do you respond to the fear that ASBOs might push youngsters inappropriately into that system?

Ms Curran: I approach the issue from a different angle. The current system is such that there is a range of mechanisms for young people who offend, however one defines that—such behaviour can range from the relatively minor to the extremely serious. For young people who offend, it is proper that there is the option of the children's hearings system. Many people originally thought that, with the bill, we would undermine the children's hearings system, but it is clear that our proposals go with the grain of that system. A number of our suggestions have been welcomed and most people welcome our approach.

We must be honest and admit that the behaviour of a number of young people who have come in and out of the children's hearings system has not changed. That damages not only those who are on the receiving end of such behaviour, but the young people themselves and their opportunities. Given that they are young people, we have a special duty to sort things out for them.

At present, offending young people can come in and out of the children's hearings system and, if their behaviour is left unchecked for whatever reason—I am sure that we could debate the reasons—and the children's hearings system cannot get a grip of it, they reappear in places such as Barlinnie or Polmont. With the ASBO, we are proposing another step to fill the gap that

occurs when the children's hearings system does not work and the only direction in which a young person can head is towards the full-blown adult criminal justice system, the serious consequences of which we all know about. ASBOs are another intervention, another check and another requirement; their aim is to change such behaviour, the minds of those who commit it, the support that they receive and what happens to them. Although I concede that ASBOs might not work for everyone, I firmly believe that they will work for some people and that makes them a measure worth taking.

The Convener: I will ask one more general question before we move on to specific matters, because we must ensure that all such points are covered.

There is an argument that the definition of antisocial behaviour is too broad, in that it would pull in too much behaviour that was of a less serious nature. There is also a concern that it would give much weight to sheriffs' discretion, which could have two different effects. Although having such a wide definition would allow sheriffs to be fairly robust, it could mean that there would be inconsistency across the country. One issue is that, when a local authority promotes an ASBO in one place, it might not get the same response that is received elsewhere. That will be fed back into the system and produce a feeling that an ASBO is not worth pursuing because it cannot guarantee a result.

Does the minister wish to make any general points on the theme in our evidence of the broad nature of the definition of antisocial behaviour and what may happen as a consequence when that definition takes effect in the system?

Ms Curran: A number of points arise. I would like to clarify that the definition in the bill is based on the definition that is used in the Crime and Disorder Act 1998. As the definition has worked well in practice, we do not believe that there are strong grounds for changing it. The police and local authorities have given us the clear message that the current definition has the flexibility to deal with the kind of behaviour that we are concerned about. We think that such flexibility is necessary to capture the range of behaviour that can reasonably be considered to be antisocial.

I have studied with interest some of the evidence that the committee has received and some of the press comment on it. With due respect to the committee, I disagree with some of the comments that have emerged, because I think that antisocial behaviour is more serious than has sometimes been suggested. I will return to that.

We believe that it is right that sheriffs have the discretion to take decisions on the basis of the

specific circumstances of a case. That is why that forms part of the proposals. However, we accept your point about inconsistency and the fact that there might be issues to do with the evidence on that. As part of the delivery plan that I have mentioned, we will be working on how to promote best practice and consistency. Of course, we want to encourage the use of professional witnesses, because where that has happened it has led to the efficient execution of cases and the efficient provision of evidence, which sheriffs obviously require.

The Convener: On the issue of taking into account a case's specific circumstances, will sheriffs be expected to consider the context? One of the arguments about legislation on stalking is that it names the problem, whereas just saying that a breach of the peace has taken place can obscure things. Let us consider an example of community disorder, such as an individual who throws a stone. The fact that that happens every night is one possible context but, if we pull the camera back—so to speak—and find that there are 20 people around the person who is throwing the stone, that changes the context. Would sheriffs be expected to take that into account?

Ms Curran: I will need to come back to that issue so that I can provide absolute clarity. Part of the definition encapsulates the effect that the action in question has on people and that may be an argument for taking into account the wider context. I think that consideration of the balance of much of such evidence in whether to grant an ASBO may well come down to the sheriff's discretion, but I will seek legal clarification and come back to you on that.

I wanted to raise some points about what we mean when we talk about antisocial behaviour, but I am not sure that this is the appropriate moment.

10:30

The Convener: If committee members have no objections, I am happy for you to do that.

Ms Curran: I would be the last person to take on this committee or its convener.

I understand that the press puts a spin on how any evidence-taking session goes, but I feel obliged to emphasise that antisocial behaviour is not about people playing bagpipes, being watched by curtain twitchers or being gossiped about, and it is not about unduly dispersing young people who are engaging in conversation; it is about serious behaviour that intimidates and harasses people and, as the definition in the bill says, is likely to cause alarm and distress.

I could spend the rest of my time today listing examples of such behaviour. It includes workers'

being called off sites because they have come under persistent attack from local youths, families whose cars are wrecked by local youths because they have had the temerity to ask their neighbours to turn down their music, and neighbourhoods that are targeted by people who take over public places, stairs and closes to drink and urinate in and who intimidate people who pass by. We have to realise the responsibility that has been placed on us by the seriousness of the behaviour that we are dealing with. We have to realise that we are charged with the responsibility of responding to the issues. We cannot be patronising towards people who articulate the problem and we should not do them a disservice by underestimating the scale of the problem.

Patrick Harvie (Glasgow) (Green): I apologise for coming in part way through the meeting.

I do not think that anyone would challenge the truthfulness of the examples that you have given or the seriousness of the impact that such behaviour can have on people. Nobody who has given evidence to the committee has done that and I do not think that any member of the committee would do it either. One of the problems, however, is that there is a concern that the subjective nature of the definition that is being used will mean that the bill will cover not only incidents such as those you mention, but other situations, as well. Similarly, the relatively limited preconditions for granting an ASBO do not explain the circumstances in which it would be appropriate to do so. Could you give us a bit more of your thinking on how the definition will be limited to serious circumstances rather than its being more vague and subjective? The definition of such behaviour is certainly subjective.

Ms Curran: The fact that one cannot develop a scientific criterion for something does not mean that one cannot take action in public policy. If that were the case, we would be unable to legislate on many areas, so you have to be careful with that argument. As I said, our definition is based on that which is in the Crime and Disorder Act 1998. There is clear evidence from local authorities, the police and other organisations that it is an appropriate definition that allows flexibility and also enables agencies to determine the seriousness of the activities that might be likely to cause alarm or distress. I do not know whether Patrick Harvie's experience is different, but I have never dealt with an allegation of antisocial behaviour that was based on curtain twitching or gossiping. People know what they are talking about when they talk about antisocial behaviour.

At the heart of what Patrick Harvie is saying, I think, is that one community's tolerance level is different from another's; it would be daft not to recognise that there is some substance in that

argument. As the Minister for Communities, I have responsibility for poverty and all of the social justice issues that I am sure members understand well, and I believe that there are communities that are not fairly judged. Some communities expect antisocial behaviour to happen in their streets because they think that that is what young people in those communities do. However, if those people lived somewhere else—in a better-off neighbourhood—they would not expect or tolerate such behaviour and, as a result, all sorts of services would kick in. We have to be careful that we do not apply different standards. If anything, I think that the bill is about levelling up so that everyone in Scotland has the right to expect certain standards of safety, security and freedom to go about their business. We have to be clear that that is not the case for key sections of our communities and we have to be determined to take action about that.

Patrick Harvie: If I were in the minister's shoes, I would be worried that I was leading people to think that I was going to remove minor irritations and behaviour that gets up people's noses but which is not serious. Are you worried that people will get that perception?

Ms Curran: If anyone has listened to anything that I or any member of the Executive has ever said, they would know that that is simply not what we are talking about. We are clear about the fact that antisocial behaviour is serious—

Patrick Harvie: But the bill is not clear.

Ms Curran: I think that I have just said what the definition in the bill is; local authorities and the police have been able to work within that definition. I am sure that, if the police thought that they were being told by the Scottish Executive to take action in relation to minor irritations, they would have told the committee that. ACPOS has issued statements that acknowledge that the problem is serious. Previously, people have said that one person's minor irritation is another person's antisocial behaviour. Someone has said to me that smoking is an example of antisocial behaviour; it is interesting that some people want to ban that but are unsure about banning antisocial behaviour, which I think is a wee bit inconsistent and shows that a double standard is being applied. However, we will argue about that later.

Patrick Harvie: I am sure that we will—long and hard.

Ms Curran: I accept that there are different judgments to be made. We charge our agencies, courts, police, children's hearings and local authorities with those judgements and I think that they are all capable of making the distinction between someone who is annoying an older or

less patient person by kicking a football against a gate and someone who is engaged in serious and persistent antisocial behaviour. The police and a number of agencies acknowledge that they were wrong to dismiss the claims of people—who said that they were not simply having a go at young people or being intolerant of their neighbour who plays music night after night at three o'clock in the morning when the neighbour must get up at six—and that there was a wider problem. Previously, people were told to stop being intolerant and to let young people go about their business, and to let their neighbours play music when they wanted. I think that that attitude is shifting as agencies realise the extent of the problem.

I would always say that people who are making serious decisions—and ASBOs are a serious measure—have to make them within a proper framework and with proper regard to human rights and equal opportunities. However, we are confident that those concerns are embraced in our bill.

On the final question that you asked about ASBOs, the court has to decide whether an ASBO is necessary in order to protect people from harm. The issue is not simply the definition of antisocial behaviour; it is about protecting people from harm. Your definition of smoking, Patrick, is that it harms other people; some definitions of antisocial behaviour deal with behaviour that harms other people. We have to be prepared to face that. Your question was provocative, if nothing else.

Cathie Craigie (Cumbernauld and Kilsyth) (Lab): I want to ask about the provision in the bill to extend ASBOs to people aged between 12 and 15. We have taken evidence from a wide range of interest groups, as you know, some of which have supported that proposal and some of which have not. Shelter Scotland, in particular, had concerns that lowering the age limit would put individual tenancies at risk. For example, if a member of a family has an ASBO applied to them, a local authority might be able to convert that tenancy to a short Scottish secure tenancy, which would put the tenancy at risk. Shelter was concerned that that would lead to homelessness.

Ms Curran: I do not agree with that. As Cathie Craigie knows from exchanges that we had in the then Social Justice Committee during the passage of the Housing (Scotland) Act 2001, if there is a demotion to a short Scottish secure tenancy one of the requirements is that support be provided. Shelter Scotland strongly supported our amendment to strengthen that provision so that support and intervention automatically kick in if a demotion is delivered.

Nonetheless, tenants need to be responsible for the people who visit their properties. During the passage of the Housing (Scotland) Act 2001, we

also discussed that issue. As I recall—although I could be wrong—there was quite broad support for addressing the issue because of some of the problems that people knew about in that respect.

The Antisocial Behaviour etc (Scotland) Bill will not in any way undermine people's rights under the Homelessness etc (Scotland) Act 2003 or the Housing (Scotland) Act 2001. As Cathie Craigie knows, those acts gave people quite a substantial package of rights. People's rights are protected in that regard.

Cathie Craigie: Just to go a little bit further on the issue, Shelter Scotland's view is that, if the measure was to be extended, instead of linking an ASBO to the housing tenure of the family involved, it should be linked to support packages. I know that within the Housing (Scotland) Act 2001, support services were allied to ASBOs.

Ms Curran: Support services will not be affected—the Antisocial Behaviour etc (Scotland) Bill would not change any of that and support packages would still follow. Cathie Craigie might have been alluding to a deeper question that has troubled many of us over a number of years, which is whether tenants in the social rented sector are assumed unfairly and disproportionately to be the only people who perpetrate antisocial behaviour. That is categorically not the truth.

Local authorities have broader and more strategic powers in relation to the owner-occupier sector. We are taking action to deal with the issue—

Cathie Craigie: Can I just come in there? I was about to move on to address that subject. Witnesses from the Dundee Federation of Tenants Associations gave evidence last week. One of the points that they made was that people might get the impression that the Antisocial Behaviour etc (Scotland) Bill is aimed at tenants and that antisocial behaviour occurs only in the rented sector. What measures will be at the disposal of local authorities to deal with people in homes that they own?

Ms Curran: On the contrary, the bill is part of the answer to the frustrations that some of us have had. In the past it felt as if we had more tools to deal with people in the social rented sector than we had to deal with people in other sectors. I know that many committee members—Cathie Craigie in particular—have pursued the issues around private landlords because they did not feel that there were sufficient powers in that regard.

As I said, local authorities have strategic responsibilities to deal with people in the owner-occupied sector, but they felt that their powers were insufficient to deal with the problems in that sector. I believe that, in the past, there has been a disproportionate focus on tenants. Part of the

reason for the introduction of the bill is to ensure that we can widen the powers and the focus of action, so there is a package of proposals in respect of private landlords. People sensed that there was a vacuum in relation to what could be done about those landlords.

I repeat that part 1 of the bill takes the more strategic approach. In relation to acceptable behaviour contracts, for example, housing is part of that measure but not the only part of it. We need to ensure that owner-occupiers are no more able to perpetrate antisocial behaviour than anyone else. A range of proposals in the bill will apply equally to them.

Cathie Craigie: I will return to the subject of private sector landlords as we make our way through the bill.

We also received evidence on the resources that will be involved in making an application for an ASBO, including the resources that will be involved in the court procedures that are necessary to produce an ASBO. That evidence also came from the Dundee Federation of Tenants Associations. Its representatives felt strongly that it was unfair that the burden of the cost to produce ASBOs will fall on the shoulders of the rent payer. As we know, antisocial behaviour crosses all sectors of society and all housing tenures. What guidance can you give, or will you give, to local authorities to recognise that the problem is one that should be borne by the taxpayer and not just the rent payer.

10:45

Ms Curran: The context of my reply is the broader work that we are doing in relation to the antisocial behaviour strategies and the resources that we are to give to local authorities in terms of support for their antisocial behaviour strategies. I can give details to the committee if it wishes me to do so: I am sure that a member will ask me to do so. We think that that widens the shoulders, so to speak; it puts the responsibility on to the shoulders of the taxpayer as much as it does on to those of the rent payer.

The problem in the past was that the rent payer paid the price for tackling antisocial behaviour. Everywhere I have gone, I have heard that housing officers used to be given the responsibility for tackling antisocial behaviour—most people acknowledge that. We are trying to do the opposite now: we are trying to broaden the issue out across local authority services and in terms of Executive resources.

Cathie Craigie: Is that your view of what should happen or is that what is happening out there? If I go back to what happened in the late 1980s and early 1990s, when we were dealing with

homelessness legislation, I remember that most of the costs to local authorities fell on the rent payer. That went on for years and years before there was a real push to change the way in which those provisions were paid for. Are you, as the minister, or is your department sending out guidance to local authorities on how they should account for the costs of the antisocial behaviour strategies that they are putting into place?

Ms Curran: I will read something out, because I think that in part it answers your question.

"We will also make clear that in drawing up their antisocial behaviour strategies in terms of Part 1 of the bill, local authorities and other community planning partners should consider the best use of Scottish Executive funds and it is for them to decide whether, in the circumstances of their area, providing support to groups of RSLs—

for example—

"would be an appropriate way of achieving the outcomes of their strategy."

So, to put the answer into my own words, I do not think that we will issue, as Cathie Craigie suggests, guidance to say to local authorities, "You cannot charge this to your housing account," or whatever. We are not going to say that there is an embargo on doing that. Some people would argue that some of the proceedings might relate to antisocial behaviour or whatever.

We are providing far more resources than ever to tackle antisocial behaviour. Support will come under different guises and will be part of how we tackle antisocial behaviour—our response is not purely in terms of housing. For example, a housing department could make use of a mediation service, which might not be funded by the housing department, but by the local authority. I hope that that helps in some way to address the point that Cathie Craigie made. I do not know whether there are plans to specify that in guidance. In the terms in which the question was put, I think that that is not the case, but Cathie Craigie might like to come back to me on that.

Scott Barrie: The bill proposes that ASBOs for under-16s be sought through sheriff courts. Some of the evidence that we received highlighted a danger of there being almost a parallel legal system in which young people who are in the children's hearings system could also have orders granted against them through the court system. Are you satisfied that the correct approach is that ASBOs be sought through sheriff courts?

Ms Curran: Yes, I have to say that we are satisfied that that is the correct approach. We have considered the representations that we received on that. I said earlier that some people thought that we were going, for example, to change the children's hearings system and other things. We believe fundamentally that it is

important to go with the grain of the children's hearings system and we think that our proposals will supplement the existing work of the hearings system. They will not undermine it in any way, but are a continuation of its work.

Scott Barrie: I will stick with that point. At the moment, the more serious offences that are committed even by someone who is under 16 can be tried in a sheriff court. The requirement is that the sheriff should seek advice from the children's hearings system, but the final decision is made by the sheriff. Is there an opportunity, as some organisations have suggested in their evidence to the committee, to use a similar procedure that could in effect seek to dovetail the hearings system and the sheriff courts. That would mean that we would not end up with two completely different systems and that, for example, a children's panel could be invited to give advice to a sheriff when he or she was considering an ASBO for an under 16-year-old.

Ms Curran: We do not expect to end up with two completely different systems. In practice, we expect courts to take panel views into account; however, we are not minded to make that a formal requirement because we think that that would make the process over-bureaucratic and that it would add to the problems that we are trying to resolve. There is a requirement to consult the reporter before applying for an ASBO. We think that gives the reassurance that Scott Barrie seeks.

Donald Gorrie: There is concern that because part of the deal for ASBOs is that there will be a package of support, there will be a temptation for people to resort to ASBOs in order to access support. Would it be possible to write into the bill that there has to be a visible package of support before an ASBO is introduced?

Ms Curran: It is certainly worth thinking about how that could be framed in the bill and what its implications would be. We have to be alive to certain situations. I imagine that most young people who are in such circumstances will have had considerable intervention before—it depends, to an extent, on what you mean by support—and there may be young people for whom that may not be appropriate. However, I will give consideration to the idea. We want to make the system work, but if we try to put too much in it, that might counterbalance some of the other things that we are trying to do. Nevertheless, Donald Gorrie's suggestion is something that we will consider.

Donald Gorrie: We got some good evidence from people for whom the support system had, in the end, worked well, although it had come rather too late. The earlier that support is given, the better.

Ms Curran: Yes. I have had conversations with

people who have been through the system—guys who are now out of Barlinnie. Their strong message was that, if someone had made them listen when they were 14—if someone had got them by the scruff of the neck when they were 14—they might not be where they are today. However, they did not pay any attention because they did not feel that they needed to, or because they did not quite get it then. There is a balance that we need to strike.

The Convener: I suspend the meeting for five minutes.

10:52

Meeting suspended.

11:01

On resuming—

The Convener: I call the meeting back to order.

Patrick Harvie: I will ask a couple of quick questions about community reparation orders before I move on. A few people have questioned the upper age limit for community reparation orders. Why is the limit important and is the Executive open to reviewing it? Will the CRO disposal be made available to the children's hearings system, giving young people the opportunity to benefit from it in a purely voluntary capacity without getting involved in the court system?

Ms Curran: I am just looking at my briefing and I will go through the points, which we can discuss. We plan to introduce a new low-tariff order within the sentencing spectrum, which is likely to be particularly appropriate for young offenders and which will help to avoid the risk of premature up-tariffing of offenders, which is what I discussed with Donald Gorrie. A low-tariff order will help to avoid offenders escalating up the tariff scale and ending up in custody for relatively minor offences because other sentencing options have been exhausted. If individuals continue to indulge in antisocial behaviour by the age of 22, courts are more likely to take a serious view of the offending and to use one of the existing higher-tariff sentencing options, such as probation or a community service order.

There is consistency with other measures in the bill such as ASBOs and restriction of liberty orders. However, the number of community reparation orders for under-16s is likely to be low, as summary cases for that age group with which the courts deal are limited and, essentially, are restricted to those involving existing road traffic accident offences. It is important to remember that procurators fiscal who operate within the framework of the Lord Advocate's guidelines will

continue to refer the vast majority of cases involving under-16s to the children's reporter, so there will be no change in that practice.

Community reparation orders are a disposal for the criminal courts when someone has been convicted of a criminal offence. The court might impose such a sentence when someone has been convicted of a low-level offence that involves antisocial behaviour. As I have said, it would not be appropriate for such a sentence to be imposed by the children's hearings system, because it would be a punishment for a crime, which is outwith the beat of the children's hearings system. Children's hearings are not about setting the punishment to fit the crime; they are about determining what is in the best interests of the child. The children's panel witnesses did not support CROs being made available to them for that reason.

Patrick Harvie: Is not the concept of restorative justice, of which CROs are a part, slightly different from punitive justice? It seems strange to regard CROs as a punishment. Surely they are part of reparation, as distinct from punishment.

Ms Curran: Some people would say that reparation could be an appropriate restorative justice mechanism, as part of punishment. If we are talking only about adult offenders in the adult criminal system, we recognise that there is a place for supervised attendance orders, community service and reparation. Reparation is seen as being part of paying back society in a way that is, some would argue, more constructive than imprisonment. We would all agree that imprisonment is not always appropriate in all circumstances; it depends on the nature of the crime. That does not mean that an offence is not a crime; the point is how we respond to crime. We should not prohibit other work from being undertaken with young people or encouraging those with offending behaviour to do restoration, but that should not happen within the CRO framework.

Patrick Harvie: With regard to the age limit, you said that when persistent offenders reach the age of 22, the fact that they have not changed their behaviour will be seen as being serious enough. However, we might be talking about people who do not have a long history of offending behaviour. In some circumstances, would it not be appropriate for a court to use CROs as a disposal for people who are a bit older?

Ms Curran: If the committee came to that strong view, we would think about it and perhaps I could return to the matter at stage 2. It would not be in our interests to cut people off unduly from that option if it was thought to be appropriate—that is not our intention. We would like to see the evidence before we discuss it at stage 2.

Patrick Harvie: I know that you are keen to talk about the power of dispersal. You will be well aware of the comments that have been made in the committee. Let us consider first of all the evidence that the police gave us. They talked about resources, officers on the ground, time and staffing levels. They said that the question was about more than powers. The police told us that they do not need the power of dispersal and that they would not and could not use it. What is your response to that?

Ms Curran: I have studied the relevant committee evidence and I recognise the views that have been put to you. We give serious consideration to committee evidence and the matter has exercised our thoughts. I am sure that that reassures you.

The police made a variety of comments and, to put the matter in context, I point out again that the police support 95 per cent of the bill. I am sure that you will go with me on that.

I am not convinced that the police are saying that we need more police officers and that that will solve the problem. They are saying that they do not need the power of dispersal and that they would not want to exercise it if they had it. There is a legitimate debate to be had about police resources, the deployment of police on the beat and related operational issues.

Patrick Harvie: That is one of the things that we have heard.

Ms Curran: I will come back to that point. I want to concentrate on the principle of the power and what we are doing. We are told two contradictory things—that is how it seems to us when we consider the evidence that members have been given. On the one hand, we are told that the power is draconian and that young people who are not guilty might be swept up unduly and accused of antisocial behaviour. On the other hand, we are told that the power is not required and that the police have existing powers to deal with situations. Both scenarios cannot fit.

As is proper, I have engaged with ACPOS on a number of issues. I have gone through its arguments in depth, but I remain convinced that we need to introduce the power of dispersal. First of all, if it is not required and the police have existing powers to deal with antisocial behaviour, the obvious question to ask is, "Why do we have a problem on the scale that we currently do?" Why do we have persistent problems of serious and significant antisocial behaviour that are not being dealt with appropriately? The police would say that a couple of extra officers on every team would not solve the problem and that the nature of the problem is the reason why it is not being solved.

We have spelled out the different stages that will be required to exercise the power and that the power is proportionate. There are enough reassurances that the police will not target people unduly and inappropriately.

Patrick Harvie: You have talked a lot about the principle of the power, but the practice of it is the crucial element. It is important to take a pragmatic approach. I am uncomfortable with the power in principle, but I would accept that we must consider it if I were convinced that it would work.

Ms Curran: Right, so if I get you to think that it will work—

Patrick Harvie: You have not got me. You would get me to think about it, but I am not yet convinced that it will work. A few reasons lead me to believe that. One is that the police have told us that there will be a requirement for multiple call-outs. For example, to designate an area, they will have to come back to it again and again to demonstrate that there is a persistent problem. In addition, to disperse someone, the person will have to have returned within 24 hours and will have to have been identified as the same person who was there 24 hours previously. Some of those practical issues seem to make the implementation of the policy worthless.

Ms Curran: I recognise your point about the difference between principle and practice, and that you need to be reassured about the practice before you can consider the principle. The committee has received evidence that suggests that the police might like to do something but think that the measures are unworkable or put too much onus on them. However, that is not true.

In my hand, I have a guide to the implementation of the power of dispersal. The first step is gathering evidence, to which I will return; the second step is authorisation of the use of the powers; the third step is the use by constables of the powers; and the fourth step is the withdrawal of the authorisation to use the powers. We want everything to be as simple as possible. In our world, it is proper to take a page to explain how to exercise significant powers, but that does not make the exercise of those powers unworkable.

We have sought to reassure people who think that the powers might be unduly, inappropriately or unfairly implemented by police officers, who may go out with what is asked of them and sweep up people improperly. We do not want to sweep up people improperly. I say categorically that the powers are not about dispersing a couple of young people who are standing in a shopping centre; the powers are inextricably linked to antisocial behaviour.

On your point about multiple call-outs, a senior police officer must authorise a dispersal area and

that authorisation must be based on evidence. If there is antisocial behaviour in an area and the police are thinking of using the proposed proportionate response, I would imagine that there will already have been multiple call-outs. The police have said that they have problems with the system, because in some areas they do not get the number of calls that would properly reflect the scale of the problem. However, I have confidence that superintendents will be able to judge appropriately what is antisocial behaviour. As we said earlier, such behaviour is not about a young kid playing football, and a superintendent would not regard a call-out to such behaviour as being evidence of antisocial behaviour. The argument about multiple call-outs being required is not substantive, because the police would already be getting multiple call-outs.

Patrick Harvie: But that is the problem. The police say that their existing powers are insufficient not because of the way in which the powers are drafted, but because they have to come out time and time again, and they get there after the event or they get there and are unable to identify who has committed a particular offence. Will not all those practical problems still exist if the power of dispersal is brought in?

Ms Curran: No.

Patrick Harvie: What will solve them?

Ms Curran: Let me have a bash. I think that you are saying that the police do not have sufficient powers to deal with the issue just now.

Patrick Harvie: I am saying that they have a different range of powers and that they have given reasons why the existing powers cannot deal with the problem.

11:15

Ms Curran: Let me wind back a bit, because understanding the problem goes to the nature of the solution. Currently, we have issues in concentrated areas where there is clear evidence from local communities of significant and persistent episodes of antisocial behaviour, with which current police powers are not dealing—I accept that ACPOS takes a different view, but there is substantial evidence to support the view that I have stated. When we drill right down, we can ask the police, “If you have sufficient powers and you can take action, why is the problem not being solved? What should you be doing?”

There are two hurdles in the system. One is that when people are engaged in antisocial activity and they see the police coming, they either run away or they stop doing it. That might be thought to be a solution, but the problem starts when they come back the night after and the night after that. That is

when people feel that there is no solution. The second hurdle is that the police do not have any evidence. For example, people hide broken bottles or knives, or stop going in and out of people's houses, so the police do not have the evidence to exercise their existing powers. The only way they can exercise them, properly and understandably, is by getting evidence to support the call-outs about the behaviour.

The problem that we have—and if we do not implement the proposed measures, we will have to work out how we will solve it, because it is our collective responsibility—is that people are too frightened and intimidated to give evidence, because of the serious consequences for them. Even when they give evidence and say, “It was so-and-so and so-and-so, and this is what happened and it was really serious,” and the police try to do something about it, people are either intimidated after the event or, as happens sometimes, the young people are put through the system and are back on the streets the next week doing exactly the same thing. Local people then say, “What is the point in my having the bottle to report that to the police when these guys are straight back at my door the next time? It is a pointless, fruitless activity. It is not solving the problem. Someone needs to solve the problem for us.”

The problem needs to be solved not just for the people who experience antisocial behaviour, but for the young people themselves. I would rather that someone stepped in and said to the kids, “Look what is happening. We need to get a grip,” than that they were arrested. Under the existing model, the only option that the police have when they really want to take action rather than just have a word with them—

Patrick Harvie: I am going to move on to some of those more positive approaches in a moment or two.

The Convener: Patrick, nearly everyone on the committee has a question, so you can have one more shot, then the others will get a go.

Patrick Harvie: Can the minister explain how it will be easier under the proposal to prove that the same person was in the locality within the previous 24 hours than it is at the moment to prove that people are committing an offence in the first place? That would be helpful. Could she also talk about the more positive stuff? In order to designate a locality, why is there no requirement to demonstrate that positive engagement, mediation services, support and alternative social provision—that is, places for people to go where they can feel safe and where they want to be—have been tried and have failed?

Ms Curran: Convener, bear with me, because those are serious questions and I must take a bit of time to answer them.

The nature of the power responds to the nature of the problem. I will address your second point first and return to your first point. Under the provisions, the superintendent would designate the area and would be required to do that in consultation with the chief executive of the local authority.

Patrick Harvie: And with other community planning partners?

Ms Curran: No, with no other community planning partners. Bear with me as I take you through the logic. The fact that the police officer who would designate the area is the superintendent and that the person with whom he must engage is the chief executive of the local authority gives some indication of the seriousness of applying the power of dispersal. We see the power being used only in very serious circumstances, in which other measures cannot resolve the situation, as a result of which there must be a response. To my mind, such a response to the problem is much more progressive than are current policies.

Young people engage in difficult behaviours for all sorts of reasons. We could spend hours discussing the sociology and psychology of that, and I am sure that we would all have different views. However, there is no doubt that, crudely, there are two or three different camps when it comes to young people. There are young people who engage in serious, malevolent and dangerous activity and who, I argue, may enjoy that. There are some young people, who might have nothing else to do, who are on the margins of that and who are quite influenced or excited by such behaviour. We might think that they could be doing other things but they do not see anything else in our boring adult world that is as appealing or entertaining. There might be some substance in that—they are not going to go to Labour Party meetings instead of going out with their pals. I understand that there are some young people like that. There are also other young people who get caught up in the groups in an area. Often, the 10-year-olds will follow the 15-year-olds—we know that that happens.

I do not think that it is appropriate for us to say, even if a big gang gets together and becomes engaged in something pretty serious—when a response of the order of using the power of dispersal might come into play—that all the people in that gang should always be lifted. In any case, there is evidence to suggest that that does not really solve the problem. In such circumstances, I think that the use of dispersal powers is more appropriate.

We need to tell young people that what has been happening is serious and that it cannot go unchecked. We would all agree that that is an

appropriate human response to any child in difficulty. We cannot say that such behaviour does not matter. We might understand the reasons behind it, and we can and probably should say that, but we must check young people's behaviour and make it clear that it cannot go on for ever and that they must think of the consequences, both for themselves and for other people. The provisions on designating an area allow for that. First, they mean that we can tell young people that they need to leave the people who have been suffering in peace, that what they have been doing in an area will not happen any more and that what they have been doing will simply stop or serious questions will be asked. Secondly—and this is the profound point—they mean that we can tell people to think again before they do something because, if they do not, the consequences will become progressively more serious for them. The breathing space that young people will get in which to think again is really important.

Patrick Harvie: Does the provision allow for that?

Ms Curran: I think the bill does allow for that, but please bear with me.

That breathing space is also important for communities.

Let me explain why I think that the power of dispersal is justified. I know that things can be said in guidance or in bills—we could argue about where until the cows come home, and you can argue with me later about where you think these provisions should be—but let me explain the logic of the argument.

At the moment, the young people involved in such behaviour are simply left, although there might be some interventions with them. With this proposal, we are saying not only that there will be consequences if people do something again, but that, in the meantime—during the breathing space—we will work with them to do something to help fix whatever has gone seriously wrong in their neighbourhood.

My strong argument relates to the fact that there is a certain pressure on certain communities, but nobody is listening to the people in them. We are not co-ordinating responses, we are not prioritising resources and we are not concentrating the minds of officers to solve the problems. In the bill, we are not just saying that the answer is to get a youth worker out on to the street; we are saying that the chief executive of the local authority must exercise his powers and that, if the chief executive gives his agreement, officers will have to deliver a response. That is really serious.

Patrick Harvie's point is that, if we feel that strongly about the need for intervention, we should include it in the bill. However, we need to be

careful because there are some very standard and, I would say, old-fashioned notions about what young people want and need. More thought about that might be needed on our part. For a lot of young people in the situations with which we are concerned, youth facilities are irrelevant. They might be banned from them because of various things or they might have wrecked the facilities—we know of a lot of cases in which that has happened. Whatever, the chances are that the young people do not want to go to them.

Leisure opportunities and leisure facilities have transformed over the past generation. Free swimming is provided in Glasgow, for example. I have been considering some of the issues that arose in Easterhouse in the 1960s, when there were huge problems around leisure provision. The leisure opportunities that are available to young people now, compared with what was available to people in Easterhouse then, are phenomenal. People can make personal use of video games and so on and leisure facilities are more broadly available to young people. The situation is far from perfect, and I am not complacent about it, but the solution is not as straightforward as simply putting facilities in place and saying that we thereby create opportunities for young people. Of course we should have free swimming and other facilities, and I say good luck to people who want to play PlayStation 2 games or whatever. That is all fine, but it is not enough.

We need now to develop detailed and, I would argue, sophisticated intervention as part of our response strategy for a designated area, which would be much more along the lines of the detached youth work model, with intensive support. From my previous background, I believe that such approaches work and that, although they do not work with everyone, the earlier we can get to young people, the better. The dispersal provisions allow us to get to the 10-year-old who might see something going on in their neighbourhood and stand at the margins of it; to the 12-year-old who is thinking, "Hey, this is quite exciting"; and to the 15-year-old who thinks that they have had a really good night out, which they plan to repeat again and again. It is possible to develop strategies to distinguish and respond to those groups of people.

Patrick Harvie: The—

The Convener: I call Campbell Martin.

Ms Curran: I would be happy to come back on some of those points.

The Convener: We have only half an hour left and a number of people want to contribute. If specific points around dispersal have not been made, and if there is a space, I will let Patrick Harvie back in, but I want to ensure that other aspects of the bill are pursued.

Campbell Martin: The minister mentioned the importance of the power of dispersal. It is clear that antisocial behaviour can make people's lives unbearable when such behaviour impacts on them and, in general, I support the Executive's proposals. However, I have concerns about whether the power of dispersal will achieve what the Executive hopes it will achieve.

Patrick Harvie and the minister have referred to what currently happens if a group gathers and causes problems—the police will turn up and the group will run away. If an area in which groups can be dispersed is designated, the police will still turn up and the group that has gathered will still run away. How will the proposals on dispersal help in situations that are currently a problem? Will such problems remain?

We have taken evidence from many people, including the police. The police said that groups sometimes challenge the police and wind them up to get a chase. With the dispersal proposals, is there a danger that people will simply have to turn up in a designated area to get a chase from the police? They will not need to commit a specific crime—they will simply have to hang around in an area to get the chase that they seek.

Ms Curran: Those are significant issues, which we have considered in considerable detail. I do not pretend that the power of dispersal is the answer to tackling antisocial behaviour in all circumstances or that people who are at the serious end of committing antisocial behaviour will somehow see the light as a result of having been dispersed from an area, will see a youth worker and their life will be transformed—I do not suggest that for a minute.

The power of dispersal must be seen in the context of other sanctions and preventive elements. Some people think that it is great fun deliberately to taunt the police and I do not think that the power will remove that reality for ever. However, a number of points have persuaded me that it will still be worth having the power of dispersal at people's disposal. First, a community would be given breathing space and relief, which is important. I am sure that members have had people in their surgeries who are at breaking point and simply need some peace. They want a night's sleep otherwise they will not be able to work the next day, for example, or they want to have their grandchildren round without thinking that they will have to run a gauntlet of abuse and drink. The power of dispersal would achieve such things, which are not insignificant in themselves.

If people cannot hang around on John Street, they might go to, say, Smith Street. The power would not solve the problem of antisocial behaviour in itself, but it should help with the strategies that have been proposed. We are not

proposing only powers of dispersal. People should be able to work with some of the young people in question, divert them from such activities and engage with them.

A decision to designate an area will be taken in consultation with a local authority and will always take wider circumstances into account. In all candour, there are places in my constituency that I would love to see designated as areas of dispersal, although I do not know whether I should say for the *Official Report* where they are—doing so might be inappropriate. However, such designation might be inappropriate because all that would happen is that people would move literally down the road. Senior police officers and the local authority will have to take such matters into account and decide where they think a designated area would be an effective part-deterrent and part-intervention.

Breach of a dispersal direction could bring arrest, so the power has teeth and there would be consequences. I appreciate that some people might feel uncomfortable with that because none of us is inclined to have young people arrested. I understand the difficulties, but if a senior police officer and a local authority ask a person not to go back in very prescribed circumstances—I presume that people around the person will know about such circumstances—and the person determines to go back, that would be a serious act.

We must be very clear and not allow the police or any authority to designate an area unwittingly. If the police are getting lots of phone calls about John Street and they do not really know what is going on, it might be thought that designating it as an area of dispersal will give them a bit of peace and quiet. I do not think that it is as simple as that, because the police will have to go to the local authority and certain things will kick in as a result of that. The matter is not just one of the police dispersing and walking away; they will be involved in the follow-up.

We also have a range of measures that protect more innocent young people. There has to be evidence of antisocial behaviour having been perpetrated. Most young people would prefer to walk down a peaceful street than down a street that they are frightened of. I do not know which young people you have heard evidence from or what they have said to you, but the vast majority of young people tell me that they are scared to walk down their streets.

When members consider the bill, I ask them to think about one thing in particular. We already have areas of dispersal. There are certain streets in our communities where people are too frightened to go. Young people are too frightened to walk down those streets. If members do not think that that is happening, I can take them and

show them where it is happening. There are people who are too scared to live in their communities and, if they can, they are voting with their feet and getting out, leaving the poorest people behind. That is why we have to act.

11:30

Campbell Martin: On the point about people being scared and terrified, the police have said to me that they would love to have the resources to introduce mobile closed-circuit television units, which some English police forces use to provide evidence that they can take to court. That could perhaps work here as well. As Patrick Harvie said, the police have to establish that people have been in a designated area in the previous 24 hours. However, if those people run away, the police cannot do that. If the police had enough resources to use such facilities, they could drive past and record on film the fact that those people were hanging about 24 hours before and they could then take action.

Ms Curran: Yes, the police have said that to us when we have talked to them about the implementation of the bill. CCTV is one of the things that they would use to produce evidence. I remember a debate many years ago about whether CCTV improperly infringed people's rights, stigmatised areas or allowed the police to finger people. That was before the technology was as good as it is now. Mobile CCTV is now a useful proposal to consider. I do not think that the use of such cameras alone will address the substance of what we are trying to deal with, but I understand that we have allocated more funding to CCTV.

Elaine Smith: I think that I have almost as many papers in front of me as you have, minister. I hope that I can find what I want to talk about. It is linked to what you said earlier about dispersal being better than the police lifting people. However, you went on to say that, if the people came back, that is what would happen to them, although that would be for coming back, rather than for committing a breach of the peace.

The police currently have the power to take action in cases of breach of the peace. That does not need witnesses from the community to come forward, but just requires corroboration by two police officers. Moreover, under the Civic Government (Scotland) Act 1982, the police have powers to move groups on if those people are loitering or causing an obstruction. I assume that that provision covers people loitering in shop doorways, in gateways, on footpaths and on bridges, as well as the kind of things that you have talked about. How do those powers differ from what you are trying to introduce?

The other week, I was concerned about how the police would prove that it was the same person

who was returning to an area. There would have to be 24-hour policing in the area to catch them. When I asked the police how they would prove that the person was the same, Chief Constable Strang said:

"To do that, we would need to take their name and address and record the fact that the person had been so warned."—[*Official Report, Communities Committee*, 21 January 2004; c 508.]

However, if the person ran away, how could the police do that? I am curious about that.

In addition, how would you ensure that other groups—for example, peaceful protests—would not be dispersed if the proposed powers were introduced?

Ms Curran: We have looked at the Civic Government (Scotland) Act 1982 in detail. You will know that section 53 of the act provides for exactly what you have described. It could provide opportunities to deal with the problem that we are addressing, but we do not think that it would, as it does not target the specific problem that we are trying to deal with. Groups of people might obstruct the passage of others, but they might well not be doing so. They might stand back and let other people through when the police are present. In that case, the police would be powerless under that provision. The gang might congregate in a park or other area where the concept of lawful passage is not relevant. In the five years to 2001, only eight people in Scotland were convicted of a breach of section 53. There were no convictions in 1997 and 1998, five in 1991, one in 2000 and two in 2001. If the police thought that the power in that section was appropriate, they would use it. There are all sorts of qualifications to the power and it does not fit with the behaviour that we are trying to address.

We have also considered breach of the peace. The criteria that constitute a breach of the peace in Scots law were set out in the case of *Smith v Donnelly* in 2001—I say that in case members did not know it. The decision in that case makes it clear that the mere presence of a group of people, irrespective of their number, cannot be a breach of the peace. I am sure that that is greatly reassuring to the committee. The subjective opinion of members of the public that the group is causing them alarm or distress does not render the group's behaviour criminal. Again, there has to be evidence.

I will address the points that have been made about human rights and the legal right of assembly. Lawful processions under the Civic Government (Scotland) Act 1982 are specifically excluded from the dispersal power in the bill. The effect is the same in relation to trade union activity—I think that that is what you asked me about. We are satisfied that the provisions

advance the legitimate aims of preventing disorder and crime, ensuring public safety and protecting people's rights and freedoms. We are also satisfied that the provisions are a proportionate response to the issues of distress and alarm. No restrictions can be placed on the exercise of people's rights other than those that are prescribed by law and are necessary in a democratic society for, among other things, the prevention of disorder and crime. That guarantees freedom of peaceful assembly and freedom of association with others. I hope that that makes sense.

Elaine Smith: That is helpful. You gave the figures on the use of the power under section 53 of the Civic Government (Scotland) Act 1982, but earlier in your evidence you talked about focusing the police's minds on the fact that antisocial behaviour is a problem. If we do that, perhaps the power will be used more often. Obviously, we cannot predict that that will happen, but perhaps the power has not been used for some of the reasons that you mentioned earlier in your evidence.

Ms Curran: Given that the police are focusing on antisocial behaviour and that they recognise it as a priority, I encourage them to exercise all the powers that they can to deal with the problem. There has been much focus on the power of dispersal because the chief police officers have drawn a significant amount of attention to it. We must ensure that people appreciate that the use of that power must be proportionate and must relate to serious incidents. The power will not be introduced easily throughout Scotland; there are strong caveats attached to it.

I will address the other point that you raised. Currently, the police cannot act if there is no evidence of an offence when they arrive or if there is no obstruction of the public right of way. That will change, in specific circumstances, on the basis of prior evidence and consultation. That is how the bill allows us to call for intervention.

The Convener: Two other members want to ask about dispersal. After their questions, we wish to cover other substantial elements of the bill. I hope that it will be acceptable to the minister if we have some written correspondence on any aspects that we do not reach and on any items that committee members have chosen to make a lesser priority. I do not want to close down this part of the session—I recognise how seriously people take the issue—but I want to ensure that we have time to move on to discuss issues such as landlords.

Donald Gorrie: Minister, we have heard encouraging evidence that, where good community consultation takes place, it can often defuse the issue and the problem is greatly diminished or goes away. You spoke about the

importance of street youth work. Would you consider including in the bill a provision whereby, when chief superintendents have discussions with councils, they must ensure that there is proper community consultation to try to sort out problems? I think that that would help. The part of the bill that we are discussing is strong on the heavy side but not so good on the preventive side.

Ms Curran: Part of the reason why it might appear to you that we are heavy on the sanction side and that there is less emphasis on prevention is the nature of how legislation is drafted. This part of the bill deals with that subject and we will deal with prevention and early intervention in another part of the bill. Try as I might to tell people to connect the parts of the bill, often, for all sorts of reasons, people telescope in on certain provisions and fail to see them as part of the wider package. If we get the earlier stuff right, the part that we are talking about becomes of less importance.

I do not want to be glib about how we can change things but I think that community engagement in its broadest sense—obviously, consultation would be required in that regard—is extremely significant. When a community is alive, organised and has assertive leadership—much as that pains us sometimes—it is easier to solve problems in that community. I would strongly encourage that and I would see community involvement in some form as being part of that process. Patrick Harvie referred to the importance of ensuring that young people are involved and that it is not only adults who are determining what the solutions should be.

We would be sympathetic to your suggestion, but I will have to get back to you on whether we would include the issue in the bill. I accept that it will take more than simply the powers in the bill to solve the problems and that it will be important to take further action around the bill.

Cathie Craigie: I have listened carefully to your evidence, minister, and you will not be surprised to hear that I support the power of dispersal.

Earlier, the convener mentioned a report in a Sunday newspaper this weekend. The report stated:

"Opponents claim that, under the current plans, police would have to disperse gangs purely on the word of a local resident. They would not have to offer a reason for why they want to remove such gangs, according to critics."

I do not know whether the Scottish Executive was asked to comment, but it certainly had an opportunity to correct that statement. How do you respond to the statement?

Ms Curran: There are a number of responses. In defence of our press office, which is usually assertive and effective, I should say that sometimes it might not be shown the broader

context of something that it was being asked to comment on. I have to say that, if, as the convener indicated had happened in this case, a report had been leaked prior to its formal submission when I was a committee convener, there would have been war.

Cathie Craigie: That is not quite the point that I am talking about. There is a suggestion that a local resident can—

Ms Curran: I am not dealing with the issue facetiously. The reason why the leaking of a committee report is a serious matter is because it makes it impossible to deal with the evidence properly—people get only a partial glimpse of what was said. In all honesty, I do not know whether that newspaper report reflects what the Justice 2 Committee said. With all due respect to those who work in the media, I will not take their word for it.

Cathie Craigie: I am sorry if I have not been clear, minister. The newspaper report is not quoting from a leaked report; it is saying that opponents of the measures have made a claim. I am looking for you to say that that claim does not marry with the evidence that you have given this morning.

Ms Curran: The claim is quite wrong, however it is articulated. I am sorry; I misinterpreted what you were saying. I thought that you were talking about a quotation from the Justice 2 Committee's report. I apologise humbly and ask for my comments to be struck from the record.

It is wrong to suggest that the police can designate an area of dispersal on the word of one resident. There must be prior evidence of the need for that action to be taken. The decision must be taken on the recommendation of a superintendent—a highly professional senior police officer who will have access to a range of evidence that will enable him to make that recommendation—and the chief executive of the local authority. That is not just the word of one resident. I think that there was another part to your quotation.

11:45

Cathie Craigie: The article says that the police “would not have to offer a reason for why they want to remove such gangs, according to critics.”

Ms Curran: No, that is categorically wrong. They would have to offer a reason.

The Convener: I have some questions that Stewart Stevenson wanted to ask. He has sent his apologies.

My colleague Donald Gorrie mentioned the importance of community mediation. However, do you acknowledge that, because the powers of

dispersal are very far down the line and have to be implemented slowly—everything else has to be done first—community leaders will have voted with their feet and moved away? Communities are being divested of the very people who have had the bottle to carry out mediation and to hold things together, whereas those who remain are more silent. There is a downward spiral. As a result, could it be argued that, because of the broader social inclusion issue, some of the measures in the package should be implemented more quickly?

Stewart Stevenson also wanted to know how many authorisations to designate an area would be made in a year. Moreover, what kind of resources would be required to prepare such authorisations? After all, you will be aware of the suggestion that people will perceive the proposed measures to be as slow, cumbersome and expensive as ASBOs were felt to be in the early days. Will you reflect on how quickly the measures can be implemented and how much they will cost? Will you listen to the argument that the process should be less bureaucratic?

Ms Curran: I will first address your broader policy point that communities are vulnerable in areas that are associated with persistent difficulties. I would not say that those areas are affected only by youth disorder; they also face problems such as chronic underinvestment and the legacy of deindustrialisation—I will not go on in case I make an inappropriate comment, but I will simply say that there are all sorts of reasons why communities are vulnerable. I am not suggesting for one minute that youth disorder is the cause; indeed, more than anything else, it can be a symptom.

Nonetheless, we have to come to terms with some serious issues. For example, we have made substantial investment in housing in certain areas—I immediately call to mind an area of Greenock where only three or four years ago £20 million was spent on renovating a block of flats. However, because people simply concentrated on the fabric of the housing and did not put things in their proper context, the residents are now moving out. That is happening not because the housing is inappropriate—because there is dampness or anything else—but because the people are frightened of the kids going in and out. As a result, we have to address the broader issue of the viability of regeneration investment in such areas.

Some of the community support and social care networks, which might involve community leaders, are feeling the strain and beginning to collapse. For example, the daughter in one family might move away and will not be close to her mother any more. There are very serious consequences of any neglect in this social policy area.

Your comments appear to be a bit of a qualification of what Donald Gorrie said about community consultation. Community consultation does not mean simply consulting three or four people without considering the community's broader issues.

The Convener: However, if any strategy of community engagement is to be effective, we have to ensure that we hold the community together and have enough faith that what we are doing will be worth while. As a result, we need what I would call a backstop mechanism. The fact that communities can regenerate as well as degenerate gives us something to build on. Nonetheless, we have to take some tough measures if we are to have the space to introduce other aspects.

Ms Curran: I suppose that people might say that community spirit is a part of regeneration, because it means that people do not feel abandoned and are supported when they are in trouble. I see this policy as a dimension of that.

It is interesting that those at one end of the debate say that the powers of dispersal should be taken quickly, cleanly and effectively and that any caveat might undermine the process. Although we can trust the police and local authorities at that senior level to agree on an act of dispersal, we must reassure and give guarantees to people who are concerned that the power might be inappropriately applied. There is no doubt that some people feel that the balance should be tipped in favour of speed, because they believe that police officers and local authorities are held to account for their actions in different ways.

As for Stewart Stevenson's other question, it is difficult to predict how many people would benefit from or be on the receiving end of the authorisations. I am absolutely assured that, although people might not agree with the power's implementation, the power will be used appropriately and proportionately. As I have always said, I see the measure as being at the extreme end of the spectrum. I do not imagine that the power would be used all over Scotland. We could keep in touch with the committee as we develop an understanding on that.

Mary Scanlon: Sections 20 and 21 cover another significant area of principle—ministerial directions and guidance. In its written evidence, the Scottish Police Federation stated:

"Any inference that policing decisions have been taken for political reasons would threaten ... Public confidence and support".

ACPOS stated that the matter was not for ministers. Hugh Henry, the Deputy Minister for Justice, said that he was prepared to review sections 20 and 21. Do you think that you perhaps

overstepped the mark? Have you considered a review of those two sections?

Ms Curran: I would not concede that we have overstepped the mark. We wanted to be sure about the circumstances in which the directions would be used. We were not intending to interfere with the operational independence of the police or otherwise to step inappropriately beyond the boundaries. We are prepared to review those sections to ensure clarity. We will keep the committee in touch with that and we will take on board its views, as appropriate.

Scott Barrie: I have a question on parenting orders, which follows on from some of my questions about children's hearings and their interaction with the sheriff courts. Parenting orders will be a disposal from the court, rather from the children's hearings system. A number of organisations have argued that one of the problems with children's hearings is that, in that system, it is possible only to put a sanction on a child; it is not possible to address issues relating to the parent, if those are deemed to be the cause of concern. Given that, do you feel it appropriate to leave it to the sheriff court to apply for parenting orders or do you see the order as an extra disposal for the children's hearings system, given that it deals with the child?

Ms Curran: I am not sure whether to answer yes or no to that. Yes—I am satisfied with what we are proposing. I think that the parenting order addresses the lack of empowerment that some people sense exists in the children's hearings system. To give a similar answer to one that I gave earlier, I believe that giving such a power to children's hearings would change the nature of the system and deflect from the central focus of its interests in the child. Given that a breach of a parenting order is a criminal offence, the use of such an order by a children's panel would fundamentally change the nature of the hearings system.

We do not want to introduce into a system that is intended to be open and inclusive and to be focused on the best interests of the child a focus on legal procedures whereby legal representation is mandatory. I ask you to note the fact that reporters and children's panel representatives have given evidence supporting the use of parenting orders through the courts. There is to be a broader review of the children's hearings system, but I think that people who are involved in the system believe that the proposals represent the appropriate model.

Scott Barrie: The issue of resources is key. The policy memorandum says that the option of parenting orders will not be used until such time as the resources have been made available and people are deemed not to have accepted other

options. Have you thought through where any pilot areas might be located? According to what timescale might such schemes get up and running?

Ms Curran: One of the interesting things that came out of our considering and drafting the various proposals was the gap in the provision of support and assistance to parents—parents of all sorts of shapes and sizes and in all sorts of difficulties. Judging from the evidence that we have considered, we believe that support can make a real difference for parents. We are considering the whole infrastructure of support services. Work is being undertaken to assess the current infrastructure and what we do about it. I will be happy to keep the committee informed about that. When we step in and try to fill the gap in the current system, that will make a significant contribution to resolving some of the issues. The result of that work will not be a panacea, but it will help to begin to tackle some of the issues.

The Convener: I am conscious of time. I propose that we do not go on beyond 12.15 pm—I hope that that is acceptable to the minister. We are genuinely appreciative of the amount of time that she has given us already. I will take Cathie Craigie and then one final questioner. If there is time after that, I will accommodate one or two last points.

Cathie Craigie: I will move on to part 7 of the bill—perhaps I should say move back—and the antisocial behaviour notices as they apply to the private sector. Although mixed messages came across in the evidence that we received, it is fair to say that there has been a fair deal of support for the measure. However, there are a couple of issues that cause concern, one of which is intimidation in the private sector. A private landlord might feel intimidated by a tenant if such a notice were served. Support and advice need to be given to private landlords to assist them through the process. Another concern is that tenants in the private sector might behave in an antisocial way deliberately in order for a notice to be served on the landlord, as that would mean that the landlord could not collect rent from them. What provision will be made for rent to continue to be collected? Who would do that?

A further problem was raised by local authority witnesses in evidence to the Local Government and Transport Committee about applications for management control orders. As we know, problems with water penetration and dampness can arise in private sector properties. Who would be responsible for repairs that required to be carried out in such circumstances and who would pay for them?

Ms Curran: Quite a number of substantial points were made in that question and I might have to

ask one of my officials to respond to some of them. On the question about providing support for landlords who are being intimidated, the first act would be to try to solve the problem. An approach would be made to the private landlord to see what could be done. Part 7 of the bill came about as the result of a sense that backstops, as the convener put it, are needed to make people respond to problems. People need to know what the consequences of their behaviour are and about the series of steps that can be taken to deal with the problem.

There could be tenants who will not pay their rent and who will try unduly and inappropriately to blame the landlord for neglecting to solve the problem of antisocial behaviour when the problem relates to them. The incentive in the scheme encourages proactive management of the issue, as that is more likely to resolve the issue.

In any event, some—but not all—people who are engaged in antisocial behaviour might rely on state support to provide rent to their landlord. I think that the generally held view is that it is inappropriate for people to claim the resources of the state at the same time as they neglect their basic duties as a landlord. We need to get that balance right. We are saying that it is not appropriate for people to keep collecting housing benefit or rent when they are not managing their properties properly. If that is a challenge to some people who have difficulties with that, we have to question their ability to be a landlord—I am sure that I have heard you say that. I am certain that we have to encourage landlords to seek wider help in the resolution of the issue. We need to be prepared to take action if a landlord will not work with a local authority to resolve an issue.

Under the management control order provisions, in the circumstances described the local authority would be required to step in. Local authorities can deduct costs and regulations will provide for redress where costs exceed rent.

12:00

Cathie Craigie: I am not asking the minister to give us all the detail today, but perhaps she can clarify the matter in writing after the meeting. Where does the money go in the meantime? Who holds it? Who would the local authority claim the money back from?

Ms Curran: I will write to the convener about that.

Cathie Craigie: Part 8 of the bill gives local authorities the power to designate an area where private landlords will be required to register. There have been mixed messages on that from people who have given evidence to the committee. Some feel that designating an area would be negative

and might move the problem elsewhere. They feel that it is not appropriate to deal with the private sector in the bill. Other people have said that a registration scheme should be compulsory across the board. Some of my constituents have said that part 8 does not go far enough and that all private landlords should be licensed and every property in the private rented sector should be registered with the local authority. They tell me that criminal activities are going on in some of the properties and there is a suspicion that some private landlords are using money that they have gained through criminal acts to buy property and affect the value of the property in their close or their street. Is the Executive intent on sticking with what is in the bill or has it been listening to the evidence that we have been taking and opinions that have come not just from my constituency but from other constituencies that are having the same problems with the private sector?

Ms Curran: I dare not say that I have not been listening; you would not let me off with that. We have to consider in which bill to include the provisions. Members will know that the housing improvement task force has reported. We have proposed a bill on private housing and people are aware of all the different dimensions of that. There was a judgment call as to whether to include in this bill the measures that are in part 8. Registration areas could be linked to issues to do with the standard of properties, repairs and the wider responsibilities of landlords, which are serious issues. If we had not included the provisions in this bill, you might have. People would want to see the provisions in the bill, because they see a strong connection between antisocial behaviour and private landlords. One of the most striking aspects of the consultation was how often the issue of private landlords came up at meetings that I attended. I was genuinely surprised by that. If we had not attempted to make a move on the situation, people would have felt let down by us. We had to take immediate action, because some people are having real difficulties.

However, what we do in the bill has to be consistent with the forthcoming housing bill and we will make every effort to ensure that it is. We could do a lot of things to improve the operation of the registration scheme to try to minimise some of the difficulties you have with it and some of the unintended outcomes that there might be, such as shifting the problem. We need to have a workable scheme and if people were to make alternative proposals, we would need to ensure that they would work. There are good private landlords and the landlords who do not manage antisocial behaviour are in the minority. We have to tackle that minority, but we also have to strike a balance. I am sure that the committee will come back with views on that. Of course, if the committee said that

there is something that the Executive has to consider, we would reserve the right to disagree, but if we thought that there were alternative schemes to tackle antisocial behaviour more effectively that were in keeping with our general approach in dealing with the private housing sector, we would give them proper and serious attention.

Cathie Craigie: I accept what you are saying. I agree that the majority of private landlords are good and have proper management processes, and they would probably agree that the minority—the rogues—are getting private landlords a bad name. Are you still convinced that the bill is the right place to deal with antisocial behaviour in the private sector but not conditions in the private sector, which will be addressed in the private housing bill?

Ms Curran: Yes. We remain of the view that it was appropriate to introduce sections to deal with antisocial behaviour in the private landlord sector. For good reasons, some people thought that we should take a wrapped-up, consistent approach and wait until the private housing bill before addressing that issue, but that would have taken too long. Our approach is consistent. The bill is a rounded bill that deals with antisocial behaviour, and we need to take action against landlords, although I recognise that people have criticised the relevant sections and wish to discuss them further.

Cathie Craigie: Unlike you, I have not had the benefit of consulting the whole of Scotland, but do you agree with the message that I have received from my constituency, which is that unless the bill deals with the private sector, it will be difficult to deal with antisocial behaviour in some areas, because the antisocial behaviour coming from the private sector is such a significant part of the problems faced by communities?

Ms Curran: We thought about it, and our final view was that if we had not taken action in the bill, it would have been an opportunity lost. That does not prevent us from taking action later. We will need to ensure that there is consistency between this bill and the forthcoming private housing bill, if they pass through Parliament unscathed. However, the action that is required will depend on the outcome of our discussions and on the outcome of stages 2 and 3. We are prohibited from moving outwith definitions of antisocial behaviour and into more housing-related matters. We seek to keep that division. However, we see the bill as an important part of our policy to tackle antisocial behaviour.

The Convener: We should not allow Cathie Craigie to underplay the work of the committee, because the whole committee went out throughout Scotland. We may not have gone everywhere

individually, but we got the same flavour of a lot of the issues.

Elaine Smith: I wanted to explore some of the issues to do with parenting orders and electronic monitoring, but I understand that we do not have time to go into them, so the committee will take up those issues with the minister in writing.

Minister, I am still unclear about your interpretation of antisocial behaviour. I asked the police in particular about that issue. The bill is wide ranging, because it addresses private landlord issues, litter, fly tipping and spray paint, but it also addresses what you refer to as serious antisocial behaviour, although that is not to say that those other things are not serious. I will put to you what I said to the police a fortnight ago, and see what your response is.

If a large group of people—I think that I said 150—were running down a street, setting cars alight and breaking windows, I would view that as riotous behaviour, rather than antisocial behaviour. The police said:

“Section 110(1)(a) describes antisocial behaviour as acting

‘in a manner that causes or is likely to cause alarm or distress’.

It is behaviour that causes alarm or distress but does not amount to assault or damage, because someone who commits assault or who does damage would be dealt with for assault or damage, as that would be the more serious offence.”—[*Official Report, Communities Committee*, 21 January 2004; c 509-510.]

What are we talking about here? What is antisocial behaviour? What is criminal? Where do the two come together?

Ms Curran: I do not doubt that there is an interface with violent behaviour, which the law categorises in various ways. You and I have legislated to tackle domestic abuse, which people used to say was not really violent or important, because it happened in a domestic dwelling. That was neglected before, and we redefined it and the interface with definitions of violence. There is an interface between antisocial behaviour and various other acts, just as there was with domestic abuse. Something that could start as antisocial behaviour could end up as a serious violent assault.

I am saying that the definition that I read out earlier, which relates to the causing of alarm and distress, is the one that we are holding to. I understand the points that Patrick Harvie made; there is an element of subjectivity. My definition of alarm and distress may not be the same as your definition, because it involves an element of personal response.

Elaine Smith: I am sorry to interrupt, but part of the problem might be the fact that, in a different part of the bill—part 8—the definition refers to the causing of

“alarm, distress, nuisance or annoyance”,

which I think causes confusion. If there were a curtain twitcher—as you put it—who did not happen to like youngsters gathering at a street corner on their bikes, because they felt that the youngsters were looking in their windows, would that nuisance be covered? There are issues here.

Ms Curran: I think that we can answer those concerns. It is spelled out that the change in the definition in parts 7 and 8 relates specifically to housing. That will ensure consistency with the Housing (Scotland) Act 2001, in the discussions on the passage of which I think that you played a part. We wanted to ensure that the bill covered the necessary range of issues on housing responsibilities.

It is proper that we have stuck with the definition that works for the police, the local authorities and the Law Society of Scotland. They have all found the definition workable and flexible; it has worked in law and in practice, so I think that we will find it workable. It is also consistent with the legal framework within which we are operating. That does not mean to say that there are no operational matters to which the police need to give attention when they decide that one charge takes priority over another. Such matters are for the police; that is the current situation—the legal system works that way. When people are engaged in illegal activity, they are sometimes engaged in different illegal activities at the same time and the police make a judgment about how to pursue matters.

Given that the police, the Law Society and the local authorities are satisfied with what we propose, I think that it represents a satisfactory basis for proceeding with the bill's legal framework. All the other support services can respond to that in a variety of ways.

Elaine Smith: It could be illegal for someone to reverse their car out of their drive, but you will be leaving the judgment about whether to prosecute for that entirely up to the police's judgement.

Ms Curran: That goes to the heart of what I have been trying to say to the committee. There is now a legal definition of antisocial behaviour and there is a commonsense understanding of antisocial behaviour. It is critical that, in this Parliament, we do not trivialise what people experience antisocial behaviour to be. I have never heard of a car being backed out of a road being described as antisocial behaviour.

Elaine Smith: I am not doing that.

Ms Curran: With all due respect, I do not think that there is a police officer in Scotland who would interpret that as antisocial behaviour and I do not think that the bill's provisions would allow them to do that.

Elaine Smith: I am saying that that could be an illegal activity, not an antisocial activity. However, it would be for the police to make a judgment on whether they intended to lift someone for doing that. I want to make it clear that I would not trivialise antisocial behaviour.

The Convener: The test is whether activities that were dismissed in the past are now taken seriously. The minister gave the excellent example of domestic abuse.

Ms Curran: I will return to the points that I made earlier. It would be nice if we could invent a simplistic definition that summed up the human experience of antisocial behaviour as it is perpetrated, but such a simplistic approach would probably not do justice to that experience, so it is better to try to encapsulate what the experience means.

As I tried to explain, the experience of antisocial behaviour does not just relate to a one-off event; it is about the persistent and cumulative experience of such events. When interim ASBOs were introduced, people said that they were inappropriate, that they would be used improperly and that we would categorise the wrong activities as antisocial behaviour. We are now criticised because not enough activities are categorised as antisocial behaviour and because ASBOs are not used appropriately. There is a form of human activity that can be categorised as antisocial behaviour, but we cannot be absolute in defining where it starts and where it stops; the same is true with all sorts of criminal activity, especially when mitigating circumstances are taken into account. That is why we have a highly complex legal system in which there are so many lawyers who get paid such a lot of money; we need assistance to help to ensure that we understand it and to ensure that people's rights are properly protected in it. In the past, antisocial behaviour has been improperly excluded from the justice system—in the broadest sense. This is one dimension of that.

One member of the committee has asked me to be clear about the operational freedom of the police. I hope that I have reassured members that the police will have the operational freedom to ensure that they can ascertain the appropriate processes that should take place and the appropriate legal sanctions that should apply. There are enough caveats about police operations to reassure people that the gathering of evidence of antisocial behaviour would not be about curtain twitching.

12:15

The Convener: I think that we have come to the end of the session. I thank the minister and her officials for coming and I appreciate the co-

operation of members in keeping the minister here for only 15 minutes longer than expected. The session has usefully provided responses to some of the issues that have been highlighted in relation to the bill.

We will write to the minister about the outstanding issues and we look forward to receiving her response. Elaine Smith was right to say that those issues are too substantial for us to have a stab at raising now, only to get half a response.

We move on quickly to agenda item 2. We have been asked to decide whether to discuss an issues paper on the bill in private at our next meeting and whether to discuss our draft stage 1 report on the bill in private at future meetings. The idea is that at next week's meeting we will flag up the key issues that we will wrestle with in our report and that we will discuss the report itself in private at subsequent meetings.

I want to highlight to members that there is a strong possibility that additional meetings might be required in the two weeks after the February recess. I am sure that everyone on the committee shares my sense of responsibility for getting the report right. I have been frustrated that we have had to close down discussions or questioning in open session. It is important that members have enough time to interrogate the report so that it can show areas where we have reached consensus and be clear about what we disagree on. I hope members will take that into account.

Do we agree to discuss in private the issues paper at our next meeting and the draft stage 1 report at future meetings, to ensure that we give ourselves enough space to do that properly?

Members indicated agreement.

Meeting closed at 12:18.

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