

JUSTICE 1 COMMITTEE

Thursday 6 June 2002
(*Morning*)

Session 1

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JUSTICE 1 COMMITTEE

24th Meeting 2002, Session 1

CONVENER

*Christine Grahame (South of Scotland) (SNP)

DEPUTY CONVENER

*Maureen Macmillan (Highlands and Islands) (Lab)

COMMITTEE MEMBERS

*Ms Wendy Alexander (Paisley North) (Lab)
Lord James Douglas-Hamilton (Lothians) (Con)
Donald Gorrie (Central Scotland) (LD)
Paul Martin (Glasgow Springburn) (Lab)
*Michael Matheson (Central Scotland) (SNP)

COMMITTEE SUBSTITUTES

Bill Aitken (Glasgow) (Con)
*Mrs Margaret Smith (Edinburgh West) (LD)
Kay Ullrich (West of Scotland) (SNP)

*attended

THE FOLLOWING ALSO ATTENDED :

Stewart Stevenson (Banff and Buchan) (SNP)

WITNESSES

Tony Cameron (Scottish Prison Service)
Mr Jim Wallace (Deputy First Minister and Minister for Justice)

ACTING CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 2

Scottish Parliament

Justice 1 Committee

Thursday 6 June 2002

(Morning)

[THE CONVENER *opened the meeting at 09:03*]

Interests

The Convener (Christine Grahame): I welcome everyone to the 24th meeting in 2002 of the Justice 1 Committee—the committee that never sleeps. I remind members to turn off their mobile phones and pagers. I omitted to mention this yesterday, but Margaret Smith is present as Donald Gorrie's substitute. I require to ask Margaret to declare that she is here as Donald's substitute and whether she has any interests.

Mrs Margaret Smith (Edinburgh West) (LD): I am here on behalf of the Liberal Democrat group as Donald Gorrie's substitute. I have no other declaration to make.

Prison Estates Review

The Convener: I refer members to paper J1/02/24/1. We will pick up where we left our discussion on private prisons. As no one else wants to start, I will begin with one of the questions that has not yet been put to the minister.

The suggestion—perhaps it is more a proposition than a suggestion—has been made that it is immoral to profit out of incarceration and prisons, and that private prison providers have no incentive to reduce recidivism, because, for them, the more they can fill up their prisons, the better. What is your response to that proposition?

The Deputy First Minister and Minister for Justice (Mr Jim Wallace): I recognise and respect the moral argument that some people use that there is no place for the private sector in running prisons. I want to make it clear that I am not ideologically driven towards private prisons. The case that we have put is based on a number of factors, not least of which is value for money for the taxpayer. If you were to suggest that no one should make a profit from crime, every criminal lawyer in Scotland would probably have to give up their work—no one would advance that as a serious proposition.

The Convener: I hope that you are not suggesting that members of the legal fraternity encourage crime for the sake of their profits.

Mr Wallace: No, I am not, but they derive an income—a substantial income, in some cases—

The Convener: I thought that they served justice.

Mr Wallace: They derive an income because crime exists. Everyone would be highly delighted if crime were to be totally eliminated.

We should face up to the fact that a number of services are provided in our public prison service by the private sector. For example, all the education work is provided by an outside source.

The Convener: Forgive me, minister. I appreciate that, but the point that I was making was that there would be more endeavour in the public sector to encourage rehabilitation with a view to reducing the prison population, whereas there may not be that endeavour in the private sector—if I may put it in the abstract—because it is in the private sector's interests to keep the prisons bulging.

Mr Wallace: I have heard that view expressed before. It is a very cynical view and there is no evidence to back it up. I ask the committee to remember that, at the end of the day, the private sector has to perform to specifications that are stipulated in a contract. The onus is on the public

sector—on the Scottish Prison Service and on the Administration—to ensure that the contract contains drivers that promote rehabilitation. If a company that is driven by profit does not perform according to the contract, that is a sure way of not making a profit. I have made it clear on a number of occasions—not least in my original statement—that we see an emphasis on rehabilitation as being an important part of any contract.

The Convener: Let me continue with our theme of privately run prisons. The minister's ambition is, I think, to reduce the number of prisoners through the use of alternatives to custody. What would the impact be if you were to commit to building the two, or possibly three, private prisons that are in the pipeline, but the numbers were to fall? Would the publicly owned, publicly run prisons be emptied because you were locked into contracts with the private sector? It would be in the interests of the purse for those prisons, rather than public sector prisons, to take prisoners.

Mr Wallace: That is a hypothetical question about the projected numbers, although I would love to see the numbers fall—I hope that we would all be delighted if prison numbers were to fall. When and if that situation arises, I would fully expect a number of factors to be taken into account, not least of which would be the physical condition of the estate, before decisions were made about which prisons should be closed. If we build new, privately funded prisons, those prisons will be the estate's newer prisons, and that might well make the argument for retaining them. However, I am talking about hypothetical decisions or proposals, which—

The Convener: But it remains the case that, through the Executive, the Scottish public would be locked into 25-year contracts or what not, and that things can greatly change over 25 years. In those circumstances, private prisons would be likely to remain full, because we would be paying for them.

Mr Wallace: In the circumstances of the hypothesis that you put forward, that would represent best value for the taxpayer. I rather hope, too, that the public benefit of having reduced the prison population through a number of factors, such as alternatives to custody and reducing crime, would be more important than any ideological split as to whether prisons are publicly or privately run.

The Convener: The committee has received evidence that, elsewhere in the world, privately built, privately run prisons are now going back into the public domain—certainly the operational side of those prisons is—and that for us to go in the direction of private build, private run is going against the international grain of the operation of prisons. Do you agree?

Mr Wallace: Examples of that having happened exist. We cannot say that it is a universal trend. New private prisons are opening up. Mr Cameron probably has better all-round international knowledge.

The Convener: The question is to both of you.

Mr Wallace: I think that the authorities in South Africa are opening a very substantial private prison. It is far bigger than any such prison that we would want in Scotland. Mr Cameron probably has more detail.

Tony Cameron (Scottish Prison Service): The commentators tend to focus on instances in which a privately managed prison has been taken back into public management. That is news. Movements in the other direction are not news. Western Australia has just opened a large new facility. Victoria took one prison back into public management—I think that earlier evidence to the committee stated that—but that has not stopped the authorities letting other contracts. As the minister said, in South Africa two very large private sector prisons are being commissioned. I think that one is about to open.

The Convener: Those prisons are run by Premier Prison Services, are they not?

Tony Cameron: No, they are not.

The Convener: Are they not in the family of that company?

Tony Cameron: No, I think not. Neither prison is. One of those prisons was in that family, but the ownership of the private sector prison at Kilmarnock has changed.

The Convener: Yes, but I am thinking of the connection with the director.

Tony Cameron: There are different trends. My understanding is that the worldwide provision of prisons built and run by the private sector is still expanding rapidly.

The Convener: I leave that to the committee. That did not appear to be the evidence from some of our previous witnesses.

Tony Cameron: I am not surprised.

The Convener: I welcome Maureen Macmillan and Wendy Alexander to the meeting. I also omitted to welcome Stewart Stevenson, who has a well-known constituency interest.

I thank the minister for giving us two and a quarter hours. I am trying to run to a timetable and help the minister. The general questions will take us from 9 o'clock up to 10 o'clock. We will then move on to questions on Peterhead, Barlinnie and Low Moss from 10 o'clock until 11.15. That is to try to give you an idea of how we need to keep the meeting rattling along.

Michael Matheson (Central Scotland) (SNP):

On the international experience, America was the country that led the way in developing private prisons. That country has considerable experience of private prisons. The committee has had clear evidence that, in America, there is a movement in the opposite direction: a number of states have taken private prisons back into public control and the private prison market is shrinking. Is that not the case?

Tony Cameron: I could not comment overall. It is difficult to generalise.

Michael Matheson: You commented that the private prison market is still expanding rapidly, Mr Cameron. We have had clear evidence from an expert in the field who said that that was not the case. That person said that in America, which has the most experience of private prisons, the market is now shrinking. That is why companies such as Premier Prison Services, which is linked to Wackenhut Corrections, are moving into other countries to set up prisons in them.

Tony Cameron: Premier Prison Services is no longer connected to Wackenhut Corrections, as you know.

Michael Matheson: You know about the various companies anyway. We have received evidence from an academic who is an expert in the field that the companies that originally started in America are now moving into other countries because the market in America has gone flat and, if anything, is shrinking. Are you saying that that is not the case?

Tony Cameron: I do not know about America. I am only saying that there is a worldwide expansion of private prisons. It is difficult to generalise about America and I cannot comment on that situation. I have no specific information about aspects of the American situation.

Michael Matheson: From where do you get your evidence that the market is expanding?

Tony Cameron: The companies that are in that field are still expanding.

Michael Matheson: Yes, but are they expanding in size or finance?

Tony Cameron: They are expanding the number of facilities that they run.

Michael Matheson: Where is the evidence of that?

Tony Cameron: Their newsletters talk about opening a new prison here or there in various countries, from which I deduce that they are expanding. Elaine Bailey states that the market is still there and that Premier Prison Services is expanding generally. We have not studied that. It is irrelevant to our interest in the matter, but that is the evidence that I have. I cannot comment on

America specifically. The American model is not particularly common or favoured in Europe. The American situation is very different. America has even higher levels of incarceration. There is a federal system and there are state systems, so it is difficult to generalise.

09:15

Michael Matheson: The American model is probably pertinent, because America has the greatest experience of private prisons. We should therefore consider the American experience. I understand that the private companies that are involved in the sector want to play up the market. I am more likely to listen to an independent academic who studies the sector and has given information contrary to what you are saying.

Tony Cameron: I cannot comment on that. The place in the world with the highest percentage of prisoners in privately run prisons—about 40 per cent—is the state of Victoria, not America. I am not sure that I agree that America has the greatest experience or the most relevant experience from our point of view. There is not an American model; there are many American models.

Michael Matheson: Consider the time frame in America. It has been involved in privately run prisons for 15 to 20 years.

Tony Cameron: That is possible.

Michael Matheson: It is not possible; it is the case.

The Convener: We will move on. It is probably my hearing, Mr Cameron, but I would appreciate it if you could move your microphone a little closer to you.

Stewart Stevenson (Banff and Buchan) (SNP): I have a small point to make about risk transfer in relation to private prisons. Is the minister aware that in France private involvement in the prison sector is paid for on the basis of the number of prisoners that are serviced? Do you accept that that model achieves a better balance, if there is a declining prison population, in making the choice between subsequent public or private provision? One can reduce costs in the private involvement in prisons as one can in the public provision.

Mr Wallace: I am interested to hear about that. If the decision were taken to go down the road of commissioning private prisons, there would have to be detailed contractual negotiation, as there was before the commissioning of Kilmarnock. As I have indicated on several occasions, there are a number of objectives, one of which is good value for money for the taxpayer. I do not think that we should be too proud to learn of good ways of doing that.

The Convener: On the point about the detailed negotiations for the Kilmarnock contracts, my understanding is that when staffing levels were agreed for Kilmarnock no account was taken of the fact that prison officers would be used for escort duties, because escort duties had been privatised in the English contract, on which the Kilmarnock contract was based. My understanding is that that presumption was made and the contracts were just moved over. Is that the case?

Tony Cameron: No.

The Convener: Is that not the case?

Tony Cameron: The first point is that the staffing levels were not agreed. It is up to the company to decide on staffing levels. There is no agreed staff complement in the Kilmarnock contract. The committee has seen the full contract. No staffing level is specified. The escort position was taken into account, but no staffing levels are agreed in the Kilmarnock contract. The company decides on that input. The fact that the company was doing its own escorting was included explicitly in the contract.

The Convener: So when you negotiated the contract with Premier Prison Services, was the staffing complement of prison officers not part of that?

Tony Cameron: First, Premier Prison Services does not employ prison officers; it works in a different way. The inputs that the company chose to employ were its own decision. There was a competition in which people within the company made presentations about what they thought that they could achieve and the best overall balance of service and price won the contract.

The Convener: Regrettably, I did not see the details of the contract.

Ms Wendy Alexander (Paisley North) (Lab): We had the opportunity yesterday to look at the specifics of the contract, which was an interesting exercise. We were able to look at balance sheets, profit and loss and cash flows for the Kilmarnock project. Those were agreed by the Scottish Prison Service at the outset of the project and covered a forecast horizon from 1998 to 2005.

Given the topicality of the issue, what work has been undertaken internally—perhaps external work has been commissioned—to examine whether the cost structure implicit in the projections that were made more than four years ago has been fulfilled? The revenue line is fixed. If there are 500 places, we guarantee that we will fund 500 places and therefore the variability is all on the operations and costs side. Has any work been done by the SPS to establish whether the cost structure that was agreed in 1998 has been fulfilled over the past four years? There were

implicit assumptions about staffing levels and so on in that operating model.

Tony Cameron: No. No work has been done on that.

Ms Alexander: I am grateful for your candour. However, we have had a private sector prison operating in Scotland for four years with an implicit cost structure and it is a matter of concern that, at the end of four years—given that we are about to embark on projects for three more private prisons—we have not embarked on any work to establish whether the cost structure and staffing levels have been fulfilled.

I do not want to trespass on what things can and cannot be said in public, but clearly there was an implicit internal rate of return for the operator associated with those financial projections. In terms of ensuring probity for the public purse, it would seem crucial to establish whether the internal rate of return had been met or was higher or lower. There is four years of accumulated evidence that would allow us to consider that, and that could act as a helpful benchmark to indicate how we should move forward.

Tony Cameron: I understand the point, but we do not think that there is any need for that assessment. It depends on whether one believes that there is a competitive market here. If there is, looking at the internal rate of return is not the best way to determine the market price. It is the market price that determines whether we are getting the right quality and price balance.

Ms Alexander: With respect—

Tony Cameron: That is what is the Treasury guidance suggests.

Ms Alexander: Given that one of the responsibilities of the public sector is stewardship, having some sense of whether the operating structure that was implicit in the one private prison that we had four years ago has been fulfilled in practice is a crucial input to the decisions that we must make now.

One of the issues that Stewart Stevenson raised was that in the contract that we had hitherto, very little revenue risk was borne by the operator. In other countries the operators have borne revenue risk and therefore understanding whether the cost structure has been fulfilled is important. At a United Kingdom level, organisations such as Partnerships UK are there to ensure efficiency in the procurement of public-private partnerships and it is important to look across comparators of different projects—be it a hospital PPP or a schools PPP—where there is no risk on the revenue side. I would feel more comforted if we had looked at how that had transpired.

There are various competitive markets in place.

There is a competitive market for private prisons emerging in the UK. If we embark on another three private prisons, that will certainly go some way towards creating a competitive market. The first operator probably does have the right to have some monopoly premium associated with being the first, but I would hate to see the public sector having to pay a continuing monopoly premium if we had four more private prisons across the UK. The benchmark would allow us to consider the risks in the context of a competitive market not just in the prison sector, but in other sectors. That is how the financiers and operators will look at it.

Tony Cameron: Kilmarnock was not the first private prison, so monopoly premium would not attach to Kilmarnock.

Ms Alexander: It was the first in Scotland.

Tony Cameron: It does not matter because it is a UK market—for this purpose we are one economic unit. Can I say that—

The Convener: I am sorry, Mr Cameron, but, before she comes back in again, I must ask Ms Alexander to make her questions a little shorter, wonderful though they are.

Tony Cameron: The Executive, like the UK Government, does not generally do post-internal rate of return comparisons where there is a competitive market. It is in rather more specialised circumstances that they are recommended, and we have not done one. We do not think that there is a need for it, given the state of the market. We are a part player and there is a much bigger market on our doorstep, which influences us considerably and is dominant. There is a basic UK market in such services.

The Executive does not, as a matter of course, do internal rate of return comparisons calculations post hoc for any of the other projects you mentioned either, unless the market is not giving the right signals. There is no such suspicion in this case. PricewaterhouseCoopers did not report one.

Ms Alexander: I will not prolong this line of questioning. However, I feel that it would be useful to have some understanding of whether the operating structure that led us to agree the Bowhouse contract has been fulfilled and proved accurate. It seems to me to be an essential input, and it is slightly surprising that PWC has not pursued the matter.

Tony Cameron: The real contract compliance question is whether we are getting the outputs that we are paying for, and we are.

The Convener: That was a wonderful maiden question from Wendy Alexander.

Mrs Smith: I hear what you say about a competitive market, Mr Cameron, but I would like

some clarification. You said that the contract for Kilmarnock does not need to contain any details about staff numbers, so there is no set staff-prisoner ratio and no quality indicator based on staffing levels.

Tony Cameron: There are quality indicators, but not staffing levels.

Mrs Smith: So, theoretically, once a firm has organised a contract with you, there is nothing to stop it reducing its staffing levels by 40 per cent.

Tony Cameron: Or increasing them by that amount.

Mrs Smith: Given that it is a competitive market, it is more likely that firms would reduce their staffing levels.

Tony Cameron: No, because they must meet the contract specification.

Mrs Smith: If there is nothing in that Kilmarnock contract, and you appear to be happy with that, you must intend that future private prisons in Scotland will have no stipulations for staff-prisoner ratios in their contracts. Is that correct?

Tony Cameron: One of the questions is whether you want risk transfer.

Mrs Smith: I want public safety and prisoner safety.

Tony Cameron: Yes, we all want that. That is what the output specification is. The question is whether you want to specify the outputs in terms of safety or whether you want to second-guess the inputs. If you want to second-guess the inputs, it is likely that the whole operation would be on the Government's balance sheet and the costs would therefore be up front.

As you know from previous discussions, the SPS has succeeded in ensuring that the risk transfer in the Kilmarnock contract was sufficient to take Kilmarnock off the balance sheet, or not to bring it on to the balance sheet. That is the accountants' way of saying that sufficient risk has been transferred to the operator to produce the public safety and other benefits that we want. There is sometimes a natural tendency to want to second-guess an operator when you buy a service from any supplier, but doing so carries considerable financial risks.

Mrs Smith: The risks involved in this case are not just financial. Maybe I am naive, but the risks here are about people's safety and incarceration, not just about accountants and balance sheets.

Tony Cameron: Indeed they are, and that is the important thing to keep our eye on. Many of the 50 or so specific performance measures are designed to tell us whether we are getting that, but they do not tell the operator how to do it.

Mrs Smith: Do you not think that the Scottish public, which we represent, would think that it was reasonable for us to have an idea of how many prison officers, or whatever you want to call them, are actually functioning within prisons, where we have taken away people's liberty?

Tony Cameron: Not particularly.

Mrs Smith: You do not think so?

Tony Cameron: It depends on what the purpose of that would be. If the service is being provided satisfactorily, it is being provided satisfactorily. It is that mix of inputs that produces the best outcome for the taxpayer.

The Convener: On the matter of whether the service is provided satisfactorily, I would like to quote from the evidence of Phil Hornsby of the Prison Services Union.

He said:

"I complained previously to the English contracting authority about the paucity of staff in the privatised custodial services, and was met with silly responses such as, 'It's nothing to do with us—it's the contractor's problem. They contracted to do the job with this many staff, and that's what you've got.' That is not good enough. It is an irresponsible attitude and that must be addressed. If it is right, for example, that in a public prison in Scotland there should be 100 prison officers, why should there be only 50 at Kilmarnock prison? It is a ridiculous situation. It is irresponsible of the contracting authority."

You are the contracting authority; are you being irresponsible?

09:30

Tony Cameron: From what you said, I do not think that that comment was directed at us, was it?

The Convener: Oh yes—he is talking about Scotland.

Tony Cameron: Ah—I thought that the bit about being "irresponsible" was about somewhere else.

The Convener: No—he was talking in the context of the contracts awarded. You may check it for yourself in the *Official Report*. Mr Hornsby went on to say:

"It is irresponsible of the contracting authority. The ferocity of the tendering system means that every new private prison that comes on stream does so with fewer staff on lower pay, because the wages bill is the big cost in running a prison, and it is the only cost that the operators can address in order to remain competitive. Somewhere, the bubble will burst. We are in a ludicrous situation."—[*Official Report, Justice 1 Committee*, 30 April 2002; c 3486.]

You are about to launch into the tendering process for another two private prisons. Staffing is where the money is saved.

Tony Cameron: We would not agree with the sentiments that you have expressed.

The Convener: So, it is not a ludicrous situation and there is no bubble to burst?

Tony Cameron: No.

Michael Matheson: The issue of staffing in private prisons has been raised with the committee on a number of occasions. The chief inspector of prisons, Clive Fairweather, has described the staffing level at Kilmarnock as "dangerously low". Do you agree?

Tony Cameron: No. I have no view on the number of staff at Kilmarnock; that is a matter for the operator.

Michael Matheson: Do you feel absolutely no responsibility to ensure that the prison is adequately staffed and that you are satisfied about safety in the prison?

Tony Cameron: We are concerned with safety, but not with the staffing level. That is for the operator. The two things are not the same, as you know.

Michael Matheson: The concern over the low level of staff has been to do with safety—in particular, the safety of staff in the prison.

Tony Cameron: I am sorry, but I am missing the point.

Michael Matheson: The point is that the dangerously low level of staff affects the safety of staff and prisoners in the prison.

Tony Cameron: If there is a dangerously low level.

Michael Matheson: That is why I am making these points—the levels are dangerously low. Do you not accept that?

Tony Cameron: No. I repeat: the staffing level in the prison is a matter for the operator. However, safety in the prison is our concern.

Michael Matheson: The points that have been made relate to the safety of prisoners and staff.

Tony Cameron: What point are you making? I am not sure how to respond. I understand that you have had discussions with the operator on staffing levels.

The Convener: You cannot separate staffing levels from safety. They are bound together.

Tony Cameron: They are connected.

The Convener: If you do not have enough staff, you may compromise safety. That is the point that Michael is making.

Michael Matheson: I can give an example. We have discussed the matter with staff at Kilmarnock and they feel that staffing levels are so low that they are at risk.

Tony Cameron: Does the company agree?

The Convener: Ha! What do you suppose?

Michael Matheson: Apparently, the only issue to do with staffing that you are interested in is safety.

Tony Cameron: Yes, that—

Michael Matheson: The staff feel that the levels are so low that their safety is at risk. They believe that there could be a problem for prisoners as well, if we consider assault figures. Are you concerned about that at all?

Tony Cameron: We would be concerned if the assault figures were out of line, but they are not.

Michael Matheson: What about the safety of staff?

Tony Cameron: Health and safety is a hugely important subject and it is one that the prison service—probably more than all the other public services—takes most seriously. It is not unusual for unions to claim that there are not enough staff. That is what they are there for. I am not surprised that that is the view that you were given. However, I have no comment on the specific staffing levels and all the safety measures that the operator at Kilmarnock chooses to employ to deliver a safe prison. As the contracting authority, I am concerned that it delivers a safe prison, and it has done so.

The Convener: I would like to ask the minister to address all the responses that we have heard, which must be giving the committee some concern. Perhaps the minister will say whether he agrees with the chief executive of the Scottish Prison Service.

Mr Wallace: I do not have Clive Fairweather's interim report on Kilmarnock with me. However, I recollect that it was not he who said that staffing numbers were dangerously low, but staff. I am informed that Clive Fairweather told the committee that he did not say that staffing was dangerously low. It is important to put that straight and on the record. If committee members want to come back on that—

The Convener: I think that it was the prison officers who said that. We are checking that point.

Mr Wallace: Mr Matheson's question was prefaced by the comment that Clive Fairweather had claimed that staffing levels were dangerously low. The issues under discussion are sensitive and it is important for us to be accurate about who said what.

The Convener: I will quote from paragraph 4.4 of the interim report.

"Custody officers claimed that staffing levels could at times be dangerously low, especially in 'A' wing and at weekends."

The report continues to narrate various examples of assaults and other less serious incidents. I will pass the copy of the report to Michael Matheson, as he may want to refer to it.

Michael Matheson: I understand the point that the minister is making. However, it is clear that Clive Fairweather thought that the comment warranted reporting.

Mr Wallace: One would expect him to report the comment.

Michael Matheson: An important issue is involved. When Donald Gorrie and I visited Kilmarnock, prison officers continually raised the issue of staff safety. Tony Cameron has stated that, in the running of Kilmarnock, the SPS is concerned primarily about safety. Safety was raised as a matter of concern. Is action being taken to address the matter?

Tony Cameron: Did Mr Fairweather recommend that action should be taken?

Michael Matheson: I am asking you a question. You stated that you would be concerned about safety. Clive Fairweather highlighted the issue as one that staff had raised with him. Is the SPS, as the contracting authority, doing anything about that?

Tony Cameron: No. However, the contractor responded to that point when giving evidence to the committee. The point was put to Premier Prisons, was it not?

Michael Matheson: Are you satisfied with that?

Tony Cameron: Yes.

Michael Matheson: What was Premier Prisons' response to the committee?

Tony Cameron: Ron Tasker did not agree with the comment.

Michael Matheson: Even allowing for the fact that staff at Kilmarnock had told the committee otherwise?

Tony Cameron: Very possibly—staff in our service often do the same.

Michael Matheson: Does that mean that you see no need to look at the matter further?

Tony Cameron: No.

Michael Matheson: Even though you are concerned about safety?

Tony Cameron: I am concerned in general about safety, but not about that particular issue.

Mr Wallace: It is important for us to clarify that Clive Fairweather did not make the comment, nor did he endorse it in his interim report on Kilmarnock. As far as I am aware, he also did not

make a recommendation following his reporting of the comment. Safety is a paramount consideration in our prisons. No one attempts to run away from that fact. Perhaps the best indicator of safety that we can make is one that examines the safety record.

In the year to 31 March 2002, the number of prisoner-on-prisoner assaults in Kilmarnock was lower than in Edinburgh and was the same as in Aberdeen, Barlinnie and Glenochil. Over the same period there were two serious prisoner-on-staff assaults in Kilmarnock compared to one each in Barlinnie, Edinburgh, Glenochil and Perth. Any assault is a matter for concern, but the figures do not suggest that the position in Kilmarnock was in any way out of line from the position of prisons in the public sector.

The figures that I have for fears about safety are, I think, from the prisoner survey of 2001. They show a figure of 31 per cent in Edinburgh, 22 per cent in Perth and 23 per cent in Kilmarnock. The figure is not out of line from what is being delivered on the ground. It should also be borne in mind that more time is spent out of cell in Kilmarnock than in most other prisons in the public sector. Inevitably, if prisoners are out of their cells, the opportunity for attacks is greater.

Given the fact that the figures for Kilmarnock are in line with those in the public sector and allowing for the fact that prisoners spend more time out of their cells, there is no evidence to suggest that the position of staff or prisoners in Kilmarnock is any less safe than it is in comparable prisons in the public sector.

I have two further points to make. The first is in response to Margaret Smith, who said that private prisons could continue to reduce staff and that there was no restraint on that process. That is not correct, because at the end of the day at Kilmarnock they have to deliver against 50 outputs and specifications, therefore they cannot allow the number of staff to be reduced to a level at which they cannot deliver.

Finally, it is my understanding that the Health and Safety Executive's remit runs to Kilmarnock prison, so an independent outside body with a track record in health and safety can be called in if there is a suggestion that a proper safety regime is not being run at Kilmarnock. That is independent of the chief inspector of prisons and the Scottish Prison Service.

Tony Cameron: Indeed, Kilmarnock prison won a health and safety award last year.

The Convener: Wendy Alexander, Maureen Macmillan and Margaret Smith wish to ask questions. Before that, I wish to clarify Clive Fairweather's comments. He said:

"I must make the point that I have never said that staffing levels are dangerously low; the staff have ... There are certainly much fewer staff about. As we said in our last report, we are worried that, when there are few members of staff about, it is difficult for them to interact with the prisoners. I am not sure that officers at Kilmarnock can keep on top of the drug problem—which they said they would like to do—because of the shortage of staff."—[*Official Report, Justice 1 Committee*, 14 May 2002; c 3538 and 3539.]

He also talked about the way in which staff are rostered, so there are issues that Clive Fairweather is concerned about, which are a matter for the contract.

There is so much more that we wish to do on this issue. The minister may wish to comment at the end, or now, on Phil Hornsby's comments—to which Mr Cameron responded, but I regret that I did not ask the minister to do the same—that the tendering was ferocious and that staffing is what goes by the wayside.

Mr Wallace: Obviously, he is coming from a particular standpoint. It does not surprise me that he said that. It is also the case that prison officers in the public sector from time to time complain—Mr Cameron can provide chapter and verse on that—about staffing levels.

The Convener: Minister, surely the point is the tendering process and competition.

Mr Wallace: The important point is that we—the Scottish Prison Service and the Scottish Executive—stipulate what we want these prisons to deliver, therefore it is not in the interests of any private operator to recruit below the level that can deliver on a range of indicators. If they did so, they would start to lose money. I have given indications in written answers—[*Interruption.*]

The Convener: I am afraid that Ms Alexander was not here when I gave my usual warning about mobile phones.

Mr Wallace: I have sat in Cabinet with Ms Alexander.

The Convener: I hope that that call was not somebody putting in a tender.

Maureen Macmillan (Highlands and Islands)

(Lab): I want to ask about safety and assaults. When we examined Kilmarnock prison previously there was a perception that some assaults were being wrongly recorded, so that instead of being recorded as serious assaults they were being recorded as minor assaults. Are you aware of that happening? Do you have any way of checking whether assaults are recorded accurately?

Tony Cameron: Yes, we have. We believe that the recording of assaults at Kilmarnock is superior to that anywhere else. There is an independent check at the prison, because we have a group of people in our employ—the controller and his

staff—at the prison all the time. A view was expressed on how we record serious assaults as scored against our key performance indicators, which are set by the minister. We went back and checked, and found that the figures were accurately reported for Kilmarnock and other prisons.

The definition of what constitutes a serious assault is complicated. It will be obvious in some cases when an assault is a serious one, but there is a boundary line. The Scottish Prison Service applies the same test, whether the alleged serious assault takes place in Kilmarnock or in Edinburgh or Perth, which are the two nearest comparator prisons. We measure assaults carefully in all our prisons, both prisoner-on-prisoner assaults and prisoner-on-staff assaults, which are very rare. The figures are comparable and appear in our annual report. Outputs at Kilmarnock score against the SPS totals, so we are very careful when assessing them. Also, assaults at Kilmarnock are independently validated, which does not happen to the same extent elsewhere.

The minister indicated that at Kilmarnock prisoners are out of their cells for longer than at any institution other than those in our open estate. More is done to challenge their offending behaviour and there are more work programmes. However, if prisoners are not locked up for as long, there is a greater risk of assaults taking place. There is greater emphasis at Kilmarnock than anywhere else in the system on prisoners' going to work each day, because work inculcates good habits. We make no apology for taking that approach and would like it to be adopted more widely.

09:45

Maureen Macmillan: I intended to ask how assaults at Kilmarnock are monitored, but I will skip over that.

You mentioned the work-based programme at Kilmarnock. The chief inspector of prisons has expressed concern about the quality of the opportunities that prisoners at Kilmarnock have to address their offending behaviour. I know that the estates review recognises that more can be done to ensure that private prisons focus on reducing reoffending and that the SPS intends to pursue that issue. Everyone is concerned that rehabilitation is not a priority for the private sector. To put it crudely, if private prisons rehabilitate their clients, they will lose them.

Tony Cameron: For many years there has been an international debate about whether work programmes and other activities in prison help to prevent prisoners from reoffending—or reoffending seriously enough to have to be returned to

custody. There are different views on that. We have tried to adapt to our circumstances a combination of work and other programmes from around the world. However, there is no hard evidence that particular programmes have a dramatic effect on recidivism or reincarceration rates. The measure that we use is whether the first offence that a former prisoner commits after release is serious enough for them to warrant imprisonment.

I can shed some light on the debate that we had with the chief inspector following the appearance of his previous interim report on Kilmarnock. In late April my board colleague Mike Duffy, who is director of operations for the south and west, wrote a letter to Clive Fairweather in which he picked up some of the points that Clive had made in his report. Mike Duffy said:

“SPS Operating Standards were one of the key drivers of the Kilmarnock contract. Nowhere else in the system is closer to achieving these Standards, than Kilmarnock. For example, nowhere else are prisoners out of their cells for as long as they are at Kilmarnock. We are trying to increase it elsewhere but the key comparator prisons”—

The Convener: Are you quoting from the interim report?

Tony Cameron: I am quoting from a letter that the SPS sent to Clive Fairweather.

The Convener: When was the letter sent?

Tony Cameron: It is dated 26 April. We can make the letter available to the committee.

The Convener: Please do so. Had Clive Fairweather written to you, or did Mike Duffy write his letter in response to the interim report?

Tony Cameron: Clive Fairweather is responsible for making interim reports.

The Convener: So Mike Duffy's letter is the SPS's response to Clive Fairweather's interim report on Kilmarnock.

Tony Cameron: Yes. It is not unusual for us to respond to interim reports in that way. Perhaps some explanation would be helpful. Major reports that Clive Fairweather produces on the prison system are submitted to the Minister for Justice. A protocol ensures that they are also sent to the SPS, so that it can check that they are factually accurate. We do not discuss the recommendations that are made in such reports. The same procedure is not followed with the more cursory day-long or two-day-long interim or intermediate reports. In such cases, if we want to pick up on anything, we simply write back to Clive Fairweather, mentioning that we have picked up some points.

The Convener: We are running short of time. Could we hear the letter, please?

Tony Cameron: The letter says:

"Having prisoners out of their cells, with an expectation that they work, increases some risks eg refusing to go to work, drug trafficking and various forms of misdemeanour. If prisoners are locked up for much of the day, which sadly is too common in some of our prisons, they get less chance to create mischief, but by the same token they are not then being engaged in purposeful work activity. Many prisoners have never had a job in their lives and most of them did not go to school regularly - so inculcating regular habits and particular work habits is a vital task for us if we can manage it. In this respect, Kilmarnock is at the forefront not at the back of correctional excellence which we intend to roll out through the Service over the next few years."

09:50

Meeting suspended.

09:51

On resuming—

The Convener: We had a problem with the sound system, but it is now back on and we are back in session.

Maureen Macmillan: You were saying how wonderful Kilmarnock is and describing how it can deliver as well as, or better than, the public sector. I realise that the various programmes are just beginning to be rolled out in the public sector too. Are you as happy with a private prison delivering rehabilitation services as you would be with a public prison doing so?

Mr Wallace: Yes—in as much as it is in our power, when we enter into a contract, to stipulate what must be delivered. The fact that that becomes a contract performance measure in many respects gives more power and leverage to ensuring delivery than is the case in the public sector. If any public sector prison fails to deliver on a particular programme, there is not much that can be done about that. If a private prison, having contracted to deliver programmes—and I have emphasised how important rehabilitation would be in any contract—fails to deliver, there is contractual recourse to penalties.

I hear the cynical viewpoint, according to which private prison companies have no interest in promoting rehabilitation and recidivism is to be encouraged, as it provides more raw material for prison places in the future. That takes no account of the fact that, if private prisons fail to deliver, they are penalised. As I have indicated in written answers, the Scottish Prison Service has not been slow to penalise Kilmarnock prison in cases of failure to meet one of the contractual standards.

Maureen Macmillan: If you are so happy with the way in which the private prison service can deliver rehabilitation, why have you made it clear in the estates review that the private sector would

not deliver the STOP programme?

Mr Wallace: That came from a private conversation with the chief inspector of prisons for Scotland, but I am sure that he would have no difficulty in my disclosing this. He said to me that he thought that the STOP 2000 programme should be delivered within the public sector. I took that on board and responded to it.

Maureen Macmillan: But there is surely an inconsistency there.

Mr Wallace: I do not think that there is an inconsistency. I would have hoped that the committee would give me some credit for the fact that I have taken on board a specific point by the chief inspector of prisons about a particular programme. That is something for which I consciously made provision in the prison estates review.

The Convener: That is interesting, because I think that the chief inspector of prisons wants the STOP programme to continue to be delivered at Peterhead.

Mr Wallace: The conversation was not so much about Peterhead specifically, but about the public sector.

The Convener: I want to move on to the public-private option. Please provide two quick answers. Do you think that work is rehabilitation?

Mr Wallace: Yes.

The Convener: You do.

Mr Wallace: Yes, for the simple reason that employability and being able to gain employment is one of the factors that is most likely to assist a prisoner in rehabilitation within the community.

The Convener: The effectiveness of work as rehabilitation obviously depends on the quality of the work that is available. There is another issue that I want to clarify. We received evidence about a conflict at Kilmarnock between going to rehabilitation programmes and doing work. Is it correct that one can be disciplined—one can lose money—if one opts out of the work regime and goes to rehab?

Tony Cameron: That is a problem everywhere—it is not peculiar to Kilmarnock. There is tension—

The Convener: Please use the minister's microphone. We will suspend shortly to allow the microphones to be fixed.

Tony Cameron: There is tension everywhere relating to time out of cell. Work is a legal requirement—the law says that convicted prisoners in Scotland must work. That is a very old rule, but one that we must observe, as it has been

regarded as extremely important for a long time.

The Convener: The wages that are earned at Kilmarnock are higher than the wages in the public sector.

Tony Cameron: Sometimes they are higher and sometimes they are not. The wages vary in Kilmarnock and they vary in our directly managed prisons. In talking about developing quality programmes and approved activities and so on, there is a danger of losing sight of the fact that prisoners work for most of the time in prison. Work helps to create order and is important for employability, as the minister said. The quality of the work is obviously important and we cannot always provide the quality of work that we would wish.

The Convener: Clive Fairweather says that insufficient work is available at Kilmarnock. I am not saying that that situation applies only at Kilmarnock.

Tony Cameron: Although there is insufficient work at Kilmarnock, on average there is more work at Kilmarnock than there is anywhere else and the number of hours that are worked—35 hours a week—is greater than it is anywhere else. The paucity of work is more of a problem for places such as Perth and Edinburgh.

The Convener: I am sorry to rush you. We are running out of time and we are having trouble with the microphones. Michael Matheson will ask a short question, then I will suspend proceedings so that all the microphones can be sorted out.

Michael Matheson: On quality of work, will you explain how painting gnomes improves one's employability?

Tony Cameron: Painting gnomes is the same as sewing mailbags—a task that our prisoners no longer do—but it inculcates work habits. Some of the tasks that we obtain in the economic market in which we must exist provide work that in many cases is of a menial character. That work enables prisoners to earn money, which they can spend or save. In that way, the prisoners acquire work habits, which they would not otherwise have.

Michael Matheson: Painting gnomes is an example of some of the work that is available at Kilmarnock, which you have just been boasting about. As a former occupational therapist, I do not consider such work as rehabilitation.

Tony Cameron: I note your comment. The work that is done at Kilmarnock is very similar to the work that is done elsewhere. In many cases, it is superior to the work that we are able to provide elsewhere.

The Convener: I will suspend proceedings for five minutes. Members will be able to have a

coffee until the microphones have been fixed.

09:57

Meeting suspended.

10:05

On resuming—

The Convener: I am sorry to rush everyone, but time is precious. We are wired again, in all senses of the word.

Margaret Smith has a question about the private build, public operate option.

Mrs Smith: The estates review examined the totally public option, the totally private option and, latterly, the private build, public operate model, which is superficially attractive to some people and which might be called the third way. The consultation paper on the Prison Service estate states:

“the private build, public operate model may well not translate well into the prisons sector where the private sector role in successful PPP contracts has covered not only the delivery of ancillary services but also the delivery of core operations.”

The Prison Officers Association told the committee that 21 prisons in France were privately built and publicly run. Did the minister investigate fully the feasibility of that option and consider international models before publishing the prison estates review? What is the minister's view of the private build, public operate option?

Mr Wallace: The French models are known to us. I am not sure whether Mr Stevenson visited France this week, but at my previous session with the committee, I said that I was more than interested to learn about the outcome of the visit. We understand that the operation in France is not entirely comparable, not least because many of the ancillary tasks have been contracted out. That already happens in a number of respects in the Scottish Prison Service. For example, education work is contracted out and there are pilot schemes for contracting out social work services, which are still being evaluated.

Mr Cameron can elaborate more on the importance of catering, but my understanding is that catering is an important part of running a prison because it involves work for the prisoners and the quality—

The Convener: The quality of the food has a connection to morale.

Mr Wallace: It is an important issue, as the convener rightly says. Although parallels can be drawn and lessons can be learned, it was our view that the French model did not represent a template for what might be done in Scotland. The First

Minister and I asked for work to be done on private build, public operate prisons. We were attracted to that option.

The Convener: You have confessed that you do not know fully about the French operation, because you asked to talk to Stewart Stevenson, who has been there. The question was whether you investigated fully the feasibility of the French option before publishing the estates review.

Mr Wallace: I am sure that the convener is familiar with paragraph 4.2(c) of the PricewaterhouseCoopers report, which indicates that the French model was considered. It states:

"However, we understand that this is a straightforward outsourcing of services without the significant risk transfer responsibility applied by the PPP Private Build Private Operate model, and without the private sector capital being provided or put at risk dependent upon delivery of the services.

We have concluded that there are no direct benchmarks in the UK or internationally for provision of prison facilities".

The French model was specifically referred to in that connection, as it were. If someone believes that PricewaterhouseCoopers has got it wrong, I am open and receptive to such views, as I have indicated from the outset. The French model was considered and rejected for reasons that I have given. However, perhaps someone can shed new light on that model.

The Convener: I know that Stewart Stevenson has a lot of information on the French model, from his visit, but I want him to ask only crisp questions on the matter.

Stewart Stevenson: I will not go into the matter at length, as that would not be appropriate just now. The committee and the minister will get my draft report later this week.

I can understand, having visited France, why the perception of the French system has been formed. I think that it concerns differences in the ways that words are used in different languages. That is why I would encourage the Prison Service and perhaps the minister to go and see the French model.

Paragraph 4.1 of the PricewaterhouseCoopers report lists four bullet points to define the private build, public operate model. Only one item in that list is not matched by the French model, and that is the word "finances" in the first bullet point; in the construction phase of prisons all the risk is taken by the private sector, but at the end of that phase the prison is sold to the public sector which, in a sense, carries the risk thereafter. However, maintenance and insurance continue to be carried by the private sector. Therefore, the difference is actually quite subtle. The French have been using the procurement model since the time of Louis XIV in the 16th century, when it was introduced for canals. Without going into the matter at length, I

came back convinced that the French model is worthy of further consideration. However, I spent only six hours there and could not look at everything.

The Convener: How did PricewaterhouseCoopers miss that system, when it has been going for such a long time?

Mr Wallace: PricewaterhouseCoopers considered that system and reached a different conclusion. This is not an exact science, but PricewaterhouseCoopers reached its conclusion after taking account of various rules about the transfer of risk. I do not think that Stewart Stevenson purports his conclusion to be any more right than the conclusion of PricewaterhouseCoopers.

Stewart Stevenson: I do, as I visited France and talked to the people in the French justice ministry. PricewaterhouseCoopers did not do that.

Mr Wallace: I am interested in other views.

The Convener: It is good news to hear that the minister is perhaps moving on that.

Maureen Macmillan: I wonder whether the minister might be considering a fourth way, never mind a third way, which would be for the new prisons to be run by a not-for-profit trust. That idea was flagged up in a Sunday paper last weekend. Will you comment on its feasibility?

Mr Wallace: I am aware that, in the context of schools' PPPs, Argyll and Bute Council has done a lot of work on a not-for-profit trust. Again, boxes have to be ticked off in terms of what is required to transfer risk. No work is being done on what is required to transfer risk, so I do not know whether the not-for-profit trust idea could fly. However, Maureen Macmillan has thrown an interesting proposal into the pot.

Michael Matheson: Are you prepared to consider that idea?

Mr Wallace: I am open to that suggestion, if people want to put flesh on it and the proposal can meet the various criteria, particularly the crucial one of transfer of risk. As has been said, there is no point in going through all the hoops if you find that the risk is still on the public sector balance sheet.

The Convener: It seems incredible that that option, which is not new, was not considered during the two and a quarter years of the prison estates review and that you have been left with a huge postscript of issues to be considered, such as French prisons and not-for-profit trusts.

Mr Wallace: To be fair, the French prison model was looked at and a view was reached on that.

The Convener: All right, but what about not-for-

profit trusts?

Mr Wallace: We as ministers took the initiative to look at the private build, public operate model, but not on a not-for-profit basis. No one suggested not-for-profit trusts. With respect, convener, enough complaints were made about the time that it took, because we did that, to produce the review.

The Convener: Yes, but look at the result. The evidence that we have taken has contained so many criticisms that the review hardly appears to be thorough and robust work.

10:15

Mr Wallace: Has anyone given evidence that seriously challenges the figures that show a £750 million difference?

Stewart Stevenson: Yes. I have such evidence in my hand.

The Convener: We will come to that.

Mrs Smith: The estates review says that for the private build, public operate model to work, the private sector would have to accept a high level of risk. The advice from the SPS and PWC is that

"the market is not ... ready to accept this type of contract and the worldwide experience supports this view."

What evidence shows that the market is not ready to accept such a contract?

I would like to pin down the minister's comments a little. You said that you would listen to and take on board Maureen Macmillan's comments about not-for-profit trusts and Stewart Stevenson's comments about the French experience. What does that mean? Will you instruct civil servants to do further work on examining those options, which seem rather attractive?

Mr Wallace: It is right that the public operate, private build model has been examined. We asked for that work to be done, but the model did not fly. The review took a long time to compile. As I said on the day that I launched the consultation, if other people say that the conclusions are wrong, they must challenge the conclusions persuasively. A blanket criticism will not do. We need comments that properly address the matter.

That is the essence of consultation. I do not know how many times I must say that. This is a genuine consultation. The not-for-profit trust has been floated. I do not want to give an instant reaction. I undertake to reflect on that idea and to consider whether it can be taken forward.

The Convener: We will move on. I want Wendy Alexander to ask about the financial review of the Scottish prison estates review, the pricing of costs and the £700 million saving. I understand that the minister must be away by 11:15.

Mr Wallace: I have further meetings.

The Convener: We will spend about five minutes on that subject, then move on to Peterhead.

Ms Alexander: I do not know whether my question is appropriate for the minister or for the chief executive, but I will lead it to the chief executive, because it seems technical. The PWC report has been criticised for not attempting to quantify operational risk. There appears to be no explicit provision for risk in the PPP costings. Are you concerned about whether the risks have been reflected accurately in the figures?

Tony Cameron: Appendix A to the PricewaterhouseCoopers report contains an indicative risk register for the PPP private build, public operate prison, which is quite important. In a fair amount of detail, it takes each section of the commissioning, building and running of the prison over the 25-year contract period and sets out the percentage of the risk that it is reasonable to expect the state and the project company to accept, with the potential division of risk in the project company, which is normally a consortium, and some comments.

That seems the best way—it is the recommended way—of considering the allocation of risk. The amount of risk that can be transferred goes to the heart of the PPP in other sectors. PricewaterhouseCoopers has a good deal of experience in advising us—for example, it was our financial adviser on Kilmarnock. The peculiarity of prisons is the considerable difficulty in arriving at significant risk transfer to the private sector consortium in a PPP. That is not impossible, but it would be an experiment.

An issue that arose in the French and, say, the Chilean experience was the fact that guards carry guns and the companies that bid for the contracts have a policy of not arming their staff. In Scotland we do not have that situation, which is a separate risk. We must be careful about simply translating situations in other countries into Scottish circumstances, as we could find that the ground suddenly disappears from under us. Nevertheless, a big attempt was made, and a lot of work done, to construct a risk matrix. We thought it important to work through that matrix when we were deciding whether proposals from consortia could share the risk sufficiently. If they could not, there would be no advantage over the state doing the work. The proposals have to be better than that, because the situation is more complex.

Ms Alexander: I will come back to the issue of risk in a minute. Let me ask two other brief questions. The estates review says that it would require

"enormous additional input of resources to the SPS to

complete an output based prison design”—

to fit the SPS “mode of operation”. It has been suggested that the SPS could buy in the necessary expertise. Has that proposal been examined in any detail?

Tony Cameron: The answer is no. It has been a quarter of a century since we last designed and built a prison, although I know that the private sector did the building work at Shotts prison. We are not funded to do so, and have not been since then. If you were to go back to those days, you would find an outfit called the Ministry of Public Building and Works—of blessed memory—and a huge Scottish Office building directorate, which no longer exist. The SPS did not design prisons in those days. The world was a different place. Now we are funded to keep about 6,200 prisoners, with a small amount of capital for improvements to the present conditions. We are certainly not geared up for designing and building prisons. Given sufficient money, of course, we could buy anything, but the up-front costs would be very high indeed, as we do not have the expertise.

In more recent years, with house-block design, we have relied to a large extent on the Home Office—that is, HM Prison Service, which is 10 times the size of the SPS. However, I am told by the director general of HM Prison Service that even it has recently decided that it would not design and build a prison again, because the last two prisons that it built cost more than £100 million. That compares with Kilmarnock, for example, which came in at about £30 million—£40 million or £50 million is a huge difference. Despite the fact that HM Prison Service is 10 times our size, it is considering whether it has the depth and strength to build prisons.

The private consortia bring together people from all over the world, as can be seen from the South African team. We could do that if we had sufficient money, but the particular difficulties with procurement and so on mean that, in the public sector, we could provide only an episode of such activity, whereas the private consortia can provide successive work to attract people from throughout the world. We are not able to do that, because we are a small player in the market.

Ms Alexander: I have a final question. The underlying issue is whether, in net present value terms, we can save £700 million by building three private prisons. The PWC report uses the Kilmarnock model—not the published numbers, but the contract that was drawn up for Kilmarnock—as its comparator for private build, private operate. That is a legitimate exercise to conduct in order to consider the order-of-magnitude savings, and it revealed very large order-of-magnitude savings. However, a couple of questions flow from that about the actuality, about

which the SPS must take a view.

You are right to say that the financing costs are taken off balance sheet, but we should have a handle on whether the rates of return that the Kilmarnock operator has realised from the process is an issue in which we should have an interest. More important than the financing costs are the savings on operations. If it were possible to make savings on operations of that order of magnitude in a small part of the prison estate, surely it would be critical for the rest of the estate to have an underlying sense of the cost drivers.

The PWC report is drawn up—I do not dispute it as an exercise to consider the order-of-magnitude savings—on the basis of the contract that was drawn up for Kilmarnock five years ago, not what has happened. It is based on what the operator says that it can do. The critical issue for us in respect of the stewardship of the estate is to have an underlying sense of how that can be done more efficiently, what has been the cost and how the lessons are imported into the operation of the rest of the estate. That is why the failure to take a retrospective look at the cost drivers in the Kilmarnock model and what has emerged continues to trouble me.

Tony Cameron: I could not agree more with you about the general sentiment. The question is whether that is best done by looking at the internal rates of return. You are quite right—this is one of the comments that Clive Fairweather has made and with which we agree—that it is extremely important that we examine what we can change to make us more competitive. We have been doing so during the past year or so. To do that, it is necessary to know a good deal about other operators.

Incidentally, the report was not based only on the Kilmarnock contract five years ago. Page 27 of the PWC report gives about eight examples. The contract price per prisoner place has stabilised at between £10,000 and £12,000 a year depending on what is required. The report is not based on a one-shot Scottish experience. Some of the other examples are more recent and they are similar contracts. We based our Kilmarnock contract on pre-existing English contracts, modified to suit our circumstances.

There is no doubt that you are right. In a sense, the question is why the SPS cannot get its costs nearer to those in the private sector while still delivering the same outputs. However, we must start from where we are. Having been a monopoly for a hundred years, we have monopoly profit. That is difficult to shift, but not having more private prisons is unlikely to increase the pressure to perform.

The Convener: I am sorry, but we have to move

on to questions on Peterhead. Have the minister and the chief executive of the SPS, Tony Cameron, had the opportunity to read the Grant Thornton report and the operational case by Peter McKinlay?

Mr Wallace: I have had the opportunity to read them, but not to analyse them.

Tony Cameron: I have not seen them.

The Convener: Are you in a position to make any comment on either report? I give you the opportunity to comment because we are having Peter McKinlay before us next week and possibly somebody from Grant Thornton, but because of the way that we are squeezed into this timetable, we will not have the opportunity to have either of you back to respond to what they have to say about their reports. Does the minister want to make general comments about the reports now? We will start with the operational case for retention.

Mr Wallace: I will make some general comments. Perhaps the helpful thing to do would be to produce a written note on the reports for the committee, once I have had a proper opportunity to analyse them.

The Convener: Yes. I was going to give you that opportunity, but I thought that you may want to say something about the reports now, given that they are in the public domain and are of great interest.

Mr Wallace: My initial response, as I have said, is that I welcome any contribution to the debate. I gave an undertaking last week when I met Peter McKinlay, along with senior representatives of Aberdeenshire Council, that I would give fair and proper consideration to the points that he makes.

The Convener: Did you see his operational case for retention?

Mr Wallace: Yes.

The Convener: So you saw it some time ago?

Mr Wallace: Yes. He went over it with me.

The Convener: But you are not in a position to give us a more detailed response on it today, although you have been right through it?

Mr Wallace: I have not had the report on the operational case for retention properly examined or analysed. It would have been improper to have passed the report on in print before it was in the public domain, but rest assured that the committee will get a very proper response to it.

One or two things strike me. Peter McKinlay comes to a conclusion, in paragraph 6.1 on page 19. He states that

"there would be more victims of sex crime through re-offending".

I am not quite sure what there is in the report that gives substance to that bold assertion at the end. Notwithstanding that, we will reflect on what he says.

There are two points that I do not see in the report. If anyone can show me that I am wrong, I will happily revise this comment. There seems to be no adequate recognition of the fact that the STOP 2000 programme is currently delivered in prisons outside Peterhead nor of the fact that more of the SPS staff who are trained in STOP 2000 are not at Peterhead than are. Because a lot of publicity has been given to this matter, I am anxious that the valuable work that is done in other institutions such as Polmont young offenders institution, which I have visited, should not be devalued. There should be no suggestion that what is happening there is threatened.

The Convener: The report is about long-term adult male sex offenders.

Mr Wallace: Yes, but STOP 2000 work is being done—

The Convener: We know that, minister. That is not the problem. The point that is being made is about the culture in Peterhead.

10:30

Mr Wallace: I do not want people to be left with the impression that the programme is being implemented only in Peterhead or that Peterhead is the only institution in which the programme is successful, and that if it is done somewhere else, it poses a threat to the community. I assure this committee that public safety is one of the paramount considerations in any approach to the prison service, particularly in relation to the prison estates review.

The Convener: In your discussions with Peter McKinlay and Aberdeenshire Council, did you raise the part of the conclusion that suggests that there would be more victims of sex crimes as a result of increased recidivism?

Mr Wallace: To be fair—

The Convener: Did you raise that with Mr McKinlay?

Mr Wallace: No, I did not, for the simple reason that I was given what might be called a synopsis. I am not sure if it has been printed publicly, but it does not make the bold assertion that you mention.

The Convener: The committee will have to think of a way around this. Perhaps we will come up with a set of questions that we would have put to you had we the time rather than simply hearing a statement from you about the report. We will discuss that later.

Mr Wallace: I welcome the report as an important contribution to the debate.

The Convener: I want to raise a point about the condition of the building. On 15 May, we wrote to you, asking whether you would commission a full structural survey of Peterhead prison and make that available to the committee before implementing any further decisions about the prison. It is our understanding that the last structural survey was carried out in 1979. However, as far as I am aware, the committee has not received even an acknowledgement of the letter. What is happening in that regard?

Mr Wallace: The buildings in Peterhead have been regularly inspected over the years. I am not suggesting that there is any danger of their falling down. Because they had been regularly inspected, we did not believe that there was a need for a full structural survey. I am advised that, in 1998, an SPS working group concluded that the buildings were substandard and that a further survey would not add materially to the sum of human knowledge.

There are evident problems with the buildings in Peterhead. I am not sure whether you want me to go into them in detail as it will take up time but, for example, the gross floor area of the cells makes them too small for integral sanitation to be included; there is no access to night sanitation; there is no electrical power in cells or in-cell fire detection systems; windows are below SPS security standards and are non-compliant with building regulations in terms of daylight factors and natural ventilation; the existing small door frames makes the retrofit of doors compliant with SPS security standards impossible. We have had to bear such matters in mind. The fabric of Peterhead is not ideal for a prison.

The Convener: Maybe not superficially.

Mr Wallace: Windows and ventilation are not exactly superficial matters.

The Convener: The building is not going to fall down, though.

Mr Wallace: That is correct.

The Convener: The PricewaterhouseCoopers report says that the prison is not well located—we will come on to that later—and that the buildings are at the end of their useful life.

Mr Wallace: I think that they probably are. Interestingly, Peter McKinlay says in his report that the status quo is not an option.

The Convener: We know that the status quo is not an option.

Mr Wallace: The status quo cannot be an option while the buildings are not fit for purpose.

The Convener: We know that. The issue is how we can resolve the situation.

Maureen Macmillan: The buildings are sound enough. Is the problem modernisation?

Mr Wallace: Yes. The buildings are structurally sound in the sense that they are not going to fall down. However, there is water ingress.

Tony Cameron: There are several problems. Like many old hospitals and other buildings, the prisons were sturdily built. Our experience of refurbishing a number of halls has not been a happy one—it tends to be a complicated and expensive process to refurbish rather than to put up a new house block. That was one of the reasons why the local governor, the local management team and our estates people said, “What you need to do here is replace the unsatisfactory accommodation and build a new block.” The estates review puts a cost of £170 million or so on providing a new 350-place house block adjacent to the existing one. Such a new house block would, of course, have another advantage.

It is worth mentioning something that we have encountered in refurbishment elsewhere—Perth, Cornton Vale and Barlinnie, to name but three prisons—which is that if more halls are built, the prisoners must be decamped somewhere while that work is being done. New secure accommodation must be provided while the work is going on. In some cases, refurbishment can, sadly, go over cost and over time. Building new secure accommodation to decamp people into while refurbishment is taking place leads one to wonder why one is refurbishing. Why not just build a house block?

Unlike an hotel, we cannot just close up and say, “No more visitors.” It tends to be more expensive. That is why, in a number of areas—not just Peterhead—we favour as a general policy the building of new house blocks with all the modern facilities that they bring and with space standards, heating and environmental concerns addressed. That is no different from what happens generally with hospitals. There is a tendency to build new buildings rather than to refurbish old ones.

The cost is an important consideration. Why should we undertake a condition survey of a building that we do not think we will need to refurbish? There are considerable costs involved in that. It is better to spend the money on a new building. That is one of the options that are costed in the estates review.

Maureen Macmillan: I would be happy for you to build a new building at Peterhead, but have you costed refurbishment of the prison, bearing in mind all that you have just said about decamping?

Tony Cameron: No. We just know that it would be more expensive.

Maureen Macmillan: You just rejected that idea as not worth considering.

Tony Cameron: The consideration is as I explained. If secure accommodation had to be built to house prisoners while refurbishment was taking place, the costs would be much higher, because they would include the costs of new build as well as of refurbishment.

Maureen Macmillan: Surely, you are prejudging the situation if you are not going to undertake any analysis of the costs.

Tony Cameron: Why build new secure accommodation for prisoners only to refurbish the old accommodation? Why not just build the building—why not just stop there? Why go to the extra expense of refurbishing? It seems self-evident to us.

Maureen Macmillan: I presume that you would do it a stage at a time.

Tony Cameron: That is difficult—we tried it in Perth and it was a disaster, so we have resolved not to do that. It is the worst possible option, given the fact that the works are extremely disruptive. The last house block that we refurbished partially was in Barlinnie. We had to evacuate the site, put a secure fence around it and give it over to the contractors. It is not like having a bit of maintenance work done—it is major construction.

Our latest experience in Barlinnie has told us that that is the way to do it, because the project came in on time and on budget. However, it would be difficult to do the same at Peterhead, where one of the house blocks is adjacent to the rest of the building complex. We thought carefully about that, and that is what led the local team and the estates review to say that we need to build a block.

Maureen Macmillan: You say that major construction is required at Peterhead prison, but surely it is just a matter of putting in ducts for electricity. There has been a suggestion that you would not need to put in internal sanitation because the prisoners could be let out safely at night.

Tony Cameron: We do not share that view. I note that the chairman of the Parole Board for Scotland—who, as an ex-SPS employee and former complaints commissioner, has considerable experience—does not share it either. We would not readily contemplate a scheme such as that to which the member refers, as it would raise major issues of safety and risk assessment. It is easy to assert that prisoners could be let out safely at night.

Maureen Macmillan: Schemes of the sort that I have described are already in place elsewhere. We visited the sex offenders unit at Glenochil, where offenders are able to press a button to be let out to the toilet.

Tony Cameron: Those prisoners have electronic—

Maureen Macmillan: Why could not the same system be used at Peterhead?

Tony Cameron: If there were sufficient money, it could be used.

Maureen Macmillan: How much money would be needed?

Tony Cameron: We have not costed such a scheme, as it would necessitate evacuating the block and building secure accommodation. Why should we go to the extent of doing that?

The running costs even of a refurbished Victorian hall are substantial. The running costs and whole-life costs of a new house block are considerably lower. We know that from our experience and from the experience of prisons such as Kilmarnock. Earlier we talked about the importance of learning lessons. The whole-life cost of building a new 350-place house block at Peterhead is £170 million. That is very considerable expenditure. It would also be necessary to provide accommodation while refurbishment was taking place. In those circumstances, we do not see the point of refurbishment.

Maureen Macmillan: I favour new build at Peterhead, rather than refurbishment of the existing facility.

Tony Cameron: That is one of the options that are set out in the estates review.

Maureen Macmillan: That brings us to location.

The Convener: Before we move on, do members have any more questions about the refurbishment option? Obviously, an interim measure would be required.

Stewart Stevenson: How does Mr Cameron know that it is cheaper to run Kilmarnock prison than it is to run prisons in the public sector? All the evidence that he gave previously suggested that we do not know the detail of Kilmarnock's operation. He said that we do not need to know how many prison custody officers work at the prison.

Tony Cameron: We know the cost of the Kilmarnock contract over 25 years—£133 million. That works out at about £12,000 per prisoner place per year.

Stewart Stevenson: We do not know exactly how much it costs to run the fabric of the building,

to provide electricity and gas, and so on.

Tony Cameron: We know the total cost of running Kilmarnock prison, and we know what our total costs are.

The Convener: Thank you for clarifying that.

Mrs Smith: The estates review states that

"SPS has serious concerns about the suitability of the location"

of HMP Peterhead, but that

"the expertise gained in working with sex offenders, and the acceptance of Peterhead by the local community, are valuable assets."

Those points were borne out in evidence that was given to us yesterday by Professor Marshall, who emphasised the world-class standing of the staff and programme at Peterhead. He also noted the value for individual staff members of being able to walk into the local community wearing their uniforms.

In Peterhead the prison is part of the local community. It is difficult to envisage another community in Scotland being happy about the establishment of a prison for sex offenders in its back yard. Why have you concluded that the assets to which you refer are not as important as the location of the prison? Surely rebuilding the prison at Peterhead would be a good option? Is the main disadvantage of Peterhead its location—the fact that it is not situated in the central belt—or the problems with the fabric of the building that we have heard about? If your main concern is not the location of Peterhead, circumstances would seem to favour the building of a new prison at Peterhead, rather than moving the facility elsewhere.

Mr Wallace: I will preface my remarks by repeating what I have said on many occasions: I recognise and value the work that prison officers at Peterhead do. I have visited the prison, I have seen the work that is done there and I do not want to detract from the achievements of staff at Peterhead. Important work is done by officers and staff there, but work is also done in delivering STOP 2000 in other parts of the prison estate. In many respects, we are talking about expertise, so it should not prove impossible to deliver such programmes in other places. The asset lies in the expertise and in the quality and training of the staff, rather than in the physical entity of Peterhead prison.

10:45

I acknowledge what is said about public acceptance of the prison, although I am not sure that that was necessarily the case at the outset—it has been won over a period of years. It is also the

case that about 85 per cent of the prisoners come from outwith the Highlands and the north-east of Scotland. I believe that relocation of the vast majority of prisoners closer to their home areas can have certain advantages. Value should be attached to that. For example, it would facilitate improved throughcare in relation to sex offenders, which in itself would reduce risk to the public. That would be in line with the recommendations of recent reports of the Social Work Services Inspectorate for Scotland and with Lady Cosgrove's expert panel on sex offending. I believe that it would also provide a considerably improved service for the Parole Board for Scotland, whose responsibility it is to recommend when and under what conditions sex offenders might be released. I believe that the committee has heard evidence from the chairman of the Parole Board for Scotland.

I do not believe that all the prison's benefits accrue from its being in Peterhead. There are factors that indicate that there might be improvements to public safety if the service were to be delivered nearer to the place where prisoners are from. Maintenance of contact with family and friends is recognised as being critical; it is not the defining issue, but it is important.

Mrs Smith: The estates review states that maintenance of family links is a "major problem" for many prisoners at Peterhead, given the

"distance and awkwardness of the journey".

As you say, 85 per cent of Peterhead prisoners do not come from the local area. However, the committee has heard evidence that location is not an issue for the many prisoners' families. Many visitors feel safer; they are not open to abuse from non-sexual offenders and other families when visiting a family member in a monoculture sex offenders prison such as Peterhead, which they would be in a non-sex offenders prison. Although the distance to Peterhead might be an issue, some offenders' families would experience abuse if they had to visit prisoners held in prisons elsewhere.

Mr Wallace: Perceptions can change. Back in 1997, there was not the same consensus among prisoners as is now emerging. There was not an estates review at that time, but the committee might find the Scottish Prison Service occasional papers report 2/99 helpful to get a view of what the vast majority of prisoners thought at that time.

The Convener: As you are talking about what prisoners feel, I would like to cite some figures from the analysis of a survey of the Peterhead prisoners on 18 April, which had an 81.7 per cent return rate. On the question of whether they should stay or move, the analysis says that:

"85% expressed a preference to stay in Peterhead. What

also stands out is that a large proportion would be happy to remain in the existing buildings with the addition of power and access to sanitation".

In a survey with a high rate of return, 85 per cent of prisoners expressed a preference to stay in Peterhead. I am sorry to interrupt Margaret Smith, but I wanted to make that point.

Mr Wallace: I am aware of that and it is obviously a factor, but I do not think that anyone is suggesting that should be the determining factor.

The Convener: Certainly not.

Mr Wallace: It is certainly a factor that must be considered. However, something rather more significant has arisen in the course of the debate that has been going on since we launched the prison estates review. One piece of information that is interesting, and which carries some weight with me, is about the perception of the prisoners' families who visit. Family members find some value in being able to go to Peterhead, and that is obviously something that I will want to reflect on.

In response to the quotation that the convener just read out, I note that we have received letters from solicitors in respect of 54 prisoners who have complained about conditions in Peterhead. That is not insignificant.

Mrs Smith: The point that you are making is that no one thinks that the status quo is a viable option.

Mr Wallace: Very few people have argued for it.

Mrs Smith: You made the point that the Scottish Prison Service, like most other services, is dependent on the quality of its staff; we all agree with that. Can you assume that, if you were to move the service that is provided at Peterhead to another location, you would be able to retain staff who currently work at the prison? Professor Marshall told us that the staff at Peterhead have not implemented the STOP programme by rote, but have been extremely innovative in their approach. Although Professor Marshall is one of the world's leading experts in his field, the innovative work that has been done by staff at Peterhead has led him to change the advice that he gives to people elsewhere in the world about how to deal with sex offenders. Are not you concerned that, if we moved the service, we would risk losing some of the staff members who have experience of working on the STOP programme at Peterhead?

Mr Wallace: In theory, there is a risk of that happening. We hope that, if the decision is taken to close Peterhead, staff will be encouraged to transfer to other sites that have been designated for the treatment of sex offenders. I repeat that a considerable number of members of staff of the Scottish Prison Service outwith Peterhead are

trained in the STOP 2000 programme. Furthermore, I understand that the programme requires intensive engagement from staff. If more programme staff were located in the central belt, it would be possible to rotate them, which might be advantageous.

That, however, will not be the determining factor in our consideration of the future of Peterhead. I respect the views that staff members at Peterhead have expressed, and we must take those into account. However, it would be wrong to assume that only Peterhead staff have been involved in providing the STOP 2000 programme, although I respect the staff at Peterhead for the work that they do. The committee will be aware that a group has been set up under the leadership of Alec Spencer to consider a range of issues, including the transferability of staff.

The Convener: We all know that the STOP programme relates not only to the officers who deliver it, but to the whole community in and outwith Peterhead prison. Prison officers' wives are here today to campaign for Peterhead prison on behalf of their spouses, who are inhibited by the SPS from doing so. The churches, prisoners and the whole community of Peterhead see Peterhead prison as a huge plus, because it is delivering successfully a world-renowned programme. I do not see a queue of people bidding to have a prison for long-term male sex offenders built in their back yard. I ask the minister to reflect on the wealth of evidence that we have received from people who are opposed to the closure of Peterhead prison. Only the SPS and the chief of the Parole Board for Scotland have provided us with any evidence to the contrary.

Mr Wallace: Was that a question?

The Convener: No—I am simply asking you to reflect on the evidence that we have received.

Mr Wallace: I undertake to do that.

Michael Matheson: You will have to do a lot of reflecting, minister.

The estates review states that, if Peterhead were to close, the lead-in time for establishing another prison at which the STOP programme could be delivered would be about three years.

Mr Wallace: The review states that a minimum of three years would be required.

Michael Matheson: According to Professor Marshall, it would be possible to deliver the programme elsewhere within that time frame.

Mr Wallace: Did he say that it would be impossible?

Michael Matheson: No, he said that it would be possible. However, Professor Marshall expressed serious concerns about whether it would be

possible to transfer to another institution the staff who have been operating the STOP programme at Peterhead. Margaret Smith has already touched on that issue. Professor Marshall was also concerned that such a move might disturb the programme at Peterhead. As the STOP programme began operation at another prison, the programme at Peterhead would be run down. Has that matter been examined sufficiently? Professor Marshall was so seriously concerned that he thought that the transfer could create a risk.

Mr Wallace: I assure the committee that the matter is being considered. It is important to get the numbers into perspective. Not all the 295 prisoners at Peterhead are undergoing the STOP 2000 programme.

The Convener: We know that.

Mr Wallace: At any given time, a relatively small number of prisoners are on the programme. As I said, the STOP 2000 programme is delivered in other parts of the prison estate. As one part is reduced, other parts could increase. I think that slightly less than one third of the total number of receptions at Peterhead during the past 10 years have undergone either the STOP or the STOP 2000 programme. Given those small numbers, the closure would not necessarily have the degree of disruption that has been suggested.

Michael Matheson: I presume that the review group to which you referred will consider the risk that would be involved if the programme were to be transferred elsewhere.

Mr Wallace: I make it clear again that we are not in the business of taking risks. Public safety would be of paramount consideration if it were decided that we should relocate sex offenders to another part of the prison estate. Peter McKinlay's report assumes that the sex offenders would be slotted into the existing arrangements at Glenochil, which he does not think would be satisfactory. We have never said that that would happen. There is the possibility of new build in the public estate, perhaps on one of the existing sites. There could be a different configuration of the arrangements for holding the prisoners. If it is decided to transfer the sex offenders, we will seek to do that in the best possible way and in a way that does not pose a risk to the public.

Michael Matheson: Is there any reason why an assessment of the potential risk of the closure of Peterhead and the transfer of the STOP programme was not made prior to the publication of the estates review?

Mr Wallace: I would not have suggested proposals that I thought posed a risk to the public. A person's assertion of something does not make it right. I am not in the business of taking risks with public safety.

Michael Matheson: The review group was supposed to consider the issue.

Mr Wallace: Yes, but the proposals are out for consultation. We were planning for how the transfer would be carried out if it had to be done. Members might have said that a risk assessment was premature and that it pre-empted the consultation. I assure the committee that it would take a minimum of three years to carry out a transfer and that a lot of care and attention would be taken. The primary consideration would be to eliminate risk.

Michael Matheson: I understand your concern that an evaluation of the potential risks of transferring the STOP programme might have pre-empted the consultation. However, the estates review was on the minister's desk for more than a year. It seems obvious that, if there were a possibility of Peterhead closing, it would have been prudent to evaluate the closure's possible implications for the treatment programme, given the international recognition of the programme. If I were to put forward an argument for the closure of Peterhead, I would want to ensure that I covered all the potential areas of concern, one of which would be maintaining the integrity of the STOP programme in any move to another prison.

Mr Wallace: You do not appreciate the number of times that those issues were considered. One of my concerns when preparing the consultation paper was the deliverability of the STOP 2000 programme in places other than Peterhead. Mr Cameron will confirm that I continually asked detailed questions on a number of aspects. However, when a final decision has not been taken, it would not be right to start making detailed plans for the transfer. That would be entirely wrong.

Michael Matheson: Would a simple assessment be wrong?

Mr Wallace: You are suggesting that there has been no assessment, but there has been an assessment. The assessment is that the STOP 2000 programme can be delivered elsewhere in the prison estate. Indeed, it is already being delivered elsewhere.

11:00

The Convener: I will clarify. We know that the STOP programme is delivered elsewhere. Some of us feel that the programme as delivered in Peterhead is special to Peterhead. It is true that the STOP programme is delivered elsewhere and that there are other programmes, such as anger management programmes and programmes for people who are in denial. However, the point is that the culture in Peterhead, which comes from the community of the people who work within it

and around it, reinforces the work that is done on the STOP programme and other programmes, and that that does not happen elsewhere. Is that correct?

Michael Matheson: Yes. I have been to the unit at Barlinnie that also delivers the STOP programme. The staff do an excellent job with short-term sex offenders, but it is fair to say that it is not directly comparable with the system that is running at Peterhead.

Mr Wallace: Barlinnie is not Peterhead and no one is pretending otherwise. I reassure the committee that it is our belief that the STOP 2000 programme can be delivered effectively. There is no international consensus on monoculture; there are conflicting views. I am aware—and it is ludicrous to suggest that I was not aware—of the culture at Peterhead. I have been there, I have seen it and I have been impressed by it. I am not signing up to the recipe for despair that it is impossible to replicate anywhere else the good work that is done at Peterhead. That may be the view that the committee reaches, but I do not accept it. In saying that, I do not detract from the quality of what is achieved at Peterhead. Let us remember that people were not dancing in the streets of Peterhead when it was first suggested that the unit should go there.

The Convener: No, but they are happy now, and that is a big plus.

Mr Wallace: It is an important factor.

Michael Matheson: Is it possible for the committee to see the work that was done to assess the STOP programme and the implications of its transfer to another prison?

Mr Wallace: There is stuff in the estates review, paragraph 162 of which states:

"If the decision was taken to close HMP Peterhead, this could not take place under any scenario within a minimum of three years. This time will be utilised to continue building up expertise and training of staff throughout the SPS".

I will not go on, because it is in the review.

Michael Matheson: I return to the point that I raised earlier. I asked you whether an assessment had been made of the potential implications of the transfer of the STOP programme at Peterhead to another establishment, and you said that an assessment had been made, and that the assessment was that it could be transferred to another establishment. Is it possible for the committee to see the assessment that was done of the effects of a transfer?

Mr Wallace: There are things within the estates review that indicate that we believe that the programme can be transferred. Perhaps the best indication is that the programme is carried out elsewhere in the prison estate.

Michael Matheson: The point I am making is—

Mr Wallace: That is not an assessment, that is a reality.

Michael Matheson: If the estates review states that the programme can be transferred, I am asking to see the assessment that stated that it could be transferred. Has such an assessment been carried out, because I got the impression from your previous answer that it had?

Mr Wallace: Over many meetings I questioned officials on this matter in great detail. A view was taken. I am not saying that it was all written down, but questions were asked and evidence was given on what happens elsewhere. That is better than an assessment; that is reality.

Michael Matheson: So can we see the evidence? Is the evidence purely—

Mr Wallace: You have already visited Barlinnie.

Michael Matheson: I am sorry, but you agree that what happens at Barlinnie is not directly comparable with what happens at Peterhead. I asked you whether an assessment had been made of the implications of transferring the Peterhead programme to another establishment, and you clearly gave the impression that an assessment had been made.

Mr Wallace: Yes.

Michael Matheson: I am asking to see that assessment.

Mr Wallace: If you are asking me whether an equivalent document exists, the answer is no.

Michael Matheson: Does that mean that no formal assessment has been made?

Mr Wallace: We are dancing on the heads of pins, trying to define the meaning of words.

Michael Matheson: No, we are not.

Mr Wallace: We are into the territory of Humpty Dumpty or Alice through the looking glass.

The Convener: You are saying that you cannot provide anything for us in writing.

Michael Matheson: Exactly. It is based on the evidence of other members of staff in the SPS.

Tony Cameron: If members look at appendix C of the estates review, a great deal of information is given on our assessment of the move. In the professional opinion of the Prison Service, the programme at Barlinnie is similar to that at Peterhead. It is also our opinion that the programme at Peterhead can be transferred relatively easily.

The Convener: You consider the programmes to be the same.

Tony Cameron: No. I did not say they were the same; they are similar.

The Convener: I beg your pardon. I want to move on, but before that I have one short question and I am looking for a short answer. Alec Spencer told the committee about the working group to review the future management of sex offenders in Scottish prisons. Why was that work not carried out in advance of the prison estates review?

Mr Wallace: We are going back over old ground.

The Convener: No, we are not. Yesterday, we heard evidence from Professor Marshall that consideration may be given to establishing a prison in the central belt for short-term sex offenders. We had not heard that before and it may or may not be worth investigating. Professor Marshall has no further part to play in the committee's inquiry, as we have invited him neither to examine the subject nor to make an input. However, if the Executive is planning the prison estates for the next 25 years and it is setting up a group that is to work on the future management of sex offenders, I would have thought that the group would be set up first.

Mr Wallace: We have referred to appendix C of the estates review, which shows that work was done by the Prison Service on the STOP 2000 programme. After we made our announcement, it was clear that a number of issues were raised and complaints made. An announcement was made to the Parliament that a group was to be set up as an additional review of the management of sex offenders. It was announced that the additional review would examine a number of options. In many respects, that announcement was a response to concerns that were raised by staff, staff wives and members of the Scottish Parliament. It is not fair to criticise ministers who respond to concerns that are raised. It is not fair to hit us over the head for doing so.

The Executive could take a dictatorial view and say that that is it.

The Convener: With respect, minister—

Mr Wallace: We could say that we are not going to listen. We are trying to respond to some of the concerns that are being raised.

The Convener: I hear you, minister, but it has taken two and a quarter years to come up with a document that sets out how we are to build prisons and deal with things over the next 25 years and yet that document does not consider or include anything about policy reform, prison reform, assessments of risk management or what you will do in the future with sex offenders. What on earth were you thinking about? What kind of management and prisoners were you building for?

It looks to us as if the review was simply numbers.

Mr Wallace: With respect, you have profoundly misunderstood—

The Convener: I think not.

Mr Wallace: If you read the prison estates review—

The Convener: I have read it.

Mr Wallace: If you read the review, you will see that it includes considerable consideration on those subjects. When we examined the relocation, we took into account the fact that STOP 2000 was not unique to Peterhead, that it was being delivered in other parts of the prison estate and that there was a minimal amount of time to deliver it. As I indicated previously, the advice of the Association of Directors of Social Work was that relocating the programme closer to the home areas of offenders had advantages for throughcare. That was thought to be in the interests of public safety. All those factors were taken into account when the proposal was made.

If, in response to concerns that are aired publicly, we take further steps, that should be a matter of commendation and not criticism.

The Convener: We will see. We must move on to discuss Barlinnie and Low Moss. However, with regard to the impact of Scottish Executive policies on prison numbers, the review document states:

"These effects have not been allowed for in the projections".

Your party colleague Donald Gorrie raised that matter. The review includes nothing about changes in custodial reform and nothing about how we are to handle sex offenders in the future. You are doing that after the document is published.

Mr Wallace: I assume that you have read appendix C of the prison estates review, which sets out in some detail the delivery of the sex offender programme.

The Convener: The point is that you have undertaken a prison estates review, but the work on how you will deal with sex offenders in the future is being set up after the review has been two and a quarter years in the brewing, so to speak.

Mr Wallace: I will see whether I can put it succinctly and perhaps satisfy you, but I suspect that that is a forlorn hope.

The Convener: I think you suspect correctly.

Mr Wallace: Considerable consideration was given to all those factors such as those relating to the staff at Peterhead. We knew that the prison was popular in the local community.

Nevertheless, there were other factors. We have all agreed that maintaining the status quo at Peterhead was not an option. If we were then going to relocate, it was not just a question of academic assessments, as there was evidence that the STOP 2000 programme can and is being delivered elsewhere. The committee has accepted that that is being done satisfactorily.

There is no unanimity on monoculture. There is evidence from bodies such as the Cosgrove committee and the Association of Directors of Social Work that there are public safety advantages in locating prisoners close to where they live. That evidence was taken into account and a proposal was made. We have set up the review to try to address some of the concerns that the public expressed. I do not believe that that should be a matter for criticism. Real criticism could be made if we said, "We are not listening to you."

The Convener: Because it is a major constituency issue, I am going to allow Stewart Stevenson to ask a short question. I regret that our discussion of Barlinnie and Low Moss prisons will be truncated. That does not mean that we do not want to ask more questions, but the committee might have to submit them in writing to the minister. Peterhead is obviously a major contentious issue from the prisoners' point of view.

Stewart Stevenson: What is the cost of closing Peterhead? What are the headings under which the costs of closure come?

Mr Wallace: There would be the closure of the building and the relocation of prisoners and officers. The cost of that would depend on the time scale. There would also be revenue from the sale of the property. Therefore it is impossible to give an accurate estimate of what the cost would be. There are many variable factors.

Stewart Stevenson: Do you accept that, based on the SPS's experience, the relocation of approximately 160 prison officers will cost approximately £5 million? Are you aware that the Prison Service has already had a contractor value the site and estimate the cost of clearing it. The net receipts from that would probably be £0.5 million.

Have you costed the effects on the local economy? The report that Aberdeenshire Council tabled yesterday estimated that at between £8 million and £10 million? Do you accept Aberdeenshire Council's estimate that building a new house block at Peterhead would cost £20 million and that, on that basis, there is no difference between the cost of building a new block and the cost of closing the prison? You could, in effect, build a new block at Peterhead for no cost.

Mr Wallace: I would not accept that very loose description. However, I will consider those figures to see whether they stack up. I do not believe that the valuation of the Peterhead land site that you claim has been done is accurate.

Tony Cameron: I do not recognise any of those figures and I find them implausible.

Stewart Stevenson: I have spoken to the contractor who was asked to bid and he has given me his numbers.

Tony Cameron: I have no knowledge of that. The cost of a new 350-place house block—

Stewart Stevenson: It is a 500-place block.

Tony Cameron: It is estimated at £300 million.

Stewart Stevenson: I am talking about cash not net present value. The net present value is a different amount that is based on the funding options. The funding option that I would propose, although we do not have time to cover it today, would be a trust, which would reduce the cost considerably.

Tony Cameron: That is not known to be a fact.

Michael Matheson: You have not considered it.

The Convener: Thank you for your valuable questions, Stewart. Margaret Smith will wind up the questions and then we will write to the minister.

Mrs Smith: The estates review proposals would reduce Barlinnie's capacity to around 500 prisoners. The committee has heard evidence that the staff at Barlinnie would prefer the capacity to be increased to 800 prisoners. My first question is how you arrived at the figure of 500 prisoners. More generally, how are you working out what figures are reasonable for different establishments? We hear that new build prisons would have a capacity of 700 prisoners, but Barlinnie would have a capacity of only 500 prisoners. What is the assessment process behind your working out the numbers of prisoners in each establishment?

11:15

Mr Wallace: Before answering those questions, and before we start any hares running, I should say that as far as I am aware from conversations with the chief executive of the Scottish Prison Service, no contractor has been asked to go in and give Peterhead a sale value.

Stewart Stevenson: I can give you the name.

Tony Cameron: We are required to value all our properties for our balance sheet, but not for something specific to this—

The Convener: I am sorry. I want to get the bulk of the questions answered. We can write to—

Mr Wallace: If things that are said are allowed to remain on the record unchallenged, they grow legs.

The Convener: I appreciate the fact that you are a busy man, minister, but the committee to some extent is stuck with your diary—that is not the best way to work. We might have to look, in due course, at prioritising when the committee is dealing with a very important issue. I am obliged that we have had two and a quarter hours with you, but we could have done with more.

Mr Wallace: I think that you have had four and a quarter hours now.

The Convener: I am referring to today. We could have done with more, but it is not our fault that we have to truncate answers.

Mr Wallace: There is no exact science to the figure of 700 for new build prisons. I think that a capacity of 1,000 is thought to be too large and I do not think that we should build prisons with capacities as low as 300. The optimum number is around 700 for new build prisons.

The proposals for Barlinnie are driven in some respects by the need for refurbishment and by what we can do with regard to demolishing buildings. The arrangement is complex for taking some buildings out of commission and commissioning new ones. It was felt that a capacity of 500 is the optimum. Space has to be created. Some prisoners will have to be moved out of Barlinnie and reducing the numbers will facilitate an efficient and effective quality delivery.

Paragraph 135, on page 33 of the estates review, indicates the constraints imposed. It states:

“the operational advice is that the plan for HMP Barlinnie would be to reduce its prisoner population by approximately 500”.

We obviously want to keep prisoner numbers under review, not just in Barlinnie, but throughout the whole estate. Once the redevelopment has been done at Barlinnie, there will be room to accommodate additional numbers of inmates, if that were required. It leaves scope for further build within the public sector if that is required in future. Given the configuration and the way in which the developments have to be phased, that is the figure that was arrived at. There is no magic science about it; it is an operational judgment.

Mrs Smith: You are saying that it is generally thought that a capacity of 200 to 300 is too small. Is there not an argument that 300 is a good number for a short-term monocultural sex offenders institution in the central belt, if that is

what it takes to deliver the service? You said that a capacity of 700 is ideal for new build prisons. Is that not because that is the optimum number to allow private companies to make the highest profit, rather than the optimum number for the quality of the service?

Mr Wallace: No. We are talking about an operational judgment; no magic science is attached to it. The judgment is that a capacity of 700 is about the right size.

To answer the earlier part of the question, and to save me going into great detail, there is, from paragraph 57 of the estates review on, an indication of some of the factors that determine why 700 is an appropriate number. Those factors include proportionality, management complexity, operational stability and unit cost—but certainly not profit, because the judgment is an operational one.

As to whether 350 would be a more appropriate number for sex offenders, that may well be the case. I was talking in generalities, and no one is suggesting that the unit of 500 at Barlinnie will be for sex offenders. We are not comparing like with like.

Mrs Smith: So you are allowing for the possibility of flexibility in the service.

Mr Wallace: Yes—for different purposes.

Tony Cameron: The judgment over whether the number should be 700 is not an exact science and it would apply whether the prison was in the public or private sector.

The Convener: I would like to ask a quick question on Low Moss. In evidence to the committee, Clive Fairweather said:

“Profits go up in the private sector once numbers get over 500.”—[*Official Report, Justice 1 Committee*, 14 May 2002; c 3534.]

Was that part of the consideration in arriving at the figure of 700?

Mr Wallace: No—as Mr Cameron has just said, 700 is the number that would be thought appropriate in the public or private sector, for the reasons that I have given.

The Convener: My final question requires an answer of simply yes or no. The estates review states that there is no debate about the unsuitability of the accommodation at Low Moss. Some witnesses told the committee about a feasibility study of the future development of Low Moss that was carried out by the former governor in April 2000. Was that report taken into account as part of the estates review?

Mr Wallace: I answered that question from Brian Fitzpatrick at a previous meeting. My answer

is on the record.

The Convener: What was the answer again? I cannot recall.

Tony Cameron: That report was a minor consideration.

Mr Wallace: Yes, it was minor. It was not a key factor.

The Convener: It was not taken into account.

Mr Wallace: It was not a key factor in the estates review; but I gave a full answer when I was asked an almost identical question at a previous meeting.

The Convener: Will you confirm whether the report was taken into account as part of the estates review?

Mr Wallace: If you will bear with me a moment, I will give you an accurate and detailed answer—but, as I say—

The Convener: Perhaps Mr Cameron can tell us.

Mr Wallace: As I say, I have already answered the question.

Tony Cameron: The report was taken into account but to a very minor extent. It was one of a number of pieces of work that we had done at an early stage, but it did not figure hugely in our consideration of the estates review.

The Convener: I think that we will write to you to follow up that point, asking what you mean by “a very minor extent”.

Mr Wallace: Mr Fitzpatrick pursued this matter in some detail so you may find the answers that I gave him illuminating.

The Convener: I thank you for your forbearance. I also thank all committee members, and the sound technician for resolving the problems that we experienced earlier.

Meeting closed at 11:22.

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