

JUSTICE 1 COMMITTEE

Tuesday 13 November 2001
(*Afternoon*)

Session 1

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JUSTICE 1 COMMITTEE

30th Meeting 2001, Session 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

Gordon Jackson (Glasgow Govan) (Lab)

COMMITTEE MEMBERS

*Lord James Douglas-Hamilton (Lothians) (Con)

*Donald Gorrie (Central Scotland) (Liberal Democrats)

*Maureen Macmillan (Highlands and Islands) (Lab)

Paul Martin (Glasgow Springburn) (Lab)

Michael Matheson (Central Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED:

Stewart Stevenson (Banff and Buchan) (SNP)

WITNESSES

Ian Bannatyne (HM Prison Low Moss)

Chris Bartter (Unison Scotland)

Stuart Campbell (HM Prison Peterhead)

Michael Crossan (HM Prison Low Moss)

Adam Gaines (Disability Rights Commission)

Derek Gunn (Scottish Prison Service)

Ian Gunn (HM Prison Peterhead)

Maire McCormack (Disability Rights Commission)

Bill McKinlay (HM Prison Barlinnie)

George Peden (HM Prison Barlinnie)

Lynn Welsh (Disability Rights Commission)

CLERK TO THE COMMITTEE

Lynn Tullis

SENIOR ASSISTANT CLERK

Alison Taylor

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

The Hub

Scottish Parliament

Justice 1 Committee

Tuesday 13 November 2001

(Afternoon)

[THE CONVENER *opened the meeting at 13:37*]

The Convener (Christine Grahame): Good afternoon. I welcome everybody to the 30th meeting this year of the Justice 1 Committee. As usual, I remind everyone to turn off their mobile phones and pagers. I have received apologies from Michael Matheson and Paul Martin and interim apologies from Gordon Jackson, who may come to the meeting at some point. We welcome Stewart Stevenson MSP to the meeting. His interest is in Peterhead prison, which is in his constituency.

Members will already know this, but I announce to the public that the Protection from Abuse (Scotland) Act 2001, which the Justice 1 Committee considered, received royal assent on 6 November. It is the first Scottish Parliament committee bill to receive royal assent, something of which the Parliament and both justice committees should be proud.

Prisons

The Convener: I welcome Ian Gunn and Stuart Campbell from HM Prison Peterhead: one is programmes manager and the other is the new governor. I also welcome Derek Gunn, who is adviser to the operations directors of the Scottish Prison Service. We are to have a short opening statement from Ian Gunn, whom I invite to proceed.

Ian Gunn (HM Prison Peterhead): I wish to confirm that it is Stuart Campbell who is a programmes manager at Peterhead.

The Convener: I beg your pardon.

Ian Gunn: He has been at Peterhead for 14 years. He is involved in the management and delivery of the STOP programme, in which I know the committee is particularly interested. Derek Gunn is an adviser to the operations directors at SPS headquarters. He will assist me with any questions that I feel he will be able to help with.

I would like to highlight the key points that I made in the briefing notes that I supplied. Peterhead's key role in the SPS is to challenge the offending behaviour of adult male long-term sex offenders and thereby reduce future crime. The cornerstone of the work is the STOP 2000 programme, which is supported by other offending behaviour programmes and delivered by specially trained prison officers, psychologists and social workers. The work at Peterhead is internationally recognised. All staff in the prison support the prison's core business of delivering the SPS correctional agenda.

The condition of the prison estate at Peterhead is the subject of much concern. Many of the buildings, including the residential areas, are exhausted. Rebuilding is required, which is a matter for the estates review. The review is having an unsettling effect on staff and prisoners at Peterhead.

I am delighted to have been given the opportunity to maintain and develop Peterhead's excellent work. The prison can be proud of its achievements, including the awards that it has received through the modernising government initiative. After my first six weeks as governor of the prison, I must say that I have been very impressed by the standard of work that has been produced there.

The Convener: I open the discussion to questions from members. I will do Stewart Stevenson the courtesy of allowing him to ask the first questions, as he has been pursuing the issue of Peterhead prison quite vigorously.

Stewart Stevenson (Banff and Buchan)

(SNP): Thank you, convener. It is nice to see Ian Gunn again. I am glad to hear that your first six weeks have shown you that the prison is in good heart as far as its programmes are concerned; indeed, you mentioned the many awards that the prison staff have received for their work. Your predecessor, Bill Rattray, commissioned a report from Professor Bill Marshall on the prison's work, in which the observation is made that Peterhead is one of the top three prisons of its type in the world. After your first six weeks and from what you have learned about the prison, are you happy to associate yourself with that remark?

Ian Gunn: As I am not as experienced as Professor Marshall in this field, I find it difficult to comment on that point. However, from what I have seen, the delivery of programmes and the staff's support for those programmes are clearly excellent.

Stuart Campbell (HM Prison Peterhead): It is flattering that someone such as Professor Bill Marshall has commented on the work that goes on in Peterhead. As a member of the programmes team, I can say that we have always striven to work to the best of our abilities. It is always poignant to remember that the work of the SPS seeks to ensure that there are no victims in future.

Stewart Stevenson: An attribute of Peterhead that is not shared by any other establishment in the Prison Service is that it is a dedicated and discrete unit for dealing with sex offenders. Several experts have expressed the opinion that there is particular value in physically segregating sex offenders in a separate unit away from other offenders to ensure a climate in which they can safely receive treatment and address their offending behaviour. After your six weeks' experience, have you formed a view about the value of segregating sex offenders from the general prison population? Stuart Campbell might also comment on that point.

Ian Gunn: After eight years in the Prison Service, I feel that there is clearly a need to segregate certain types of offenders, given the attitude of prisoners and the constant threat of violence towards sex offenders. For the first time in my career, I have seen sex offenders in a local prison acting as normal, mainstream prisoners.

Stuart Campbell: In 1993, when the programme first began, Peterhead was not just an exclusive site for sex offenders; it contained different prisoner groups. At the time, we were concerned that other prisoners would derail the process, as happened on some occasions. As a result, steps were taken in 1993 to turn Peterhead into an establishment with a sex offender population, which shows that the SPS was driven towards meeting that need for that prisoner group.

13:45

The Convener: I have Bill Marshall's report on the STOP programme, which is dated 24 July 2000. A crucial concern is that, if the sex offenders programme was scattered elsewhere, its excellence would be lost. We are talking about world-class delivery, for which I praise the prison.

Bill Marshall states:

"At the time of my last visit I thought the STOP program was one of the best sexual offender programs in Britain and, indeed, among the best prison-based programmes I have seen anywhere."

That is high praise indeed. He goes on to say:

"Making Peterhead Prison an exclusively sexual offender institution shows that the Scottish Prison Service is one of the more innovative prison services in the world. I have visited only two exclusive sexual offender prisons: Peterhead and New Zealand's Kia Marama Prison. It is only in such prisons that the appropriate prison climate can be created to fully support and facilitate effective sexual offender treatment."

He also states:

"In conclusion, I consider the operation of Peterhead Prison, in so far as it affects the implementation of an effective sexual offender treatment program, to be exemplary and forward thinking. I strongly recommend that it be retained as Scotland's model sexual offender institution and that the innovations at Peterhead Prison be given full support."

I take it that Mr Campbell, who has a lot of experience of the programme, fully concurs with that. Do Bill Marshall's comments reflect the status of the programme?

Stuart Campbell: Yes. I agree with them.

The Convener: What would your concern be if the prison was closed and sex offenders programmes were dissipated elsewhere within the Prison Service?

Ian Gunn: Can I answer that?

The Convener: I would like both of you to answer. I would like Mr Campbell to speak from his experience.

Stuart Campbell: We must bear in mind the fact that the programme at Peterhead did not happen overnight. It has taken seven years to build to where we are now. Huge emphasis has been placed on the total culture, to create a supportive environment for working with sex offenders. Investment has been made in staff training and development. Over the years, we have built up a good reputation among staff and prisoners. Regardless of whether the estates review decides that the work done at Peterhead prison should move elsewhere, that work will and must continue. It is about protection of the public and the prevention of crime.

The Convener: I read that Clive Fairweather said that to recreate the status that the programme has now reached would take four or five years if it was scattered elsewhere. Given your comment that it took a long time to achieve that status, would you agree with what he said?

Stuart Campbell: I repeat what I said earlier: it has taken us seven years to build to where we are now.

The Convener: So you agree.

Stuart Campbell: Yes.

Ian Gunn: Whatever happens with the estates review, everyone agrees—all the staff at Peterhead would agree—that the buildings that are in use have a limited life, so there will be a need to stop using those buildings. There will be disruption of some kind when that happens. The prison will retain its role in its existing buildings until new buildings are available, so the work will carry on for some time. It is a question of the estates review deciding where that work will carry on.

Derek Gunn (Scottish Prison Service): I will add a comment, for the committee's information, on acknowledging the idea of a dedicated sex offender facility. It is important to recognise that we are obliged to deliver sex offender programmes in other places because we cannot, for example, move young offenders up to Peterhead. It is important that we want to use all the benefits of a well-recognised programme. Regardless of how good Peterhead is, we must learn the lessons from it and apply them in other places.

The Convener: With respect, I do not think that that is the issue. We are aware that there are other sex offender programmes elsewhere. This is a model that, because it is self-contained and is only for sex offenders, has reached the parts that other programmes did not reach. We are being informed that it would be a great loss, not only to the Prison Service but to society at large, if it were dissipated throughout the service. The prison buildings are a separate matter from the programme.

I will come back to Stewart Stevenson, as Maureen Macmillan wants to address a live issue.

Maureen Macmillan (Highlands and Islands) (Lab): If Peterhead must be closed down—you say that the buildings are in such a state that the programme cannot continue—and the programme must move, should it go to a new building in Peterhead or should it be moved to elsewhere in Scotland? I presume that the issue is whether the personnel who deliver the programme could leave their homes—which are, I presume in Peterhead—and move elsewhere.

There is a sex offenders unit in Barlinnie, which I think is for short-term sex offenders. What possibilities are there of having a unit somewhere else in Scotland that would replicate what is being done at Peterhead? Is it a question of the personnel not being able—or finding it difficult—to move in order to carry on the programme? If they could not move, would that mean that you would have to start from scratch again?

Ian Gunn: If a decision was made to close Peterhead, to build another prison elsewhere to contain long-term sex offenders—or perhaps all sex offenders—and to continue with the STOP 2000 programme or whatever programme is being delivered at that time, I am absolutely sure that staff who work with sex offenders at Peterhead who wished to move to continue that work would be given the opportunity to do so.

Maureen Macmillan: That is the big question that hangs over the programme. In my view, the staff are crucial to its delivery—not the building. We do not want to lose their skills.

Ian Gunn: That is right.

Lord James Douglas-Hamilton (Lothians) (Con): Does the governor accept that Peterhead is extremely important to the Scottish Prison Service as a whole and that a prison on that site is necessary—especially as it is not possible to know what prison numbers will be in future?

Ian Gunn: Clearly, Peterhead has an important role to play right now. It has 300 long-term male sex offenders and it would take a long time—several years—to replace that capacity. It is not for me to comment directly on whether, in the event of a new build taking place, that build should be at Peterhead or elsewhere. That is a matter for the estates review.

Lord James Douglas-Hamilton: I was involved in the decision to set up the sex offenders unit. Does your evidence suggest that the unit is a well-proven success and that it has reduced the rate of reoffending? From what you have said, I think that that is the case.

Ian Gunn: Yes. I would like to ask Stuart Campbell to comment on reoffending.

Stuart Campbell: In April this year we put together a set of statistics for the First Minister's visit to Peterhead. Since the programme commenced in 1993, it has had a total of 244 participants. One hundred and sixty-two of those prisoners have been liberated, 69 are still in custody, 173 prisoners completed the programme and 71 failed to finish it. Six have been reconvicted of a sexual offence and four have been recalled because of a breach of licence conditions.

Lord James Douglas-Hamilton: Is not that a considerable improvement on the previous situation?

Stuart Campbell: I cannot comment on the previous situation, because I do not have the figures to hand. If we could get those figures, we could sort that out.

Lord James Douglas-Hamilton: My understanding is that there has been a marked improvement.

Stuart Campbell: Yes.

Lord James Douglas-Hamilton: However, you are not in a position to deny that.

Stuart Campbell: No.

Lord James Douglas-Hamilton: What has happened to the building at Peterhead in which the special unit used to be?

Ian Gunn: The buildings of Peterhead special unit still exist, but they have been mothballed and are not used to house prisoners.

Lord James Douglas-Hamilton: Is it important to put right the shortfall of 20 officers in the operations group?

Ian Gunn: Yes. There is a shortfall and a recruitment campaign was held a couple of months ago. It has not been easy to attract operations officers to Peterhead. All potential staff are asked to express a preference about where they would like to work. Very few have expressed a preference to come to Peterhead and I imagine that that is partly because of uncertainty about the future of the prison.

Lord James Douglas-Hamilton: Is the delay over the estates review causing a loss of staff morale?

Ian Gunn: I do not think that it is a question of morale. Morale is a much-misunderstood word. At Peterhead, I see staff members who work very well together as a team to support the work that is being done with long-term sex offenders. However, members of staff will be concerned about their families. They see news reports, they read the papers and their children are asked questions at school. They want a decision. Clearly, each staff member will have a different preference about what that decision should be. The lack of a decision is draining for staff and I do not think that it has affected morale, but is of concern. The sooner a decision is made, the better.

Lord James Douglas-Hamilton: I also wanted to ask about the electronic unlocking system, which I understand would help with individuals going to the toilet at night. At present, you do not have that system.

Ian Gunn: No. In the chief inspector's report, I mention a method of allowing access to sanitation during the night. I believe that a cost was put on that, although I do not know where it came from. Whether or not we have such a system in place, it would not help the long-term future of the building. The building will not be adequate for its purpose for much longer.

Derek Gunn: A figure was quoted for a system and, like Ian Gunn, I do not know where it came from. The figure is not really accurate because installing night-time sanitation that has electronic unlocking would be short-term expenditure and would not prolong the life of the buildings. Glenochil has that kind of system, as members who have visited it might know. It would not be desirable to install such a system in buildings that will not exist for much longer.

Lord James Douglas-Hamilton: May I request, through the convener, that information be sent to the committee on the reduction in reoffending?

The Convener: Yes. Comparisons with other institutions and other types of offences would also be interesting.

Donald Gorrie (Central Scotland) (LD): This question might be out of bounds. If we set aside the issue of the electronic unlocking system, there seem to be three options. The first is to rebuild the prison on its present site. The second is to rebuild it nearby so that the staff are kept together and do not have the problem of moving. The third is to rebuild the prison in a totally different part of Scotland, which might mean that you would lose some staff. Do any of the witnesses have any preferences from among those three options?

Ian Gunn: That is a difficult question to answer. We will have to wait for the estates review to see what decisions are taken. As I said, each member of staff at Peterhead has their own view. Some staff members might be close to retirement and want the prison to remain open for as long as they must continue to work. Other staff members are prepared to move anywhere to carry on the work that they are doing with prisoners and some people would prefer to stay in the north-east because of family commitments. Without knowing what will be in the estates review, it is difficult to express a preference. We do not know at this stage.

Derek Gunn: No decisions have been made, so we can only speculate. However, we should keep in mind the assurances that our chief executive, Tony Cameron, repeated recently to the Justice 1 Committee. Those assurances were on the security of jobs for all staff. However, if staff were prepared to move, they would be moved and if a move were to take place, it would take place over time.

I do not think that anyone has argued about the benefits of having a dedicated sex offender facility. No one has argued that we should not keep the staff together and not use the expertise that we have. The Scottish Prison Service is keen to maintain that expertise and to continue learning from the experience that has been built up over the past seven years. We will have to deliver the service on other sites as well.

Donald Gorrie: As I understand it, the Victorians liked their prisons to be a long way away, where they were out of sight. A more modern view is that it is better to site many prisons nearer the prisoners' families to allow the families to visit. Are sex offenders less likely to receive visits from families? If so, is that a stronger argument for having a slightly more remote location for such a prison, rather than siting it in the central belt?

14:00

Ian Gunn: As a large percentage of prisoners have offended against family members—Stuart Campbell has just reminded me that the figure is 45 per cent—they would probably not have that family contact. There is a system in the SPS that allows prisoners to move from one prison to another to receive visits. They can also save up their visits, which means that a prisoner from Dumfries or Inverness can spend a month at the prison in those places. There are conflicting views about whether it is good to keep sex offenders in any particular place; however, visits are probably more of an issue for sex offenders who have not offended against their own family than for those who have.

Stuart Campbell: I add only that, in a recent survey, 12 per cent of prisoners at Peterhead said that they were unhappy with visiting arrangements; the rest were quite satisfied with the current system.

The Convener: On a point of clarification, Derek Gunn mentioned a "dedicated sex offenders facility". Did you mean a dedicated sex offenders prison, or a facility that is attached to other prisons?

Derek Gunn: I am not sure that there is a simple answer—

The Convener: You said it; that is why I am asking you about it.

Derek Gunn: I would refer to Peterhead at the moment as a "dedicated sex offender facility".

The Convener: Yes, but what would such a facility mean in future? Would it mean Peterhead prison by another name, either in Peterhead or elsewhere, or would it mean a unit for sex offenders attached to another prison?

Derek Gunn: You are asking me to prejudge the estates review, which I cannot do.

The Convener: No, I am asking you what "dedicated sex offender facility" means.

Derek Gunn: I would mean by that a facility that is designed to suit that situation. For example, visiting arrangements could be made if there were a compound that was completely separate from the rest of the prison. So, yes, such a facility could be—

The Convener: Attached to another prison.

Derek Gunn: It could be part of another prison or it could be a separate prison.

The Convener: That is where I have a problem. I am not the expert here—I defer to Mr Campbell and, to some extent, Ian Gunn in that respect. Everything I have read about Peterhead suggests that the key to the sex offenders unit's success is the fact that it is contained within the prison and has evolved a special environment to deal with sex offenders. An attempt to recreate such an environment in a unit that was attached to another prison would be less successful for a variety of reasons, including the way in which the programme would be implemented and how the prisoners would feel. From my reading of the reports, it seems that the trick to making the programmes work—if the word "trick" is not too frivolous—is the way in which the prisoners respond to such an environment. That is why I am concerned about the use of the word "facility". That was not included in Donald Gorrie's list of options.

Ian Gunn said that he would wait for the estates review. What the committee wants from professionals such as Mr Gunn and Mr Campbell is their views and opinions about what would happen if the programme ceased to exist either in Peterhead prison as it is now or in a new building adjacent to the prison. I am seeking your professional opinion on that question.

Ian Gunn: I am sure—well, I am not sure, but I will make a very educated guess that any decision on the estates review will protect continuing work with sex offenders. I cannot envisage a decision being made not to support the continuation of that programme, whether at Peterhead in its existing buildings until a new building is finished, or phased from the old buildings to new buildings. I do not think that a decision would be made that would impact on the programme. It is most important that we continue to work with sex offenders.

As I said in my briefing notes and to the committee, it is important to me that we give prisoners full support if we want them to be prepared to work with us. We must ensure that they feel safe and secure. The staff who work with

them must understand sex offenders and they must be prepared to challenge them on their behaviour. We must ensure that the sex offenders challenge each other.

Stuart Campbell: I return to where I began: a total culture and a supportive environment are the key elements. We are not talking just about one programme. The sex offenders programme is but one of a raft of programmes that are available at a facility such as Peterhead. Built into that programme are specialist staff, who can challenge daily any comments that an offender makes or any matter relating to offending behaviour that needs to be examined and addressed. I hope that, when a decision is made, we can put the appropriate staff skills in place to ensure that the work continues. The work is based on protecting the public for the future.

The Convener: So a facility attached to another prison would not deliver what Peterhead is delivering now. That is my understanding of what you say. Is that correct?

Stuart Campbell: Peterhead is a totally unusual facility. It is the only such facility in Scotland that has a total culture in which offenders can move about freely.

The Convener: Would that total culture not exist in the facility if it was attached to another prison?

Stuart Campbell: No.

The Convener: Thank you. Do you feel the same, Mr Gunn?

Ian Gunn: The model that we have works. If we are going to change that model, we will have to consider carefully what a different model would look like. As I said, my experience of working in local prisons before I moved to Peterhead is that sex offenders do not feel safe and secure and do not become involved in much activity unless they are kept together. Any different model that we might support in future would need to be considered very carefully to ensure that we do not lose prisoners' confidence in becoming involved in programme activity.

Stewart Stevenson: I will ask a couple of questions about the prison in the community. I understand that the majority of the uniformed staff who work in Peterhead prison travel to the prison wearing their uniforms and that that is by no means the norm elsewhere. What do you think that tells us about the attitude of the general population in the Peterhead area to the people who work in the prison?

Ian Gunn: I must admit that, when I read that, it was the first time that I had ever heard it. If I think back to when I worked in Edinburgh and Aberdeen, I do not remember that that was a particularly big issue in those cities.

Stuart Campbell: I have lived in Peterhead for the past 14 years. Over the years, the prison's staff have built up a very good relationship with the Peterhead public, who know exactly what our work is about. We have spent much time in the community giving presentations and explaining what our work is about. We explain that it is about trying to protect the public in future. We also explain the positive aspects of having 300 sex offenders living in the confines of Peterhead prison. We are there to support the community as well.

Stewart Stevenson: The economic multiplier that I have been given for the value of the prison in the community is about £25 million a year. That is just one facet of the prison's relationship with the community. Is it fair to say that, when the idea was first mooted of sex offenders coming in large numbers to Peterhead, there was considerable disquiet in the community? Is it also fair to say that, just as it has taken many years to build up the skills and resources in the prison staff to deal with such prisoners, it has also taken considerable work, investment and time to arrive at the position in which the local community is comfortable about having such a facility in its midst?

Ian Gunn: I do not think that I am able to answer that question. I ask Stuart Campbell to answer it for me.

Stuart Campbell: It is clear that what Stewart Stevenson says is correct. Over the years, we have built up a very good relationship with the Peterhead public.

Stewart Stevenson: Do you therefore agree that among the challenges, if the facility were to be relocated in another community, would be—I say this kindly—the prejudices, discomfort and lack of knowledge in that community, and the concerns that that community would have about sex offenders being located in a facility within its boundaries, however secure you were able to demonstrate that facility to be?

Ian Gunn: Again, I cannot answer that because I have never lived anywhere where a prison will be sited.

Stuart Campbell: It would be hard, but that is speculation. We managed in Peterhead.

Stewart Stevenson: Have you surveyed local attitudes to the prison?

Ian Gunn: I cannot give an informed answer to that and I do not know whether Stuart Campbell can. We have probably surveyed local attitudes, but I am not sure.

Stewart Stevenson: Did you survey local attitudes in connection with a proposal, which I understand has not yet proceeded, to take pre-release prisoners into the community on

supervised programmes?

Ian Gunn: I am aware that there was a plan to do that, although I do not know the full details.

The Convener: I want to ask about Professor Marshall's report on Peterhead prison's sexual offender programme, which was commissioned by the previous governor, and the community work programme—has that been implemented?

Ian Gunn: No.

The Convener: Professor Marshall's report says:

"The community was canvassed with a 98% response rate all of whom indicated approval of the project. However, a Head Office directive shut down the project before it was implemented."

Would you comment on that?

Ian Gunn: I cannot comment directly on that. I read the document once.

The Convener: The report is interesting and was commissioned by the previous governor to find out how things are going and about the community-based programme. I want to pick up on what my colleague said. It is human nature that people do not want a sex offenders institution near them, yet Peterhead has somehow broken the blacklisting—if I may put it that way—and has succeeded all round with sex offenders, its staff, programmes and most important, with the community and recidivism. It seems to me that we should not dismantle that, but perhaps I am naive. Mr Campbell, would you comment on the 98 per cent response rate? Do you know about it?

Stuart Campbell: I know of the report, but I am not sure of its intricacies and ins and outs. An important part of working with sex offenders is that we start to build in prevention of relapse work where they can be put into the community to be tested.

The Convener: Why was the programme stopped? Why did a head office directive shut it down? I am sorry that I have only one copy of the report, but I received it only today. The report is dated 24 July 2000, which is more than a year ago. Would you comment, Mr Gunn?

Derek Gunn: Sorry, I cannot.

The Convener: Perhaps we should have an answer. The committee would like to know why the community intermediate step did not proceed.

Ian Gunn: I do not know the reasons, but many prisoners who are released from Peterhead are not released into the local community. There is an issue about their being moved back to jails that are nearer to where they will live.

The Convener: The report mentions

"community work outside the walls"

involving a small group

"of carefully selected inmates, under the supervision of an officer ... engaged in limited community work as part of their pre-release preparation".

In view of everything that has been a success at Peterhead, that seems another interesting step. Those prisoners will eventually be released into their own communities and there was a positive response from those who were canvassed, yet nothing happened. The committee might like to know why the project was not progressed. Was cost the reason or was there another reason? There did not appear to be community antipathy towards it.

Ian Gunn: No. We will get information for the committee.

Derek Gunn: We would be happier to give the information at a future date. Further comment now would be speculative.

The Convener: That would not be a problem.

Derek Gunn: Perhaps the prisoners who were selected were suitable to go to open prisons, or there were other reasons. We would prefer to give the information at a later date rather than to speculate.

Maureen Macmillan: I want to clarify what is important and what is not so important. You said that you thought that it would be best to have a dedicated prison for the treatment of sex offenders. I would like you to compare what you are doing with what happens in Barlinnie, where there is a unit that deals with short-term offenders. Saying that you want to have a prison dedicated to sex offenders might denigrate what Barlinnie is doing.

Is it important that the unit is in Peterhead because that community accepts it? If you were offered a new prison in Peterhead that included ordinary prisoners, would you turn that down and agree to go elsewhere to have a dedicated prison? I want to know what your priorities are.

14:15

Ian Gunn: You will be speaking to Mr McKinlay from Barlinnie and he will have the answers. Barlinnie has short-term prisoners and long-term prisoners waiting to move on to other prisons. The estates review may address whether a new build at Peterhead would contain more than a sex offender population. Whatever model is built, we will have to be careful to protect the integrity of the programme that we deliver.

Stuart Campbell: I agree with that. It is for the estates review to decide on the best course of action.

Maureen Macmillan: Presumably, the programme can be delivered in the same building that other prisoners are in if there is total separation.

Stuart Campbell: I go back to total culture. The Peterhead experience is a total culture that seems to work better because we have a population composed only of sex offenders.

The Convener: Mr Gunn, I will put this question to you, not to insult you, but to give you an opportunity to respond to something that was said by Derek Turner of the Prison Officers Association Scotland. It has been in the press and commented on previously and I am sure you have read it. I will also put it to the governor of Barlinnie. Derek Turner said that your appointment as governor was

“seen as an opportunity to move existing governors out and to put people in.”

He went on to say that the governor of Peterhead prison was put in place

“specifically because he would be less argumentative about the future of the establishment”.—[*Official Report, Justice 1 Committee*, 23 October 2001; c 2683.]

Would you comment on that?

Ian Gunn: I do not know the source of that information. It does not match anything that has ever been said to me. I was assigned to the post of governor of Peterhead prison. I was delighted to accept that assignment. On several occasions, I had said to my line manager that, as part of my career development, I would like the opportunity to be governor of Peterhead prison. I was given that opportunity. At no time was it ever indicated to me that the reason I was going there was because I was less argumentative. If you talk to my wife, she will tell you that I am extremely argumentative, at times. I do not think that that comment has any substance whatsoever.

The Convener: So you are not a soft touch.

Ian Gunn: I do not think so.

The Convener: Thank you, gentlemen. The committee has arranged to visit Peterhead on 10 December. As I come out of plaster on 12 December—there is a plaster cast under the table—would you arrange another date with the clerks and members of the committee? The visit could still be before the recess but at a time when I could attend, as I would be pleased to see your programme. Would that be convenient?

Ian Gunn: That would be no problem. I look forward to seeing you.

The Convener: I welcome Bill McKinlay, the governor of HM Prison Barlinnie, and George Peden, the admissions and induction manager of Barlinnie. We still have Mr Gunn with us—he seems to have a starring role this afternoon. I have been to Barlinnie, as have Lord James Douglas-Hamilton and Maureen Macmillan, so we have some knowledge of the layout of some of the halls. I believe that you wish to make an opening statement.

Bill McKinlay (HM Prison Barlinnie): Yes, I will make a short statement. I draw members' attention to my brief submission of 13 November. Primarily, I highlight issues about the estate, overcrowding, regime provision—including details of programmes—and the way in which Barlinnie staff deliver consistently when faced with various demands in those areas daily. I reiterate that Barlinnie is a busy and important establishment within which integral sanitation is an important issue. It would be a tremendous benefit to Barlinnie if that problem could be solved, because it detracts from many of the things that we are trying to do in Barlinnie. I am not here to defend slopping out in any way.

As you will be aware, renovation has started in Barlinnie. One hall is due for completion in March next year, which will give us 170 places, with the possibility of 250 people having access to integral sanitation. What happens next—I hate to say this to you—will be determined by the estates review, which is due to go out for public consultation shortly. In the meantime, we are examining the services of a further hall in case the estates review allows us to renovate it, which would take us up to somewhere near 66 per cent with integral sanitation. I would like people to bear in mind that during any major renovation in a prison there is significant disruption and difficulty. The situation is even worse when there is overcrowding and we are looking for places for people. I say that to highlight the management issues that my staff have to deal with daily. I commend them for what they are doing in Barlinnie.

The Convener: Thank you. Does anyone wish to start?

Lord James Douglas-Hamilton: I mention an interest, because Barlinnie provided me with much of my bread-and-butter employment when I was a young advocate. I wish to ask about slopping out. How great is the problem? How many places do you need to renovate to eliminate it once and for all?

Bill McKinlay: Approximately 950 places have to slop out at the moment. We have space for 130 with integral sanitation from the renovation of D hall. From March next year, as I said, B hall will be renovated to give a further 170 places, which could be doubled up in certain instances to give

about 250 places. So at the moment, the number of places with integral sanitation is quite limited. Over time, the staff are trying to reduce the impact of slopping out through having screens in rooms, kits and so forth, but I am not here to condone or defend slopping out. It is still a significant problem in Barlinnie.

Lord James Douglas-Hamilton: If slopping out were completely phased out, would fewer prison officers have to be on duty during the night?

Bill McKinlay: Less time would be utilised in supervising that activity. Whether we could divert staff into other programmes or areas is another matter. It would certainly have an impact on the time that is spent supervising that activity.

Lord James Douglas-Hamilton: How do you deal with the problem of overcrowding? Overcrowding to the extent of 32 per cent was mentioned. Do you double up prisoners in cells?

Bill McKinlay: We have no limit on our capacity, but around 1,230 prisoners is the maximum. We deal with overcrowding by managing the space that is available in terms of who we take in and where we locate them.

We have a mixed population. We cannot refuse to take anyone from the court. We have young remands, sex offenders, vulnerables, short-term prisoners, untried adults and long-term adults. The objective of the exercise for me is to try to move the long-term adults on and create space so that we can accommodate prisoners who come in from the courts.

Lord James Douglas-Hamilton: I understand that there is a problem with the access of young remands to education facilities. Is that being addressed?

Bill McKinlay: There was an initial problem. The young remands tried to take the initial hall apart so we had to relocate them in stronger facilities in the renovated hall. In doing so we lost the educational facilities, so we have put in place portable accommodation, which is a very good facility. The young remands have access to education daily.

Lord James Douglas-Hamilton: I noticed that 15 of your 118 operational staff and three of the 306 residential staff have resigned. Are you confident that you can recruit the necessary number of staff?

Bill McKinlay: Yes. From Monday we are 12 residential staff over and one operational staff member down. We are receiving recruits. The figures are based on those members of staff who have left for alternative employment; they do not include those who have been medically retired or dismissed and those who have left for other reasons. We are now just about up to

complement.

Lord James Douglas-Hamilton: Will you kindly update us on what has happened to the special unit at Barlinnie?

Bill McKinlay: A working party review in 1994 recommended that the unit close and the unit in effect closed. It is planned that the unit will be used for the introduction of 12 care workers and two care managers under the drug action team funding for dealing with people with dependencies.

Maureen Macmillan: I want to follow up on the discussion that we had with the Peterhead governor and others by asking about the sex offenders unit in Barlinnie and the work that it does. Is the programme based on the programme that is used at Peterhead? How short are the stays in the short-stay unit? How do you feel about having a sex offenders unit inside a mainstream prison? Do you think that it works?

Bill McKinlay: I had a feeling that that would come up. Fifty-four sex offenders are held in Barlinnie. They are held separately from the remainder of the population. Programmes and education operate separately for them. Three members of staff are trained to deliver the STOP 2000 programme to the same criteria. The training course is accredited and the trainers hold certificates. I ask George Peden to give the committee a breakdown of the types of prisoners that are involved in the programme; there was a slight inaccuracy in something that was said earlier.

George Peden (HM Prison Barlinnie): In the STOP 2000 programme at Barlinnie there were eight completions last year and seven are in progress at the moment. There is a mixture of short-term prisoners—prisoners doing less than four years—and long-term prisoners who have been transferred in from other establishments.

Maureen Macmillan: You have long-term prisoners at Barlinnie.

George Peden: Long-term prisoners are transferred in to do the STOP 2000 programme. Approximately 14 long-term prisoners are awaiting allocation to Peterhead.

Maureen Macmillan: Do they come to you and then go on to Peterhead?

George Peden: That is correct.

Maureen Macmillan: Do you find it difficult to offer the programme at Barlinnie? Is the atmosphere not conducive to that? As was said, Peterhead is a dedicated prison and that is thought to create a better atmosphere.

George Peden: The programme is delivered in a fully relaxed manner, but that is down to the location of the programme at Barlinnie. The

programme is run in what is called Letham hall, away from the main part of the prison. Letham hall is shared with high-dependency unit prisoners, but they are kept separate at all times. The mixture of prisoners at Letham hall allows the sex offenders to go about their daily business.

14:30

Bill McKinlay: Prior to coming to Barlinnie, I was the governor of Shotts for five and a half years. Shotts is a maximum-security prison. During my time at Shotts, the STOP 2000 programme was run in a vulnerable unit that held 117 vulnerable prisoners including approximately 60 sex offenders. As was mentioned, the problem with the STOP 2000 programme concerns dedication and the influence of others. For the programme to work, people have to be protected—they have to be kept separate. The programme is resource intensive. However, if staff who worked at Shotts at that time were asked about the programme, they would say that prisoners did equally well in it as they did in programmes delivered at Peterhead. That said, it was more difficult to manage the STOP 2000 programme.

Maureen Macmillan: What about the local population's perception of the prison? Did they know that there were sex offenders at the prison?

Bill McKinlay: I cannot comment other than to say that records exist, from 1987, about the positioning of Shotts prison beside Shotts village. Pressure groups were set up at that time. The prison is now accepted as part of the community and the community is involved with the prison. A prison is not what people want on their doorstep. That is my personal view.

The Convener: From what you said, if a prison is accepted within its community, as seems to be the case with Peterhead, that is good.

Bill McKinlay: If an opportunity arose to place a prison in a community that would accept it, that would be fine. However, it takes only one incident to occur for that to change.

The Convener: I want to follow up on what was said about the STOP 2000 programme. You think it works, but you are saying that you pretty much run a prison within a prison.

Bill McKinlay: Yes.

The Convener: Did you hear the evidence of the previous witnesses?

Bill McKinlay: Yes.

The Convener: In Professor Marshall's report, which was commissioned by a previous Peterhead governor, the professor wrote:

"I have visited only two exclusively sexual offender prisons: Peterhead and New Zealand's Kia Marama Prison. It is only in such prisons that the appropriate prison climate can be created to fully support and facilitate effective sex offender treatment."

Do you agree with that?

Bill McKinlay: Professor Marshall has visited only two prisons that are dedicated to the treatment of sex offenders. As the convener indicated, other prisons take a mix of prisoners and different regimes have to be run in them. I am not in a position to say what is successful. The comment is a professional comment, but I have to say that the same accreditation and certification exists in the central belt as exists in the north-east of Scotland. If you are asking whether people are more competent in one part of the country, I would have to say that that is not the case—a standard applies. If you are asking about the benefits of a dedicated system, I would say that I prefer vulnerable prisoners and sex offenders to be in separate units.

The Convener: Would it be better if there was a dedicated prison in Scotland?

Bill McKinlay: I cannot judge the outcome of the estates review—

The Convener: I am not interested in the estates review; I am asking for your experience as a prison governor. Let us forget the estates review. It will be a long time in the post.

Bill McKinlay: From a management perspective, the answer is yes.

The Convener: So, from a management perspective, it is better. From what you have said, it is difficult to manage the two different regimes.

Donald Gorrie: I want to explore the impact of being 32 per cent over capacity. To what degree is the time that staff work related to the number of prisoners? Is the number of prisoners irrelevant, to an extent? Is it instead a question of the number of cells and dining halls and so on?

Bill McKinlay: I have already alluded to the fact that a good proportion—or at least a certain proportion—of staff time is spent supervising slopping out. That includes dealing with overcrowding.

The ratio of staff to prisoners is consistent. We undertake risk assessments and safe systems at work assessments to ensure that staff are safe. That permeates everything, including trying to get people out of cells and on to programmes and moving people. It is astonishing; already this year there have been 24,000 movements in and out—or is it 19,000?

Donald Gorrie: It says 24,000 in your submission.

Bill McKinlay: Sorry. There have been 24,000 movements in and out this year alone and there were 48,000 last year. We are concentrating on processing. I commend staff for the work that has been undertaken, some of which has been at the forefront. We have recently been involved in the work of the drug action teams and with care workers and in a range of other things. Staff are working extremely hard to compensate for the overcrowding, but they still have to deal with it. The issue at Barlinnie is managing the numbers.

Donald Gorrie: I want to pursue that point. In a previous discussion, I think in relation to the budget, we were surprised to hear that one of the official statistics relates to the number of prison officers and capacity. We thought that that should be prison officers and prisoners.

Bill McKinlay: There is an issue. Some prisoners need little supervision, whereas others need significant supervision, so resources are applied at different levels, depending on the type or classification of prisoner, the security risk and the danger posed by the prisoner to staff. Every prisoner who comes in is assessed on their dangerousness, their security and any difficulty, whether that concerns health or mental welfare. It is not a simple case of relating the number of prison officers to the number of prisoners.

Donald Gorrie: I am not entirely happy with that. From the figures that have been supplied—doubtless, things have changed—I note that there were 1,106 prisoners in Barlinnie and that the capacity was 836. How many prison officers do you need to run the prison really well with 836 prisoners, and how many do you need to run it with 1,106 prisoners?

Bill McKinlay: We can run the prison with the same number of staff, having undertaken the risk assessments and the safe systems at work assessments, but we have to adapt things. George Peden may wish to speak about how much staff time we apply to dealing with overcrowding.

George Peden: Slopping out will probably take up about three hours of a member of staff's time every day, between a quarter to 7 in the morning and approximately half-past 9 at night. We also have figures for programme activities and for visits. Each convicted prisoner is allocated four hours' work time, working with concrete or in the joiner's shop, for example. Other activities take up time every day, in addition to the three hours a day spent on slopping out.

Bill McKinlay: We have had to make a morning and afternoon timetable, so that prisoners get at least some time out of their cells. If we reduce the number of prisoners, we will increase the opportunities for people to spend more time

getting involved in activities. The ratio is relevant to the number of people in a work party—or workshop—but we try not to think of things on that basis. We try to maximise the time spent out of the cell, but without risk to staff.

Donald Gorrie: So the increased number of prisoners in relation to capacity means a less good experience for all the prisoners, in that they do not get so much time for recreation, crafts and so on.

Bill McKinlay: Yes.

Donald Gorrie: I will just air another bee in my bonnet. Would sorting out the court system have a major effect on your staff's time, or would that be regarded as a nice but only minor move?

Bill McKinlay: Alternatives to imprisonment would significantly help Barlinnie. There are other aspects. We are engaged with the Procurator Fiscal Service and the police in trying to smooth the movements between court and prison and so on. I am going down to Manchester soon with the court service, a sheriff and some others to look at a videoconferencing initiative between the court and the prison, which could alleviate some prisoner movement and help with the disruption that that causes. Nevertheless, it is our duty to take prisoners to court. I cannot comment on what other avenues or initiatives there are for the courts.

Donald Gorrie: Do your people have to hang around the court during the day to see whether the case will be called? If not, do the police do that and your people just come and go?

George Peden: The majority of prisoner movements to court are done by the police. Barlinnie staff take convicted prisoners to outlying courts such as Hamilton and Stirling.

Donald Gorrie: Thank you. I had not realised that.

Maureen Macmillan: So the police take remand prisoners.

Bill McKinlay: The police take the untried remand prisoners.

Maureen Macmillan: That would be most of the movements. I am interested in video links and videoconferencing, which will probably be an important way forward, but first I want to clear up one or two matters.

As the cell blocks in Barlinnie are refurbished, is there less room in them?

Bill McKinlay: We intend to move untried prisoners who are in C hall into B hall, which will take the untried prisoner population. They will have better facilities, such as integral sanitation and EPIC—electric power in cells—but that will not necessarily relieve the overcrowding.

Maureen Macmillan: Yes. In fact, it might do the opposite, or are the numbers the same?

Bill McKinlay: The numbers are the same.

Maureen Macmillan: What is the scope within the Barlinnie compound for building a new block, say, or a new prison?

Bill McKinlay: The estate is quite tight as it is built against the wall, although there is a football park outside the wall that belongs to us. Rebuilding would require the demolition of possibly two of the existing halls, which are substantial. Alternatively, it would mean the demolition of the work parties—or workshops—which would not be a good idea, as we are trying to keep people out of their cells. The possibilities are limited unless there is demolition, which is an expensive way to do it.

Maureen Macmillan: That would be demolition of halls that have already been refurbished.

Bill McKinlay: Yes, and we are already talking about being overcrowded.

Maureen Macmillan: Yes. Demolition does not seem to be a good option.

Derek Gunn: On a point of information, if halls were to be demolished, it would not be those that have been refurbished. The refurbished halls would be retained.

Bill McKinlay: I am sorry. I meant to point that out. We intend to refurbish five halls and have done three so far. Depending on what the estates review states, we might end up with demolition, but I am not party to what is in the estates review.

Maureen Macmillan: None of us is, I am afraid.

The Convener: We wonder whether it exists.

I want to ask about what the chief inspector of prisons for Scotland's report says about the inspection of Barlinnie. I appreciate that the inspection was in November 2000, but I would like you to comment on what the report says, because it is serious. The chief inspector had a lot of reasonably good things to say—he saw improvements in such areas as the drug regime and figures for assaults. However, on page 13 of his report he says:

"That said, it was clear that a huge amount still remains to be done. We saw dirty cells with torn mattresses and filthy pillows and conclude that conditions for some prisoners remain unacceptable."

Are there any cells with torn mattresses and filthy pillows in your establishment now?

Bill McKinlay: I cannot say that there are not, but I can say that since the report there have been significant improvements to enhance the situation for prisoners. Those include access to showers and new bedding, replacement of dirty pillows, and

access to a cleaning kit. A range of improvements have taken place. I do not know whether I can give the committee a promise, but inspections ensure that the situation is improved. Staff check those items.

The Convener: But there may still be dirty cells with torn mattresses and filthy pillows.

Bill McKinlay: I hope not. Staff check cells regularly. As governor, I would hope not to find such a cell and I would not like to find one.

The Convener: When other committee members and I visited the prison, remand conditions were dreadful. I take it that remand prisoners are still located in the same place.

Bill McKinlay: They are the prisoners who I said would move to B hall in March.

The Convener: However, they are currently in the same place.

Bill McKinlay: Yes. I ask George Peden to comment, because he is involved on the ground. I think that furniture has been provided and that a range of measures has been undertaken.

14:45

George Peden: The inspectorate's report mentioned a dirty cell in A hall. Since November 2000—within a couple of weeks of the committee's visit—the cells in C hall, which holds all remand prisoners, and A hall, which the committee also visited, have been refurbished. The refurbishment included new bunk beds, new cell furniture, new chairs and privacy screens. The refurbishment was planned. The cells have been fairly dramatically upgraded.

The Convener: Did that happen in the old remand hall?

George Peden: Yes. That was done in C hall.

The Convener: How have the facilities been upgraded? They did not appear to have much room for upgrading.

Bill McKinlay: We are talking about new beds, new mattresses, new bedding, new lockers and new basins, for example. The situation remains unsatisfactory and I am not here to defend it. The staff try to alleviate some of the unacceptability of prisoners' circumstances.

Maureen Macmillan: I was with the inspector who saw the dirty cell. The bedding looked like it had been there for about 30 years—it was very old and had ingrained dirt. It was not as if someone had just been sick on it. I am glad to know that improvements are being made.

The Convener: Is sufficient funding available to upgrade present facilities? We should separate

that issue from the issue of providing sanitation facilities in B hall.

Bill McKinlay: There are sufficient funds for upgrading bedding. It is unacceptable for someone to have poor bedding, poor pillowslips, poor pillows, a poor unit, a poor bed frame and a dirty cell. Measures have been taken, including providing cleaning and sterilising equipment and cleaning cells. I expect the tasks to be performed. I do not know whether I can guarantee that, but it is my job to ensure that the measures are undertaken.

The Convener: Do remand prisoners have the worst conditions of all categories of prisoner in Barlinnie, or is that comment unfair?

Bill McKinlay: Conditions for remand prisoners are similar to those for other prisoners, but you are right that the conditions are unsatisfactory.

The Convener: What is the capacity of the refurbished B hall? What is the occupancy of C hall? Will B hall clear up the number from C hall?

Bill McKinlay: The capacity of B hall is 170, but it can take up to 250. The average number in C hall is about 280.

The Convener: Even after refurbishment, overcrowding will continue.

Bill McKinlay: People on remand will go through to the new hall, but because of overcrowding, we must locate some of the untried in other halls. That is not a significant proportion—the number is small. Some of the untried who require protection because they are vulnerable must also be located away from others.

The Convener: That must be a huge problem. I know that the halls have managers, but the situation must cause problems for you, as governor, and for prisoners on remand, who are among untried prisoners and, as you say, might be vulnerable.

Bill McKinlay: Overcrowding is unwelcome. It poses a significant problem for staff looking for rooms. A prison is almost like a hotel. We try to segment the population but, at times, we are looking for space, so people must move about. That takes up valuable resources.

The Convener: We are going to talk about the infamous estates review—perhaps we should just call it the ER. I am curious about why you have money to refurbish B hall when the rumour abounds that Barlinnie is for the chop.

Bill McKinlay: That was the rumour. I cannot comment.

The Convener: You have far better information than I have.

Bill McKinlay: I am not sure that I do. All I can say is that anything that happens at Barlinnie is unlikely to happen quickly and so we still have to deal with the situation that exists.

The B hall services, such as electricity, were put in place in 1999, but the hall was not completed. That was because there was an expectation that the results of the estates review would be released earlier than they have been. A decision has been made to go ahead with B hall and I am now dealing with the services to C hall, without knowing the outcome of the estates review. However, whatever the outcome of the estates review, I know that we will probably need the third hall.

The Convener: I am sure that you have seen the SPS staff survey for August 2001, which I have before me. It shows clearly that morale is dreadful. There are particular problems around relations between prison officers and the SPS.

Question 21 asks whether staff members agree with the statement:

"The SPS promotes an environment which is concerned with the welfare of all individuals in the Service".

Only 20 per cent agreed. Only 18 per cent agreed with the statement:

"Management in this establishment make sure every employee feels valued."

Only 7 per cent agreed with the statement:

"Staff turnover is low in the SPS because pay and conditions are good."

All the comparators have fallen considerably since 1999. In August 1999, 31 per cent said:

"In the SPS, I believe information is communicated honestly to staff."

In August 2001, only 19 per cent believed that.

I know that the statistics are for the whole of the service, but they must be bad for you, as the manager of a prison. This is not a happy prison service.

Bill McKinlay: We talked earlier about definitions of morale. I have been in the service for 30 years and I have been a governor for 27 years. During that time, morale has risen and fallen, depending on the changes that have been made over the years. The changes that have taken place in the past year are unheard of in my experience. They are necessary, but no one in the service has ever gone through a similar process. I can understand the response of staff. I do not particularly like it, because it is not good for me as a manager; it sets a significant challenge for me, especially with the sort of issues that we now have to deal with, such as the changes to staff attendance patterns and the fact that Barlinnie and three other prisons are awaiting the outcome of

the estates review. People are apprehensive, fearful and concerned; they have every right to be, because they cannot get information on the progress of the estates review and the important decisions have not been made.

I must state that the survey does not reflect the way in which staff do their jobs. The SPS will have to do a lot of work to turn the situation around. Some of the decisions that have been taken to modernise the service are not well liked by staff. My job and the job of people in similar positions is to improve the survey results, because they reflect how people perceive us.

The Convener: People do not like change if it is thrust upon them rather than something in which they have had a hand. Reading the survey gives me the impression that the SPS hierarchy is completely disconnected from prison officers at the coalface. I know that you and the chief inspector of prisons commend staff and say that they deliver a good service in a professional manner, but the situation seems very sad.

Bill McKinlay: I can comment only on the SPS. I have read about other organisations in which change has had a significant effect on people—

The Convener: But you are an experienced person. You have been in the service for 30 years. You must have a feel—

Bill McKinlay: I have seen morale go up and I have seen it go down. From my discussions with the staff I am aware that they want to know what is happening and why it is happening. Even when I explain that, they are still fearful. People are concerned about whether Barlinnie will survive.

I cannot answer for everyone who responded to the survey, but there is a job to be done to involve staff locally and nationally. Almost four and a half years ago, we tried to change the staff attendance system in Shotts prison. We communicated readily with the staff, but there was resistance to change. Of course, the reports must be considered seriously and we must take dramatic action, because something is out of kilter.

The Convener: I ask Derek Gunn to comment, as he is a representative of the SPS.

Derek Gunn: It is important that we monitor such issues by carrying out surveys, which are important indicators and which we take seriously. We have taken a range of actions to address recognised difficulties. We made clear promises that there would be no job losses and we made promises on transfers, which indicates that we are making a serious attempt to understand and to deal with problems. We recognise the problems with change.

The Convener: Should not action have been taken before morale got so low? There were other

ways of engaging the staff at the coalface with what was ahead. There appears to be a disconnection between what happens at the coalface and what is decided up above. There is no communication or engagement between the two apart from on the long-delayed prison estates review, for which we have waited for more than a year. Has the SPS failed?

Derek Gunn: Other measures suggest that we are doing extremely well in delivering a range of things. In his report, HM chief inspector of prisons pointed out repeatedly that staff work well, provide a high level of activity and cope with immense problems. Bill McKinlay spoke about Barlinnie, which has a high number of movements and is overcrowded, but the staff do a good job. We heard the same about the staff in Peterhead, who also do a good job.

Perhaps the staff want to send a message. Although the survey is broken down into establishments, it was national and was conducted at a time when there was disagreement and difficulty. Nevertheless, the SPS did not step back and refuse to conduct a survey because of those difficulties—the difficulties were all the more reason to test the temperature of the water to find out what had to be done. We have carried out a staff survey for several years; we did not dream it up in response to a difficulty, but in advance.

The Convener: I appreciate that. I have the comparative results of the staff surveys for August 1999 to August 2001. Question 43 of the staff survey is:

“To my knowledge, compared with other organisations SPS is a good employer.”

In August 1999 the figure for those who agreed with that statement was 63 per cent; in February 2000 it was 51 per cent; in August 2000 it was 38 per cent; and in August 2001 it was 36 per cent. It seems to me that senior management have failed with communication. Do you accept that, notwithstanding the difficult times, those figures reveal a huge drop in respect for the organisation?

Derek Gunn: I accept that the figures reveal a huge drop.

Bill McKinlay: Another indicator for determining the health of an organisation is the number of leavers. We have fewer leavers than the national average and, in Barlinnie, only three out of 308 residential staff have left. That is not to deny the facts: we must work on our communication strategy. If staff think that they are less engaged than before, I have to deal with that as a front-line manager. George Peden is close to the people who responded to the survey. He may want to comment.

15:00

George Peden: I go around Barlinnie daily and I go into the residential area daily. Yes, staff are apprehensive. They feel insecure about the estates review and about changes in staff attendance. However, that has not stopped them doing their job, as the key performance indicators show. The survey shows that 60 per cent of respondents said that they had good communication with their line managers.

The Convener: Yes, I was going to raise that point.

George Peden: A total of 70 per cent said that they felt they were treated with fairness and respect by their colleagues, so—

The Convener: Can I stop you there, Mr Peden? I was considering the SPS and the fact that there was a breakdown with management further up—not at line-manager level. A high percentage thought that line managers were doing a worthwhile job.

In answer to Mr McKinlay, staff turnover may be low in the SPS, but only 7 per cent agree that pay and conditions are good. The staff are not happy people. They may not be leaving, but that could be for all kinds of reasons—their homes are there and their children are at school there, for example. The issue is complex.

I accept the figures that Mr Peden has just read out, but the general feeling is that demoralisation has been caused by the way in which the SPS has dealt with things further up. Whether or not one likes the results, the handling of the situation has not been satisfactory—quite apart from the long delay.

Maureen Macmillan: I want to ask about staff turnover and staff illness. Has the low morale that the survey indicates caused staff to leave? I am told that prison staff have left to join the police. If staff are not happy and are stressed, they will sometimes go off with stress-related illnesses. You have said that turnover is low. How does it compare with turnover in other prisons and other industries?

Bill McKinlay: Turnover is less than what would be an acceptable figure in other industries—although I am not sure what they would deem an acceptable figure. At Barlinnie, the sickness rate has gone down from an average of 28.8 days per person in 1994-95 to an average of 10.4 days per person this year. If things were as difficult as has been said, we would not have expected to see that fall. However, those figures may not apply across the board; I cannot speak for other establishments.

Members might expect that the number of complaints from staff would be going up, but we

have had only three complaints this year to do with bullying and intimidation. In the first case, an officer made a complaint against another officer. In the second case, an officer made a complaint against the line manager; that case was solved by mediation. In the third case, a first-line manager made a complaint against a middle manager; that has been investigated, but no grounds have been found for the complaint.

There has not been an increase in the number of complaints. That does not detract from the perceptions of the staff members who answered the survey, but we have to consider the facts. Those respondents are voicing an opinion, but the reality of the statistics at Barlinnie is slightly different.

Maureen Macmillan: So you see a mismatch between what is happening in the prison and what the officers have said.

Bill McKinlay: As a manager, I still have to take account of those views. It is important that I heed the responses and deal with them.

The Convener: I will put a final point to you; I put the same point to the governor of Peterhead. It is not to insult you; I just want to give you the opportunity to respond. Derek Turner of the Prison Officers Association Scotland said that your transfer to a position at Barlinnie had been seen

“as an opportunity to move existing governors out and to put people in.”—[*Official Report*, Justice 1 Committee, 23 October 2001; c 2683.]

The inference was that you were a soft touch and would not put up a fight.

Bill McKinlay: I am wondering whether it is worth commenting, but I will do so.

The Convener: I wanted to give you an opportunity to respond to that on the record.

Bill McKinlay: That is fine. I have been a governor for 25 years. I spent the five and a half years before I came to Barlinnie managing and governing the maximum-security prison at Shotts, which had 560 maximum-security prisoners—the prison included the Shotts unit. I was asked some time ago whether I would move to Barlinnie. I was keen to do so. That was not because the incumbent was being forced out, but because he had chosen another career path. I do not consider that that in any way reflects on me or my abilities. When I moved into the position, I had—believe me—no intention of keeping my mouth closed when I saw something wrong. That is not to say that the board is the problem if something does not fit or I do not agree with something.

I do not know where the comment that you repeated came from, but I am very unhappy that it was not addressed to me personally, because I

would have dealt with it personally. My record and experience show that it is not true.

The Convener: In fairness to Mr Turner, I should add that the speculation was also made in the media.

Bill McKinlay: I was just talking about that one individual.

The Convener: I raised the issue to give you the opportunity to respond.

I thank the witnesses from Barlinnie. We will press straight on. I am sorry that we are being so slow. We have taken some time over the discussion this afternoon. Prisons are a major issue for the committee, as I am sure the witnesses are aware. We have persisted in trying to get to the bottom of things.

I welcome Ian Bannatyne, governor of HM Prison Low Moss, and Michael Crossan, head of operations at Low Moss. We are still accompanied by Derek Gunn, who will be glad to know that he gets a break at the end of this session of evidence. He can then go and do other things. Does Ian Bannatyne wish to make a short statement or shall we just press on to questions?

Ian Bannatyne (HM Prison Low Moss): I am conscious of the time, convener, so I am happy to press ahead.

The Convener: Low Moss is another prison that I have visited. One of the pluses of being on the Justice 1 Committee is that we get to go to prisons.

Donald Gorrie: I have not been to Low Moss. I would find it helpful if the witnesses described briefly the prison's physical appearance. I know that it consists of wartime wooden huts.

Ian Bannatyne: The prison is surrounded by a single fence. It contains 14 former barracks, as I imagine they would be called, which now form the dormitories and other facilities. They are linked together by a central communicating corridor. In addition to that, we have substantial and more modern industrial areas, for the textiles and joinery workshops and our estates staff, for example.

I have been the governor of Low Moss for only three weeks. The aspect of the establishment is relatively pleasing—there are pleasant gardens—but the accommodation buildings do not meet the current need.

Michael Crossan is not only operations manager; he was acting deputy governor for some time. I ask him to fill in anything that I have left out.

Michael Crossan (HM Prison Low Moss): I add only that, over a year ago, we inherited temporary cellular accommodation from HM Young Offenders Institution Polmont. That

accommodation comprises 30 cells. At present, 50 prisoners are located there.

Although we take prisoners who have been sentenced for up to 18 months, the cellular accommodation allows us to take, in the final nine months of their sentences, category C prisoners who are serving sentences of up to four years. That is the top end of Low Moss. We have no difficulty in filling those places with prisoners from Barlinnie, Greenock or Kilmarnock. The description that Mr Bannatyne gave is otherwise reasonably accurate.

Donald Gorrie: This may be an unfair question, given that the review is taking place. In your view, would it make more sense to improve Low Moss where it is or to construct a new prison somewhere else?

Ian Bannatyne: I do not have the technical expertise to give you a competent answer on that. Like my colleagues before me, I await the outcome of the estates review.

Donald Gorrie: One point that surprised me was the statement in paragraph 5.2 on page 11 of your submission. You say:

"The fast turnover of the population indicates a need to develop shorter approved activities".

Why is there a faster turnover?

Ian Bannatyne: Because Low Moss is a short-term establishment. People serve shorter sentences, so the turnover is considerably higher than at Shotts, which has longer-term prisoners.

Donald Gorrie: There is not a faster turnover than there used to be; there is a faster turnover compared with other prisons.

Ian Bannatyne: Yes.

Donald Gorrie: People have said to me that short sentences are a waste of time, because there cannot be an effective programme of education and rehabilitation. Is that a valid criticism? Can a sentence be too short to allow you to have an impact?

Ian Bannatyne: Even with a short sentence, we can make an impact. We are trying to achieve that with colleagues in Low Moss. I ask Michael Crossan to comment on that.

Michael Crossan: Generally, the SPS does not have the structured sentence-management approach to short-termers that it has to long-termers. That process starts with proper risk and needs assessments. A considerable number of prisoners spend an extremely short time in prison. That said, a number are involved in the revolving door syndrome, which has been described as serving a life sentence in instalments. Those people constantly come back to prison.

With short-term prisoners, we must engage more with external agencies. If a short sentence is seen as an event, rather than as part of a process of considering all the needs of the individual, it will not be as effective. The way ahead for extremely short sentences is to start to engage with external agencies and to emphasise the importance of throughcare. We have identified that as a major issue at Low Moss.

Donald Gorrie: Paragraph 5.2 also states:

"We have introduced a Prisoner Partnership Forum involving several community based groups aimed at promoting social inclusion upon release."

The prisoners will be released all over Scotland. How do you educate them for social inclusion locally?

Michael Crossan: The initiative is very much in its infancy. As part of the SPS drugs strategy, we will, in December or January, be employing four external agency workers. We will also be the location for the throughcare chaplaincy. We engage with the Church of Scotland and other denominations to provide accommodation for prisoners on liberation. We have an initiative called the new leaf project, which attempts to find employment for prisoners on release. It has been extremely successful. We also have a housing officer who attends for approximately two and a half days per week.

Our intention is to establish the specific needs of short-term prisoners and to design a regime that considers what happened to them before they came into prison and what will happen to them when they leave. The approach is a seamless one. That is the only way forward. The SPS is examining sentence management for short-term prisoners; we hope that that model will be replicated.

Lord James Douglas-Hamilton: I should say how much I appreciated the welcome that I received when I visited Low Moss some years ago. The chief inspector of prisons suggested that there were not enough nursing staff at Low Moss to operate a drug detoxification programme, despite the obvious need for that service. Is that matter being addressed?

Michael Crossan: Yes. That was the case at the time of the inspection. A nurse is now dedicated to that matter.

Lord James Douglas-Hamilton: There is some concern about the increase in the rate of positive mandatory drug tests at Low Moss; I think that 35 was the average for 2000-01, compared with 28 for the year before. Is that a particular problem? Is the matter being looked into and dealt with?

Ian Bannatyne: Drug taking continues to be a problem. As Mr Crossan indicated in his response

to Mr Gorrie, we are addressing it in a number of ways, including mandatory drug testing. There is no easy fix. As long as that problem continues in society, prison managers and the rest of the prison staff will continue to focus on it.

15:15

Lord James Douglas-Hamilton: The chief inspector said that the prospect of privatisation was unsettling. Is that the case? It would be helpful to know whether the staff are unsettled in that respect and whether steps have been taken to deal with that.

Ian Bannatyne: When the chief executive of the SPS appeared before the committee on 23 October, he indicated that the world has changed for the SPS since there has been another provider. Change is unsettling for everyone. We are attempting to manage that by communicating with our staff. I heard the convener quoting from the staff survey. I heard my colleague Mr McKinlay say that as prison managers we need to continue to address the issue to ensure that we keep our staff on board. They are doing an excellent job at present.

Lord James Douglas-Hamilton: Has the delayed estates review had an adverse effect on staff morale and on your plans for modernising the prison?

Ian Bannatyne: I have to admit that I have been back in the country for only a few weeks, having served in the Netherlands for a considerable period. I ask Mr Crossan to respond to that.

Michael Crossan: As we develop a regime, the estate has to support that regime. Investment in Low Moss will be an issue once the estates review has been made public. I do not want to speculate on the extent of further investment. Over the past year in particular, the prisons board has upgraded the gate facility. The cookhouse has been renovated with new equipment and there are plans to upgrade the waiting area for prisoners' families. In order to assist with the development of our regime, part of the estate has been turned into office accommodation.

Maureen Macmillan: I have some more questions about the survey of prison officers. The survey showed that morale was low. The governor of Barlinnie said that, in spite of that, he did not think that there had been any real effect on the way in which the prison officers were working—they were still working very professionally. Absence and turnover rates were low and people were not leaving the service. Could you say the same about Low Moss or are there indications that the staff there are more anxious? Perhaps they feel that they have reason to be more anxious.

Ian Bannatyne: I have no way of accurately gauging the staff's anxiety. However, I can tell you that, since I came to Low Moss, I have seen a highly committed staff, who are keen to do a good job and may well be affected by uncertainty. Overriding all that, however, is the staff's commitment to deliver what we are asking them to deliver.

Maureen Macmillan: How does the turnover rate compare with that in other prisons?

Ian Bannatyne: In the past six months, we have had the resignation of three band C officers and one dismissal and, in the past 12 months, we have had the retirement of two band D officers and one resignation, so the turnover is low.

The Convener: I wish to ask about the increase in the number of positive mandatory drug tests, which went up to 35 in 2000-01 from 28 the previous year. When I went round the prison with your predecessor, one concern was that, because Low Moss is a low-security prison, people were literally throwing drugs over the fence. That may not be the only way in which drugs were entering the prison. Your predecessor said that some of his prison officers had to spend time wandering around picking up packages. Is that still happening?

Michael Crossan: There is a risk, given the nature of the perimeter fence and the location, that that will continue to happen. There have been upgrades and camera facilities have been extended to try to identify people. The number of prisoners who are allowed to move around the prison unescorted has been reduced. There will always be a risk, but we are taking steps to reduce it. It is significant that, in years gone by, we were more reluctant to take prisoners at Low Moss who had a drug problem. We now are willing to accept prisoners who require detoxification on admission, so the profile of the population has changed and with that change in profile there has been a corresponding rise in the number of drug abusers compared with the number we had a year or two ago.

The Convener: Do the dormitory conditions contribute to that? How many men are in a dormitory?

Michael Crossan: On average there are 27 men in a dormitory.

The Convener: The conditions in the dormitories are basic. They must be cold. It is cold here, but it would be cold in winter in those huts. Do the dormitories facilitate drug exchange? Do they contribute to the drug culture, including, for example, intimidation?

Ian Bannatyne: It is fair to say that the dormitory conditions do not help our efforts to prevent drug misuse.

The Convener: Does Alba House still exist?

Michael Crossan: Alba House does not exist.

The Convener: Self-referral was used there. Why was it stopped?

Michael Crossan: The view of the previous governor was that, in Barlinnie, the number of prisoners who had the opportunity to address their offending behaviour did not truly reflect the drug problem. It was felt that, with the new SPS strategy, it would be better, as far as the staff at Low Moss were concerned, to take a different approach to drug behaviour.

The Convener: Do you agree with that?

Michael Crossan: There was never a formal assessment of Alba House, so it is difficult to say how successful the approach was. As you indicated, the level of drug abuse is quite significant in Low Moss and, in terms of the investment, Alba House alone was not really addressing the problem.

The Convener: Could you expand on what you said about resources? I recall that, in a previous report of the chief inspector of prisons, one of the pluses of Alba House was that it was pretty tough. I think that prisoners did cold turkey there. There was very much a community influence, in that each had to influence the others into being honest about their position. The impression that I got was that that was by no means an easy option. I accept what you say about there being no measure of how successful that approach was. Tell me about resources and whether it would be useful to have something like Alba House, given all the problems of the revolving door for prisoners, which I agree means that, in effect, prisoners at Low Moss often serve a long sentence by instalments.

Michael Crossan: Although there is an issue about resources, the situation must also be seen in the context of the role of residential staff at Low Moss in previous years. It was identified that residential staff were not engaging significantly with prisoners. As a result of our new staff attendance systems, we have officers working full time in the dormitories. Part of the strategy is that a dedicated officer or group of officers work in dormitories and those officers are competent to deal with many of the drug issues that present at Low Moss. That is the approach that we wish to take.

Maureen Macmillan: Does that new way of working with officers explain the fall in levels of prisoner violence that the chief inspector of prisons pointed out?

Ian Bannatyne: There are a number of factors behind that reduction, prime among which is the fact that we have installed closed-circuit television cameras in the dormitories. That has not totally eradicated violent incidents because, as a low-security establishment, Low Moss obviously has a lower level of supervision than there would be in a high-security establishment. That said, to a greater extent, there has been a reduction in both the number of assaults in dormitories and, as the chief inspector mentioned, the number of people slipping on soap.

Maureen Macmillan: I do not remember reading that in the report. That is quite interesting.

The Convener: A difficulty is that many prisoners are in prison for only two or three months. During my visit to the education unit, the teacher told me that there was no continuity because the prisoners came in, were released and then came back again. I was also concerned about the quality of the employment. For example, I saw some prisoners stripping wire; however, I believe that wire-stripping is a tough job and that there is a certain kudos for the men who do it. How can we improve the quality of education and employment at a prison such as Low Moss where the population is made up of short-term prisoners? I am sure that you will agree that the quality is not—

Ian Bannatyne: It is certainly an improvement from the days when I would wander into the industrial area of Barlinnie and see the prisoners sewing mailbags.

The Convener: Wire stripping is not much further up the scale.

Ian Bannatyne: It is, but only marginally.

Michael Crossan: I agree that the situation is not ideal. There is an issue about the extent to which we could introduce certificated vocational training for short-term prisoners. Salvage work keeps them busy and employed and allows them to associate with others, which probably—more than anything else—is its objective.

The prison also has a wood assembly shop, which makes garden sheds, and a textile shop. However, to be realistic, I do not think that there is much employment for males in the textile industry on the outside. The whole issue of prison employment does not affect only Low Moss, and should be addressed.

The Convener: So that is an issue that the SPS should consider, especially in relation to short-term prisoners.

Michael Crossan: Yes.

The Convener: Thank you very much. We will have a five-minute adjournment.

15:28

Meeting adjourned.

15:36

On resuming—

Subordinate Legislation

Legal Aid (Employment of Solicitors) (Scotland) Regulations 2001 (SSI 2001/392)

The Convener: Agenda item 2 is consideration of a negative instrument—the Legal Aid (Employment of Solicitors) (Scotland) Regulations 2001. Members have a note by the clerk, who will draft a report based on any comments that members might wish to make. The report will be circulated by e-mail for approval. We can simply note the instrument, unless members want to comment.

Lord James Douglas-Hamilton: The instrument seems sensible—I think that we can just approve it.

Maureen Macmillan: It is about setting up pilot schemes for community legal support services.

Donald Gorrie: I felt that the document might have told us where the four pilot schemes are.

Maureen Macmillan: It does. One is in Inverness—

The Convener: We should not break into general discussion. I refer Donald Gorrie to the list on page 1 of the Executive's note.

Are members content to note the instrument?

Members *indicated agreement.*

Freedom of Information (Scotland) Bill: Stage 1

The Convener: We will now take evidence from Chris Bartter, communications officer, and John Stevenson, chair of the communications committee, at Unison Scotland. We have received a written submission from Unison, but Mr Bartter wants to make a short opening statement.

Chris Bartter (Unison Scotland): First, I thank the committee for the opportunity to give evidence on the Freedom of Information (Scotland) Bill.

Unison Scotland has two remits.

The Convener: I apologise for the poor quality of light in this room. I do not know how much difficulty you are having with your papers.

Chris Bartter: It is not too bad.

We are trade unionists working for the public sector. As employees and members of the general public, we often require to seek information from our employers. Because we represent public sector workers, we will represent many of the staff who will be required to provide information under the bill. With those cross-cutting concerns in mind, we ask the committee to do something to improve some aspects of the bill.

Our written evidence indicates that we are supportive of many of the positive aims of the bill. We appreciate that the bill is stronger than the Freedom of Information Act 2000. The harder harm test of substantial prejudice and the additional public interest test are welcome, as are the powers and independence that will be granted to the Scottish information commissioner.

We are pleased that the bill is indicative of a genuine aim for more open and accessible public services. Members have been given our written submission, so I will not go through it again. Let me say only that our organisation subscribes to the principles that have been circulated by the Campaign for Freedom of Information strategy group.

I draw the committee's attention to two key areas that must be addressed, the first of which concerns the bill's coverage. The bill, quite rightly, is aimed clearly at public authorities. Unison has no problem with that, nor do we have a problem with the authorities that are listed in schedule 1. However, some organisations that we consider to be public bodies—such as local enterprise companies, social inclusion partnerships and housing associations—are not listed.

The authorities that are listed in schedule 1 are listed correctly. However, we now live in a society in which public services are delivered by a variety

of agencies: the voluntary and community sector, partnerships, private finance initiative projects, public-private partnership schemes, contracted-out services and private firms. Although the bill attempts to cover those agencies by allowing the minister discretion to name such organisations as he or she sees fit, it contains no guidance on the criteria for inclusion. There would be huge areas in which it would not be known whether organisations were covered. For example, would the bill cover private schools? What if the contractor to a public body that was covered by section 5(2)(b) were to subcontract services to another company? What if a whole service were to be privatised in a similar way to gas and electricity supplies? Those questions and many others are not answered.

Before such firms could be covered, they would have to be subject to an individual consultation process, yet no guidelines are given on how often that consultation should take place or on the mechanics of the process. The bill could easily give rise to a two-tier freedom of information system, in which some providers of public services would be liable to provide information to the recipients of their services—who might be tenants, students or workers—whereas others would not. For example, if the tenants of councils such as Glasgow City Council, Scottish Borders Council or Dumfries and Galloway Council vote for wholesale housing stock transfer, they would move overnight from a landlord that was covered by the bill to one that was not. Incidentally, we are still waiting for Falkirk Council to release its full business case for its PFI schools refurbishment project.

In our written submission, we made a number of suggestions on how the problem could be tackled. Most important, the bill should include a purpose clause, which should state the aims of the bill and whom it is intended to cover. For example, the Human Rights Act 1988 states that it applies to bodies

“whose functions are functions of a public nature”

and the concept of the emanation of the state is included in many European Union directives.

In addition, if public authorities can be listed, why should not the list include private and voluntary bodies that provide public services? The inclusion of such bodies would serve a dual function: it would make it clear that the bodies would be covered and it would start the consultation process. That would mean that the legislation could come into effect to cover all public service providers at the same time.

The second point to which we draw the committee's attention concerns how the bill's intended change in culture will be achieved and how the resources will be provided to ensure that

information is stored, processed and retrieved. Anecdotal evidence from our members suggests that the archiving and information-storage-and-retrieval function of authorities has been a low priority for some time. In periods of cutbacks and reorganisation, low-priority services suffer. Authorities have never dedicated huge numbers of staff to such services, but our information suggests that the numbers of such staff have dropped further. For example, The City of Edinburgh Council has only four and a half whole-time equivalent staff who work on its archives. The City of Edinburgh Council is one of the biggest local authorities, so what does that imply about the staffing situation in other authorities?

The bill's financial memorandum, which suggests that authorities will not need extra resources because they already provide information under existing codes of practice, ignores the fact that the bill is supposed to achieve a culture shift in people's attitudes towards freedom of information. I am not being disloyal to public authorities when I say that they will be required to take a considerably different attitude to their information function. Adequate storage facilities, proper access-and-retrieval systems and training for staff will be required.

The financial memorandum also ignores the fact that we have gone through a long period of cuts and reorganisation. Prior to 1996, 12 local authorities had a statutory archiving function, but after 1996, 32 authorities had such a function. I am not aware of any major increase in staffing to cover that. A Friends of the Earth Scotland trial survey indicated that a number of public authorities have difficulty in complying with the timetable of the current codes.

Resources and training need to be given much higher priority if public authorities are to be able to meet their responsibilities under the bill. I understand that the Scottish Executive's estimated figures in the financial memorandum were loosely based on the Irish experience. At a recent seminar on freedom of information, Patrick Whelan—the director of the Irish Office of the Information Commissioner—said that the resources that would be required to cope with demand had been greatly underestimated. In the OIC office itself, the four original inspectors had to be increased to 12 in two years—and that does not take into account the effect on public authorities outwith the OIC.

If the bill is to achieve its aims, the loopholes and anomalies in its coverage must be addressed and the Executive must tackle the issue of resources. Other aspects of the bill are covered by our written evidence and our previous responses. If members have any questions, we will be pleased to answer them.

15:45

Maureen Macmillan: I want to ask about training and how staff will cope. We talked about the change of culture that will be needed and how long it might take. How long will that change take? What sort of training will be necessary?

Chris Bartter: To answer that question, we would need to know what resources will be available to provide training. Two kinds of training will be required. First, training will be required that indicates to staff the importance that the Scottish Executive and the public authority attach to freedom of information and to ensuring that it is given due weight by staff. In addition, every public authority should have a designated officer who is responsible for freedom of information.

It would be useful to include likely users of freedom of information provisions in the same training to ensure that people on both sides of the fence are aware of the legislation and the procedures that authorities will adopt. That would introduce people to one other and provide the service that people want.

We need guidelines, responsible people and training that covers the importance of the legislation. That applies not just to the front-of-house people who will receive requests over the counter, but to staff whose job it will be, or should be, to ensure that records are kept, information is stored and the guidelines that are set by the Scottish information commissioner are adhered to.

Maureen Macmillan: Staff will have to know what information they can and cannot give out and how to define vexatious requests. Do you foresee problems?

Chris Bartter: Yes. There is anecdotal evidence that some of our members envisage problems with vexatious requests, for example. Such terms are not well defined in the bill and it is difficult to see how they could be. We would like the section in question to be removed from the bill—that would not be a major problem. Our information is that repeat requests are easier to process than new requests.

Maureen Macmillan: I think that information about repeat requests would be put on a website if it were obvious that people were continually asking for the same information, so there would not be a problem with that. However, making a subjective judgment about a vexatious request could—

Chris Bartter: We would not want individual members of staff to have to make subjective judgments of that sort. The question whether a request was vexatious should be a judgment for either the legislative authority or the public authority.

Maureen Macmillan: Or perhaps for the information commissioner.

Chris Bartter: Indeed.

Maureen Macmillan: You said that four and a half staff work at the Edinburgh archive. Do you envisage needing a lot more staff to deliver this service?

Chris Bartter: That will depend very much on the authority. In some smaller authorities, I do not think that a huge increase in staff will be required; proportionately, a large increase in staff will not be needed in any authority. However, our evidence suggests that extra resources may be needed for some time to set up systems and processes, to ensure that information is more easily accessible.

Maureen Macmillan: Money may need to be spent on making information more easily retrievable.

Chris Bartter: I hope that resources will be available for that.

Donald Gorrie: You mentioned the need for a purpose clause. The official line seems to be that such a clause might be restrictive and that it would introduce to the bill an element of vagueness that is not currently there. How would you argue for a purpose clause?

Chris Bartter: The bill's current title is clear, but restrictive. It is difficult to argue that a purpose clause would be more restrictive than that. The bill is restricted by its title to the provision of information by public authorities, which are clearly defined. However, the intention, certainly as described in the consultation paper "An Open Scotland", was that the legislation should provide for information to be made available on public services, whoever the providers of those services. It would be invidious for a situation to exist in which suppliers of one public service were liable to provide information under the bill, whereas providers of the same service elsewhere were not, simply because their function was described differently.

A clearly written purpose clause would help to define the scope of the bill, rather than making it vaguer. It would help to clarify the intention of the bill and whom it is intended to cover.

Donald Gorrie: It has been suggested that the bill should cover all public service providers. That seems to me to be rather a good idea. Would public service providers need to be listed or could it be left to the courts to make it clear what public service providers are?

Chris Bartter: In our written evidence, we suggest that it would be best to include both a purpose clause and lists to clarify what is meant by a public service provider. Lists of public

authorities already exist. If, under section 5, ministers were to define other bodies as public authorities, presumably those bodies would have to be added to the list or a separate list would have to be created. I see no difficulty in that. As I said, there are a number of ways in which public sector providers could be defined. Lists would be one way of doing that.

Donald Gorrie: It has been suggested that large commercial companies could come under those provisions, in so far as they have activities, that make them public service providers. If a big multinational gets a contract, through PFI for example, to build a road, which aspect of the work comes under those provisions? In general, we cannot ask questions about what the company is doing in Canada or Timbuktu or wherever. How would you list that? Is it not better to stick to the concept of public service provider, rather than list firms when, from time to time, they undertake PFI contacts?

Chris Bartter: If the aim of the bill is to provide information on public services, it makes sense to list the public services about which we are talking. My understanding of how that part of the bill will work is that the minister will designate a firm or part of a firm that deals with the service in question. I see no real problem in doing that. It is no more of a problem than are the current designation procedures.

Donald Gorrie: You are against class-based exemptions but not contents-based exemptions. Will you run through your arguments on those exemptions?

Chris Bartter: We see no reason why so much of the information should be the subject of class-based exemptions. The legislation aims at openness. Any content-based exemption must satisfy the harm test of substantial prejudice and the test of public interest. It strikes us that any information that can be excluded by the legislation, such as information that is already in the public domain, can be the subject of an absolute exemption. The class-based exemption seems to give other levels of problem. It leads to the anomalies that are to be found in the bill.

For example, information that is commercially confidential is the subject of a content-based exemption in that it is subject to the substantial prejudice and public interest tests. That is fair enough. However, trade secrets are a class-based exemption. I am not a lawyer and do not know whether there is a legal definition of a trade secret. If there is not, who knows how it will be defined? Are processes, staffing levels or the amount of cleaning of a hospital ward trade secrets? If so, they fall under class-based exemptions. That automatically exempts companies from requiring to give information on them.

The Convener: Can I intervene? We are muttering that a trade secret would be the recipe for Drambuie or black bun. Those recipes might be trade secrets whereas staffing levels and so forth would come under commercial confidentiality. Do you accept that?

Chris Bartter: I am not sure that that is true in all cases. Is it not still the case that the private sector providers of Kilmarnock prison refuse to give their staffing levels?

The Convener: The basis for that is commercial confidentiality, as the prison does not want its competitors to know its contractual arrangements. It is not a trade secret, which is something that is usually in the manufacturing or development of a product—I hear mumblings of “Irn-Bru”, but we are digressing from the question. Please press on, Donald.

Donald Gorrie: I am happy at the moment.

The Convener: Perhaps the cold is affecting us.

Lord James Douglas-Hamilton: I would like to ask one or two questions about funding. It is estimated that the implementation of the bill will cost between £2.5 million and £4.8 million a year. Am I right in thinking that you want a firm pledge that those resources will be delivered to public authorities to implement and deliver that service?

Chris Bartter: Yes, we are asking for resources to be delivered to public authorities for that purpose.

16:00

Lord James Douglas-Hamilton: What concerns do you have about the method of communication and about the requirement to lodge written or electronic requests being unfair, because some people might find it hard to communicate in that way?

Chris Bartter: We are concerned about the bill's requirement that requests both for information and for review must be delivered by written or electronic means to be acceptable. That could discriminate against people whose first language is not English and against people who have difficulty in dealing with written language at all. From that point of view, we think that there is potential in the bill for discrimination. We think that it should be possible to develop a system whereby requests, whether they come in by phone or by personal approach, can be recorded and tracked. We accept the need for the requests to be recorded in some way so that they can be tracked, but we do not think that the restriction that they should be submitted in writing or electronically is wise.

Lord James Douglas-Hamilton: Do you have a list of categories of persons who might be in that position?

Chris Bartter: We do not have a list, but I am sure that there are agencies that would be able to provide one.

Lord James Douglas-Hamilton: So you are raising the principle.

I would like to ask about charging. I think that there was some concern about a partially sighted person being charged more for information in larger print. Are you arguing for fair play and for the need not to disadvantage people because of physical disability?

Chris Bartter: Indeed we are.

Lord James Douglas-Hamilton: What are your views on the proposed role of the Scottish information commissioner? Are you content with that?

Chris Bartter: We think that the role of the Scottish information commissioner as set out in the bill is one of the plus points of the legislation. It is good that what is envisaged is a powerful and independent authority. Small areas, such as the sanctions available to the information commissioner, might need to be beefed up. However, we are much happier with the powers and independence of the Scottish information commissioner compared to those of the UK information commissioner.

Lord James Douglas-Hamilton: Are you at all concerned about the powers of ministers to overrule the decisions of the commissioner by ministerial certificates?

Chris Bartter: We are opposed to the ministerial veto.

Lord James Douglas-Hamilton: In principle?

Chris Bartter: Yes.

Lord James Douglas-Hamilton: That will obviously be a controversial issue.

You propose that a designated freedom of information officer should be appointed for public authorities. Can you tell us more about that?

Chris Bartter: As I said when I talked about training, we think that it is important for each public authority to have a designated freedom of information officer, whose job is to ensure that the legislation is followed and implemented as it should be. We are not saying that a new post should be created in smaller authorities, but somebody should certainly have that role as part of their function.

Lord James Douglas-Hamilton: Do you feel that your views have been taken into account

properly and fully during consultation?

Chris Bartter: Some of our views have been taken into account and we welcome that. However, it is clear that the minimal changes between the draft bill and the bill that the committee has in front of it are indicative of the fact that many of the important points—particularly the two points that I raised at the start—have not been taken into account in the process.

The Convener: I have two questions about two entirely different areas. The idea has been considered that the commissioner and the proposed public sector ombudsman should be one and the same and that they could operate together as a one-stop shop, as it were. Along with Aberdeen City Council, you responded that the function of the two offices might be sufficiently different to make such an approach inappropriate.

Will you expand on that? There are many names and many organisations out there. It seems quite attractive to know that the Scottish public sector ombudsman is the same person to whom we go when we want access to the type of information that the Freedom of Information (Scotland) Bill deals with and to know that the ombudsman will deal with regulation. That might not be a bad idea.

Chris Bartter: I can see how that might appear attractive. The Scottish information commissioner should be an independent post and should concentrate on the function of ensuring freedom of information. The commissioner should be allowed to issue guidelines and carry out investigations.

Although the coverage in Ireland is slightly different, the number of staff that the information commissioner in Ireland required rose considerably from the original estimate. I do not think that it is a question of there not being enough work for an information commissioner. The other fact that supports that view is that three of the posts that are currently subject to the freedom of information legislation are the ombudspersons for health, local authorities and administration. If they were subsumed into one post, the information commissioner would be in the invidious position of policing his or her own submission.

The Convener: Are you saying that there would be a conflict of interest?

Chris Bartter: That depends on how the appointment is done, but there is a risk of that.

The Convener: I ask about the codes of practice. The framework is exactly that, but the codes of practice are important for the public, your members and public bodies.

I am concerned that the codes of practice will fall late in the legislative process. At the most recent meeting at which members took evidence, there was hope that we would have the codes of

practice before stage 3. What is your view on that? It seems to me that that would alleviate many of your fears, as the question of vexatious applicants might be dealt with.

Chris Bartter: We see no reason why work should not be started on developing codes of practice in advance of the legislation. We have codes of practice for the information that the Administration and public authorities provide.

We said in one of our submissions that we would like training to start before the bill is passed. Codes of practice and guidelines would make that much more possible. Unison, too, would welcome the issuing of guidelines and codes of practice as soon as possible for precisely the reason that you indicated, convener—to clarify the situation for our members who will provide the information.

The Convener: The idea is attractive. What you said about extending what comes under the public authorities is worth while. Donald Gorrie said that a company that was within that remit for only a short time might be listed. We cannot include such companies in the legislation. However, guidelines for codes of practice would make it clear, at least in the initial stages, to a local authority or other body that they might be caught up in the eventual act. The commissioner could consider both the remit and whether the interpretation was correct—the commissioner could act as both an adjudicator and as an advice centre on the legislation. Do you agree that that is a better way of dealing with the matter?

Chris Bartter: Until now, we have thought that the codes of practice should be in the main body of the legislation. This is not an area that we have given a huge amount of consideration to and we may well consider your suggestion on guidelines more favourably. We have indicated that we think that the delineation of who should be covered should be added to the role of the information commissioner. That might be a step forward.

The Convener: You do not believe that much progress has been made with the drafting of the codes of practice, although there are guidelines. We might get some idea from looking at the Freedom of Information Act 2000. To ensure that the committee has a rounded view of the legislation at stage 2, do we need to know more about the codes of practice?

Chris Bartter: Reading those codes of practice would assist both the committee and other people.

Donald Gorrie: Because it might affect some of your members, I will raise the issue of enforcement. The powers of enforcement seem to me to be zero. If a bolshie council department or quango fails to produce the information and the commissioner tells it that it is naughty, what happens then? It may have to produce the

information but there seems to be no penalty, even if the organisation consistently does that.

It was suggested to me that the commissioner could send in somebody to that department to ensure that it performed properly. Some of your members might take a dim view of that, might they not?

Chris Bartter: The question of imposing sanctions on a recalcitrant body involves the clear delineation of the responsibility of the authority and the responsibility of the individual member of staff. If there is a recalcitrant authority, the sanctions should apply to the authority. Having said that, we will not sit here and defend obvious malpractice. The bill refers to the criminal offence of the deliberate destruction of records. We support the bill in that and will continue to do so. It should be made clear that the sanctions are against the bodies or authorities that have made the decisions.

Maureen Macmillan: In your submission, you say that the suggestion that any request that would cost less than £100 should be free is unacceptable. However, would that not cover the vast majority of requests? You also say that that ceiling should be raised and that help should be provided to voluntary bodies. Would you elaborate on your ideas?

Chris Bartter: In an earlier submission, we suggested that the limit should be around £200 or £250. In particular, we would like the removal of the provision in the legislation that indicates that authorities will not be obliged to provide information above a certain level, as that level is currently lower than it is in the UK legislation.

Maureen Macmillan: Are there swings and roundabouts? Am I right in saying that the ceiling of £100 in Scotland is higher than it will be in England?

Chris Bartter: You might be right—I am not absolutely sure at this stage.

Maureen Macmillan: How many of the requests do you think will fall into the under £100 bracket?

16:15

Chris Bartter: Quite a lot of the one-off requests will fall into that bracket. The cost is likely to be more than that for detailed information requests, when people may be seeking detailed information on future plans for public services, costs and so on. That information may take much more time to put together. That will cost more in terms of the authority's time and resources. I have not seen estimates of how many requests would fall into the lower category. We think that £100 is not very much for a detailed search. Some authorities have quoted—not implemented at this stage—£50 an

hour for an information search.

Maureen Macmillan: That is surely not what your members get paid.

Chris Bartter: No, it certainly is not. If that is going to be the charge, it is clear that the limit of £100 will be reached quickly.

Maureen Macmillan: Would £250 be a better limit?

Chris Bartter: Perhaps it would be better if there was a linked figure that would automatically uprate.

Maureen Macmillan: We would like to see the figures on which the limits are based.

The Convener: Would you like there to be standard fees throughout Scotland? I am not sure whether that is part of the proposals. Let us take as an example property inquiry certificates from local authorities when somebody is purchasing a house. They are now a good source of revenue for local authorities. The charges vary throughout Scotland for property inquiry certificates. Would we want a standard charging rate throughout Scotland so that it was not felt that one local authority was—far be it for me to say this—profiting from providing the information?

Chris Bartter: Given the range of information that will become available under the legislation, there would be difficulties—

The Convener: I meant a rate.

Chris Bartter: As I understand it, this aspect is covered in enabling legislation—the details are not in the bill. We were not in favour of a flat rate. We thought that the majority of inquiries should be delivered free of charge. We are also clear that authorities should not try to recoup the whole cost of providing the information. We felt that that would mean that the cost of the provision of information would be prohibitive. I believe that that principle has been accepted in the legislation, although we do not necessarily agree with the specific figures that have been produced.

The Convener: I feel that we are going further and further into the night. Before darkness descends, I will say thank you very much, gentlemen.

Chris Bartter: Thank you very much for listening to us.

The Convener: Good afternoon to the witnesses from the Disability Rights Commission. I am sorry that you have come as the light is failing. We are peering into our papers. This is a very bad venue for a meeting.

Adam Gaines is the head of policy, Maire McCormack is the parliamentary officer and Lynn

Welsh is the legal officer. We have a submission from the commission. I know that the witnesses have waited for a long time, but I ask them to make brief opening statements because it is useful for us to ask questions and to receive lengthy answers. As I will be disabled for the next six weeks with a broken ankle, I have sympathy for people who try to get in and out of this building in a wheelchair. We need a proper ramp into the Hub, because I know that one cannot get a wheelchair over the existing ramp.

Adam Gaines (Disability Rights Commission): I thank the committee for the opportunity to give evidence. My initial comments will be brief, but we have a written opening statement that we will make available, if that will save time.

Overall, we support freedom of information and the general principles of the bill. We want to ensure that disabled people can access information on an equal footing. We are particularly keen to ensure that the bill makes specific reference to the needs of disabled people. Although we recognise that the bill is not intended as an equality measure, it provides a good opportunity to produce an exemplar of best practice for disability access. That means ensuring that disabled people can access information in a format that is most relevant for them and that the costs are not passed on to them.

Donald Gorrie: The official argument for requiring applications in writing is that it avoids disputes. In a telephone conversation, the two parties might have different interpretations of what is agreed, which might lead to disputation. It is safer to ensure that applications are written down. Why should we accept as applications telephone calls, personal visits and conversations?

Maire McCormack (Disability Rights Commission): We appreciate the arguments for freedom of information requests to be in writing or in electronic format. However, the requirement in section 8 of the bill that FOI requests must be in writing could cause substantial difficulties for disabled people, deaf people, blind people and people with mobility difficulties. As was mentioned by Chris Bartter, the witness from Unison, the problem applies not exclusively to disabled people, but to people from minority ethnic groups. The Disability Rights Commission feels that public authorities should be required to accept requests for information by other means, such as by telephone or in person.

The Disability Discrimination Act 1995 already requires reasonable adjustments to be made in the first instance. Such a requirement under the FOI bill will ensure compatibility with part III of that act. We appreciate the reason behind the argument for requests to be made in writing, but to

generate a culture of openness and transparency throughout the public sector, access to information must be provided clearly and equitably.

The two tasks for the Disability Rights Commission are to eliminate discrimination against disabled people and to promote equal opportunities for them. That element of the FOI bill is potentially discriminatory against disabled people and could place several barriers in their way.

Maureen Macmillan: I will pursue that point. I hear what you say about not everyone being able to make requests in writing, but some people might not be able to make requests by speaking either. They might have severe communication difficulties. Surely we are looking not for a form of communication other than writing, but for advocacy for people with communication disabilities.

Maire McCormack: A reasonable adjustment could be the provision of advocacy in person or by telephone. That could be a role for the Scottish commissioner or the designated person.

Lynn Welsh (Disability Rights Commission): As Maire McCormack has said, all providers of public services have a duty to ensure that their services are available through auxiliary aids and services. By insisting on writing, they breach the DDA.

We must start from that point. Those public service providers will have to arrange another form of communication for people who would find it unreasonably difficult or impossible to make requests in writing. The 1995 act and the bill conflict. How public service providers make that adjustment to make their services available is open to discussion. It is their duty to provide alternative means of communication.

Maureen Macmillan: I understand the problem about recognising communication that is not in writing as a true record. That is why I suggested advocacy, as that would allow the advocate to write on behalf of someone.

Lynn Welsh: Not everyone will require an advocate. That presumes that people cannot make their own representations.

Maureen Macmillan: People would have to be able to check the written version of their representations. I am not sure how the system would work.

Lynn Welsh: The task is for the local or public authority. If a body requires information in writing, it might have to make an officer available to meet the disabled person and write down their information.

Maureen Macmillan: The problem is not

insuperable. It would be quite easy to organise that.

Lynn Welsh: It would. At present, many public services are available by phone, so the possibility of disputes over records is an insufficient reason for not allowing other means of communication to be used.

Adam Gaines: Many public authorities take requests for information in different ways. It is important to public authorities that they have a record of requests.

The Convener: That is because of the time scale.

Adam Gaines: From our perspective, it is important that a reasonable adjustment is made for individuals to make requests in other ways than writing. Some existing processes could be used for that.

Maureen Macmillan: Authorities would also want to know that the person who made the request was the person whom they said they were. They would require proof of identity.

Lynn Welsh: A written request does not necessarily require proof of identity.

Maureen Macmillan: A signature might provide that.

Lynn Welsh: I presume that a signature would not be checked before information was provided. We are keen to ensure that disabled people are treated equally.

Maureen Macmillan: I take your point.

Lynn Welsh: That is important. It is not a case of letting people substitute for disabled people. Disabled people must be treated equally and given the same place as non-disabled people.

The Convener: Section 11, which is on the means of providing information, states that

“the authority must, so far as is reasonably practicable, give effect to that preference”—

the applicant's preferred means of receiving information. Subsection (3) states:

“In determining, for the purposes of subsection (1), what is reasonably practicable, the authority may have regard to all the circumstances, including cost”.

You talked about able-bodied people not being hide-bound to writing for requests, but providing information in Braille or any other form for people with a range of disabilities might involve even more expense. Is the provision sufficient?

Lynn Welsh: No.

The Convener: This lady is ready—she is on the starting blocks before I have got there. If we left that insufficient provision and someone was

not provided with information as they required it in a certain format because of their disability, could that person bring a test case under the Disability Discrimination Act 1995? I have a feeling that much of what will eventually be the position will have been formed—as it always is on the edges—by test cases. Is that sufficient, or should the bill itself expand on that issue? I am sorry—that question was very long.

16:30

Lynn Welsh: At the moment, local authorities have a duty to make reasonable adjustments for any service that they provide. Our concern is to ensure that, when they decide the means of provision under section 11 of the bill, they do not take into account the cost of that reasonable adjustment. Otherwise, what will happen is that the two costs will combine and automatically mean that most disabled people will receive one of the cheaper means of information provision, simply because of their disability. That is discrimination. We are arguing that section 11 should include a stipulation that reasonable costs do not include the cost of reasonable adjustments that local authorities are already obliged to make under the Disability Discrimination Act 1995. In other words, there is a two-step process. First, what means will be provided under section 11? Secondly, what reasonable adjustment will allow us to provide those means?

The Convener: Are you saying that the bill should state explicitly that the reference to reasonable adjustments in section 11 is compatible with section whatever it is of the Disability Discrimination Act 1995?

Lynn Welsh: Yes.

Adam Gaines: Including a reference to the Disability Discrimination Act 1995 would help public authorities to carry out their duties. As a result, we would not have the cases that you referred to, convener, and public authorities could prepare their schemes in the knowledge that they would require to take the issue into account.

The Convener: So the bill would include wording along the lines of, "For the avoidance of doubt, this provision includes the definition made under whatever section of the Disability Discrimination Act 1995."

Lynn Welsh: Yes.

Donald Gorrie: There seem to be two aspects to the issue. First, you are afraid that public authorities might provide a less good service to disabled people because the system will be difficult and cost more and, as a result, the information will not be presented satisfactorily. Secondly, you are concerned that your members

will be charged more because the additional technology required to provide the information to someone with a disability will put the cost over the higher level. Is that right?

Lynn Welsh: Yes. Arguably, that is discrimination and the case could therefore be taken to court. It all depends on the definition of a reasonable adjustment. The council cannot pass on the cost of a reasonable adjustment—as opposed to the cost of a more than reasonable adjustment. However, instead of getting into such an argument, we think that it is clearer and safer to include in the bill the stipulation that such costs will not be charged.

Donald Gorrie: Presumably if I am a disabled person and ask for some information, someone has to spend X hours researching the matter. However, that would be the same whether I was a very fit genius, a disabled person or whatever. Whereas a non-disabled person would simply be given a piece of paper with all the required information, a disabled person might need something more. I imagine that that additional cost would have to be disallowed in the charges.

Lynn Welsh: Indeed, yes. Under the Disability Discrimination Act 1995, it would be separated out.

Donald Gorrie: And you think that that stipulation could be included in the bill.

Lynn Welsh: Yes.

Donald Gorrie: It seems a good idea if we can do it.

The Convener: Perhaps it might be better to deal with that point in the codes of practice. I do not like cluttered bills in which little details like that are tweaked. Local authorities' codes of practice on this, that and the other could also include guidelines on what is and is not chargeable. If someone with a disability required something to be translated into Braille, the commissioner's guidance could specify that the translation costs should not be charged to the account. Might not that deal with the issue better?

Lynn Welsh: It would be better to have both. Section 11 could contain literally half a sentence on the matter, which could then be expanded in the codes of practice. We believe that it would be more useful and convey a stronger message if the provision were in the bill in a short form.

The Convener: My understanding is that if the codes of practice are issued by the commissioner—who will also educate on their purpose, so there will be a dialogue—they will have legal standing. Because the provisions of the bill will be phased in over a period of years, it will be years before it is implemented in full. However, I understand that it will be an offence for a public

authority to be in breach of the codes of practice.

I am just suggesting that it would be better not to clutter the bill with such details as charging and fees. What is and is not chargeable should be in the codes of practice. Someone with a disability should not be discriminated against by being charged extra for their inquiry because of their disability.

Lynn Welsh: What we would like to see in the bill is not cluttered detail, but an important statement, if you like, with the detail to follow in the codes of practice. The legislation should state strongly the principle that disabled people cannot be discriminated against by being charged that extra cost.

The Convener: Do we have any further questions?

Donald Gorrie: No. I think that that has covered the matter well.

The Convener: I am sorry that the session has been brief.

Maire McCormack: I want to add to what Lynn Welsh said. We in the Disability Rights Commission want all the mechanisms that are deployed, including the bill, the codes of practice and regulations and guidance, to ensure that access to information for disabled people is fair and equitable. That could cover the publication schemes and so on. We want to use all the available mechanisms—not just the bill, but the guidance, the codes of practice and best practice. The commissioner could promote good practice in the publication schemes, with model publication schemes and so on.

The Convener: What you are saying is that whenever the act is launched, with guidelines on how the public can use it, special attention should be paid to how disabled people can access information and to their rights in respect of what they should and should not be charged for.

Maire McCormack: Absolutely. There is also a duty under section 15 to provide advice and assistance. We want to ensure that that includes the needs of disabled people.

Adam Gaines: The bill provides an excellent opportunity, with the publication schemes and the codes of practice, for monitoring over time of equal opportunities and access for disabled people. Those issues could be looked at later and potentially reported on by the information commissioner. We could see over time what sort of progress was being made. Therefore, there is real potential in that respect as well.

The Convener: We do not have amendments from the Executive. We could certainly consider any amendments that we might receive from you

at stage 2 if you felt then that the Executive had not taken your evidence into account.

Thank you very much. I am sorry that the meeting has run on so late and that you had such a wait.

Adam Gaines: Thank you.

Meeting closed at 16:37.

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