

# **JUSTICE 1 COMMITTEE AND JUSTICE 2 COMMITTEE (JOINT MEETING)**

Tuesday 17 September 2002  
(*Afternoon*)

Session 1

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## JUSTICE 1 COMMITTEE 30<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

## JUSTICE 2 COMMITTEE 29<sup>th</sup> Meeting 2002, Session 1

### CONVENER

\*Pauline McNeill (Glasgow Kelvin) (Lab)

### DEPUTY CONVENER

Bill Aitken (Glasgow) (Con)

### COMMITTEE MEMBERS

\*Scott Barrie (Dunfermline West) (Lab)

Mr Duncan Hamilton (Highlands and Islands) (SNP)

George Lyon (Argyll and Bute) (LD)

Mr Alasdair Morrison (Western Isles) (Lab)

\*Stewart Stevenson (Banff and Buchan) (SNP)

### COMMITTEE SUBSTITUTES

Roseanna Cunningham (Perth) (SNP)

Lord James Douglas-Hamilton (Lothians) (Con)

Donald Gorrie (Central Scotland) (LD)

\*attended

### THE FOLLOWING ALSO ATTENDED:

Richard Lochhead (North-East Scotland) (SNP)

### WITNESSES

Michael Crossan (HM Inspectorate of Prisons for Scotland)  
Clive Fairweather (Her Majesty's Chief Inspector of Prisons for Scotland)  
Malcolm McLennan (HM Inspectorate of Prisons for Scotland)  
Mr Jim Wallace (Deputy First Minister and Minister for Justice)

### CLERK TO THE COMMITTEE

Alison Taylor

### SENIOR ASSISTANT CLERK

Claire Menzies

### ASSISTANT CLERK

Jenny Goldsmith

### LOCATION

The Chamber

### CLERK TO THE COMMITTEE

Gillian Baxendine

### SENIOR ASSISTANT CLERK

Irene Fleming

### ASSISTANT CLERK

Richard Hough



## Scottish Parliament

### Justice 1 Committee and Justice 2 Committee (Joint Meeting)

*Tuesday 17 September 2002*

*(Afternoon)*

[THE CONVENER *opened the meeting at 13:41*]

**The Convener (Christine Grahame):** In this joint sitting, I convene the 30<sup>th</sup> meeting this year of the Justice 1 Committee and the 29<sup>th</sup> of the Justice 2 Committee. I ask everyone to ensure that their mobile phones and pagers are turned off. I have received apologies from Donald Gorrie and Duncan Hamilton. Margaret Smith has joined us—you are welcome, Margaret—and Richard Lochhead may join us later in the meeting.

## Scottish Executive

**The Convener:** I welcome the Deputy First Minister and Minister for Justice, and thank him for providing us with his statement, which I invite members to peruse. I understand that he would like to begin by addressing us for five minutes or so.

**The Deputy First Minister and Minister for Justice (Mr Jim Wallace):** I am grateful for the opportunity to say a brief word or two of introduction. We are now in the final year of the first session of the Scottish Parliament, and it is right that we should look at what the Executive and the Parliament have achieved for the people of Scotland and what lies ahead in the remainder of the session.

Politics apart, we all share the aim of making Scotland safer and fairer, and I think that we can fairly claim to have made progress on both. To make Scotland safer, we have funded a record number of police officers, who are achieving record clear-up rates for crime and have doubled the seizures of class A drugs. I would like to draw particular attention to our commitment to victims and witnesses in the criminal justice system. Following the Executive's victim strategy, we now have witness services in all 49 sheriff courts. I am pleased to inform the committee that we will provide a similar service for witnesses in the High Court.

We have worked with the committees on legislation. In particular, I would like to mention the legislation to safeguard rape victims from cross-examination by the accused. We will commence the Sexual Offences (Procedure and Evidence)

(Scotland) Act 2002 on 1 November. I draw the committee's attention to our continued funding for front-line policing at the present high level and to our major legislative programme, especially the Criminal Justice (Scotland) Bill, whose main aim is to protect the public.

We want to make Scotland fairer, and we are delivering on our programme for government commitments. Members will have seen the legislation that is being considered by the Social Justice Committee on the replacement of poinding and warrant sales. Our commitment to access to justice will continue to be shown in the development of the community legal service and in legal aid. I am aware that members will want to raise detailed questions, and I shall deal with them as best I can.

There are two major issues that it would be remiss of me not to mention. The first is the prison estates review, on which the Justice 1 Committee reported and on which I made a statement this month. The decisions that I announced are aimed at achieving a prison estate that is fit for purpose, by providing enough prisoner places of suitable quality to meet demand.

For too long, prisoners have been slopping out in overcrowded accommodation. Mostly, we will be replacing substandard accommodation, not providing extra places. There will be the biggest ever investment in existing public sector prisons; more than £110 million will be spent on that over the next three years. Even that will not be enough on its own. We therefore decided on two new prisons. The first will be built and run by the private sector, to get the new places quickly and to address the current overcrowding, especially for remand prisoners. The second new prison is our challenge to the public sector, both management and unions, to produce a robust and credible plan for the new prison that is competitive, offers value for money and delivers on time the places that we need. We listened very carefully to those who called for the prison at Peterhead to be retained. I was impressed by the arguments and we have decided that Peterhead will stay open.

Prisons are not just about bricks and mortar. I have asked the Scottish Prison Service to develop a prisons performance management framework in 2003, including the publication of performance agreements, improvement targets and details of performance by each establishment. I would welcome any thoughts that the committees have on how to do that and how they could be involved in monitoring that.

13:45

Finally, my colleague the Minister for Finance and Public Services made several important

announcements last week. Those represent very major commitments to the justice system. I will give the committees a few highlights: funding for police pay awards negotiated in the Police Negotiating Board for the UK; a major investment in police technology, especially the national element of the new airwave communications system; resourcing the current record level of judges and sheriffs and growth in provision for legal aid—an area the committees raised in the previous budget scrutiny.

In conclusion, I think that the Parliament can take some satisfaction from what it has done. I would be the first to acknowledge that there is a great deal more to do. I was, as you know, among those who argued strongly for the creation of the Parliament and for the new ways of working that would come with it: an approach that was more consultative and less confrontational, which was focused on achievement and outcome and not on party-political point scoring. I continue to believe in that, and I hope that for the remainder of the session my colleagues and I will be able to work with you on that basis.

**The Convener:** Before members ask questions, I remind the committees that the Justice 1 Committee has secured a debate on our response to the prison estates review. That debate will be held on 10 October and will last for two hours. Members should bear in mind the fact that we will have a full debate on the estates review.

**Maureen Macmillan (Highlands and Islands) (Lab):** Deputy First Minister, you will know that the committee has been very concerned about the provision of legal aid because that is the way in which people can access justice. When we were considering the Protection from Abuse (Scotland) Bill, a question that was raised continually was whether people seeking justice under the bill would have access to legal aid provision. You will be asked some more questions about the Protection from Abuse (Scotland) Act 2001 later.

What has been the progress of the implementation of the recommendations of the working group on the development of a community legal service? That was highlighted as the solution to everything. I am aware of some things that have happened on the ground. For example, I know that Scottish Women's Aid has been asked if it is willing to take a role and that adverts have appeared in local papers, seeking solicitors to work in citizens advice bureaux. Could you give us some more detail on that?

**Mr Wallace:** I am grateful to Maureen Macmillan for that question. I do not think that I have ever gone as far as saying that the provision for improved community legal services is the solution to everything. However, they have an important part to play in ensuring that legal services are

accessible in various geographic areas and for all subject matters. In the past, people have not been able to identify where they could go for legal aid. It is important that we put up signposts in clear language indicating where people can get access to the best advice.

In May 2002, at the launch of Glasgow City Council's review of money advice provision, I announced that we would take forward some of the recommendations of the working group that was set up to consider the provision of legal advice and information across the country. The action plan to lay the foundations for the community legal service has been developed by the Scottish Executive with the Scottish Legal Aid Board. It involves the creation of three pilot partnerships—one in a rural area—to examine local advice needs and service provision and to seek to tailor supply to demand. It also involves a national survey of the current provision of legal advice and information, a review of the advice and assistance scheme operated by SLAB and a review of the service delivery mechanisms using information technology in outreach services.

Glasgow City Council launched a very important project and we indicated that the Scottish Executive would enter into partnership with the council to share ideas, information and best practice and to carry out joint work on the needs assessment of the city, including an initiative on debt profiling. We are taking that work forward. It is important that we identify what is already out there. Pockets of advice have been identified, but part of the problem has been steering people in the right direction so that they can access that advice. That is an important part of what we are trying to achieve.

**Maureen Macmillan:** You talk about pockets of advice. How willing are organisations to engage in the process? Are you finding it easy to get them on board? When will the pilot schemes be assessed? What is the time scale for roll-out across the country?

**Mr Wallace:** I remind members that the working group involved a wide range of organisations, for example the Scottish Legal Aid Board, Shelter Scotland, the Convention of Scottish Local Authorities, the Scottish Association of Law Centres, the Federation of Independent Advice Centres, HomePoint—which was part of Scottish Homes—the Scottish Employment Rights Network, Citizens Advice Scotland, Money Advice Scotland and the Scottish Consumer Council, as well as the Law Society of Scotland. Off the top of my head, I cannot give Maureen Macmillan an exact answer on when the pilots will be evaluated, but we are looking to do so in 12 to 18 months.

**Maureen Macmillan:** In your opening remarks, you mentioned that the provision of legal aid would

increase as a result of the comprehensive spending review. What areas of legal aid will the funding be used to enhance?

**Mr Wallace:** As I have indicated to members in the past, legal aid is substantially demand driven. Regardless of what we put in the budget line, we are obliged to meet the legitimate demand that satisfies the tests. The Justice 1 Committee expressed its concern that the budget line had been relatively static for a while. There was a downward drift and demand remained relatively low for some time, but we are beginning to see an upward trend, which is why we have responded by increasing the baseline. I am sure that members will agree that there is no point in tying up money in a baseline if it is not used, but there are signs in the system that demand for legal aid is increasing. As legal aid is demand led, we are obliged to address that increasing demand by ensuring that resources are available to meet it.

**Maureen Macmillan:** The Justice 1 Committee felt that there was a fall in demand because the tests were too stiff. If more money is available for legal aid, are you thinking of making it easier for people on low incomes—as opposed to people on benefit—to access it?

**Mr Wallace:** In fairness, in response to the Justice 1 Committee's report on legal aid—I cannot remember whether I responded last year or earlier this year—we made a number of changes to the eligibility criteria. I think I am right in saying that we changed some eligibility rules that had not changed for the best part of 20 years, and we changed others which, although they had not been stuck for quite as long, had been stuck for a fair length of time. When we did that it was acknowledged that we had gone some way to addressing the concern of the Justice 1 Committee that rates had not kept pace with inflation.

We were asked recently—and I wrote to the convener of the Justice 1 Committee on the matter—whether there could be an automatic uplift. Under present statute, we do not have the legal competence to vary the rate automatically each year, so we cannot go down that line.

**Maureen Macmillan:** I want to ask about other time scales, such as time scales for the increase in fees for civil aid work, which was to be linked to quality assurance. What progress are you making with quality assurance?

**Mr Wallace:** We are still waiting for proposals from the Law Society of Scotland. I have indicated previously that we will be willing to engage when proposals are produced. I recall that the Justice 1 Committee's view was not just that there should be an increase, but that quality assurance was necessary too.

The Faculty of Advocates has submitted to the justice department a proposal for a significant fee rise in criminal legal aid and, I think, in civil legal aid.

**The Convener:** The Faculty of Advocates has given a lesson in not wasting time to the Law Society.

**Mr Wallace:** I am prepared to consider a fee rise, but I reiterate that, as the Justice 1 Committee recommended, a quality system must be an important feature of such a rise. I would not wish to impugn in any way the quality of legal services that my brethren in the Faculty of Advocates provide, but its proposals on how that aspect would be addressed were very light, if indeed they existed at all.

**Maureen Macmillan:** Do you have any comments on the research that the Executive is carrying out on the impact of the fixed-fees regime?

**Mr Wallace:** We are not aware that the fixed payments are reducing access to justice. It is our clear impression that solicitors have adjusted to the new regime and that some benefits have arisen from speedier payments. There has been less scope for protracted dispute with the Scottish Legal Aid Board. I cannot immediately remember further results of the research.

The Scottish Legal Aid Board keeps a watchful eye on the situation. We made amendments to the Convention Rights Compliance (Scotland) Bill to allow some flexibility in more difficult cases. The perception is that the system is working reasonably well.

**The Convener:** I ask you to turn your mind to legislation on dangerous driving and the recent members' business debate on the report "Dangerous Driving and the Law". In the Justice 1 Committee, we recently discussed petitions from Mr and Mrs Dekker, Tricia Donegan and Frank Harvey—petitions PE29, PE55, PE299, PE331 and PE111. We understand that you are setting up a steering group, but we are concerned about how long the issue has been dragging on. It was an aim of devolution to accelerate consideration of such matters. Petitions PE29 and PE55 were first considered in 2000, by the Justice and Home Affairs Committee. The report "Dangerous Driving and the Law" was produced by the Department of Transport, Local Government and the Regions and you decided to set up a steering group. We have sent a letter asking for the time scale in which you anticipate that the steering group will report. We also want to know who is on the steering group.

**Mr Wallace:** I cannot inform the committee who is on the steering group or what the time scale will be. I will ensure that you receive that information

as soon as possible. I am conscious that most road traffic law is reserved.

**The Convener:** We understand that.

**Mr Wallace:** Our hands are not entirely free to deal with the matter, but I will ensure that you get the information that you have requested.

**The Convener:** I simply seek to underline what has been concerning the Justice 1 Committee.

**Mr Wallace:** I am well aware that dangerous driving generates concern—indeed, I have met Mr and Mrs Dekker. I recognise that that is a sensitive position for anyone to find themselves in.

**The Convener:** The Justice 1 Committee also made recommendations after it had seen “Dangerous Driving and the Law”, which we agreed with. We wrote to you about those recommendations. We would like to know about the time scale and the membership of the steering group.

I want to raise a second point, which the Deputy Minister for Justice addressed during the members’ business debate. It concerns specific research in Scotland. I would not wish to attribute the wrong words to the deputy minister, but I received the impression that he was not of a mind to undertake separate Scottish research. The petitioners were of the view that the DTLR research did not adequately cover the Scottish dimension. Do you intend not to undertake separate Scottish research? If not, why not?

**Mr Wallace:** The DTLR report dealt with research that was carried out across Great Britain and involved input from a Scottish perspective; the police and the Crown Office and Procurator Fiscal Service gave evidence.

We were not convinced that separate Scottish evidence could add to that bigger body of research. The issues and concerns have been well identified and it is not readily obvious what more we could understand or glean from more specific Scottish research. Examples of Scottish input were in the original DTLR work and I am not clear what would be achieved by doing further research of an exclusively Scottish nature.

14:00

**The Convener:** This might be a bit of a daft lassie question, but is the research that formed the basis of the report separable? Are there separable Scottish and English statistics in that research? For example, are Scottish drivers more likely to speed than English drivers? Is there anything like that in the background material that you do not need to commission but could be put forward in a different way?

**Mr Wallace:** I would be wary of unpicking or unstitching a body of research without careful

thought. I would not want to speculate on that although I know where the convener is coming from. I could ask that the research be looked at to see whether Scottish strands could be identified. It is not the sort of thing that I would want to do ad hoc.

**The Convener:** No, but it would be helpful. I just do not know whether it is possible.

**Scott Barrie (Dunfermline West) (Lab):** Some time ago, a proposal was made for a bill to reform family law in relation to separation and divorce and, more particularly, in relation to contact and residence issues for children whose parents have separated. Where are we with that proposal?

**Mr Wallace:** The committee might recall that when we announced the legislative programme for the year, the First Minister indicated that we intend to publish a draft family law bill. However, we want to take into account the emerging implications of the adoption review and build those into any draft bill. The bill is not imminent. I would not want to hazard a guess as to whether it will be published before the election. Given that we do not have too many legislative opportunities, it seemed to make sense that we incorporate a review of an important part of family law.

**Scott Barrie:** I appreciate that we might want to incorporate updates in the adoption law into any changes that we make to family law. Has the Executive undertaken any contemporary research? When the draft bill was first talked about, I received a number of representations from people who were concerned about the implications of changes in family law, particularly for the rights of unmarried fathers. Has the Executive reflected on the information that it has received on that?

**Mr Wallace:** Yes. It was one of the key considerations between one of the earlier proposals and when we issued the white paper. The Executive’s prevailing view at the earlier stage was that all fathers should have automatic parental responsibilities and rights. We responded to some representations that we received during the course of the earlier consultation. We said that if the father and mother had reached an agreement—possibly just the status quo—it would be wrong to make those rights retrospective.

There was a lot of concern, particularly—but not exclusively—from women’s groups, that when a father has not had that automatic right for many years, it would not be appropriate to change that retrospectively. That is now reflected in the white paper. Scott Barrie has identified one of the key issues that arose. There were arguments on both sides, but I hope that by making the change we have reflected the balance of those arguments.

**Scott Barrie:** Will future legislation—with various safeguards, obviously, depending on the



circumstances of the conception of the child—make the assumption that unmarried fathers will have full parental rights and responsibilities?

**Mr Wallace:** Yes, in future.

**Stewart Stevenson (Banff and Buchan) (SNP):** Is the Executive minded to make any changes to the rights and responsibilities of grandparents in relation to grandchildren?

**Mr Wallace:** I have said in the chamber that we would certainly listen to representations on that issue. However, it is very difficult to establish a formal right for grandparents. How can I put this tactfully? Sometimes the parents do not want the grandparents to be involved. Under existing legislation, grandparents are among those who may have a locus to seek a court order. However, going beyond that and asserting a more express right could be done only with great care and caution.

**Stewart Stevenson:** The minister should not conclude that I am suggesting that he should do that.

**Mr Wallace:** Point taken.

**Scott Barrie:** The current law—the Children (Scotland) Act 1995—allows for significant adults to apply to the court for contact and, in some cases, residence. Is that a route that grandparents should be encouraged to use if they are being denied contact with their grandchildren?

**Mr Wallace:** Very much so. I entirely endorse that view—as, I am sure, would Lord James, who piloted that piece of legislation through what was a very co-operative committee, as he would agree. What Scott Barrie suggests was very much part of the thinking behind that legislation.

**The Convener:** Scott Barrie has referred to legislation that gives various interested parties the right to apply to the courts for residence or contact. Will the new bill consolidate existing acts? Family law will now be dispersed over several statutes. If the bill is to be called a family law bill, will it draw in as much as possible, so that the practitioners as well as the public know where it all is?

**Mr Wallace:** The bill is not intended to be a consolidation bill; that is a very different creature.

**The Convener:** I accept that, but the bill could serve both purposes. It could repeal certain things by absorbing sections of other acts—such as sections relating to contact rights.

**Mr Wallace:** I do not think that that is what is intended—except that, when and where necessary, legislation may be repealed. Obviously, we would have to repeal certain provisions in existing divorce law. I usually take guidance from the Scottish Law Commission on

consolidation because it is an art in itself. I take your point, in relation not only to family law but to a whole range of laws, about the advantages of legislation being available in one statute. The Parliament has not done very much of that. The legislation on salmon is the only example that comes to mind as having been consolidated. The next Parliament may consider other areas for which consolidation ought to be considered.

**Pauline McNeill (Glasgow Kelvin) (Lab):** I agree with your views so far. The Executive is doing important work on the updating of family law. Do you agree that we have to give proper consideration to civil justice? I agree with Scott Barrie—the law already provides for contact for all sorts of people in a child's life. However, we may have to examine how access rights are provided, rather than who gets access rights.

We have debated the point many times, but I want to be sure that we debate the place of civil justice. Sometimes civil justice takes second place to criminal justice. The cases that we have been talking about should be much further up the agenda than they are. I am thinking of the whole question of legal aid and the issue that we discussed with Richard Simpson in the Justice 2 Committee—the policy on full-cost recovery of fees in the civil courts.

**Mr Wallace:** I strongly endorse your general point. We should not lose sight of the civil justice system, which impacts on many aspects of people's lives. The question follows on from Maureen Macmillan's question about securing better access to justice, which includes civil justice. Most people who go to CABx have issues that relate to civil justice.

We should not lose sight of the fact that the Parliament has passed legislation on the feudal system, which many people thought was long overdue, and that the Title Conditions (Scotland) Bill is before the Justice 1 Committee. That committee is no doubt grappling with the concepts in that bill.

**The Convener:** It is bedtime reading.

**Mr Wallace:** A lot of work has gone into that bill. We are addressing the practical problems that many people have found with the worst aspects of the feudal system. It is wrong to ignore the civil justice system or to downplay its importance. Most of us hope that we will avoid contact with the criminal justice system. We certainly hope that we will not be criminals and that we will not be the victims of crime. However, many situations that people encounter in their everyday life raise civil legal issues. I am at one with the general thrust of Pauline McNeill's question.

**Pauline McNeill:** My next question also relates to civil justice. Petition PE336, on asbestosis, is at

present before the Justice 2 Committee. You might be familiar with the committee's work on how the written pleading system in some cases holds back people from getting to court. We want that process to be speeded up. We have had exchanges with the judiciary about why the present written pleading system cannot be substituted for the system that is used in the commercial courts. The difference is that in the commercial courts there is much more judicial intervention and banging of heads together, which brings about a speedier conclusion.

Given the serious nature of some of the cases that we are considering—people have died while waiting in the queue for their case to be heard—the Justice 2 Committee feels that the status quo in the written pleading system cannot be justified. Many good things have happened, but the committee is yet to decide whether that is enough to satisfy our demands. Is the Executive considering changes to the system? I know that the system covers more than simply asbestosis cases; it also covers personal injury cases. Are there any developments on that?

**Mr Wallace:** I am aware that the Justice 2 Committee has been considering the petition from Clydeside Action on Asbestos. The committee will readily recognise that ministers must tread carefully, not least with specific cases, and that we do not wish to intrude on anything that is properly a matter for the court or that relates to judicial independence. However, the issue is raised in discussions between ministers and the judiciary. To be fair to the courts, the initiatives that have been taken and the work of Lord Mackay of Drumadoon has helped to move things forward.

The working party that was chaired by Lord Coulsfield proposed changes to speed up the determination of personal injury claims, including those that relate to asbestos. We look sympathetically on some of those proposals. Some of them will need primary legislation and others relate more to court practice. However, no such legislation is proposed for this side of the election. There has been a lot of focus on speeding up the work of the High Court and the criminal law side, but I am interested in what can be done to speed up and streamline the work of the civil courts. The proposals of Lord Coulsfield's working party are a good starting point for that.

**Pauline McNeill:** The Justice 2 Committee might choose to return to the question of the written pleading system generally. However, there has been some movement on the issue, as you said, with the judiciary recognising that something must change. The High Court, presided over by Lord Mackay, is doing a good job of speeding up the asbestosis cases.

We visited the High Court hearings and saw that

it is a slow process to get important information, such as verifying where or in which shipyards a particular person worked, from the national insurance contributions office. I ask for your full co-operation if we need to pursue that issue, albeit that it crosses into a reserved authority. However, the opinion of the Parliament—or the committee—might be that the matter needs to be pushed on.

14:15

**Mr Wallace:** If that situation is proving to be a bit of a sticking point, or at least a hold-up, I would want to consider what might appropriately be done, such as having a word in the right place or giving any push that we can. If the committee makes its views well-known, they will be picked up by those responsible at Westminster. There is no reason why there should not be co-operation. Members of the Westminster Parliament might want to take that up. I would want us to facilitate something because I recognise that time is not on the side of many of the sufferers.

**Pauline McNeill:** That would be helpful because I understand that there are delays of up to six months, which hold up the progress of many cases.

**The Convener:** I have a point to make, before we pass on to the next question, on the issue of reparation actions involving civil legal aid. We have had evidence from practitioners about policy decisions by the Legal Aid Board on sanctioning experts. The only expert might be in London, for example, and be expensive. A solicitor puts in an application with an estimate of the cost and the application is rejected. However, insurers have almost no such cost limits.

I wonder whether the minister would keep that situation in mind and investigate it, because it seems to come up regularly as a complaint. It certainly came up when I was in practice and it has come up in evidence to the committee. The sanctioning of experts delays reparation actions and an applicant often has difficulty in getting the same level of expertise on his or her side of the case as the insurers have, because there is a cap on what the Legal Aid Board will spend.

**Mr Wallace:** I am sure that the committee previously raised that matter.

**The Convener:** Yes, it did.

**Mr Wallace:** I have a feeling that we responded, but I cannot remember exactly what was said. In the interests of consistency of response I will—

**The Convener:** I asked the minister to be mindful of that matter.

**Mr Wallace:** I certainly will be.

**The Convener:** The issue is still around. It might

not be specifically relevant to the asbestosis cases, but many other cases require serious experts, who are costly.

**Mr Wallace:** It might not necessarily be just personal injury cases that require experts. They could also be required in other types of case.

**The Convener:** Exactly. I referred to personal injury because we are on the track of civil matters.

**Lord James Douglas-Hamilton (Lothians) (Con):** Will the minister give an updated progress report on proposals for reforming policing structures and the police complaints process?

**Mr Wallace:** Substantial work is being done by working groups or task forces, comprising the Association of Chief Police Officers in Scotland, the Association of Scottish Police Superintendents and the Scottish Police Federation, looking at common services. That process is covered by Lord James's term "structures", because we have indicated our intention that Scotland's eight police forces should remain.

We are anxious to identify the areas in which we can make progress through common procurement or through different forces coming together, as well as putting on a better footing some of the areas in which there is already a common structure, such as the Scottish Criminal Record Office and the Scottish Police College. Every constabulary is involved in those, but the lines of responsibility are often not as clear as they might be. I can assure Lord James that work is progressing on that. We are anxious to identify as much progress as we can so that we can develop that in the context of a white paper.

Regarding police complaints, the consultation has concluded and I am engaged in announcing our response to it. It identified possible options with greater or lesser degrees of independence for a potential ombudsman. When we publish our response, I want a clear steer as to the direction we want to take. A final decision is yet to be made. I hope we can publish it before the end of the year.

**Lord Douglas-Hamilton:** Is the minister satisfied with the progress on DNA testing and all related arrangements?

**Mr Wallace:** Yes. Without wanting to sound complacent—certain things can always be done better and further steps can be taken to improve matters—DNA testing has been a milestone in aiding detection, as the police would agree. Any time I have met police forces, they have been keen that we continue to push forward with DNA testing. When I visited the Tayside constabulary, it took a sample of my DNA. *[Interruption.]*

**The Convener:** You were heckled by Maureen Macmillan; she said that that sample would come back to haunt you.

**Mr Wallace:** We talk about the fact that we have record clear-up rates, which are attributable in no small way to some of the advances in technology. It is our concern that as well as trying to maintain numbers of front-line police, they are equipped with modern technology to ensure that they do their jobs as best they can.

**Paul Martin (Glasgow Springburn) (Lab):** Are there any proposals to change the way in which crime statistics are recorded, as part of the reform mechanism? Also, there has been recent media attention about the sickness levels of police forces. Are there proposals to consider identifying ways to improve those levels as part of the reform programme?

**Mr Wallace:** There are moves afoot to better standardise the collection of statistics in Scotland. There was a high profile announcement about the changes that were made in Lothian, which showed up an increase in numbers that had not been taken into account previously.

Even before that was done, I asked that a working group be set up—to include ACPOS in particular—to ensure that we get a better standardisation in Scotland. That is easier said than done, however, because there are grey areas when examining the statistics of recorded crime. Often, it is not clear whether a crime has been committed. If a window is smashed, nine times out of 10 it might be a crime, but not always. There are other grey areas. It is important to tease that out as best we can to ensure that we are comparing like with like. That is why figures produced by the British crime survey provide a more reliable guide. That not only records crime, it speaks to victims about their experience of crime. There are crimes that some people do not report, so they do not show up in the figures of recorded crime. I am anxious that people have confidence in the figures that we discuss and that, from year to year, we compare like with like as best we can—and indeed, force with force.

I understand that we are awaiting a report from the chief inspector of constabulary on police illness and absenteeism. I do not wish to anticipate that report. I accept that there is a clear issue, which was identified as part of the police negotiating board's pay settlement on a UK basis. I do not pretend to have an easy solution to the problem. It is recognised as a problem that must be addressed.

**The Convener:** I apologise to Margaret Smith, because I was treating her attendance as a visit by a constituency MSP. In fact, she is one of those new people called committee substitutes and she is sitting in for Donald Gorrie.

**Mr Wallace:** So she is Donald Gorrie in disguise.

**The Convener:** Again, I apologise to Margaret.

**Mrs Margaret Smith (Edinburgh West) (LD):** Are you apologising because I am trying to be Donald Gorrie, or for another reason?

**The Convener:** Take your pick.

**Mrs Smith:** Minister, you say that you have funded record numbers of police officers and have achieved record clear-up rates for crime—and not simply because you submitted a sample of your DNA. However, police officers in our areas tell us time and again that although they might have record numbers on paper, they are still stretched because of demands on police time. What progress is being made through greater use of civilian staff or, in particular, through the streamlining of court procedure in order to free up police officers and ensure that they are where people want them to be—in the community?

**Mr Wallace:** Your comments are reflected in the feedback that I have received from visits to police stations. The First Minister and I have visited the police station at Torphichen Street twice, and indeed, I had my ear bent by Margaret Smith herself when I visited her community.

It is important to acknowledge that we have funded constabularies to ensure that they have a record number of police officers. As Margaret Smith pointed out, the fact that we have a record number of support staff is also worthy of note. There is a case for the use of civilian support staff to free up police officers for so-called front-line duties, where that is appropriate—and I stress the word “appropriate”. I know that we all use the phrase “front-line duties”; however, it might be a misnomer in some cases. In these days of intelligence-led policing, police officers are not always in the front line and are very often carrying out very good intelligence work elsewhere to ensure that the right front lines are being covered. It is all very well having more bobbies on the beat, but intelligence-led policing ensures that the most effective beats can be identified. That is part and parcel of modern policing.

We ought to examine ways in which we can free up police time. Some steps have been taken in that direction, not always without controversy; however, the use of single control units and having some civilian staff to process regular calls while police officers deal with emergency calls has released police officers. For example, the new communications centre in Lothian has freed up the equivalent of 89 police officers. Although the total numbers do not change, front-line policing itself can be improved.

The committee will be aware of our proposals for prisoner escorts. When work started in Lothian to get some handle on how effective the idea might be, the working assumption was that it might free

up more prison officers. In fact, the studies came to the surprising conclusion that far more police time than had ever been recognised was taken up with such duties. Of course, I should add that a substantial amount of prison officers’ time was also taken up with those duties. Obviously, we are moving on that front.

As a result, a range of measures can be introduced to ensure that even though the police officers are there, they can be used for front-line duties. I am always anxious to find better ways of ensuring that police officers spend less time inefficiently sitting around in courts. However, there will always be an element of that, because part of a policeman’s duty is to give evidence. After all, that is how convictions are obtained. However, I know from anecdotal evidence and observation that a considerable amount of time is spent in courts. Perhaps Lord Bonomy’s review of the High Court and Sheriff Principal McInnes’s review of summary justice will make some proposals on how we improve the efficiency of the courts, which will also lead to a more effective use of police time.

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

Are there plans for a review of the system for allocating grant-aided expenditure to local authorities? The minister may be aware that some police boards believe that, historically, they have been underfunded, even when their component local authorities fully matched the funding for policing from the Scottish Executive. The police boards are losing out because of the way in which grant-aided expenditure is calculated.

14:30

**Mr Wallace:** A review is in progress. An initial report was produced and is being worked on by a group that involves ACPOS, Executive officials and COSLA. That group’s final proposals will be with ministers imminently. Some people boil the matter down to doing everything by crude headage—by head of population. Such a test is too facile and simple. Several other factors are involved, such as the huge geographical areas that are to be covered and the different issues that arise in different places.

It is not easy to arrive at a formula that satisfies everyone, be it for police GAE or other matters, because if there are winners, there will be losers. Until I have the final report, it would be premature of me to speculate on who will win and who will lose. We would not wish police budgets to be cut, so the proposals might have to be implemented over a period rather than in one big bang.

**Michael Matheson:** When does the minister expect to announce any proposed changes? If the system is to change, what is the time scale for implementing the change?

**Mr Wallace:** Until I have seen the concluded report, it would be premature for me to speculate. However, I have suggested that the change could not be made in one year. If there are to be winners and losers, the change might have to be phased in. I am conscious that an issue exists, but until I have seen the final report, it would be idle to speculate.

**The Convener:** I have a question for the minister, to which I do not know the answer. Apparently, no one round here knows the answer either. What has happened to fingerprinting techniques and procedures, given the recent high-profile case? Are they being investigated or queried?

**Mr Wallace:** For sub judice reasons, I do not want to go into a particular case. The committee will recall, however, that when we received the initial report from Her Majesty's chief inspector of constabulary relating to the Shirley McKie case, the Lord Advocate told the Parliament that when fingerprint evidence was used, it would be independently verified. That was done for the best part of a year. In every case, the fingerprint evidence that the Crown was going to lead was independently verified. That no longer happens. The subsequent inspection by Her Majesty's chief inspector of constabulary acknowledged a considerable step forward in the work of the fingerprint bureau in the Scottish Criminal Record Office.

**The Convener:** I do not know, but I take it that a line has been drawn under that and that there are no more concerns.

**Mr Wallace:** Obviously, a case is still pending. I do not want to go into that.

**The Convener:** I am talking about practice and procedures.

**Mr Wallace:** The Crown Office stopped independent verification. Fingerprint evidence continues to be led in cases. Perhaps what should be said about fingerprint evidence is that it is not an exact science, but involves an art form. It is a skill that involves judgment and cannot be boiled down to an exact science. However, having had a string of cases independently tested, the Crown was satisfied that the fingerprint evidence that was being led was credible. Ultimately, that is a matter for the courts and for juries to decide, but the Crown is confident in the evidence that it is leading.

**The Convener:** I will move quickly on to a hobby-horse of mine: the Protection from Abuse (Scotland) Act 2001, which was the first committee bill to go through the Parliament. I am concerned that the public does not seem to know about the broad range of circumstances in which the provisions of that act can be used. After all, it can

be used by a child who is bullied in the playground or against a neighbour who constantly breaches an interdict. I have never seen advertisements or leaflets about the act. What information has been put out to make the public aware of how the act operates? I am not asking that question for the first time—I have asked many times before—and I know that Stewart Stevenson has also asked that question.

**Mr Wallace:** I am sure that I have responded to that question in writing.

**The Convener:** We received a strange response that said that, because the act began as a committee bill, the committee would be responsible for the publicity attached to it. The committee has no budget for publicity, so that letter bounced back to your department. Then Margaret Curran told us that the various agencies that are involved, such as lawyers, know about the act, but my point is that the general public does not. The remit of the act is far wider than simply protecting cohabiters. I find it extraordinary that people do not know about the act and I would like to know whether there is a publicity budget for it.

**Mr Wallace:** I do not know whether there is a publicity budget for it. I will have to check that. MSPs have notified me of their constituents' complaints or concerns and I am conscious that I have written to suggest that the act might be useful in those circumstances. That underlines your point, convener. The act protects not only partners in cohabiting relationships, but grandmothers and their grandchildren. The example that you gave about neighbours is pertinent—people often raise concerns about harassment from their neighbours. I undertake to investigate what information has been put into the public domain. I am not entirely sure what would be the best way in which to advertise the act.

**The Convener:** I am thinking of a small leaflet for citizens advice bureaux, schools, old folks homes and wherever such public information leaflets are distributed.

**Mr Wallace:** That is a helpful suggestion. I undertake not to find a budget, but to look into the matter.

**The Convener:** We have pursued the matter up hill and down dale.

**Pauline McNeill:** On the regulation of the legal profession, which is a matter into which the Justice 1 Committee has been inquiring, do you support self-regulation in the legal profession? Do you support the strengthening of the role of the Scottish legal services ombudsman in the complaints procedure?

**Mr Wallace:** I hesitate to make any commitment ahead of the publication of the Justice 1 Committee's report. The appropriate chronology—

**The Convener:** May I halt you there, minister? I am conscious of the fact that you have not yet had the opportunity of giving evidence to the Justice 1 Committee on the regulation of the legal profession. I advise you that we are writing to offer you an opportunity to respond to those questions more formally, on a date to be confirmed.

**Mr Wallace:** On such issues, it is sometimes better to respond to the committee's proposals than to second-guess the committee.

The Executive welcomed the Justice 1 Committee's inquiry. An effective complaints handling procedure is a key part of any profession—not least the legal profession. In fact, such a procedure may be even more important in the case of the legal profession, as I learned during my early days in practice. The trouble is that 50 per cent of the people who become involved in legal situations think that justice was not done: someone wins and someone loses, but everyone believes in the rightness of their own case. The complaints system must be robust enough not only to pick up legitimate concerns and poor practice, but equally to prevent those who have discharged their responsibilities professionally from being hounded unreasonably.

**Pauline McNeill:** I would not want to cut across your dialogue with the Justice 1 Committee, so I take that as a fair answer.

As a constituency MSP, I would like to offer a view to lay on the table in respect of the complaints procedure. A high percentage of the complaints that I hear from constituents are about their dissatisfaction with the legal profession. I accept that, as you say, that is their perception of how they have been dealt with. However, there is one particular issue that causes me concern; the scope of the ombudsman and the complaints procedure is far too narrow. I am convinced that that must be more robust and that there must be stronger powers if people are to have faith in the system. The system falls down in cases where a solicitor fails to notice that there is a time bar and the client seeks another solicitor to take action against the first one. I have constituents who have been turned away from four or five different solicitors in such cases. There must be strong consideration of various options, for example identifying solicitors who deal only with such work.

I am convinced that the current situation is unsatisfactory and I hope that something different will come out of any review. I will leave that to the Justice 1 Committee.

**Mr Wallace:** Any such changes in the powers of the ombudsman would require legislation. That would be a major shift and should not be embarked upon lightly, although that is not to say that it should not happen. It will be interesting to see what conclusions the Justice 1 Committee

comes to on the matter. I acknowledge Pauline McNeill's point about the difficulty in getting a solicitor to take up cudgels—sorry, I mean to say, “take legal action”—against another solicitor. As long as no one is obliged to take on a particular client, that is a potential difficulty. If the committee were able to identify ways in which that problem could be addressed, and the sense of grievance—which I fully recognise—eliminated, I would be interested in considering them.

**Pauline McNeill:** Is the minister confident that the Law Society of Scotland will be able to assume the responsibilities of the Scottish Conveyancing and Executry Services Board, which is to be abolished by the Public Appointments and Public Bodies etc (Scotland) Bill?

**Mr Wallace:** I am confident that it can—I would not have proposed that if I were not.

**The Convener:** Proposed legislation has a habit of unravelling.

**Mr Wallace:** I gave great consideration to that board, which was established to compete with solicitors in relation to conveyancing and executry services; however, the numbers of practitioners coming through were so limited—of the 11 practitioners that were registered at the time of the review, only two were practising independently—that there was a strong argument for putting that quango on the so-called bonfire. There was an on-going cost to the taxpayer and the board was not delivering efficiently what it was set up to do.

The Law Society of Scotland has had long experience of supervising solicitors and I believe that it is well placed to assume the future regulation of conveyancing and executry practitioners. That is very much in line with the kind of work that it was doing anyway.

**Stewart Stevenson:** I am sure that I will not be alone in welcoming the comment in your introductory remarks that you are seeking to encourage the Scottish Prison Service away from simply considering bricks and mortar. Your invitation to the committees—and, I presume, to the members of the committees—to provide input into that will be readily accepted by many of us. You also observed that you want to deliver a prison estate that is fit for purpose. In that regard, you will no doubt recall that the estates review said that Peterhead's buildings were “reaching the end of their useful life”.

I welcome the reprieve for HMP Peterhead and the modest investments that will be necessary to bring it up to the standards that are required legally and morally. However, I am conscious that there will be other changes to standards. In particular, I draw your attention to changes in ventilation standards that are to be made next year. Peterhead does not currently meet those

revised standards. Given that the prison building at Peterhead will still be the one that was built in 1888, can you say that Peterhead prison has a long-term future? If, as a result of developments in the short and medium term, conditions at Peterhead become unacceptable legally and morally, what changes might be necessary to give the prison a long-term future?

14:45

**Mr Wallace:** As I said in my statement of 5 September, Peterhead prison remains open and there are no plans to close it. The building is old, but we have never argued that it is about to fall down and that is almost one of the problems—the building is very sturdy and has stood the test of time. We want to install electric power in cells and to pursue the suggestions that local Prison Officers Association Scotland staff have made for improving prisoners' access to night sanitation. Those are two measures that would lead to significant improvement. SPS will consider other interim measures that can be taken to improve conditions.

I am, for two reasons, not in a position to make a further commitment. First, most of the £110 million in public investment that is earmarked for the existing estate has been allocated to development plans that have been worked up for Edinburgh and Perth prisons, HM Young Offenders Institution Polmont and HMP and YOI Glenochil. The investment will not dry up after three years, but I cannot commit myself beyond that. We are making the biggest-ever public investment in the estate.

Secondly, our decision regarding Peterhead was underpinned partly by the fact that the Spencer report identified the range of rehabilitation work that needed to be done with short-term sex offenders. We see that work as a priority, so we did not think that it made sense to disrupt the work that was being done with long-term sex offenders. During the consultation, it was made clear that long-term sex offenders are well provided for under the STOP 2000 programme at Peterhead.

**Stewart Stevenson:** I welcome the minister's acknowledgement that the Spencer report focuses on the need to address the issue of short-term sex offenders. That is not, and will not become, an issue for Peterhead prison. None the less, because when the Spencer report was prepared it was proposed that Peterhead would close, some of the report's conclusions are based on that premise. I take it that the parts of the Spencer report that refer to Peterhead closing have been disposed of, on the basis that Peterhead will remain the centre for treatment and incarceration of long-term sex offenders.

**Mr Wallace:** Peterhead is to remain the centre for treatment and incarceration of long-term sex offenders. Where there are inconsistencies, the policy that I announced on 5 September will prevail.

**Stewart Stevenson:** I referred to the changes in ventilation standards that are to be introduced. I am told that Peterhead prison currently does not meet those revised standards, which will be introduced in the next 12 to 18 months. As you have said that Peterhead will remain the centre for the treatment and incarceration of long-term sex offenders, I take it that the expenditure that is necessary for the prison to meet the new standards will be made available. I have no idea what that expenditure may be, or whether it is possible for Peterhead to meet the new standards.

**Mr Wallace:** That would have to be assessed in terms of what the requirements state and the physical attributes of the building. I could not give an immediate response because of the level of detail that is involved.

**The Convener:** Since neither Maureen Macmillan nor Richard Lochhead is here at the moment, I will ask a question that one of them would have asked. The report on HMP Aberdeen offers an extraordinary indictment of that institution. It says that the prison

"has greatly deteriorated since the formal inspection of Autumn 1997, and, currently, in our opinion, is an idle, unsafe and failing prison."

In your response to that, you say that the report is "disturbing" and that it

"highlights a range of concerns".

You note that the report "concludes with some recommendations" and you go on to say that there is

"clearly room for improvement in ... other areas."

In fact, I believe that the only positive thing that the inspector said was in relation to the cognitive skills programme.

You say, too, that

"the management action plan being implemented by SPS should address these issues",

and that you

"have asked the Chief Executive to keep"

you

"informed of progress that is made."

The report contains extraordinary information, such as prisoners having to use bedding to cover missing panes of glass in their windows. It is one of the worst reports that I have ever read. As we will definitely raise the issue with Clive Fairweather later today, I would like to know what progress has been made since that report was published in July.

**Mr Wallace:** As my foreword to the chief inspector's annual report says, since the inspection was undertaken, a review of the staffing complement has resulted in an increase of five in the number of staff. One of the key issues that Clive Fairweather raised related to escort demand; the increase in staffing will have a positive effect on that.

The chief inspector also recommended that the facilities for an adequate health care service should be reviewed and I can confirm that a future layout of those facilities is being considered as part of a comprehensive development plan for the programme. I can also confirm that a business case for a new health centre has been prepared and will be considered at this month's meeting of the estates development group.

Clive Fairweather also recommended that the longer-term accommodation requirement should be urgently reviewed in order to avoid further overcrowding. The response of the SPS was that that recommendation was being addressed and that work on it was in hand. Obviously, however, action cannot be taken immediately.

**The Convener:** On remand conditions, the report states:

"Graffiti covered most of the walls and bed linen was improvised to provide curtains for the windows in order to reduce the draft caused by missing windowpanes ... Remand prisoners were prevented from wearing their own clothing, which we were told was a local rule ... Prisoners also complained that they were not guaranteed a daily change of underwear, though staff in the hall suggested that this was more to do with prisoners failing to exchange their dirty kit than the establishment's ability to provide the service. We suggest both situations are re-examined as a matter of urgency."

The situation would be bad in any case, but is made worse by the fact that these are remand prisoners.

The report says:

"The drug free area situated on the top flat of 'A' hall was, at the time of inspection, offering no therapeutic enhancement to the prisoners housed there."

We also read:

"The health centre is small and cramped and the lay out does not afford the privacy required for health consultations and treatments."

Such information can be found all through the report. We are told that some support is given to senior management to reinvigorate the regime but we know that the management structure is under stress.

The report contains a litany of evidence of a prison that is in a dreadful state. If you cannot address those gravely concerning points now, I hope that you will contact us to do so as soon as possible.

**Mr Wallace:** I will do so. I have undertaken to visit Aberdeen prison in the next two or three weeks to see how it is and to determine what progress has been made since the report was compiled. I have said that some work has already been done in relation to increasing the number of staff. A business case has been made for improving the health facility.

As the convener pointed out, I described the report as very disturbing, and it is my intention that the situation should improve materially and visibly at Aberdeen prison. However, let us not lose sight of the other issues, such as drugs. Aberdeen prison cannot—as a local prison—be isolated from what is going on generally in the Grampian area.

**The Convener:** The chief inspector of prisons does not do that. The problem is that no therapeutic enhancement is available to the prisoners in a drug-free area. The chief inspector freely admits the drug background of the prison; however, he also says that the prison itself is crumbling in all manner of ways.

**Mr Wallace:** One of the other issues is remand. The convener will remember that, when I announced the prison estates review, I pointed out that the number of remand prisoners has increased by about 28 per cent since last year. We do not understand why, but we are trying to find out. The fact that Aberdeen is a local prison where people are committed on remand by the local sheriff courts undoubtedly adds to the overcrowding. I offer that not as an excuse, but as background. We must try to find out why the number of remand prisoners has increased considerably.

**The Convener:** I cannot pursue the matter with you further, given our time limit.

**Mr Wallace:** Aberdeen prison is not the only prison where the number of remand prisoners has risen. Inverness is another such prison.

**The Convener:** No doubt Clive Fairweather will be asked about that and you will get the chance to ask about it when you visit Aberdeen.

We now move on to female prisoners. My final quote from the chief inspector's report is this:

"More and more women were being admitted to the female unit in Craiginchies, many of whom were very damaged individuals."

I put it to you that those issues are of extreme concern. When will you visit that prison?

**Mr Wallace:** There is no fixed date, but I hope to visit it in the next two or three weeks.

**Maureen Macmillan:** Local prisons seem to have been ignored entirely in the prison estates review. The convener has talked about Aberdeen prison. Although HMP Inverness at Porterfield



does not face the horrendous problems that Aberdeen prison seems to face, it is extremely overcrowded. The latest report by Her Majesty's chief inspector of prisons gives the impression that things are starting to fall apart slightly. One of the problems is staff morale. As you mentioned, officers must often desert what they are doing with prisoners to escort other prisoners to court. I have spoken to you often about the set up in the Highlands and Islands, regarding the small courts and the vast distances that must be travelled. Such issues also impact on the police.

It is time that we got some indication of how you intend to solve the problem. The last time I wrote to you about it, I was told that there were legalised police cells. I know that there are legalised police cells, but they are not adequate for their purpose. There are now so many remand prisoners that the local legalised police cells cannot cope. I want to hear that you are looking into what is happening in local prisons, especially in respect of overcrowding, and that you are seeking solutions.

**Mr Wallace:** Maureen Macmillan knows Porterfield prison in Inverness as well as I do—possibly better. There is little that we can do to expand the prison, which is one of the most compact prisons that exist in a city centre. The situation there also reflects the point that I made to the convener on the number of remand prisoners. There has been a significant increase in the number of remand prisoners in Inverness, and I have set in train efforts to find out what is driving that increase. We are told anecdotally—although we have no evidence for this—that the increase is due to people defaulting on bail and being remanded a second time. It is dangerous to rely too much on anecdotal evidence. Nonetheless, some people believe that, if people are sent to prison, they are more likely to try to get their drug problems sorted out than they would be if they were allowed to remain in the community. The further we can roll out drug treatment and testing orders across Scotland, the better, although that in itself demands a considerable level of human resource—it is not just a question of money. We are certainly committed to rolling out DTTOs and I am sure that they have a contribution to make.

15:00

I could not agree more with Maureen Macmillan on where our move towards using third parties for prison escorts could be of most benefit, which would be the Highlands and Islands. The previous governor of Inverness prison told me about two prison officers having to take someone to Wick sheriff court and back—a fairly lengthy journey, which takes prison officers away from other things that they could be doing in the prison.

I was made aware recently of a fine default case

in Kirkwall sheriff court, which I have drawn to the attention of my officials, because it links with the question of legalised police cells. It involved a person who was given a period in custody because of a fine default. The number of days of the sentence was such that, once automatic remission was taken into account, plus the fact that prisoners are not let out on Saturdays or Sundays, he had to be released on the Friday having been sent down on the Thursday. A police officer had to accompany the prisoner from Kirkwall to Inverness by plane, the prisoner spent one night in Inverness prison and he was let out the next morning. He was not officially accompanied by the police officer on the plane back, but the officer went back with him. To me, that is a complete waste of money and of police time. It also took up a place in Inverness prison for a night. Those are the issues in which prison escorts might provide a solution; legalised police cells might well provide another.

Moreover, further use of supervised attendance orders could be used instead of custodial sentences for fine default. Everything is being done—or is about to be done or is being worked up—to try to address the perfectly proper concerns that Maureen Macmillan expresses.

**Maureen Macmillan:** I have also raised with you the use of video links.

**Mr Wallace:** Indeed, and I am keen for them to be used. As members will recall from consideration of the Criminal Justice (Scotland) Bill, the pilot will be based at Barlinnie prison. The reason for that choice is that the large volume of cases at Barlinnie means that the things that we would look for in a pilot—finding out what the problems, issues and difficulties are—can more readily be identified. The number of remand cases going from, for example, Kirkwall sheriff court to Inverness prison would not necessarily generate the volume that would enable us to read anything into a pilot there.

I hope that the pilot offers a successful way forward. There is a lot of potential in it and, if we can identify the issues and resolve any problems and difficulties in prisons that have a high volume of remand cases, such as Barlinnie, the Highlands and Islands would then be an area in which it would make sense to roll out the pilot, which would cut down on travel time and use of resources.

**The Convener:** I invite Scott Barrie to ask his questions on two different topics together or, at least, to ask them one after the other. We are conscious of the fact that time is running on.

**Scott Barrie:** When you made your statement to the Parliament some two weeks ago, you said that there would be two new prisons, including one new privately built and privately operated prison

intended to deal in particular with the large increase in the number of remand prisoners. Can you say any more on that proposal? In particular, what is the likely time scale for building the prison and which location is the prison likely to be placed in? When do you think the prison will be in full operation?

**Mr Wallace:** Although I said in my statement that the prison would have to be fully flexible for prisoner places in order to get the benefits from the contract, it is our intention that the prison be used wholly for remand prisoners. That being the case, the best geographical location is somewhere in central Scotland, closest to the sheriff courts that people would be most likely to appear in. As far as timing is concerned, I recall that the time from the announcement about HMP Kilmarnock to its opening was less than three years. Planning permission will be a key matter and determining how long that process will take is not in the Executive's power.

One reason why we wanted to go down the private build, private operate road was particularly to deal with the increasing number of remand prisoners. As Clive Fairweather said in a BBC interview on 23 August:

"As far as private prisons are concerned – one of the advantages is that they can be put up quickly."

**Scott Barrie:** I take it that an attempt will still be made to identify the reasons for the huge increase in remand prisoners in the past 12 months and that you will be involved in any steps that can be taken to reduce the number.

**Mr Wallace:** Yes, very much so. I have tried to give that impression. We are anxious to identify the reasons and we have asked for hard information on what is driving the increase.

**Scott Barrie:** In his annual report, the chief inspector of prisons calls for the development and implementation of an integrated national policy for the management of young offenders, who amount to 13 per cent of the overall prison population and to more than 30 per cent of the remand population. Are there any plans to develop such a strategy?

Pauline McNeill and I accompanied Clive Fairweather on his last unannounced inspection of Polmont and discovered that in some halls with remand prisoners, up to 40 per cent of the young men were in their cells during the day and not doing any constructive work. If we are serious about the rehabilitative aspect of prison, it is important—as Clive Fairweather says in his report—that prisoners are constructively engaged during the day and not just lying around in their cells, which seems to be a feature of some of our establishments.

**Mr Wallace:** I endorse that. The Administration's policy is that the rehabilitative element of prison is vital, particularly in so far as it tries to minimise the likelihood of reoffending. A working group is examining the overall policy on young offenders. I cannot say when it will report, but if I can find that out I will add it to the list of matters about which I will write to the convener.

The policy document "Intervention and Integration for a Safer Society", which was launched in 2000, dealt with several categories of offenders, including young offenders, so it is not as if the matter has been without policy. That document dealt with policy on young offenders, but as I said, a working group is considering the matter further.

**Ms Wendy Alexander (Paisley North) (Lab):** I will return to the helpful statement that the minister made as part of the response to the prison estates review, in which he identified the need to bridge the gap between the private sector's estimated cost of provision and the public sector's—the competitiveness issue.

You said that if the public sector proposes a private build, public operate option or a public build, public operate option, you are willing to consider that, so it is obviously important that the public sector move into a position in which it can meet the competitiveness challenge that you have laid down for it. What steps will the public sector need to take to meet that challenge?

**Mr Wallace:** We will have to identify how the sector's present working practices militate against its obtaining the efficiencies that have been achieved elsewhere. In the immediate aftermath of my statement on 5 September, I was encouraged that a joint statement was issued by the chief executive of the Scottish Prison Service and by the chairman of the trade union side, David Melrose. Among other things, they acknowledged the £110 million investment in the public prison estate and said:

"We have been presented with a major challenge and for the first time in the UK the possibility of a public/private build and public run prison is being considered. We believe that we can deliver, but we recognise that only by Management and Trade Unions working together in partnership can we rise to that challenge.

We commit ourselves to that partnership working and to ensure that we communicate effectively with you throughout this process."

No one underestimates the scale of the task, but the fact that that was an immediate response by the trade union and management sides together should give us cause for hope.

As I said, all things being equal, I would prefer to see a prison in the public sector than to see one in the private sector. Until now, things have not been equal, but the opportunity exists to make them so.

**Stewart Stevenson:** One of the things to which you and others have referred in respect of the way in which we measure what is delivered by our prisons is the use of key performance indicators at Kilmarnock prison. KPIs are short-term measures of activity within an organisation, which are a surrogate for an indicator of expected long-term benefits. They are used because we cannot wait for the long term to see the benefits. It is important that KPIs are chosen with care so that they measure the activities that must take place in the short term to deliver the long-term outcomes that we desire.

What research-based evidence exists that the KPIs that have been selected for the private prison and those that will be used in any widespread introduction of KPIs in the public sector are linked to the long-term outcomes that we desire, or have KPIs simply been selected because they are convenient, measurable, available and simple to provide numbers for?

**The Convener:** I think that Stewart Stevenson was asking whether the KPIs are relevant.

**Stewart Stevenson:** No, convener. I want to see whether there is a linkage between the KPIs, which measure short-term activities, and the knowledge that they will deliver the long-term outcomes that we desire.

**Mr Wallace:** First, KPIs are not exclusive to Kilmarnock prison. In fact, KPIs are set annually for the Scottish Prison Service. In turn, each prison is set targets for its contribution to the overall delivery of the KPIs. In the past couple of years, I have adjusted some of the KPIs to put a greater emphasis on education and programmes that promote rehabilitation. I did that specifically to address the point that Stewart Stevenson made about considering the longer-term outcomes that we want to see from a prison service that delivers on correctional excellence.

The Kilmarnock contract performance indicators cover a range of issues including the amount of time that prisoners spend on employment-related activity. I want to pick up on the question that Scott Barrie asked earlier about the experience of prisoners at Polmont, where a lot of time is spent doing not very much. It is fair to say that Kilmarnock is at the opposite end; more time is spent out of cell in Kilmarnock than in any other prison. That is because of a belief at Kilmarnock that employment-related activity and the nature of the work will benefit the longer-term employability of the prisoners and lead to less likelihood of reoffending.

It is also important to point out that Kilmarnock has its own rehabilitation programmes. In his written evidence to the Justice 1 Committee, the chairman of the Parole Board for Scotland set out:

“HM Chief Inspector's recent report on Kilmarnock shows that Kilmarnock put proportionately at least as many prisoners through programmes as any SPS establishment – and these programmes were led by professionally qualified staff rather than by trained prison officers.”

It would be wrong to say that such programmes, which look to the long term and to the needs of people who will be released into the community, are not measured. In Clive Fairweather's first report on Kilmarnock, he indicated that one of the prison's strengths was its series of performance indicators. The public sector could well learn from that.

On 5 September, I announced that, for management and performance review and for greater accountability and transparency in each prison, the public sector should consider a much wider range of indicators. Those exist at Kilmarnock but have not been so prevalent in the public sector. We have a joint role in ensuring that we are satisfied with the criteria and the indicators that we are considering and in monitoring how performance matches up against the criteria that we have set.

**Stewart Stevenson:** Convener, I would—

**The Convener:** I am sorry, Stewart, but we have only another 10 minutes and I would like to let Pauline McNeill ask about Cornton Vale. I know that James Douglas-Hamilton and Margaret Smith would also like to ask about alternatives to custody.

15:15

**Pauline McNeill:** I realise that we will not have enough time today to examine all the issues surrounding the overcrowding at Cornton Vale, but I would like to put down a marker about our concerns and the issues that we would like to discuss with the minister in future.

I welcome the Scottish Prison Service's decision to move 50 inmates from Cornton Vale to Greenock to relieve overcrowding, but I want to make a couple of points. First, we must be notified of exactly what the arrangements are, so that we know where offenders now are. Secondly, the justice committees have both made lengthy visits to Cornton Vale, where we saw the medical centre and learned of the welcome improvements in the medical attention received by inmates, particularly in relation to the spate of suicides. There have recently been two further suicides, so we want to be reassured that women who are moved to other prisons will have access to the same kind of medical attention. I realise that the minister may not be able to give us that assurance today, and I shall put the same question to Clive Fairweather, but I would welcome a reassurance that the minister shares our concerns and that proper dialogue will be conducted in future.

**Mr Wallace:** It is important that the conditions at Darroch hall in Greenock are of a high standard. The SPS assures me that the women will be held in a separate hall in Greenock and that every effort will be made to provide a regime similar to that in Cornton Vale. I am also advised that more nursing staff must be employed to meet the health care needs of the female prisoners and that the time scale for moving the prisoners will be contingent on those staff being available. We are right to focus our attention on Cornton Vale. If there is a further opportunity for one of the committees to take a more in-depth look at the prison, I would welcome that.

The acting chair of the visiting committee sent an interesting letter to *The Herald*, pointing out that a range of alternatives to custody is available but that Cornton Vale, like other parts of the Scottish Prison Service, is obliged to take the people whom the courts send there. Tragically, many of the young women who are sent to Cornton Vale have great problems.

**The Convener:** I think that we know that, but Pauline McNeill is referring to a specific issue.

**Pauline McNeill:** I agree with all that the minister says, but I am trying to get him to address a specific point. There is no time for a committee to consider the issue. We are looking for a commitment now, as the conditions in which women who leave Cornton Vale for other prisons will be housed must be examined urgently, particularly as regards medical care.

**Mr Wallace:** As I have indicated, I am assured by the SPS that every effort will be made to provide a regime similar to that in Cornton Vale. The engagement of more nursing staff at Greenock is an important part of ensuring that the health care needs of the female prisoners who are transferred there are addressed.

**The Convener:** It seemed to take the prison visiting committee's report for the chief executive of the SPS to act to address the overwhelming prisoner numbers in Cornton Vale. Action was taken shortly after that report was made public and put into the press. Is that the case?

**Mr Wallace:** The timing is probably coincidental.

**The Convener:** It followed the publication of that report.

**Mr Wallace:** During the summer, I received a number of reports from the chief executive of the Scottish Prison Service identifying the increasing numbers at Cornton Vale. Knowing the level of attention that was being paid to the numbers there, I do not think that it really needed a report to provoke action.

**The Convener:** Was it a coincidence that 50 women were moved only a week after that report?

**Mr Wallace:** It is not a coincidence in as much as there is clearly an issue with Cornton Vale.

**The Convener:** The numbers have been rising for years.

**Mr Wallace:** It is not surprising that the visiting committee highlighted that, but it would be wrong to suggest that that was the catalyst for the proposed move. I can assure the committee that the numbers at Cornton Vale have been of concern as they have increased throughout the summer. The numbers have been watched closely.

**The Convener:** We will now move on to consider alternatives to custody.

**Lord James Douglas-Hamilton:** I will ask my question in three parts. First, will the minister indicate the alternatives to custody that are currently available and what his future plans are? Secondly, we understand that he is considering extending the use of supervised attendance orders and ending the use of imprisonment for fine default. Does he propose to end imprisonment for fine default altogether? What consequences will that have? Thirdly, is there a need for more robust sanctions for breaches of alternatives-to-custody sentences, especially if such sentences are to avoid being categorised as a soft option?

**Mr Wallace:** There are a considerable number of alternatives to custody: probation, community service, supervised attendance orders, and drug treatment and testing orders. Specific programmes can also be attached to probation and community service. As Lord James will be aware, from May this year, restriction of liberty orders have been extended to cover the whole of Scotland. The first few months have shown that the courts are taking those up. There is a wide range of alternatives to custody.

The Criminal Justice (Scotland) Bill, which the Parliament will debate tomorrow, will develop a number of those alternatives. The bill proposes changes to the supervised attendance order, which is currently available to the criminal courts. The supervised attendance order requires an offender who has failed to pay a fine to undertake a programme of designated activities. The order substitutes a time penalty and provides for some constructive activity. Among the changes that are proposed in the bill is the proposal to allow a pilot scheme in which imprisonment would not be an option and a supervised attendance order would take the place of imprisonment.

I believe that it is worth piloting that. Earlier, I gave the example of people who often find themselves in prison for a handful of days. That probably does little to help the individual or to encourage their rehabilitation, but people might calculate that it is better to go to prison for two or

three days than to pay the fine. I am not sure that we want to encourage that sort of attitude. That is why the supervised attendance order makes more sense.

To answer the latter part of Lord James's question, it is important that we find ways of speeding up the time taken to bring people to court if they are in breach of an alternative to custody. We are actively considering ways in which the bureaucracy can be minimised so that people can come to court. In such cases, justice speedily dispensed is more likely to be effective.

Things will obviously vary from case to case, depending on the circumstances of the breach. For example, I think that breaches of restriction of liberty orders are taken very seriously by the courts because such orders are intended at the outset to be a genuine alternative to custody and are not imposed as a community sentence.

As Lord James will be aware, drug treatment and testing orders are intensive and involve a degree of judicial oversight. Every encouragement is given to try to get the person through. A technical breach may not result in everything going back to square one, but one would expect the courts to respond to a serious breach—particularly when a person dismisses a great opportunity that they have been given and to which they have consented.

**Lord James Douglas-Hamilton:** What robust sanctions do you envisage for breaches of sentences involving alternatives to custody? Will the ending of imprisonment for fine defaulting include the ending of imprisonment for non-payment of compensation orders?

**Mr Wallace:** The non-imprisonment of fine defaulters and the use of supervised attendance orders in such circumstances are being piloted. It would be wrong to jump the gun and to speculate on whether the pilot will be a success.

There is a widespread feeling that many people are in prison for very short periods, which does nothing to advance the rehabilitation agenda. The penalty for breaches of sentences involving alternatives to custody need not be a custodial sentence. The requirements of community service can be very demanding. Community service is also more likely to have a beneficial outcome and to make people less susceptible to reoffending. It is a fallacy that a term of imprisonment—especially very short-term imprisonment—is the best course for ending reoffending. I am not talking about people who have committed serious offences and for whom prison is appropriate, but at the lower end of the scale, the evidence suggests that non-custodial sentences are more likely to lead to positive outcomes and to make people less liable to reoffend.

**Mrs Smith:** Police officers have told me that a spectrum of sentences, including the alternatives to custody that you have outlined, is needed. However, they feel that best practice is not always taken on board. Pilots come and go without the information that is gleaned from them being passed on. How is best practice on alternatives to custody being developed? How is that being co-ordinated at national level?

**Mr Wallace:** I agree with the general premise of the question. Experience of good outcomes should be shared. In the Freagarrach project, the overall rate of offending by young people decreased by between 20 and 50 per cent compared with the previous year. Under the new directions scheme that Aberdeen City Council and Aberdeenshire Council are pursuing, likely offending behaviour has been reduced threefold. The project has contributed to a dramatic reduction in the number of children in secure accommodation. It is right that we disseminate as best we can such examples of best practice.

We have brigaded—if that is the right word—criminal justice social work on the Scottish mainland into 11 groups. That should allow criminal justice social work to be seen as more of a priority than was the case when it was tagged on to individual local authorities. There are national standards for all 100-per-cent-funded disposals. The Scottish Executive provides 100 per cent of the funding for most criminal justice social work projects.

We are setting up an accreditation panel, chaired by Alan Finlayson, to ensure that projects are properly accredited. The criminal justice social work development centre at the University of Edinburgh has been extended to allow it to act as a national resource for the dissemination of best practice, the commissioning of research and the accreditation of programmes. Local authorities have been given £25.5 million over four years to invest in community-based programmes for persistent offenders.

Resources are being invested and work is being done to ensure that best practice is identified and disseminated. The reorganisation of criminal justice social work and the accreditation that is about to take place are key components of our strategy for ensuring quality. No single approach will achieve it, but the committee can perhaps appreciate that a number of strands are coming together to ensure that we address the problem that Margaret Smith raised.

**The Convener:** Thank you, minister. You have finished almost on the half hour.

We will suspend for a short break, if members agree. Please be back in five minutes to hear Clive Fairweather's evidence.

15:30

*Meeting suspended.*

15:39

*On resuming—*

## Prisons

**The Convener:** I reconvene the meeting and thank members: we have stolen only an extra five minutes for our five-minute break, which is our usual.

I welcome Clive Fairweather, Her Majesty's chief inspector of prisons for Scotland. It is his last appearance before the committee today—more about that later. I also welcome David McAllister, assistant chief inspector of prisons, and Malcolm McLennan and Michael Crossan, who are inspectors.

We will be referring to your reports, Mr Fairweather. You might have heard the minister's evidence on Craiginches. Do you have anything to add to your reports before we launch into questions?

**Clive Fairweather (Her Majesty's Chief Inspector of Prisons for Scotland):** The period covered by the annual report ended on 31 March. However, we have been to Aberdeen since then and we made a further visit to Aberdeen last week, just before the press conference, to find out whether there had been improvements. In addition, we have carried out intermediate inspections of Inverness prison, which I will be happy to discuss, as they are not included in the annual report and the reports will not have been before the Parliament. Last week, we carried out an intermediate inspection of Cornton Vale prison, in the course of which we also went to HMP Greenock to look at the medical facilities. I am happy to answer questions about any of those inspections.

**The Convener:** I refer members to Clive Fairweather's annual report and to his address to the media, which are covered by papers J1/02/30/4 and J2/02/29/4. As I am mindful of the fact that time is pressing on, I ask members to put their questions.

**Maureen Macmillan:** Mr Fairweather, you have been concerned about staff morale for the past three years or so during which we have been involved in discussions with you about the prisons. You say:

"Staff have gone through 3 years of enormous uncertainty, and we can't simply ignore the disquiet which has been engendered."

You warn that that disquiet could

"persist for some considerable time".

Will the recent announcement on the prison estates review go some way to alleviating that disquiet? Should the Scottish Prison Service implement specific measures to address low staff morale?

**Clive Fairweather:** I am sure that the announcements will go some way to putting right that uncertainty. Morale is a difficult thing to judge. I said in one of my papers that more leadership and less management will be required. During the past few years, there has been a certain amount of confrontation in relation to private versus public prisons. It is obvious that there must be competition, but I hope that some of those confrontational elements will fade.

Although we are only six months into the new reporting year, I am particularly concerned about the high levels of staff sickness that we are picking up. That trend has been detected in spite of the changes that have been made, for example, to the shift pattern. In Aberdeen, staff sickness is running at three times the 1997 level. Similarly, there were high staff sickness levels in Inverness and, more recently, at Cornton Vale, where the levels were extremely worrying—they were double the target. It is no secret to say that Cornton Vale will probably have the highest sickness levels in the SPS.

Although I am here to talk about the past year, I am receiving indications that staff sickness levels in the SPS will be particularly high this year. That is a concern because, when staff are absent, the remaining staff are put under pressure and there is less staff-prisoner engagement. Sickness levels will have to be watched carefully and managed up ahead. I have concerns about morale in general. However, when I stand talking to prison officers on the galleries, I am as impressed as ever by the daily cheerfulness of most of the staff whom I meet.

**Maureen Macmillan:** That has been our impression, too, except when some of us were confronted by a roomful of staff when we came to talk to them about the prison estates review. They thought that we were members of the Executive. Once we had explained who we were, the atmosphere thawed considerably.

**The Convener:** You were safe after that.

**Maureen Macmillan:** I hear what you say about sickness levels, which is very worrying. High sickness levels are a feature of occupations in which people feel under stress or have felt under stress for a while.

You mentioned leadership. Can you expand on your statement that

“there needs to be far less emphasis on ‘management’ and a bit more actual leadership”?

**Clive Fairweather:** I can give the member a good example of what I mean. [*Interruption.*]

**The Convener:** Will members and people in the public gallery ensure that mobile phones, pagers and other electronic devices are switched off?

**Clive Fairweather:** The governor of Aberdeen prison, who had been in post for seven months, was the recipient of the worst report that we have ever written. Her response was that the prison had to take the report on the chin and to get on with moving forward. When I saw her on television and read what she had to say, I was hugely impressed. Previously, there may have been too much management of issues at Aberdeen, but the governor has now provided a potent example of leadership.

15:45

**Maureen Macmillan:** So people must roll up their sleeves.

**Clive Fairweather:** Yes.

**The Convener:** Does the need for leadership extend to the leadership of the SPS?

**Clive Fairweather:** It extends across the board. There are always tensions between individual establishments and headquarters. In the army, units have views on headquarters and headquarters has views on particular units. I do not want to go into the matter in detail, but prison headquarters needs to examine its relationships with the field, and vice versa, in the hope that the confrontation that we saw last year will be reduced.

**The Convener:** Is that possible with the current personnel?

**Clive Fairweather:** It is. All that is needed is a slightly different mindset.

**Stewart Stevenson:** In the face of arguments, the Minister for Justice has granted Peterhead prison a reprieve. He has indicated that power will be provided to cells and that the prison officers’ offer to re-roster and to provide prisoners with night sanitation, on request, will be investigated. Do those commitments offer Peterhead a long-term future?

**Clive Fairweather:** We last inspected Peterhead prison in March. Many of the proposals to which you refer were included in that inspection, which took place four days after the announcement of the results of the estates review. In an ideal world, we would like more to be done in the prison. However, everything depends on whether the necessary money is available. The measures that have been announced are sufficient to enable Peterhead to continue to deliver the excellent regime that exists.

One issue will need to be monitored. Peterhead prison is extremely short staffed, as it is difficult to persuade officers to move there. Will the staff complement continue to dwindle without the comfort value of long-term build? Will the prison be able to recruit more prison officers? I do not know the answers to those questions.

In 1999, the SPS board indicated that another block could be built at Peterhead. There is certainly enough space to do that. I have made the same suggestion to the minister privately—I am sure that he will not mind my making that public. Power would have to be provided to cells in the present block and the whole electricity support system would have to be improved. We are not experts, but we think that for about £25 million it would be possible to have a 550-place prison at Peterhead. That would include a new visits facility, a new ops room, various other facilities that have been suggested and a new block, costing about £17 million. I am not a buildings expert, so I do not know whether the provision of a new block would assist with the decanting of prisoners while electric power in cell was installed.

One other point that I would like to make, which we made in our projections for the future, is that Peterhead holds many more older, frailer prisoners than do other prisons. Peterhead is beginning to have difficulty meeting the needs of those prisoners in its present buildings. I am thinking of the many buildings regulations, which were mentioned earlier. The building of a new prison block could meet those regulations by including facilities for the disabled. The new block—indeed, there is room for other new blocks—would give Peterhead a lot of flexibility for the future. The building of the new block would give Peterhead a complement of 550 places, if places in the existing blocks were taken into account. However, the problem, quite simply, is lack of funds—our estimate was that about £25 million was needed.

**Stewart Stevenson:** It may be worth saying that, subsequent to the recent announcement, ministers have indicated to me that their plans include replacement of the power supplies to the whole prison.

In measuring the effectiveness of prisons such as Peterhead in the public sector and, if appropriate, of those in the private sector, should we look at a reduction in reoffending as an indicator of the delivery of a real financial benefit to the prison service and the criminal justice system and a real benefit to public safety? When we compare different ways of providing new prisons, should effectiveness be taken into account as a factor?

**Clive Fairweather:** We are very much about measuring outcomes and what we see in regimes.

The bit that always seems to be missing, however, is the outcome for the public outside the prison. We can only guess at that and I suspect that it would be difficult to come up with a formula to measure it. Nevertheless, I imagine that another committee could be given the job of examining how to measure success in rehabilitation and the like. It may be high time that that was examined.

I remember talking to Michael Forsyth when he first came into office as Secretary of State for Scotland. He told me that one of the most frustrating elements of his job was never being able to measure outcomes. He was not able to complete that work, but it could be examined.

**Ms Alexander:** I want to follow up on the wider issues of performance management. You have said that the private prison contract management process allows for greater clarity and that that has led to a desire to see similar measures put in place in the public sector. The minister has now indicated that he wants to move down that route. Will you offer us more detail on how to manage performance in publicly run prisons?

**Clive Fairweather:** For the first time, at the back of our annual report, we have tried to set out comparisons across the board. I am not sure of the annexe number, but it represents our first attempt to set out a like-for-like comparison of the performance measures that need to be considered. I would like to see that work extended—we have only made a start.

We are waiting for the Prison Service to take up some of the good ideas at Kilmarnock, of which a number could be used. A great deal more can be done in measuring outcomes. As we said in our first report, Kilmarnock is good at measuring outcomes. However, we also said that the contract that was drawn up for Kilmarnock needs to be more flexible. I hope that greater flexibility will apply to Kilmarnock in the future and to other new private prisons, including the remand prison.

**The Convener:** I advise members that they should be looking at annexe 6 to Mr Fairweather's report, in which they will see comparators across all prisons.

**Ms Alexander:** I will continue in a similar vein on new prisons. As you know, the minister has challenged the public sector to match the competitiveness of the private sector. If it can do so, one of the prisons that was expected to be private might be a public build, public operate or private build, public operate prison. What steps will the public sector have to take to meet that competitiveness challenge?

**Clive Fairweather:** One of the first matters that management, the unions and staff will have to consider is the evidence that Kilmarnock produced about how it operates and about its costs. They



will have to consider how to equal that—I expect that that will be done through examining the work force and various practices.

There will be a level playing field in buildings this time. Previously, comparing somewhere such as Barlinnie with Kilmarnock has always been a problem. The challenge is not huge. It is a two-way challenge. Provided that people get down to it—I get the impression that they will—I see no reason why the challenge cannot be met. If the private sector can achieve certain standards, I do not see why the public sector cannot, but the public sector will have to re-examine and update some practices.

**Ms Alexander:** I will ask about one other issue that arises from the minister's response to the prison estates review. As you know, the decision has been made to go ahead with one private prison immediately, in response to the rapid rise in the number of remand prisoners. I invite you to say whether you welcome that proposal and ask whether you have anything to say about the remand-specific aspect of the planned private prison.

**Clive Fairweather:** From the start, I have said that privately run companies were probably as good at running remand prisons, because those prisons do not involve rehabilitation and the like. I have never been entirely certain of the evidence from Kilmarnock, but a private company can provide a safe and decent environment quite quickly and can build quite quickly. It is sensible that the remand prison should go to a privately operated company, because of the speed, the pressures and the fact that what is involved is private citizens looking after people who have not yet been found guilty. A balance must be struck and I am encouraged by the situation.

However, we are still talking about a time that is three years away. I have not seen the detail, but the bigger problem for the prison service is not three years away. The bigger problem is next week, next month and next year. I do not know whether further building can be undertaken in places such as HMP Shotts, where we heard today that there is space. I hope that that is being considered instead of just the situation three years down the line. The figures have shot up because of the extraordinary number of remands this year, particularly in Barlinnie and Edinburgh. I hope that the number starts to drop away in the next month or so. If not, severe difficulties will be created.

**The Convener:** I am sorry if I missed this, but did you say how long it would take to build a remand hall that would be suitable for the immediate problems? We understand that it takes three years or thereabouts to build a remand prison, so how long would a remand hall take?

**Clive Fairweather:** I am not talking about building a remand hall; I am just talking about building a hall, as that would allow people to be moved around. The big difficulty is that the prison service is silting up with longer sentences. Longer-term prisoners need more space and juggling about. In addition, remand numbers are increasing. Those two elements are colliding. I have consistently said in every annual report that we need to deal with the situation now. I have not heard all the details of the house blocks that are being built up in the next year, but I think that now is the time to deal with the situation and that we should not say that we will solve the issue in three years' time.

**The Convener:** Scott Barrie was going to ask a question about new prisons, but I suspect that it has already been dealt with, so I invite a question from Pauline McNeill.

16:00

**Pauline McNeill:** Let me begin, chief inspector, by putting on record my personal appreciation of the way in which you have approached the inspection of prisons and have allowed members of the justice committees to accompany you and your team. That has been an excellent way of allowing us to see what goes on in prisons. I hope that that practice will continue.

Overcrowding, next to drugs, has probably become the most serious issue for the SPS. We know that five prisons are seriously overcrowded. My colleague, Paul Martin, in whose constituency Barlinnie lies, wanted to ask about this, but he has had to leave the meeting. Do you have a view on how quickly new house blocks can be built in order to alleviate overcrowding?

**Clive Fairweather:** On your first point, thank you very much. On the subject of MSPs accompanying the inspectorate in the future, I notice that my successor is sitting in the public gallery, so the point is well made.

On overcrowding, the issue is not simply about buildings; it is also about staffing. The building of a number of new blocks lies ahead, although I have not seen all the details. To give an example, a new block eventually went up at Edinburgh prison after some initial wrangles over staffing. The space was available and the block went up within about 18 months of the decision being made to bring it on stream. I hope that we can continue to consider such projects in the near future.

If the number of prisoners continues to rise, fewer staff will be dealing with more prisoners. There has been an increase in concerted indiscipline and the like over the past year. I hope that that was temporary—perhaps it was due to all sorts of other factors. We are going to run into

severe difficulties unless the number is contained and we consider new house blocks—they are expensive, mind you.

**Pauline McNeill:** I turn to a different subject, which I have already raised with the Minister for Justice: Cornton Vale prison and women offenders. I am concerned to get some detail about the condition of women who have been transferred from Cornton Vale. Do you have concerns about their access to medical services, or has that matter been properly addressed?

**Clive Fairweather:** When we inspected Cornton Vale last week, we were conscious of the proposals to transfer up to 50 of the stronger women to Greenock—although I have to wonder how 50 women who are not vulnerable will be found; that is another matter, however—but we concentrated on what the health centre was doing for the present Cornton Vale prisoners and on what measures had been sold, as it were, to Greenock. We were certainly reassured that all the lessons had been picked up.

I sent my medical and nursing consultants to Greenock last Thursday to find out whether the prison would be able to take on board 50 extra women, who will have a lot of demands, and to ascertain how the prison will manage with those female prisoners as well as with the whole gamut of difficult male prisoners who are looked after there. Greenock prison accommodates some people from areas of high deprivation, where there is drug taking and so on. I have not yet written the report on that visit, but it is worth saying that my medical consultants felt that Greenock prison had taken on board the various suggestions from Cornton Vale. To that extent, we should be reassured.

Having said that, I think that difficulties lie ahead. To expect to recruit the required number of nurses and to fill the suggested post of female medical officer in the time scale proposed may be a little optimistic. We have discovered difficulties with recruitment at Greenock prison in the past, related to its location. In particular, a large number of staff travel out from Glasgow.

I hope that, whatever happens, there is no transfer until the health facilities in Greenock prison are brought fully up to speed. Both health centres understand the issues and Stephen Swan, who is the new governor at Greenock prison, was formerly the governor at Cornton Vale, so there is understanding on both sides.

**Pauline McNeill:** We have to support your view on that. The overwhelming issue on our visit to Cornton Vale was that a satisfactory position had been arrived at in the recognition that medical services had to be tailored to the type of offender who was detained at Cornton Vale. Part of that recognition was an increase in the number of

registered mental nurses, as opposed to registered general nurses. All committee members will want to ensure that there are no transfers to HMP Greenock until we are satisfied that the provision of medical services there has reached the same level as that at Cornton Vale.

**Clive Fairweather:** At the moment, I am relatively reassured. I just hope that the staff who are required at Greenock can be recruited in time. The women should not be transferred until those resources are in place.

**Pauline McNeill:** So the women have not yet been transferred to Greenock.

**Clive Fairweather:** No. It is not proposed to move any woman there before the end of October. I think that it might even take a little longer.

**Pauline McNeill:** That was not what we understood.

**The Convener:** No. We were under the misapprehension that the women had already been transferred.

**Clive Fairweather:** No. Absolutely not.

**The Convener:** Do you have a time scale for the transfers?

**Clive Fairweather:** By the look of it, the transfers should take place by the end of October at the earliest. That is an operational matter for the Prison Service. The recruitment advertisements for nurses and the like were in the newspapers only last week or the week before.

**The Convener:** I have a quick supplementary question on Cornton Vale. I received a letter recently from Tony Cameron, the chief executive of the Scottish Prison Service, telling me that there is no difficulty in allowing women in Cornton Vale access to night sanitation. That conflicts directly with the report from the prison visiting committee. What is your view of that?

**Clive Fairweather:** We have mentioned that difficulty at Cornton Vale before. It was a big problem but not such an issue a year ago. I have done a great deal to bring to the fore the many positive changes that have taken place at Cornton Vale.

Following our inspection a year ago, I began to receive a lot of letters from ex-prisoners, telling me that access to sanitation had become an issue again. When we arrived at Cornton Vale this year, I was appalled to find that it was again an issue in the Younger block. I shall ask one of my staff to update us on that. This year, access to lavatories both during the day and at night had become an issue, largely because of overcrowding. The number of prisoners had risen to 290, whereas five years ago, the number was 170. The high level of staff sickness at Cornton Vale—which was

double the target level—also meant that there were not enough staff on duty during the day to deal with the issue properly. There has been an increase in the number of patrolmen who are available at night, but access to sanitation at night was an issue when I visited the prison and I was assailed by many women—enough to convince me that they were not at it—who told me that there was a problem.

I am assured that the management is considering how it can address the problem, and I have raised the issue with the chief executive of the Prison Service, because I am concerned. We are still producing our report on the prison and I have asked Mike Crossan to look into the issue in more detail.

**Michael Crossan (HM Inspectorate of Prisons for Scotland):** The problem was restricted mainly to the Younger block. We were told by a senior member of the establishment that, on occasions, prisoners who wanted access to the toilet had to wait for up to an hour for a response, once their bell had been rung. Since then, management has increased the night patrol by one officer, who is located in Younger hall. We have been assured that there has been a marked improvement, and that the average time from a prisoner indicating that they wish to go to the toilet to actually being allowed out is now somewhere in the region of 30 minutes. We received that information this morning from Cornton Vale.

**The Convener:** Did you receive that information this morning? I have concerns about the fact that the evidence that I am seeking conflicts throughout, but even 30 minutes is not—

**Clive Fairweather:** Yes, even 30 minutes is not acceptable.

**Michael Crossan:** I emphasise that it takes 30 minutes during patrol periods when the jail is in lock down. The process for unlocking someone takes a long time because of security issues. There has been significant improvement compared with the situation that existed before the extra officer was placed on patrol duties.

**The Convener:** When did that extra officer go on?

**Michael Crossan:** I cannot be exact, but I understand that the extra officer is a fairly recent addition to the night-shift patrol.

**The Convener:** It looks as if the pressure from committee members and others may at last be having some effect.

**Scott Barrie:** In the chief inspector's annual report, the ultimate paragraph of the section on Glenochil says:

"More importantly, what is still required, is the

development and implementation of an integrated national policy for the management of young offenders—who amount to 13% of the overall prison population, and over 30% of the remand population."

Will you expand on that? What measures should be included in such a strategy?

**Clive Fairweather:** A great deal could be written, and has been written, about how to manage young offenders. In my view, it comes down to priorities. Young offenders should have the greatest priority, especially for rehabilitation and for measures to deal with issues such as drug misuse. That should be the Prison Service's overriding priority, if for no other reason than to prevent today's young offenders from becoming tomorrow's adult prisoners.

On the practical measures, I would like to see us get past having people idle behind doors as was mentioned earlier, so that every young offender—and I mean every young offender—has a purposeful day. That is perhaps some distance away, when changes to the escorting system bite, but perhaps now that my former deputy chief inspector is deputy governor at Polmont, we will see some movement and some practical measures elsewhere.

The practical measure that I would most like to see concerns the selection and training of staff. Some individuals are not good at dealing with young offenders. Similarly, some are very good with young offenders but are not good at dealing with female offenders. I have not seen any coherent attempt to select prison officers to deal with young offenders, apart from one small experiment in Rannoch hall in Polmont. I would like to see that replicated across the board.

Prison officers should be gradually selected and trained to deal with young offenders. That would take one to two years—or perhaps three—to bite fully, but once it was done, we would have the fully integrated policy that I have been talking about. Rather as at Peterhead, we need individuals who can act as role models, but we would need all the prison officers to be trained, not just 70 per cent of them.

Once we are able to channel those individuals, we can ensure that all young offenders have a purposeful day. They should all be out at sport and the like. Every time I go to Polmont, although I know that the gym gets used, I never see the sports field or the swimming pool being used. I would like to see the young offenders having a really full purposeful day—as would, I am sure, members of the public. The public would be appalled to find out just how many offenders are behind doors.

This may make Malcolm McLennan a little bit uncomfortable, but I know that he has every

intention to put right as much as he can. A lot comes down to the management that we have now. In addition, we need the change to the escort system, which needs to start soon. We need to get down to selecting and training prison officers for discrete groups.

**Scott Barrie:** I am glad to hear what you are saying.

When Pauline McNeill and I accompanied you and Mr Dustin to the last inspection of Polmont, I was in Lomond hall and saw large numbers of very young men sitting around doing very little—and nothing constructive. That appeared to be the pattern for the vast majority of them. If we are serious about the rehabilitative aspect of prison—as I hope we are—it is important that we engage those people in some constructive activity.

16:15

**Clive Fairweather:** We should give Mr McLennan a quick opportunity to defend Polmont.

**Malcolm McLennan (HM Inspectorate of Prisons for Scotland):** I have been there only two weeks.

**The Convener:** There is no need to defend it if you have been there only two weeks.

**Malcolm McLennan:** It is much easier to criticise things than it is to fix them. However, we cannot wait on the new escort provisions coming in. We have taken some action in partnership with the local branch of the Prison Officers Association Scotland to try to solve the problem for ourselves in the near future. We also have plans for a timetable that should ensure that everybody has an equal opportunity in the programmes of activities. I am hopeful that we will be able to put that in place by the end of the year.

**Lord James Douglas-Hamilton:** In his statement, the chief inspector questioned the point of short-term prison sentences. Does he consider that sufficient credible alternatives to custody are available for offenders who are currently on short-term sentences?

**Clive Fairweather:** I am not honestly sure. The only time that I have been asked to look at the criminal justice system across the board was when I looked into the review “Women Offenders—A Safer Way”. I looked at everything that was available for women offenders and I must admit that the options were patchy across Scotland. A lot of changes have taken place since, but I suspect that that is still true. Whether a wide range of options is available will depend on which area—which sheriffdom—you are in.

More options must be considered, but every time that I talk to sheriffs they say, “Oh, you sound a bit critical of us. Don’t you realise that we have

the problem of not having enough credible alternatives?” What is a credible alternative—one that the public have confidence in? At what point does the public feel confidence? That seems to be a chicken-and-egg situation.

Over the past eight years, I have seen positive changes. On whether that is true throughout Scotland, I would be out of my depth in attempting an answer.

**The Convener:** Richard Lochhead and I will raise points about Aberdeen and Maureen Macmillan will raise points about Inverness.

You heard the minister’s evidence, which touched lightly on the Craiginches report. Given that the minister has said that he will visit Craiginches, can you bring the committee up to date on points that I have raised on the state of remand facilities, the failure of drug rehabilitation services and other general issues?

**Clive Fairweather:** Before we publish a report, I get in touch with the governor of the establishment and ask what has happened since the inspection. The inspection may have taken place three or four months earlier; in the case of Craiginches, it was two months earlier. The reason for doing that is to enable me to say, at any press conference, that certain things have changed or improved. The aim of inspections is to report on good practice or, where there is not good practice, to work towards end results. The report on Aberdeen was especially bad, but Malcolm McLennan and I made it our business to go back there last Wednesday before the press conference the next day.

When we walked into the management area, the first thing that struck us was that the governor now had a much more experienced management team, with more members than before. That was a huge sea change. I do not want to go into details on all the personalities, but I believe that the governor now has the management team that she needs to make progress in the face of the huge drug problem in the north-east. In the past, the management team was not configured in the right way to deal with that. My inspectors can comment on some of the additional measures that were in place, but I will mention that, as well as the additional five staff, who make a significant difference, the situation with regard to escorting will be improved by payments.

When we walked round the prison, we could see that it was a lot cleaner than it had been before, which was reassuring.

What heartened me most was the fact that, although the response was rather wishy-washy, the governor is quite clear that B hall will be gradually refurbished and used to house drug-free prisoners. That means that the rest of the staff in A

hall can be reconfigured to allow them to deal better with the drug problem, which, at the moment, is spread across the prison. Furthermore, we heard of plans for reconfiguration of the health centre, which we have said has been needed for five years. There is also talk of examining ways in which the accommodation and the staffing can cope with the huge explosion in numbers.

It might sound as if I am saying, "I told you so", but I want to read out what I recommended be done five years ago, as that is what is being done now. I said:

"A detailed survey of local custodial trends should be undertaken, accompanied at the very least by much more robust contingency planning for a burgeoning prisoner population; this should include staffing levels, as well as buildings".

A few years have been lost, but at least progress is now being made. Not all the shortcomings will be solved in the next few months, but I would hope that there will be significant change in the longer term. This inspection is about drawing a line in the sand. I became frustrated with the situation and felt that we had to say that enough was enough and that progress had to be made. The prison headquarters has responded to that and staff in Aberdeen will react positively to the fact that they are better resourced and will be better able to deal with situations that arise.

**The Convener:** However, you had to lob a grenade before anything was done.

**Clive Fairweather:** We have lobbed a few grenades.

**The Convener:** You had to lob a bigger than normal grenade in this case, though. You are telling us that Craiginches has been the forgotten prison for a long time.

**Clive Fairweather:** We have known about the huge drug problem for some time. Various measures have been proposed to help the situation—Malcolm McLennan was up there so often he was almost an honorary member of staff—but, each time, it was always hoped that some other measure would deal with the problems. This time, however, I think that we have got the answers.

To be fair to those in the prison headquarters, their response said that many of the measures that were suggested were already in train and that if we had inspected the prison a few weeks later, the situation would have been much better. We often hear that, however.

**The Convener:** I welcome Richard Lochhead to the committee. Richard has taken a great interest in Craiginches prison.

**Richard Lochhead (North-East Scotland) (SNP):** I thank the committees for allowing me to ask a couple of quick questions.

I congratulate the chief inspector on his tenacity in relation to Craiginches prison and I am glad that it has finally resulted in some action.

I am in a difficult and frustrating position because, as a representative of North-East Scotland, I have watched Aberdeen become virtually the crime capital of Scotland, with double the national average of housebreakings. As a result of the fact that Grampian has the second-worst problem with drug misuse in the country, we have a lot of drug-related crime. Many of the addicts end up in Craiginches prison, which is why it is frustrating to see that it has taken nearly five years for action to be taken to address that trend.

Is enough now being done in relation to drug rehabilitation? Is more likely to be done in the future? What role do you think that Craiginches and other prisons that have specific problems with drugs should play? As we know, around 80 per cent of inmates in Craiginches have some connection with drugs, and 80 per cent of crime in the north-east is drug related. Should we be thinking outside the box in terms of the Scottish Prison Service's role in drug rehabilitation? Should we have special prisons devoted to rehabilitation? What ideas do you have?

**Clive Fairweather:** We said it in a report five years ago, and we have said it again in the most recent report: Craiginches has a very positive role to play in tackling the drug problem. For a start, once individuals are in the prison, the clinics that are provided for them are available on tap, whereas getting hold of people out in the community is a lot more difficult. There are people with problems inside the prison, and there is no question in my mind but that injecting is going on there, as the problem ranges through the whole gamut of drug abuse.

A great deal can be done by all in the work force in a prison such as Craiginches to home in on those individuals and send them out with lesser habits. The first step towards that is the governor's recognition that B hall will eventually become drug free. That means that, in turn, officers in A hall will be able to focus properly on the inmates in A hall and slowly begin to have some effect on them. Craiginches has a positive role to play, but what we have been trying to say over the past five years is that it has not been resourced or managed to deal with the problem. I hope that it will be so resourced now; it must be, or it will be overwhelmed, of that I have no doubt.

**The Convener:** I shall return to that subject if we have time, but I am aware that Maureen Macmillan has to leave at 4.30 pm and I want her

to have the opportunity to ask about Inverness.

**Maureen Macmillan:** I was concerned to read the recently published report on the pressures on Inverness prison in terms of both space and staff morale. The report said that there were difficulties in delivering programmes and that drug testing had stalled. I realise that the report on a follow-up inspection has recently been published. Has there been any improvement at Inverness prison? Is the prison managing to cope with the high numbers of remand prisoners and growing numbers of drug users in the north of Scotland?

**Clive Fairweather:** Our latest report has not actually been published. It is available at Porterfield and at the SPS headquarters, and I have a copy of it in front of me now. After Aberdeen, which we always thought was a great wee jail—or so it was five years ago—the jewel in the crown of the SPS has always been Porterfield. I say that with all deference to the north-east and Peterhead.

We have always said a great deal of good about Porterfield, as it is a small and compact prison and there is a good staff-prisoner relationship there. Over the past few years, we have begun to worry a little about Porterfield. Previously, the main problem among prisoners arriving at the gates was alcohol, but we began to notice the drug problem shifting. We said that, while the chance existed, the right strategies had to be put in place to deal with what was almost certainly coming. We talked to the police a fair bit about the fact that the drug problem was coming. It has now arrived in that area like a big steamroller, but I do not think that the prison has yet reconfigured itself enough to deal with what is beginning to come through the doors.

My most recent report on Inverness is generally positive, but there is no point in simply going round and handing out plaudits and one must always note concerns before things go wrong. I said in that report that problems have increased,

“possibly due to the combined effects of new shift patterns, high sickness levels, the demand for court escorts and 23% overcrowding. These are the first worrying indications that what was previously a most positive regime could start to falter, if not addressed”.

That could lead to problems not dissimilar to those that began to occur three years ago at Aberdeen. I see the start of such problems at Porterfield. I hope that the area director concerned—the same director who looks after Aberdeen—will take note and say, “Hang on, I’m getting a double message here. We need to address that now.” I hope that that is what happens.

**Maureen Macmillan:** I hope that committees and MSPs will keep an eye on the situation to see that it is addressed and does not deteriorate further.

**Clive Fairweather:** I am still generally impressed with Inverness, I have to say.

**Maureen Macmillan:** Yes—some super things are happening there, particularly in education. However, there is a growing drugs problem in the north, and there is pressure on space at Porterfield because of the increase in remand prisoners. We must address that.

**Clive Fairweather:** When we looked at the figures this morning, overcrowding had increased and Inverness was the second most overcrowded prison.

**The Convener:** Some members have pressing engagements, and we cannot extend the meeting further or we will not be quorate. I apologise to Richard Lochhead for that.

I thank Clive Fairweather for his robust but measured contribution, both in oral evidence and in his reports. We all recognise your genuine commitment to a reformed prison service for the 21<sup>st</sup> century. I would also like to thank you personally, because I came into Parliament knowing nothing about prisons but I think that I am beginning to get a handle on them after three years—I have certainly visited enough of them. Thank you again for your visits to the committees, and we wish you well in your future career. We also wish your successor well. He has a hard act to follow, but I am sure that he will be up to it, and I look forward to doing business with him.

**Clive Fairweather:** He is up in the gallery today, and I am sure that he will hit the ground running.

**The Convener:** Thank you very much.

*Meeting closed at 16:31.*

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