

# **JUSTICE 1 COMMITTEE**

Tuesday 11 June 2002  
(*Afternoon*)

Session 1

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## JUSTICE 1 COMMITTEE

25<sup>th</sup> 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:

Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab)

Dr Richard Simpson (Deputy Minister for Justice)

Stewart Stevenson (Banff and Buchan) (SNP)

### WITNESSES

Peter Cutler (Grant Thornton)

Luke de Lord (Grant Thornton)

Peter McKinlay (Former Director of Scottish Prison Service)

### ACTING CLERK TO THE COMMITTEE

Alison Taylor

### SENIOR ASSISTANT CLERK

Claire Menzies

### ASSISTANT CLERK

Jenny Goldsmith

### LOCATION

Committee Room 3



# Scottish Parliament

## Justice 1 Committee

*Tuesday 11 June 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting in private at 13:49*]

13:55

*Meeting continued in public.*

**The Convener (Christine Grahame):** First, I remind members to turn off mobile phones and pagers—I know that mine is off. Apologies have been received from Maureen Macmillan, who is representing the Transport and the Environment Committee at an aquaculture conference in Norway. There you are. She has broken free from going to prisons.

### Items in Private

**The Convener:** I ask whether members agree to consider the remit of our inquiry into alternatives to custody, forward planning for the Title Conditions (Scotland) Bill and our draft report on the prison estates review in private at future meetings. Are members agreeable to that?

**Donald Gorrie (Central Scotland) (LD):** The Procedures Committee has been examining people's views on how well committees are doing and has found that the most common complaint is about committees meeting in private. I know that some matters for discussion in private are housekeeping issues, but I do not honestly see why they should not be discussed in public. They might not be of any interest to the public, but at least we would be seen to be open.

**The Convener:** Which of the three items are you referring to, Donald? Do you mean all three?

**Donald Gorrie:** I mean all three. There is an argument about whether draft reports should be discussed in private or in public. Not everyone shares my views, but I propose that it would be good for us to have a go at discussing a draft report in public. I do not think that any other committee has done that. I hope that the Procedures Committee will discuss its draft report in public.

**The Convener:** That is fine. Thank you.

**Ms Wendy Alexander (Paisley North) (Lab):** The suggestion is that we take three items in private. I am happy to discuss in public the scope

of what we will do on the Title Conditions (Scotland) Bill and the inquiry into the alternatives to custody. I do not feel strongly about that one way or the other. I think that determination of scope is a matter of public interest.

Clearly, the draft report for the prison estates review will ultimately be published as the committee's collective view. The danger of discussing the draft report in public is that the draft report will just become the property of the clerks because members will be conscious all the time of what they are saying. If we are seeking to reach consensus, then there is merit in that discussion, on a document that will be public, taking place in private so that we do not get committees being divided. If you have the debate on the draft report in public, then it becomes known, for example, who is for which amendment. That makes it difficult to maintain the unity of committees.

As a former member of the Executive, I confirm that the reports that caused one the most angst were those that were unanimously endorsed by a committee, because those reports carried the whole force of Parliament. If we discuss the draft report issue in public, we might inadvertently undermine our ability to present a unified face when the report is published.

**The Convener:** Does anyone else have a comment?

**Lord James Douglas-Hamilton (Lothians) (Con):** Much of the discussion of the drafting of the report will be about how best matters should be expressed and whether a form of words can be found. That kind of detailed discussion is better done in private.

**Paul Martin (Glasgow Springburn) (Lab):** I agree with what Wendy Alexander said about the need to discuss the Title Conditions (Scotland) Bill and the remit of the inquiry into alternatives to custody and that we must be given the opportunity to interrogate each other during the drafting of our reports.

In respect of public demand, I have not had a large number of e-mails from people saying, "I would like to have access to the Justice 1 Committee at 6.30 on a Tuesday evening to hear your deliberations", but it is an issue on which the Procedures Committee could provide clarity. I know that some committees have moved away from private sessions and some have not. I appreciate where Donald Gorrie is coming from, but it would be helpful to be able to discuss the issues in private. The public may be interested to hear our deliberations when we draft reports, but I am not aware of any demand to do so.

14:00

**The Convener:** I concur. The position of the draft report stands out from that of the other items. We would have the reporting of the draft and that might change the nature of our discussions, which may be robust over certain matters. If we discuss the draft report in private session, it means that we will be able to come to a consensual view. That is very important. I do not know if you wish to press your point, Donald.

On the other two items, I have no problem with the item on our inquiry into alternatives to custody being in public, because we will just be discussing the remit of the inquiry. On the Title Conditions (Scotland) Bill, we will be considering a draft list of witnesses, and there might be difficulties if we decide, for perfectly good and sensible reasons, to take some witnesses rather than others. There is also the issue of time limits.

Given that additional information, I do not know if you want to press the point, Donald. I will take the committee's guidance, but we could consider the forward planning for the Title Conditions (Scotland) Bill and the draft report on our prison estates review in private and consider the remit of our inquiry into alternatives to custody in public, for the reasons that I and others have outlined. Do you want to put it to a vote, Donald?

**Donald Gorrie:** No, I will settle for that. It is a marginal point as to whether, if we discuss whether to talk to Professor Bloggs or Mr McTavish about the Title Conditions (Scotland) Bill, the one who is not chosen will get cross. Anyway, I have floated my boat out into the sea, and will settle for one out of three for today.

**The Convener:** That is noted. Does the committee agree to deal with forward planning for the Title Conditions (Scotland) Bill and the draft report on the prison estates review in private at our next meeting?

**Members indicated agreement.**

## Joint Meeting

**The Convener:** I invite the committee to agree to meet jointly with the Justice 2 Committee to take evidence on progress to date on the future plans of the Minister for Justice, and to take evidence from Clive Fairweather, Her Majesty's chief inspector of prisons for Scotland, on his annual report. As both committees are examining those areas, does the committee agree to meet jointly, as we do with budget issues?

**Members indicated agreement.**

## Prison Estates Review

**The Convener:** I did not make it to Glenochil prison, but Donald Gorrie, Maureen Macmillan and Michael Matheson did. One of them will provide an oral report on the visit. We have until 2.15. I am also going to ask Paul Martin to give an oral report on the Audit Committee's consideration of the Scottish Prison Service's accounts. I want that to happen in the same time slot, so I ask whoever is to provide the report on Glenochil to keep within the time—the members who were on the visit are looking at each other affectionately.

**Donald Gorrie:** It was a long time ago. I was impressed by the senior staff. I think that the top two jobs were held by ladies. Is that correct?

**Michael Matheson (Central Scotland) (SNP):** Yes.

**Donald Gorrie:** They seem to have improved the situation, which was not too good previously. One obvious difficulty is faced by people who try to get to the prison, because the public transport is abysmal. That is relevant to the argument about siting another prison there. The prison does its best for visitors, but it is difficult to get there. The prison tries to deal conscientiously with those sex offenders who refuse to co-operate with the regime, and who are therefore not sent to Peterhead prison or who are sent away from Peterhead.

The staff were uncertain about what would happen to them under the various options of the prison review. That had affected staff confidence a bit. On the whole, the prisoners had no burning complaints to bring to the committee's attention. The prison is peculiar in that it has young offenders, sex offenders and ordinary prisoners—if that is the right expression—but it tackles the problems quite well.

**The Convener:** I ask Michael Matheson to add a short comment.

**Michael Matheson:** I will talk about the young offenders who are also based at the prison. Working with both groups of prisoners presents the prison with a challenge and with some difficulties in staffing and other matters. For example, the prison has difficulty in maintaining security in an area that is meant to be secure—I do not remember its name, but I think that it was called a clear area. That is because the Young Offenders Institution building is being used and because visitors must cross a yard.

Recently, there was a serious disturbance in the young offenders institution. Some damage from that was still being repaired when we visited. The toilets had only recently been completed, so parts

of the building were not in use. The general prison was fine, but the YOI requires considerable upgrading. There are serious questions about whether a young offenders institution should be, in effect, in an adult long-term prison establishment.

**The Convener:** It will be interesting to raise those issues with Clive Fairweather.

I am sorry, Paul, that your report has been deferred often. Is your memory of the Scottish Prison Service's accounts still clear?

**Paul Martin:** The discussion took place some time ago.

The Audit Committee undertook a fiercely technical accounting exercise, particularly in relation to how SPS assets are presented. For example, the Scottish Executive was shown to be the owner of the Kilmarnock project. We interrogated Dr Collings to clarify that issue.

During evidence that we took, I raised insurance issues. Dr Collings made it clear that the company was responsible for insurance for a period and that if there were any risk to prisoners from fire or any other incident, the company would relocate prisoners.

I asked Dr Collings about tax liability and whether there were tax implications for companies that did not show a prison as an asset. He said that he would write to us about that and I am not sure whether the Audit Committee has received a response. He understood that there were no tax implications. He thought that there would be no tax implications if, for example, Premier Prison Services Ltd did not show the asset in its accounts.

The need for consistent presentation of accounts was clear to the committee. We have touched on that issue. That would require a protocol between the Scottish Executive and Westminster on the way in which accounts are presented.

As members will realise, a highly technical accounting exercise was undertaken and the Audit Committee interrogated fiercely on many issues. Several responses were to be received later from the senior civil servant who gave evidence.

**The Convener:** Will the Audit Committee produce a formal report on that?

**Paul Martin:** I am not sure. The committee will probably reach conclusions on how it will deal with the accounts. I do not know whether it will note that later.

**The Convener:** When will that happen? Obviously, what the Audit Committee is considering has some impact on our report on the prison estates review.

**Paul Martin:** We took evidence not only on the accounts of the Scottish Prison Service but on those of Scottish Natural Heritage and of Communities Scotland. The Audit Committee goes through that technical exercise each year. As I have not attended some Audit Committee meetings, I have lost track of whether we will produce a single report on the accounts of the SPS or whether one report will cover the accounts of all the organisations collectively.

**The Convener:** If our committee is to have a debate in the chamber on our report, it would be useful to have the *Official Report* of that meeting of the Audit Committee so that it could become part of our debate.

## Subordinate Legislation

### Draft Criminal Justice Act 1988 (Offensive Weapons) Amendment (Scotland) Order 2002

**The Convener:** I welcome Dr Richard Simpson, the Deputy Minister for Justice. We are ready to go. I refer members to the notes that have been provided by the clerk in paper J1/02/25/8. I call the minister to speak to and move motion S1M-3177.

**The Deputy Minister for Justice (Dr Richard Simpson):** Shall I speak only to the draft instrument that deals with offensive weapons rather than to all three instruments at once?

**The Convener:** It will be clearer if we deal with the instruments one at a time.

**Dr Simpson:** The Criminal Justice Act 1988 introduced the power to ban the manufacture, sale and importation of specified offensive weapons. Fourteen weapons have been banned in that way including sword-sticks, push daggers, death stars and butterfly knives. Today, I will move to add disguised knives to the schedule of the Criminal Justice Act 1988 (Offensive Weapons) Order 1988.

Extending the order to cover disguised weapons is another step towards improving security following the events of 11 September last year. Disguised knives pose a particular threat to airline security because they are easy to carry and to conceal. By legislating to ban the sale and import of such weapons, public safety will be improved not only in airports but in places such as nightclubs, football grounds and courts where screening facilities may fail to detect such items.

A wide range of knives, such as lipstick knives, comb knives and ink-pen knives, are easily available, mainly via the internet. Such knives serve no legitimate purpose. Legislation already covers the carrying of disguised knives in public, but there is nothing to prevent those very dangerous weapons being sold, imported or manufactured. We do not know how many disguised knives are in circulation, but they are freely available over the internet. Last year, HM Customs and Excise seized more than 2,000 offensive weapons at airports and seaports and in the postal system.

The draft instrument extends both to Scotland and beyond Scotland as a matter of Scots law. The Home Office is introducing equivalent legislation for England, Wales and Northern Ireland. Subject to the agreement of the Houses of Parliament, that legislation is expected to come into force before Westminster's summer recess.

The fact that there has not been widespread consultation on the measure is in part due to the urgency of the situation. Wide consultation would unnecessarily and unacceptably delay the reduction in the threat that disguised knives pose to airports and to airline security. When the draft Scottish Statutory Instrument was laid last month, the Executive wrote to all chief constables, to the chief executives of Fife Council and of Dumfries and Galloway Council and to the clerks to the joint police boards to bring the matter to their attention. We have had no response to date.

Consideration was given as to whether our proposals should be notified under the terms of the European Community technical standards directive. The Executive takes the view that the directive does not apply to the statutory instrument on disguised knives. In our view, the directive is concerned with measures that affect the intrinsic characteristics of a product and is not concerned with instruments of a public order character whereby a product is identified by reference to its technical characteristics purely for the purposes of prohibiting a particular act involving that product.

In conclusion, prohibiting the sale, manufacture or import of disguised knives is a matter of public safety. I ask the committee to support the motion to recommend the approval of the draft instrument, which will add disguised knives to the schedule of offensive weapons under the Criminal Justice Act 1988.

I move,

That the Justice 1 Committee recommends that the draft Criminal Justice Act 1988 (Offensive Weapons) Amendment (Scotland) Order 2002 be approved.

**The Convener:** I am rather concerned that the Scottish Executive was not represented on the working group, especially given the fact that the area of Scots criminal law is not only devolved but has always been independent. Do you have concerns about that?

**Dr Simpson:** No, I have no concerns. We were fully consulted by the Home Office in the process on the position that was reached. Our position will be compatible with and will be no different from that of the rest of the United Kingdom. We are introducing the measure somewhat in advance of Westminster purely because of the timing of our respective Parliaments.

**The Convener:** I take it that this case is likely to be a one-off case because of the urgency of the matter and that the practice will not normally occur when there is Scots legislation.

**Dr Simpson:** Yes.

**Lord James Douglas-Hamilton:** Will the minister assure us that pipers or Scots who attend weddings wearing ceremonial kilts, dirks and sgian



dubhs, for example, will not fall foul of the provisions and that dirks and sgian dubhs can continue to be worn for legitimate purposes?

14:15

**Dr Simpson:** The SSI is not about carrying weapons—that is already dealt with under Scots law. Provided that one can justify why one is carrying such an instrument, there will be no problem. The issue purely concerns the manufacture, sale and importation of disguised knives and the SSI will not change the situation that you describe at all.

**Lord James Douglas-Hamilton:** Can dirks and sgian dubhs therefore be manufactured in Scotland as before?

**Dr Simpson:** I see no reason why they cannot be. I would not dare to come before the committee and propose to change that.

**The Convener:** You have spoken like a good nationalist.

**Michael Matheson:** It was not clear from the minister's answer to the convener's question why no one from the Scottish Executive was on the working group.

**Dr Simpson:** We did not think that that was necessary. The issue was being progressed and we were consulted. The SSI is largely based on American legislation that was introduced after September 11—it proved extremely helpful in progressing the matter. UK emendation to that has been minimal and it was not thought necessary to go to the expense of sending officials to the Home Office to discuss the matter. We have been kept fully briefed and informed and have not thought it necessary to make many comments.

**Michael Matheson:** Did the Home Office issue an invitation?

**Dr Simpson:** I will get back to you on that. I do not know whether it did, but I know that we were consulted.

**Michael Matheson:** Would you inform the committee whether an invitation was issued?

**Dr Simpson:** I will find that out and whether we decided to take that up.

**The Convener:** The question is, that motion S1M-3177 be agreed to. Are we agreed?

*Motion agreed to.*

That the Justice 1 Committee recommends that the draft Criminal Justice Act 1988 (Offensive Weapons) Amendment (Scotland) Order 2002 be approved.

## **Draft Advice and Assistance (Financial Conditions) (Scotland) (No 2) Regulations 2002**

### **Draft Civil Legal Aid (Financial Conditions) (Scotland) (No 2) Regulations 2002**

**The Convener:** I refer members to paper J1/02/25/9 on the Draft Advice and Assistance (Financial Conditions) (Scotland) (No 2) Regulations 2002. The instrument is a draft instrument and has a complicated title. I invite the minister to speak to and move motion S1M-3178.

**Dr Simpson:** Can we consider both instruments together?

**The Convener:** Yes. I refer members to paper J1/02/25/10 and motion S1M-3179 on the Draft Civil Legal Aid (Financial Conditions) (Scotland) (No 2) Regulations 2002. I invite the minister to speak to and move both motions.

**Dr Simpson:** I am happy to do so. The purpose of the affirmative Draft Civil Legal Aid (Financial Conditions) (Scotland) (No 2) Regulations 2002 is straightforward. They implement the commitments that Jim Wallace gave during the debate in March on the committee's report on legal aid. He announced the Executive's intention to increase the capital limit for advice and assistance to £1,300, the lower capital limit for civil legal aid to £6,000 and the upper capital limit for civil legal aid to £10,000. If the Parliament approves the changes, they will come into effect on 1 July and will make a valuable contribution towards access to justice. I invite the committee to approve both instruments and would be happy to answer questions.

**The Convener:** There does not appear to be any provision for uprating the limits annually in the regulations, as we recommended. Do you have plans to uprate the limits annually?

**Dr Simpson:** We have taken advice on that matter. The regulations are affirmative regulations, which means that there are difficulties in the primary legislation about not coming to Parliament on each occasion. We would need to amend the primary legislation so that the regulations could be annually uprated and that raises an issue of legislative time. The Parliament must take into account the fact that if we were to amend the primary legislation, members would not be asked to consider the matter again. The regulations would simply be uprated.

The problem with many such regulations, as I discovered when I was a back bencher—

**The Convener:** You are still among us.

**Dr Simpson:** The primary legislation has often been written in a way that requires the form of uprating that we are dealing with. Unfortunately, we cannot go ahead with the reasonable proposal that has been made. The Parliament will have to consider whether it wishes to give up powers of this kind by not having affirmative regulations on such matters.

**The Convener:** That is something that we may come to. Was that your summing-up?

**Dr Simpson:** Yes.

**The Convener:** Unless Lord James Douglas-Hamilton has a question, I am quite content.

**Lord James Douglas-Hamilton:** I ask the minister to note the committee's view that annual uprating makes a lot of sense. I hope that the Executive will consider favourably the relevant legislative change when it next reviews the matter.

**Dr Simpson:** I take note of that.

**The Convener:** We deal with such tiny amounts all the time.

*Motions moved,*

That the Justice 1 Committee, in consideration of the draft Advice and Assistance (Financial Conditions) (Scotland) (No 2) Regulations 2002, recommends that the Regulations be approved.

That the Justice 1 Committee, in consideration of the draft Civil Legal Aid (Financial Conditions) (Scotland) (No 2) Regulations 2002, recommends that the Regulations be approved.—[*Dr Richard Simpson.*]

*Motions agreed to.*

**The Convener:** That was short and sweet. We are required to report to the Parliament on the affirmative instruments. We need to prepare only a short, formulaic report, which will be e-mailed to members. Please let the clerks know if there are any problems.

## Prison Estates Review

**The Convener:** We move on to the prison estates review, which is item 6 on the agenda.

**Peter McKinlay (Former Director of Scottish Prison Service):** May I remove my jacket?

**The Convener:** You may. I am privileged—I have a fan.

**Lord James Douglas-Hamilton:** Would it be appropriate for me to say a word at this stage?

**The Convener:** Yes, I was just allowing Mr McKinlay to gather himself.

**Lord James Douglas-Hamilton:** I have had a working professional relationship with Mr Peter McKinlay ever since I was the Scottish Office minister who was responsible for prisons and he was the chief executive of the SPS. I supported him then and it is extremely likely that I will support him today.

**The Convener:** Well, Mr McKinlay, you may as well just go home. I welcome you to the Justice 1 Committee. We have received your report. Although the minister has not had the opportunity to respond fully on your report—which is unfortunate—he will write to us about it. I refer members to papers J1/02/25/1 and J1/02/25/3, which present the operational case for the retention of Peterhead prison.

Please provide the committee with some brief information about your background, your areas of expertise and your time as chief executive of the SPS. It would be helpful if you would also outline the remit for producing your paper.

**Peter McKinlay:** I was a career civil servant from 1963 until the autumn of 1991, when I resigned to become chief executive of what was then Scottish Homes. I retired from that post at the end of 1999, when I reached the magic age of 60.

During my career, I have worked in areas as disparate as sewerage, housing, finance, industry, personnel and industrial relations and have acted as private secretary to Bruce Millan. I worked in the Prison Service from January 1988 until September 1991, which was a particularly difficult time, as Lord James will recall. In 1987, the SPS experienced at Barlinnie, Shotts, Peterhead and Perth back-to-back riots, in which officers were taken hostage. After I started, the service experienced similar incidents at Shotts and Perth, as well as a range of minor incidents at Barlinnie. By the time I left, the people in the service—governors and staff—and prisoners had concluded that that was not a helpful way in which to manage a prison service. Since then, incidents have been few and far between.

When Aberdeenshire Council asked me to review the review report with a view to making a case for the retention of Peterhead prison as the main prison for dealing with long-term adult male sex offenders, I emphasised to that council that it was about 11 years since I had been involved in the Scottish Prison Service. Nonetheless, they asked me to report; I was happy to do that.

**The Convener:** We have been examining the condition of the Peterhead building and whether it can be refurbished or is past saving. The report of Clive Fairweather, the chief inspector of prisons, said that

“residential buildings at HMP Peterhead have been well maintained and are in good physical condition”

and that

“it would be worthwhile to produce a detailed cost/benefit analysis before writing Peterhead off”.

What do you think of that?

**Peter McKinlay:** As I said in my report, I was surprised by the Executive's conclusion about the state of the fabric at Peterhead partly because, in 1989, our view was that Peterhead's fabric was particularly robust. It was a damn sight easier to put right damage in Peterhead than it was in more modern prisons such as Glenochil or Shotts. I also understand that a fairly major investment was due to take place at the end of 1999 in relation to the gatehouse and ancillary accommodation at Peterhead. It seemed odd to me that that would be contemplated if the fabric of the prison were in such a parlous condition. That investment was postponed when the review was announced in December 1999. I have read Clive Fairweather's report and agree that a survey of the prison's buildings was last conducted in 1979. I was therefore surprised that one of the legs of the SPS's argument was the state of the fabric.

With hindsight, I suppose that the SPS might have been trying to say that, given modern-day requirements, it would probably not be cost effective to try to make the existing accommodation halls fit for purpose for the next 25 to 30 years. I do not disagree with that conclusion, but I disagreed with views that were expressed by the SPS.

**The Convener:** I have passed you a copy of a letter from Jim Wallace that deals with the prison's buildings. It will enter the public domain after this meeting. Would you like to comment on it?

**Peter McKinlay:** From my swift reading, I would say that I take Jim Wallace's point. I would not have demurred from the view that is expressed in the letter had I been told what it was. If the dimensions of the cells and so on were such that all that could be done to bring them up to standard for the next 25 years would be to stick electric

power in them and let people out at night to use the bathroom, I would not demand a structural survey. All I said was that it was surprising that there was no survey to back up what had been said about the fabric. If the argument in the minister's letter had been used in the estates review report, I would not have objected to that report; however, it was not.

**The Convener:** Does the letter represent a move away from what is contained in the estates review?

**Peter McKinlay:** I would say that it is a helpful elaboration.

**The Convener:** Members will correct me if I am wrong, but no one has been able to tell us how much it would cost to duct electricity in the prison and develop a system whereby the men can have access to night sanitation. Should the cost of that have been researched?

**Peter McKinlay:** Again, it could be argued that it was redundant to conclude that the buildings could not be refurbished to 21<sup>st</sup> century standards at a reasonable cost. As Clive Fairweather said, it would have been a make-do business of putting power in cells, which could have been done relatively cheaply.

My contention is that the kind of scenario that was recommended for Barlinnie was not costed or evaluated in operational detail for Peterhead. I would propose a mix of a new build 500-place prison—which would take all the adult male long-term sex offenders—and partial demolition and refurbishment of the ancillary accommodation, including the workshops and so on. That idea was given short shrift in the estates review, which claimed to have considered operationally 350-place, 500-place and 700-place prisons. However, to be blunt, there is precious little evidence that those scenarios were seriously considered.

14:30

**The Convener:** Do you believe that the committee does not have sufficient evidence on the buildings to decide whether Peterhead should close?

**Peter McKinlay:** The case has not been successfully made for closure because of the buildings.

**Michael Matheson:** I want to turn to the other leg of the argument for Peterhead's closure, which concerns its location. The majority of Peterhead's prisoners come from the central belt. The estates review would have us believe that it is particularly difficult for prisoners' families to visit Peterhead and that it is difficult for social workers to keep in contact with Peterhead prisoners. Mr McKinlay's report said of the argument against Peterhead's

location:

"It is strong in assertion and weak in evidence."

How valid is the estates review's argument that Peterhead's location is inappropriate?

**Peter McKinlay:** There is little validity in that argument. I feel a bit embarrassed about the fact that I started my report at the beginning of April and finished it by 1 May. It is a case, I hope, of "feel the quality, but ignore the width." The report was done quickly. Since then, it seems that Peterhead has received commendations for its track record in health—healthy eating, healthy living and so on—from Grampian NHS Board.

On Peterhead's location, the prison's current role is not an accident. I think that I said in my report that the prison did not grow like Topsy. As far back as when I was at Peterhead, it was decided to have a hall exclusively for people whom we called "protections." They were predominantly, if not exclusively, sex offenders who, when they were in mainstream prisons, had to be protected from other inmates. Our view was that putting those "protections" people in one hall in Peterhead made it easier to manage them appropriately and much easier to manage mainstream prisons.

At that time, we used Peterhead as the location for the most dangerous people in the system and those who had a record of involvement in riots and hostage taking. Within three years from 1988 we began to turn Peterhead round. Since 1991, I believe that successive Governments and ministers have taken policy decisions that have resulted in Peterhead's being as it is today. If the location argument is powerful, it should have militated against Peterhead in the first place.

It is argued that it is more difficult to manage throughcare for long-term sex offenders in Peterhead. Although it is more expensive and more difficult for a social worker or a housing officer to travel up to Peterhead to see a prisoner who is doing a sentence of more than four years—some people up there are doing as many as 12 years and some have already done more than that—I submit that neither the cost nor the difficulty are great. All the evidence from the prisoner survey is that the prisoners do not feel deprived of visits and their visitors do not feel deprived because they have to travel to Peterhead. In fact they prefer it, because they do not feel that they are hassled in the way that they are in mainstream jails. I found the arguments that location was a problem to be unpersuasive.

The other argument that was used was that it is more difficult to handle incidents at Peterhead because of distance, but distance has not proved to be a problem when there has been an incident at Peterhead. Teams came in from elsewhere in

the system to cope with the incident. The prisoners at Peterhead are not of the kind who give rise to concerted incidents and unrest. I note that Tony Cameron suggested in his evidence that the prisoners are compliant. That is going a bit far, but I believe that they are not the kind of prisoners who create concerted riots.

**Michael Matheson:** I will raise two issues. First, you appear to be saying that ministers and the SPS have had a deliberate policy of establishing a monocultural sex offenders institution in Scotland and that Peterhead was chosen to be that institution because it provided a better environment for working with the prisoner group, and because it dealt with security issues that existed in other prisons. There seem to be different opinions about whether that monoculture is the best way to go; the minister said that last week to the committee. Are you aware of any evidence that has come to light in recent years that suggests that the monoculture that has been pursued over the past couple of years has been the wrong policy?

**Peter McKinlay:** No, but it is fair to say that I am no expert—I was not when I was in the service—on the management of sex offenders. I am quite prepared to agree with the evidence that Jim McManus gave the committee. He stated that, strictly speaking, there is no hard academic research to demonstrate that the kinds of programmes that are being run for sex offending substantially reduce rates of reoffending. However, that said, I regard that as an academic purist argument.

We must give considerable weight to the views of men such as Professor Bill Marshall, who talks about the advantages of dealing with sex offenders in a single institution. He mentions the only two such institutions of which he is aware in the world; one is in New Zealand and the other is at Peterhead. All that I offer from my experience is the view that the kind of culture that has been developed in Peterhead will not be replicated in a prison that deals with mainstream prisoners and sex offenders. I do not care how carefully the two types of prisoner are segregated; having them within the same perimeter makes it terribly difficult to organise the day-to-day running of a jail and to keep the two groups separate.

Another terribly important factor that others have commented on is that we are not talking about only the officers who are involved in the STOP 2000 programme. That programme deals with only about 34 prisoners at a time and has arguably achieved extremely good results in reducing rates of reoffending. The fact that officers and non-officers, such as teachers and others in the jail, generally do not refer to the prisoners as beasties or monsters has had a tremendous effect on the

rest of the prisoners. It is a huge task to get officers in a prison to deal with sex offenders—some of whose crimes are utterly repugnant—as individuals who need help to stop them reoffending when they get out. It has taken 10 years to get people at Peterhead to that point. I do not think that you would get them to that point in a mixed jail.

**The Convener:** I know that this is your question, Michael, but we are now getting on to the STOP programme, which Lord James was going to address.

**Michael Matheson:** Sure. I am not going on to that issue anyway.

I take you back to the point that you made about social work provision and throughcare that someone receives when they are about to leave Peterhead, because that is related to one of the arguments that is put forward for its closure. Dr Jim McManus stated in his evidence that it is difficult to provide throughcare because of the way in which sex offenders go from Peterhead to other prisons prior to their release. He left me with the impression that it is so difficult that it probably will not happen. Despite the difficulties that exist in arranging for prisoners to have appropriate throughcare in the later stages of their period in prison, can appropriate care be effectively delivered through other prisons in Scotland?

**Peter McKinlay:** I see no reason why it cannot. I suggested in my report that there is already a framework on which throughcare in prisons could be built, because the estates review states that there are officers at Barlinnie, Polmont and six other prisons who are trained in the STOP programme. That could be built upon by external social work, housing and police agencies working with those people. It is not rocket science; it is management to arrange for prisoners to have an element of throughcare while they are at Peterhead and then, with a sufficient time scale, to move them to a prison from which they will eventually be released.

The key is plucking a period out of the air; for example, 12 months. When prisoners are transferred, social work, housing, police and internal Prison Service staff should be available to reinforce the programmes that the prisoners have been through and to prepare them for release. I do not see why that cannot be arranged.

**Michael Matheson:** Is the matter purely a management issue?

**Peter McKinlay:** Yes. I am not saying that it would be easy, but management is not supposed to be easy—it is supposed to be difficult—which is why managers are paid a lot of money. What I have suggested could be done.

**Paul Martin:** I refer you again to the issue of location, and in particular to your comment that resources should be set aside to deal with the support services that travel to and from the Peterhead facility. As you said, you are a former chief executive of Scottish Homes. Dr McManus pointed out in his evidence that staff spend four and five hours travelling to and from the facility. I accept that we must invest in services, but let us examine staff travel time in an ordinary working week. When you were at Scottish Homes, would you have accepted staff spending a significant part of their week travelling to and from a facility?

**Peter McKinlay:** It is unfortunate that you ask me about Scottish Homes, because we had no choice; we did that. Our people based in Inverness had to cover Orkney, Shetland and Lewis. They spent huge amounts of their time travelling, because they had to do it, so yes, I would accept that amount of travelling, because it is a necessary part of doing the job.

The second and more relevant point in the context of people travelling to Peterhead is that the situation should be managed in such a way that they do not spend four hours driving up and four hours driving back just to see one prisoner for half an hour. Travel should be organised sensibly, so that people go up to see a number of people—which makes the trip worth while—and come back.

Thirdly, relativity is important. In relation to the total cost of managing prisoners through their sentences, and the total cost of getting prisoners smoothly out of an institution and back into the community, with the kind of support that they need to make sure that they do not reoffend—or which at least minimises the chance of their reoffending—the cost in time and money of travelling to Peterhead and back is, in my judgment, neither here nor there.

**Paul Martin:** Do you also accept the issues about specialities? I acknowledge the example of Scottish Homes, but there were different support services in many more locations in the Scottish Homes situation. The Peterhead facility is unique, if you understand what I mean.

**Peter McKinlay:** As I understand it, the key external agencies—leaving aside Apex Scotland, Safeguarding Communities Reducing Offending and the Howard League for Penal Reform—are the social work authorities, the housing authorities and the police. It is part of their job to provide throughcare. If there were 12 prisoners in Peterhead—I am making this up as I go along—who were to be released in Coatbridge, all 12 would go to Glenochil and would be visited by a social worker from Glasgow. The difference between travelling to Glenochil and back—however many times is appropriate—and travelling to Peterhead and back is a cost. Adult male long-

term sex offenders present a particular kind of problem. The extra cost in time and money that would be incurred by the specialists would be worth it. Relatively, it is not a big deal.

14:45

**Donald Gorrie:** The estates review regards 700 people in a jail as par for the course, rather like four strokes to a golf hole. It is the standard. Do you think that applies to sex offenders? You argued for 500 places, but at the moment there are 300 places. Will you elaborate on why you think having 500 prisoners is best for a new Peterhead?

**Peter McKinlay:** Sorry, I did not mean to suggest that 500 places was the best figure for long-term adult male sex offenders. I meant that there are almost 300 prisoners there now and there are another 200 prisoners elsewhere. That seems to follow the argument about dealing with prisoners in a monoculture in one location and suggests that having a 500-place prison at Peterhead makes sense.

As to the optimum size of prison, it is—as I believe the Deputy Minister for Justice and Tony Cameron said—a subjective view; there is no optimum size. When I was chief executive of the SPS, I learnt that Sweden had 80 prisons. Sweden has roughly the same population as Scotland and had roughly the same prison population at that time. The average prison contained about 40 or 50 people and they were all local. The Swedish prison service built up the estate over 60 or 70 years. If members were to ask me what kind of estate Scotland should aspire to, I would say the Swedish model is preferable to the one we had in my time in the SPS when there were 20 prisons for a daily average prisoner population of about 5,000.

However, I understand why the estates review plumped for 700 places rather than for 1,500 or 500 places. We are seeking 2,200 extra places. Three new prisons of 700 would provide those places, as near as damn it. There is no optimum size.

Leaving aside the argument for dealing with sex offenders as a unique group in one jail, the other important issue is that prisoners should not be discussed in general terms because they are all different. They range from people who serve one month to people who are in Scottish prisons for more than 25 years. There is still one such prisoner who nobody ever talks about.

**Donald Gorrie:** I misunderstood your position. Were you arguing for 500 places because there are normally about 500 long-term sex offenders?

**Peter McKinlay:** I argue for 500 places purely

because of the unique situation at Peterhead.

**Donald Gorrie:** Five hundred places is a reasonable number for a jail. Professor Marshall would like a smaller number because prisoners would have better personal care.

**Peter McKinlay:** If the new prison were smaller, evidence suggests that prisoners could have more intensive personal care and that could reduce recidivism. It depends on what we are most concerned about. If our concern is minimal cost, we can build a jail and stuff it full of as many prisoners as possible to reduce costs per head. It could be argued that the right size of jail is the one with the lowest costs per head. However, I see no huge cost differential between a prison with 500 places and a prison with 700 places.

**Stewart Stevenson (Banff and Buchan) (SNP):** Do you agree with Alec Spencer, the current director of care and rehabilitation in the Scottish Prison Service, when he says in his book "Working with Sex Offenders in Prisons and Through Release to the Community":

"a sex offender intervention programme is only sustainable on a large scale if delivered by core staff, i.e. prison officers",

rather than specialists?

**Peter McKinlay:** I do not think so. Jim McManus takes the opposite view. As a good ex-civil servant, I come down somewhere in the middle. It would be a serious mistake to opt for a sex offender programme delivered either solely by core staff or solely by specialists. I would put prison officers at the heart of the matter—not only when dealing with sex offenders. To have any credibility in the eyes of prisoners, prison officers must have power as well as responsibility. It is right for prison officers to be at the heart of dealing with sex offenders. However, officers must receive sufficient professional back-up from psychiatrists, psychologists, health workers and social workers. Prison officers should take the lead, but the two options suggested are not mutually exclusive.

**Lord James Douglas-Hamilton:** It is accepted that HMP Peterhead has

"become an internationally recognised centre of excellence for the management of sex offenders through the STOP 2000 programme".

That point is made in the inspector's report for 2000-01. What effect do you think the estates review will have on the delivery of the programme?

**Peter McKinlay:** It will have an adverse effect on delivery of the programme. People can argue about how adversely it will be affected, but I judge that the effect will be serious. In the late 1980s, I was involved with the tail-end of what was called the "Grand Design", under which a number of

mainstream prisons were redesignated and several hundreds were required to be moved between prisons. That programme created huge unrest. The most astonishing example of that unrest was at Shotts, the most modern of our prisons. Within months of the prison's opening, a hostage-taking incident and a riot took place, despite the fact that prisoners at Shotts had better facilities than prisoners anywhere else in Scotland.

Replicating the programmes that are running at Peterhead either at one purpose-built prison in the central belt or at different prisons throughout the system would take a long time—three years would not be nearly enough. I have doubts about whether we would ever succeed in that task. It took 10 years to create the atmosphere and relationships that exist at Peterhead.

**Lord James Douglas-Hamilton:** You have mainly answered my next question, but I will run through it in case you would like to add something. The estates review stated that to close Peterhead would take a minimum of three years and that three years would be sufficient time to build up expertise and training of staff throughout the SPS. Professor Bill Marshall concurred with that view but stated that Peterhead should not be closed because it works. What is your perception of the Scottish Prison Service's ability to replicate the culture at Peterhead elsewhere?

**Peter McKinlay:** Officers outwith Peterhead are already dealing with sex offenders and running the STOP 2000 programme. I have no doubt that they are doing that very well, because there are many committed officers in prisons other than Peterhead. However, those officers all labour under a significant disadvantage. They do not work in a prison in which all the staff—regardless of whether they deal directly with sex offenders—feel a responsibility for and a pride in ensuring that prisoners leave less liable to offend than they were when they arrived.

**Lord James Douglas-Hamilton:** You talked earlier about throughcare. You said that it could be delivered effectively for prisoners in Peterhead with a sufficient time scale. I imagine that you meant that it could be delivered if they were transferred elsewhere shortly before release.

**Peter McKinlay:** The period before prisoners are released is critical. I know that there has been some debate in the committee about how long a period there ought to be.

**Lord James Douglas-Hamilton:** A sufficient time scale.

**Peter McKinlay:** My feeling is that it ought to be possible to manage long-term sentenced prisoners in Peterhead so as to come up with a release date that is sufficiently far in advance to allow prisoners to be transferred near to the area where they will

eventually be released. Committee members know, probably better than I do, how difficult it is these days to rehouse a sex offender in a community. I suggest that at least a year is needed for all the external agencies to become involved with a prisoner and his family to ensure as smooth a transition as possible out of the prison and into the community.

**Lord James Douglas-Hamilton:** Is it your conviction that that could be done perfectly well if a new Peterhead prison were built on the present site?

**Peter McKinlay:** It would be done better than if we were to start afresh somewhere else. As I understand it, there are already quite effective links between the external agencies and the management in Peterhead. I mean links not just with the social workers and psychologists who work within Peterhead prison, but with people from Glasgow.

**Ms Alexander:** I want to pursue the area of transitions to the community, as Peterhead is perhaps not ideally situated in that regard, so there are a variety of issues about how you militate for that. Dr McManus suggested that the potential difficulties associated with reintegration through one medium-sized town rather than through larger centres was such a persuasive argument that it should weigh very heavily with us. The general tenor of your report is that, although throughcare preparations could militate against Peterhead, there are nevertheless ways in which throughcare could be delivered. Will you explore a little further how that might be done? I am thinking particularly about throughcare that might start in Peterhead. How could transitions and support services be managed in such a way as to allow people to be reintegrated into communities in the central belt?

**Peter McKinlay:** I would like to preface my answer with a general remark. I know that some people will find it difficult to do so, but I think that the committee should give enormous weight to what the prisoner survey said. What prisoners said about safety and throughcare should weigh very heavily indeed. I know that that will annoy people—some of whom will say, "Why should you listen to these people after what they've done?"—but if we are serious about getting prisoners out in a state that minimises the chances of them reoffending, we should take what they say seriously, and they say that transitions from Peterhead are not a big problem.

I believe that transitions could best be managed, first of all, through the visitors, whether they are family or friends. If prisoners get visitors at all, that is the link. People have always regarded prisoners as having been sent furth of society, but I have always maintained that they are not. Jails are part

of society. People may have their family relations sundered, but they are not put in permanent exile from society. While they are in, they are still there, and the walls must be permeable, so I would start with the visitors.

Next come the technicalities of specialist support from social workers and psychologists. Those professions ought to be able to integrate their activities in the initial years of a sentence, when they could be managed by an in-house person in Peterhead, with what happens later. Once we are fairly sure where a person will go, we could begin to involve a social worker, psychologist or policeman from the area to which they will be released. If the release is managed properly, a case load could be built up that would minimise the number of separate visits that would have to be made. As I said, the issue is one of management.

I disagree with Jim McManus that throughcare would be better “managed” from somewhere in the central belt. To my mind, that is not the primary consideration in determining whether to build at Peterhead or close the prison.

15:00

**Ms Alexander:** I have a follow-up question on a related issue. In your report, you imply that the reason why you are not inclined to accept Jim McManus’s viewpoint on staff morale is that staff mobility, or the lack thereof, might undermine the coherence of the STOP programme as it is currently offered in the Peterhead context and how long it might take to rebuild the programme elsewhere.

The nature of campaigning is for people to say, “We will not move under any circumstances” and, “We will never think about relocating,” but that attitude gives cause for concern. If the Executive decided to relocate the prison elsewhere, it would be a tragedy for the expertise not to be maintained. Have you collected evidence about the staffs reluctance or willingness to move to another prison? What is the significance of that factor?

**Peter McKinlay:** I was unable to get any hard evidence. I visited Peterhead prison and spoke to five prisoners and three union committee members. I have enormous sympathy for the position of the staff and the deputy governor. They are effectively debarred from talking about that kind of issue.

At the end of the day, it would not matter terribly if every member of staff involved in the STOP 2000 programme and other staff members in the prison were transferred to similar programmes elsewhere. However, they are human beings and they would feel resentful at having to go. The one

certain thing is that none of the staff wants to go. I am not sure whether the committee has met staff wives, but I have met a couple of them and I know that there would be resentment. Some staff members might find that, because they are mobile grades, they are obliged to go. I asked whether an officer who said, “I do not want to go. I want to take early retirement” would be held to have taken constructive dismissal. How would that affect their pension or lump sum? I understand that questions such as that have not been answered.

The estates review repeatedly states that it is possible to shut Peterhead and move the programme. I have to accept that. The fact is that the SPS will have prisoners who are unwilling to be shipped elsewhere and prisoners’ families who are unwilling to visit them in their new locations. It will also have staff and their families who are unwilling to be shipped elsewhere.

There is a proposition in the estates review that, because staff are already offering the sex offender programmes, it is possible to have a smooth transition and to replicate the programmes elsewhere. I have said before that that is wishful thinking—it will not happen. I speak not so much as an ex-director of the Scottish Prison Service as as someone who has spent his life in management in the public sector. People are the same in the public sector as they are in the private sector—they are people.

**The Convener:** Will you comment further on the point that you made about transition? I understand that a community-based programme existed some time ago, in which inmates who were about to be released were allowed to go out and work in the community in small groups. What do you know about that programme?

**Peter McKinlay:** I was told by staff and prisoners that an arrangement was made, with the agreement of the community in Peterhead, whereby some long-term sex offenders would be allowed outside the prison on a form of training for freedom, to undertake community projects. I am not sure what they were to do—it might have been building paths. The prison and the community agreed the programme, but it did not happen.

It was interesting that when I said, “Well, who stopped it?” one officer told me that the SPS stopped it. I said, “But you are the SPS,” and he said, “No, I mean headquarters.” I do not know who stopped it or why it was stopped, but it is unfortunate that that happened. Elsewhere, long-term adult male sex offenders have been out on training for freedom before their release or have participated in working parties that have gone out and done community work. That kind of thing used to happen, although I do not know whether it still does. Here was such an initiative, which was going to happen but did not. That is unfortunate.



**The Convener:** Anybody listening to your evidence must be surprised that the community wants to keep a sex offenders prison in its midst. From your report, I understand that 98 per cent of the community are in favour of having the prisoners at Peterhead. Can you explain that?

**Peter McKinlay:** In my report, I say that that is scarcely surprising. The community around Peterhead has lived with a prison for 114 years. That is a long time and the prison is part of the fabric of society there. The only other prison that has that kind of relationship with its milieu is Barlinnie—known fondly as the Bar-L. The situation there is different, but the relationship is similar.

The other important consideration—in a sense, it is special pleading—is the fact that the prison generates a substantial amount of economic activity in the area. If the prison were shut, not only would 250-odd full-time equivalent prison jobs be removed, but there would be a knock-on impact—the EKOS report goes into detail on that. That would be significantly to the detriment of the people in Peterhead. There would be a knock-on effect on the housing market, for instance. If a couple of hundred people were trying to sell their houses at the same time, house prices in the area would plummet. Therefore, it is not surprising that the people of Peterhead are content—indeed, anxious—that the prison should stay in their midst. If it did not, there would be severe and adverse economic and social impacts on them.

A corollary to that—I say this in my report—is that I doubt whether any other community anywhere in Scotland would welcome with open arms 500 adult male sex offenders being parachuted into its midst. Lord James Douglas-Hamilton may remember the fuss in the community in Shotts when we opened a special unit there. We were accused of shutting Peterhead prison and creating Alcatraz at Shotts. That was a long time ago. If you tried to do what is suggested in the estates review, you would find it hugely difficult. You would not get planning permission or community agreement to build on a greenfield site anywhere in Scotland in anything like three years.

**The Convener:** That brings us neatly to Paul Martin's questions.

**Paul Martin:** The possibility of relocating to Glenochil was mentioned, and you have touched on some of the transitional arrangements. What do you know about the condition of the accommodation and the layout of Glenochil? From experience, do you think that it would be able to take the relocation of the Peterhead facility?

**Peter McKinlay:** As I say in my report, Glenochil has 14-cell corridors. There is a main corridor and all the halls are off it, like spines.

There are mezzanine floors. The difficulty that we found is that, if an officer is in one of those halls on his own, he cannot see colleagues and colleagues cannot see him. He feels vulnerable. In a Victorian hall, the sightlines are such that someone in the top flat can see their mates in the bottom flat and vice versa. There is a staff security issue.

Another issue is that, if a prisoner feels under pressure from other prisoners, it is difficult for them to walk away from the situation in Glenochil—it is difficult to get out of that confined area and find a bit of space. It is a lot easier for a prisoner to get down from a flat in a big hall and remove himself to elsewhere. Even the governor of Glenochil, Kate Donegan, would not tell you that the prison is ideally designed. I have never heard of an ideally designed prison. Dealing with long-term adult male prisoners is problematic enough. Dealing with long-term adult male sex offenders would be even more difficult.

**Paul Martin:** Professor Marshall has suggested that the Scottish Prison Service should consider a separate monoculture facility in the central belt for short-term sex offenders, in addition to the retention of Peterhead for long-term prisoners. What do your experience and research make you think of that?

**Peter McKinlay:** I have no experience of research on dealing with short-term male sex offenders, but I remember seeing two young sex offenders who were held in an appalling situation at HM Young Offenders Institution Dumfries. That was in my time and there was nothing that we could do about it. Those two young men—they were aged 17 or 18—were kept in two cells in a short corridor and had one officer to look after them. They were not allowed out until the rest of the jail was locked up, when they were allowed out in the fresh air for an hour a day. The rest of the time, they sat in a corridor and played draughts. The situation was dreadful, but that was all that we could do. Introducing them to structured programmes that would help them to cope when they left prison and not to reoffend was virtually impossible.

In practice, I am prepared to take the advice of a man such as Professor Marshall, but in principle, I think that a monoculture facility that dealt with short-term sex offenders would be a good idea.

**Paul Martin:** While undertaking the estates review, should the Executive have taken the opportunity to review rehabilitation strategy, rather than focusing purely on estates?

**Peter McKinlay:** I was given the remit only to examine the case for Peterhead. As I have said, that could not be done without considering Peterhead in the context of the estates review. It was unfortunate that the estates review started

with a generality about correctional excellence, a safer Scotland and so on, but the body of the report seemed excessively—bordering on exclusively—to focus on fabric and cost. The document would have been much better if it had started with an exposition of the penal policy—not just in relation to sex offenders—that the Executive is pursuing to deliver a safer Scotland. From that, the document could have constructed the costs of incarcerating people and what is wrong with the physical fabric.

**The Convener:** As you said, the executive summary of the prison estates review says:

“The overarching aim is such that the Scottish Prison Service would play its part in contributing to ‘A Safer Scotland’.”

However, the conclusion to your report says:

“It would be a serious mistake to close Peterhead. Mainstream jails in Scotland would become more difficult to manage; there would be more victims of sex crime through re-offending; and the Executive’s ambition to create a “Safer Scotland” would be seriously undermined.”

Those are strong words. When paragraph 6.1 of your report, which I have just read, was put to the Minister for Justice at our meeting on 6 June, he said:

“I am not quite sure what there is in the report that gives substance to that bold assertion at the end.”—[*Official Report, Justice 1 Committee*, 6 June 2002; c 3826.]

Will you explain your comments?

**Peter McKinlay:** That is not a bold assertion. It was misreported—as ever. All I said was that if Peterhead is shut, the adverse impact on the programmes for adult male long-term sex offenders will make the risk of them reoffending much greater. Therefore, more sex crimes will be committed through reoffending.

I do not think that that is a bold assertion; it is almost a statement of fact. I believe that the disruption to the programmes will make them less effective and that, consequently, the risk that the individuals will reoffend will be greater. I find it quite astonishing and remarkable that since the report was published—I think that I am right in saying this—Alec Spencer has been chairing a committee that is considering the risk of reoffending. The minister said that my comment was a bold assertion, but I think that it gave a balanced view of the likely result of closing Peterhead.

15:15

**The Convener:** Are you saying that Alec Spencer’s group, which is considering the risk of reoffending, was established as a consequence of the estates review, or was its establishment coincidental?

**Peter McKinlay:** All I am saying is that, given that the review was launched in December 1999, I thought that work would have been done to measure the impact on reoffending rates of stopping one thing and starting something else. It appears that that was not done until after the review. Better late than never.

**The Convener:** I think that that is right. Stewart Stevenson provided evidence that no risk assessment has been done of the consequence of transferring the work that is being done at Peterhead, or of interfering with the status quo at Peterhead.

**Michael Matheson:** This question is not related directly to Peterhead, but it is on the estates review. Given your background in the prison service, you might be able to shed some light on the matter. Reference is made constantly to the fact that Shotts is the most-recently built and procured public sector prison. It is used as an example in discussions about the problems that exist in the public sector in undertaking building projects. I have been informed of problems in the Shotts project that are not peculiar to public sector procurement programmes. Do you have a view on whether Shotts is a good example of the problems that can occur in public sector procurement programmes for prisons?

**Peter McKinlay:** No prison that HM Prison Service or the Scottish Prison Service built 10, 15 or 20 years ago should be used as an example of how a new prison should be built today. The point was made that if we were to envisage building a new prison in Peterhead, we would do some “soft marketing”. I was particularly struck by the evidence that Peter Collings gave to the Audit Committee that Kilmarnock prison is not on balance sheet for the Scottish Prison Service or for its operators. That is described as being anomalous and having no practical effect, which I find remarkable.

In essence, I am saying that I do not think that considering what Shotts cost and how long it took to build should be used as a measure of what it ought to take to build a prison now, either in the public or private sector. The world has changed; I hope that the public sector has learned a lot about how to manage projects. I have no problem with a private prison being built in Peterhead and the public sector operating it under a 25-year lease or contract, given that the minister said that the public sector should manage sex offenders. The whole private versus public discussion is a red herring. We should concentrate on how best to get the facility built and run to produce the results that we want. In any situation in which the argument weighs in favour either of private input or of public input, decisions should depend on the circumstances and we should think them through.

**The Convener:** I see that James Douglas-Hamilton has a question. Is it on Kilmarnock prison, James?

**Lord James Douglas-Hamilton:** No.

**The Convener:** We have moved on to other territory now, but I suppose that we have an extra five minutes or so.

The fact that Kilmarnock prison is off balance sheet—a matter that members have been pursuing, including Paul Martin, who may wish to come in on this—is anomalous. I have tried to find out about the transfer of risk with regard to insurance. The Auditor General commented that each side involved in Kilmarnock prison claims to have transferred to the other all risks associated with the property asset ownership. Could you comment on that? Is that what you are getting at?

**Peter McKinlay:** Not really. I found it interesting that, when Peter Collings was asked by the Audit Committee whether he knew of any other public-private project where the same situation had arisen, he said that he did not. However, it appears that the guidance that has been laid down by the Accounting Standards Board permits it.

**The Convener:** We know that. The problem comes with regard to one of the arguments that we have heard against having a mixed private build, public run arrangement—which is the question of risk transfer and who ends up taking the risks. Risks give rise to matters of insurance. We are still in muddy waters with regard to Kilmarnock

**Peter McKinlay:** I have not read the contract for Kilmarnock prison—I do not really know about it.

**The Convener:** I should stress that Wendy Alexander is not in muddy waters.

**Ms Alexander:** Stewart Stevenson and I had the opportunity last night to study the details of the contract. I think that Peter McKinlay is inviting us simply to pursue the narrow point as to whether there is a precedent anywhere for a prison's details not appearing on the books of one or other of the parties concerned. There is a question whether that is congruent with the advice of the Federation of Small Businesses—FSB—and whether it represents best practice in the context of Cabinet Office guidelines.

It may be that it is appropriate for our letter to be sent to Jim Wallace and copied to the Minister for Finance and Public Services, which lets us isolate that issue from the value-for-money issues that surround the contract as signed and as it is now operating.

**Peter McKinlay:** I will add one slight qualification: I would want to be assured that no practical operational issues arose from that accounting convention.

**Ms Alexander:** The question of when and how the decision on Kilmarnock was taken requires three factual clarifications. Following that, we should consider two policy implications: When, by whom and why was the decision taken, and did it flow from any operational or other consideration?

**Peter McKinlay:** I would ask whether the fact that the prison does not appear on the balance sheet of either party concerned affects in any way the transfer of risk. If not, that is fine; the answer lies in an accounting convention and the contract stands. In other cases of which I have heard—about which I do not know in detail—the fact that something is on balance sheet was held to have a risk factor attached.

**The Convener:** The Auditor General has made that point. Each side has claimed to have transferred the risk to the other. We can pursue the issue further by means of a letter.

**Paul Martin:** We have already clarified the issue with respect to what Dr Collings said about it. I am going only on what Dr Collings said to the Audit Committee, to which he made it absolutely clear that liability for Kilmarnock prison in respect of risk lay with Premier Prison Services Ltd, a private company. I have cited that at previous meetings. On Wendy Alexander's point, I think that we need clarity about the position that has been reached by the Audit Committee. That committee is pursuing the issue of liability and accounting procedures.

Dr Collings was very clear about risk. I asked whether Premier Prison Services would be responsible for the transfer of liability if, for example, there was a fire and prisoners had to be relocated. It was made very clear that the private company, Premier Prison Services, was responsible for that risk. I agree, however, that we should follow the matter up in writing.

**The Convener:** We will write in the terms suggested—

**Ms Alexander:** On precedence, best practice and the causality.

**The Convener:** If we like, we can circulate our letter to committee members and check whether they are content with the questions that are asked in the letter.

**Stewart Stevenson:** Is the committee aware that the most recent accounts for Kilmarnock Prison Services Ltd—which the auditors, Deloitte and Touche, signed off on 24 August 2001 and which relate to the year ending December 2000—show a transaction of £37.7 million in 1999, purporting to sell the private finance initiative asset to the Home Office? I repeat that the accounts have been signed off by the auditors. There is still a mystery. That does not alter the question of risk, which Paul Martin quite properly addresses, but

there is considerable doubt. The company has not reported to the stock exchange—the ultimate owners of KPSL—any material error in its accounts, as it would be required to do if such an error had been made.

**The Convener:** A can of worms has been opened.

**Peter McKinlay:** I am interested in what is being said.

**The Convener:** I bet you are.

**Ms Alexander:** Stewart Stevenson raises the issue of ultimate ownership of the assets and the transfer thereof without public disclosure, which is necessary for public and financial accountability. There is a close parallel with the Skye bridge situation. In that case, assets were transferred to the Bank of America without the transaction being made publicly transparent.

**Lord James Douglas-Hamilton:** You said that when phase 2 of Shotts prison was opened, approximately one third of the prisoners in Scotland were moved. You also said that, although many of those prisoners were moving to better conditions, their transfer introduced volatility into the system. Because prisoners were testing how far they could go in different circumstances, the transfer led to incidents and unrest in prisons. Dame Peggy Herbison led opposition to moves to send too many dangerous prisoners to Shotts all at once. Given the lessons that were learned from that experience, should not we be extremely careful about endorsing the transfer elsewhere of a very large number of prisoners all in one group?

**Peter McKinlay:** Yes. Dame Peggy Herbison was ably supported at public meetings by the late John Smith.

**The Convener:** Have you rehearsed this?

**Peter McKinlay:** One of the nice things about working with James Douglas-Hamilton was that one never had to rehearse. I agree with everything that the member said. I became chief executive of the Scottish Prison Service about three months after the Shotts riot happened. The problem was caused by the fact that we moved a considerable number of long-term prisoners into a prison where the staff were not sufficiently experienced to deal with them. As I say in my report, prisons are about relationships. They are not about fabric, slopping out or leaking roofs. They are about how individuals—governors, staff, prisoners, their families and staff members' families—interact. They are about human relationships. Prisons are in the people business, not the buildings business.

**The Convener:** I see tomorrow's headline. Thank you for your evidence.

I refer members to paper J1/02/25/11. We await representatives from Grant Thornton to speak to their report [*Interruption.*] Has Ireland won?

**Stewart Stevenson:** Ireland has won 3-0.

**The Convener:** Some of us are detached from football—permanently.

I welcome Luke de Lord, senior manager at Grant Thornton, and Peter Cutler, partner in project finance at Grant Thornton. Thank you for coming at such short notice to discuss your report. I will kick off by asking you to tell the committee about the background to your response to the Scottish Executive consultation on the future of the Scottish prisons estate. Who commissioned the report, and what was your brief?

**Peter Cutler (Grant Thornton):** We were commissioned by Scottish Enterprise Grampian and Aberdeenshire Council to respond to the consultation. Our brief was to examine the proposal from a technical point of view to determine whether it represented a coherent and cogent business case, whether it was well argued and whether it made its points correctly.

**Lord James Douglas-Hamilton:** In your report you state that

"there is scant consideration in the Review as to the ramifications of this policy decision"

to attempt

"to replicate ... the achievements of ... the STOP Programme elsewhere".

Can you outline the consequences of that policy decision?

15:30

**Peter Cutler:** As technicians, we asked whether the argument was well made. We have not seen—this echoes a point that was made by the previous witness—a discussion of the policy that underpins the estates review. In particular, we have seen no discussion of the benefits or disbenefits that are attached to each of the considered options. Indeed, we do not think that enough options have been considered. A coherent and cogent business case has not been constructed in the way that one would expect. The normal conventions of writing such documents—which should indicate clearly what was good about closing and moving from Peterhead and what was not—have not been followed. We can only surmise—because we are not experts in running prisons—as taxpayers and members of the public that it is quite likely that a well-established programme at Peterhead will be difficult to replicate in the central belt. That is a point that we have just heard from the previous witness.

**The Convener:** I think this is where you come into your own, Wendy. I hope that I understand the questions.

**Ms Alexander:** I will ask the proper questions, then I will depart from the script. I have some basic factual questions first. You say in your report that the estates review is not based on a comprehensive assessment of the benefits and costs of the various options. On what basis do you make that assertion?

**Peter Cutler:** There is a well-established method for drafting business cases in the public sector. The principles are set out in the green book—the Treasury's longer title is "Economic Appraisal in Central Government"—and are along the lines of the principles of economic appraisal in Government departments. There is a requirement to be clear about the objectives of the appraisal, and about which options are and are not being considered—you start with a long list and move to a short list.

There is a requirement to examine fairly the whole-life costs across each of the short-listed options, and to examine the non-financial benefits that are not otherwise quantifiable, in particular with sensitive business cases such as the one that we are discussing. Indeed, you may be asked to examine costs that are not directly attributed to the operation of the service, but which are important costs or benefits to the wider economy. For example, routinely in Northern Ireland—which is similar in some respects to rural Scotland—the impact on the wider economy is taken into account in option appraisals. There is also a requirement to consider the risks.

The point about the process is that it is a means of reaching a decision in a disciplined manner and of making it absolutely clear. We have an enormous amount of experience of that. We have gone through the process in difficult political situations. Difficult operational decisions have had to be made in a number of sectors. When we go through the process, we do so systematically, which is not evidenced in the estates review.

**Ms Alexander:** That goes to the heart of the matter. The issue is sensitive, because you had one client and the Scottish Prison Service had another client. It is clear that Grant Thornton and PricewaterhouseCoopers are concerned about the reputational risk to both firms that is associated with assessing properly the work of another firm, which is what you were invited to do.

It seems to me that you risk in your oral evidence saying something different from what is in the summary of findings in your report. My interpretation is that, in the summary of findings, you are careful to imply that PWC, which is a regular competitor and which you must know well,

has not sufficiently considered non-financial factors and that it has considered only a narrow range of options. At no point do you criticise PWC's financial assessment of the options that it considered. That is a critical question for the committee. Do you disagree with PWC's financial analysis of the options that it considered? I realise that that question is not comfortable, but it is at the heart of our considerations.

**Luke de Lord (Grant Thornton):** We sought to approach the matter from the perspective of how we would have done the review. We had only a short time to write our response. We gathered as much information as we could to do a bottom-up costing exercise. The PWC approach was to extrapolate from historical costs. We did not follow that route because we wanted to test the costs that PWC arrived at by discovering whether our approach resulted in dramatically different results. The summary net present values per prisoner place that we have produced, particularly on the private build, public operate option, are significantly lower than PWC's findings. We make the point in our report that, because of the absence of detailed information in the PWC report, we cannot give the committee the categorical statement that it wants.

**Ms Alexander:** I appreciate your candour. I accept your right to say that you do not like the methodology and that you would like another to be used. The committee has to reach a view about the legitimacy of the methodology that PWC adopted. The PWC report takes a decisive view on the order-of-magnitude differences between the three options, which are the private build, private operate option, the private build, public operate option and the public build, public operate option. The critical issue is your view of those order-of-magnitude differences. Are they right, broadly right, slightly wrong or totally wrong? That is the material consideration in deciding what weight we should give to the PWC report.

**Peter Cutler:** We can be candid about that matter. As our report states, we think that certain costs have been omitted and some costs have been treated simplistically. When I first read the PWC report, my attention was drawn to the massive difference between the public sector comparator cost and the private build, private operate cost, which is the model that is used in some English prisons. The difference in the report is about 50 per cent—the fully privatised prison is estimated in the PWC report to be half the cost of the public sector comparator. However, as paragraph 4.2 of our report points out, that has not been the case in England. When the option appraisals were done and the business cases were signed off as contracts by HM Prison Service, the cost differences that were used to justify the investment were about 10 or 15 per

cent, not 50 per cent. We do not have access to the figures and we do not know what figures PWC used, but we suspect that the reason for the figure of 50 per cent is a rather simplistic extrapolation from English prison figures.

**Ms Alexander:** That is helpful and goes to the heart of the matter. You are right that PWC estimates a 50 per cent cost differential between the public and private options and that the mixed option is the same as the private option. That is the essence of the PWC report.

Are you therefore saying that the costings of the public sector are broadly right, but that PWC artificially reduced the cost to 50 per cent below—rather than just 15 per cent below, which you think would be supported by the survey evidence in England—both the mixed option and the private-private option? Has PWC depressed the costs of those two partially or fully privatised options, rather than inflating the costs of the public one?

**Luke de Lord:** We have issues with both sides. We think that the public sector costs are overstated, but we also have concerns about the costs for private build, private operate prisons, which we think are understated. The logical conclusion from the costs that have been used is that the gap is far greater than we believe it to be. We do not believe that we are in a position to make an accurate assessment of the mixed option. We do not think that you will get reliable cost estimates until, as Mr McKinlay said, you do a soft marketing exercise to see whether the private sector will actually bid on a commercial basis. We think that that is an essential step.

**Ms Alexander:** Correct me if you think that I am wrong, but I shall describe the order of magnitude in figures that suit everybody. The Scottish Prison Service essentially said that it would cost, let us say, £100 to do it public-public, £50 to do it private-private, and also £50 to do it as a private-public mix. Your sense of the order of magnitude is that the SPS has slightly inflated the cost of public-public, so that the real figure for delivering public-public might be, using my example, £90. You are also saying that, conversely, the SPS has underestimated the true cost of private-private, so that it might really cost £70, therefore reducing the differential to that between £70 and £90 rather than that between £50 and £100. Is that layman's summary accurate? We are aware that the SPS is only at a consultation phase, and we hope that our report will allow the SPS to look again at those figures. Your willingness to give us some direction is appreciated.

**Peter Cutler:** We believe that the public sector costs have been inflated and the private sector costs have been deflated. The proof of that particular pudding is that, if you look at the history of PFI projects in the UK, you will not find those

massive differentials between public sector comparators and privately financed projects. Instead, you will find much smaller differentials.

**Ms Alexander:** I would like to pursue that final point. You say that you will not find such differentials in reality, but we guarantee that the revenue risk for private prisons is fixed, so long as they do not incur penalty payments. How does that play itself out? The PWC methodology was simply to say, "Let us assume another three Kilmarnocks." As the public purse has guaranteed to pay a fixed sum irrespective of the numbers using a facility, I do not quite understand how that could lead to the deflating of the private sector price, given that the Government revenue committed to that is fixed. That is exactly the model that PWC used. Can you clarify that?

**Luke de Lord:** If you examine the assumptions underpinning the private build, private operate prisons, you will see that some outliers are excluded.

**Ms Alexander:** What are they?

**Luke de Lord:** I would need to check the document to see which particular ones are included, but two of the earlier English prison schemes have been excluded when calculating an average. On the public sector side, HMP Shotts has been used as the example. We heard earlier that the Shotts programme has specific characteristics. Extrapolating on the basis of that prison would therefore overstate the public sector comparator costs. Likewise, because of the exclusion of the two outliers from the English prison average, the private build, private operate costs will be understated.

**Ms Alexander:** I had the opportunity last week to look in some depth at the PWC report. My understanding of it—and I put it no higher than that—is that the cost structure that it used was the contractual framework for Kilmarnock, not the English average. Therefore, essentially, the PWC report shows what it would cost to do three Kilmarnocks. It would be helpful if you wrote to the committee to specify the outlying factors that could account for an order of magnitude of up to 20 per cent, given that the economics, at least, of Kilmarnock are clear and that that is essentially what PWC used. I accept your point that the report probably slightly inflated the cost of Shotts. I am less interested in the overstating of the public cost, but I am particularly interested in the private cost.

**The Convener:** We have now requested two letters.

15:45

**Donald Gorrie:** I will pursue the question of private build, public manage. Wendy Alexander

made a slip of the tongue in her excellent and simplified example. The public-public cost £100 and the private-private cost £50, but the private-public cost £100. To most of us, that is quite astonishing. You mention the business of soft marketing, but much of the difference in public-private partnership and PFI projects arises from what is, in my view, the totally fictitious idea of risk. It would be a big breakthrough if somebody could explain the risk idea in a way in which I could accept it.

**Peter Cutler:** The fundamental justification for PFI as it has emerged in most sectors in the UK has, quite properly, been the transfer of risk from the public sector, which by and large—especially on large projects—has not been spectacularly good at managing design, build and operate. My office is near the British Library, which was 13 years overdue and God knows how much over budget. We all know of cases such as that. Under PFI, all that risk is transferred to a private sector consortium, which parcels it up and pushes it down to various levels where it is best managed. By and large, that has worked well. Prisons are different because privatisation has been taken a lot further in that sector. There are interesting questions as to why that is—perhaps it is less politically contentious to privatise prisons than it is to privatise hospitals and schools.

**Donald Gorrie:** Not in Scotland.

**Peter Cutler:** That has been the history in England. Usually, when one considers a PFI project business case, there is the PFI project cost and there is the public sector comparator, which is an estimate made by the department as to what it would cost the department to run the same project if it sourced it and operated it itself. There is usually a cost differential in that the private sector option is generally a little bit more expensive. That is because the private sector has priced in risk transfer. The history of risks on Government projects shows that they can be very large. When one carries out a proper risk analysis, one usually finds that it is worth transferring—not always, but that is usually the case.

**Donald Gorrie:** Is there an example of any private firm carrying any risk whatever? My understanding is that if there is a serious issue, the public bails out the private firm anyway. An example of that is the thing that was burned down in Derbyshire or wherever.

**The Convener:** Yarlswood.

**Peter Cutler:** Significant risks are taken routinely. We negotiated a hospital deal, which was exceptional value for money for the taxpayer. For example, the private sector took the risk of inflation on the wages of staff carrying out functions such as cleaning, catering and portering.

The wage bill is escalating at about 3.5 per cent per annum and the amount that the private sector gets to pay for it is escalating at 1.5 per cent per annum. That is a significant risk to profits.

**Donald Gorrie:** Did you have any chance to investigate the estimates in the prison estates review of the cost of running a public jail? Did PWC investigate the estimates, or did it accept dubious figures that it was given by the SPS?

**Luke de Lord:** I will answer the second part of the question first. As I said in response to Wendy Alexander's questions, we did not see sufficiently detailed information in the PWC report to enable us to do the kind of analysis that we would like to have done and to make statements on the robustness of the costs. We wanted to gauge how accurate the predicted outcomes were, so we used the budget from Peterhead to produce a bottom-up cost estimate, and we made assumptions on pro rata increases of the number of prisoners to produce the various costings that we have included in our calculations. We did that because we thought it a more reliable approach. We are not able to comment on PWC's approach because we cannot see the fundamental basis on which PWC has worked through the costings. As to whether PWC has taken information from the SPS and used it in its analysis, we cannot comment in the absence of more detailed information.

**Donald Gorrie:** I want to ask about the risk aspects of private build, public operate. If we go down that route, is there any great problem that has not been brought to our attention?

**Luke de Lord:** We think that such projects require more investigation to gain more understanding. The estates review draws on information in the PWC report and its approach seems to be a desk-top review of experience elsewhere. It considers the absence of private build, public operate as a justification for the lack of commercial viability of private build, public operate. We cannot see any evidence to support that view. We think that such a view could be justified only if there were evidence of differential pricing from the private sector operators in their consideration of private build, private operate versus private build, public operate. However, such evidence is not in the report. Therefore, work would have to be done to verify that view.

Transferring risks on a commercially viable basis is achievable in other sectors—in hospitals and schools, for example, as PWC accepts. We think that there may well be an opportunity to get the private sector to accept such an approach on a value-for-money basis. The key to that approach in all other sectors is the detailed work done by the public sector on structuring the contract, on the way in which it presents the opportunities to the

private sector, and on the level of detailed information. If those three areas are not addressed, the private sector will perceive there to be major risks and will price accordingly.

**Brian Fitzpatrick (Strathkelvin and Bearsden) (Lab):** One point concerned me when I looked through the opening statement in the PWC report. It says:

"We have been engaged by the Scottish Prison Service ("SPS") on behalf of Scottish Executive Justice Department to undertake a financial review to support investment decisions that form part of the SPS Estates Review."

Are there any terms of art surrounding the expression "undertake a financial review"? Am I right to be concerned that the opening paragraph seems to be quite a negotiated paragraph?

**Peter Cutler:** I do not think that we can really comment. It is difficult for us to read anything into it.

**Brian Fitzpatrick:** Are there any terms of art surrounding the financial review so far as you, as accountancy practitioners, are concerned?

**Peter Cutler:** No. It is negotiated with the client on a case-by-case basis.

**Brian Fitzpatrick:** You would not have seen the brief, which would have let you see the thinking that lay behind the review.

**Peter Cutler:** No.

**Brian Fitzpatrick:** You did not have the documents that lay behind the estates review, setting out the physical condition of the prisons estate, or the price comparators that were made available.

**Peter Cutler:** No, everything that we had was already in the public domain. We had the PWC report and the consultation report.

**Brian Fitzpatrick:** I am troubled by the reliance on historical data in respect of the prison samples that are used in the analysis of the public-public model. You touched on that earlier and it was also mentioned at the last meeting. It strikes me that the use of such data to make comparisons that involve future projections comes with a number of risks, not least of which are the design benefits or the build of new as opposed to old premises. The committee may explore the roll-out from the use of that data, as we do not know what it is. Is that an area of legitimate concern?

**Luke de Lord:** In the report, we recommended an approach that could be taken to the way in which the costs are prepared. We would have expected to see the costs presented in that way in the review. The fact that historic costs were used means that they related to schemes that were delivered in different time scales and with different start and end points. The comparability of the two

approaches is therefore open to question.

We commented on the cost differentials. We believe that quantity surveyors should undertake proper costings. That is the approach that the private sector would take if it were involved in the bidding. That needs to be done on the public sector side in order to get a reliable public sector comparator. The costings need to be priced on the basis of the same specification for service. It is clear that that inference cannot be drawn from the financial analysis that is contained in the PWC report.

**Brian Fitzpatrick:** A built-in obstacle for the public-build, public-run model is the presumed lengthy commissioning delay—indeed, some might think that the delay is somewhat extraordinary. The chief executive of the Prison Service, among others, gave an explanation for that. He said that the SPS lacked expertise as, in recent years, it has had no experience of building prisons. What do you make of that explanation?

**Peter Cutler:** We want to echo something that was said by a previous witness. We are not talking about a crude choice between three options. A range of options exists along the spectrum from public build, public operate to full privatisation. Not far along the spectrum is an option in which the contract is let to the private sector and the risk is ring fenced. The private sector is told, "This is the specification for the building; now go and build it." The private sector will build it rapidly and efficiently if it is sufficiently hamstrung by the contract.

Another option is to stand back and say, "We are going to do everything in the public sector, just like in the bad old days." No one would recommend that, as it is not a realistic option.

**Brian Fitzpatrick:** I was surprised that the PricewaterhouseCoopers report did not follow some of the methodology that was used in the Mouchel report. The PWC report did not include some of the permutations of contract that might be employed. Did that surprise you?

**Luke de Lord:** Yes. A number of parts of the public sector have experience of different approaches to PPP. We proposed a number of options, but it was by no means an exhaustive list of how things could be done. What is key is to learn lessons from the earlier projects. If the projects are structured with the right project management and the right professional support, there is no reason why, with a private build, public operate scheme, some of the benefits cannot be achieved.

**Brian Fitzpatrick:** Something has been made of the fact that PricewaterhouseCoopers was involved in PFI projects throughout the business world. I understand that Grant Thornton has substantial experience and involvement in private



finance projects.

**Peter Cutler:** I started my career in private finance at Coopers Lybrand, before it became PWC. I was one of the first people to undertake a PFI project for Coopers Lybrand. I then built up a practice at Grant Thornton. We are the third largest supplier of PFI consultancy to the public sector. We have a lot of experience of PFI projects.

16:00

**Stewart Stevenson:** I have a few relatively short questions.

**The Convener:** You do not have to sound so anxious about it

**Stewart Stevenson:** I was just buying some time, convener.

I understand that the PricewaterhouseCoopers review extended over a calendar year, although it is not clear how long the company spent on the report itself. From what you have seen of the material that the accountants were asked to review—and in light of what one might reasonably infer from that material about the job that needed to be done—how many man days would you have wished the accountants to spend on this particular task if you had been given it?

**Peter Cutler:** This brief would not have taken us less than three months to complete; indeed, we would probably have allowed six months for it. With two people working on it—perhaps not full-time—it would probably have taken about 150 days.

**Stewart Stevenson:** Does it therefore surprise you that a parliamentary answer to me indicates that, if we include our risk assessment workshop that involved several PWC people, the total number of man days spent on the report was 70. Might that in part account for the relative superficiality of the PWC report?

**Peter Cutler:** It might be that PWC was simply asked to carry out a small part of the work—for example, to examine the financial side of things—instead of being involved in the wider strategic decisions.

**Stewart Stevenson:** I want to turn to the exclusions that might arise in your work. You have said that you have undertaken a very quick review of the issue. Have you had the opportunity to consider any of the costs associated with the closure of Peterhead prison?

**Luke de Lord:** We have identified some areas that we do not think the PWC report has addressed—in particular, the costs of recidivism and staff relocation costs—and have reflected that in our analysis. We have considered relocation

costs only from the Peterhead perspective, because we cannot second-guess where staff might be relocated. Clearly relocating them in the central belt will mean additional costs.

Furthermore, although we have not considered the issue ourselves, we have suggested that the economic impact on Peterhead of the prison's closure should be examined. All those costs must be added in for any true economic analysis of the impact of the closure of Peterhead. Although we are not in a position to say substantively what those costs would amount to, we believe that it is essential to find out that information if we are to have a true reflection of the outcome.

**Stewart Stevenson:** Clearly such information would close the gap in the figures that you have produced.

People now seem to favour a new X-shaped prison design, which allows small numbers of staff to supervise large numbers of prisoners. Have you factored in the staffing implications of such a design? Moreover, are you aware that, in the submission that it published yesterday, the Prison Officers Association Scotland made a commitment to reduce staff numbers in a new-build prison with a new design? After all, the Peterhead design dates from 1888, and the design for Shotts, although more modern, is also clearly unsatisfactory.

**Luke de Lord:** Our estimates make no allowances for operational efficiency savings or for any approach that updates the prison design. Instead, we have attempted to show what we believe is a sensible costing assumption. Obviously, those costs could be further reduced if your two suggestions were taken on board.

**Stewart Stevenson:** In the absence of the deputy convener, who has been pursuing the subject, I want to ask about the financing of public projects. The PFI model has always conflated the issue of financing with the issue of building, and sometimes operating. If financing were to be taken out of the equation and dealt with separately through, for example, the creation of a public trust that is guaranteed by the state sector, would the banks take a different view of the risk that is associated with lending to a trust, compared with that associated with lending to a commercial company that undertakes PFI projects? Would that be likely to reduce the interest rates that are attached to lending?

**Peter Cutler:** That is a plausible way forward. I have always held the view that projects could be financed partly or wholly from the public purse and still have the benefits from outsourcing design, build and operate. If that option were available, I am sure that the banks would be willing to support it.

**Stewart Stevenson:** Would interest rates be lower?

**Peter Cutler:** Banks would not lend on the risks of project companies and their parent companies, which would vary in stature. They would probably lend to a Government-backed institution, which should be lower risk.

**Paul Martin:** Your report says:

"We have obtained indicative costs which suggest that power points could be installed in all cells for £35k or less."

Where did you obtain those costs from?

**Luke de Lord:** We used a firm of local professional advisers. We gave them a brief specification of costs and asked for a reply within the time that was available. I would not attach an enormous degree of accuracy to those costs. They are indicative and give us a sense of the costs.

**Paul Martin:** That is like a building company saying, "We could do this for £10,000," but the job could work out to be treble that amount. It is not an exact science.

I want to turn to PPPs. Through PricewaterhouseCoopers, the Executive has repeatedly raised concerns about delivering a private build, public operate model. Your evidence touched on the issue. If the Scottish Executive contacted you after this meeting, could you deliver that option? PWC advised us that, worldwide, it could not find a model that could deliver in that respect.

**Peter Cutler:** We could not promise to deliver that model. We could promise to consider the likelihood of its being delivered and explore the model's priorities through a soft market test. We draw the committee's attention to every other sector in the UK. For example, we advised Sussex police on its project to centralise its custody facilities. Much of the activity around custody that police undertake was civilianised and massive operational efficiencies were obtained. The approach was new—it had never been done before. There was a certain amount of resistance in the police forces in general to the idea, but Sussex police will tell you that the project works well, that it is excited about the project and that the project is being copied throughout the country. The project is publicly operated and privately delivered.

**Paul Martin:** In your summary of findings, you say:

"The PPP Private Build Public Operate option is discounted too easily".

Why did you say that?

**Luke de Lord:** We set out a spectrum of options. We believe that that option has been too narrowly defined. We do not believe that, for

example, letting out a Joint Contracts Tribunal design and build contract, which could be done within a PPP structure, has been considered. A range of services could be included, depending on whether they represent value for money. The market can be tested within a contract structure.

**Paul Martin:** Consider the matter from the Executive's point of view. It has repeatedly challenged organisations to come forward with a model and PWC has not been able to do that. You criticise the document but cannot provide the alternative that the Executive is seeking. You want to carry out a further desktop study to clarify whether you could go down that road.

**Peter Cutler:** That is done routinely in other sectors. It has been done in the police sector, which to a degree must be similar to the prison sector. It must be possible to craft a deal that will work for both sides. We do not deny that there will be issues relating to interface, insurance and so on. There are similar issues with schools, for example. If children vandalise schools, who will pay?

**Paul Martin:** So you cannot guarantee that you could deliver the model, but you guarantee that you could interrogate the model further and that there is a possibility that that will result in a model.

**Luke de Lord:** We believe that there is scope to test out the market and possibly come up with a workable solution. We cannot guarantee to deliver a model because the market cannot price anything until something tangible is presented to it.

**The Convener:** I thank the witnesses. I hope that I get right what I will now try to say—no doubt Wendy Alexander will correct me if I do not. I ask you to write to explain or detail the outlying factors that contributed to the differentials between the private-private, private-public and public-public options. We would be grateful if you could do so in quite a lot of detail as soon as possible.

Next week, the committee will discuss our first draft response to the report. I hope that we can then let PWC have a look at your comments—no doubt it will also look at the *Official Report*. We can ask PWC to comment on your letter and what you have said today. The committee can then assess the financial aspects of the matter and the financial rigour with which the matter has been pursued. I am sorry to put you on the spot, but would that be possible?

**Peter Cutler:** We would be happy to do that.

**The Convener:** I thank the witnesses and Brian Fitzpatrick—I should have mentioned that he came in.

Is the committee happy to proceed in that way? It is impossible to have witnesses return to the committee to respond again. Obviously, the report

will be partially in draft form and can be further dealt with.

*Meeting closed at 16:11.*

The next committee meeting will be on Tuesday 18 June in this little committee room—we will discuss our draft report on the prison estates review. I thank everybody who has attended.



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