

JUSTICE 1 COMMITTEE

Tuesday 12 November 2002
(Afternoon)

Session 1

£5.00

© Parliamentary copyright. Scottish Parliamentary Corporate Body 2002.

Applications for reproduction should be made in writing to the Copyright Unit,
Her Majesty's Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ
Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate
Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by The
Stationery Office Ltd.

Her Majesty's Stationery Office is independent of and separate from the company now
trading as The Stationery Office Ltd, which is responsible for printing and publishing
Scottish Parliamentary Corporate Body publications.

CONTENTS

Tuesday 12 November 2002

	Col.
ITEMS IN PRIVATE	4185
CONVENER'S REPORT	4186
PETITION	4187
Carbeth Hutters (PE 14)	4187
ALTERNATIVES TO CUSTODY INQUIRY	4189

JUSTICE 1 COMMITTEE

38th 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)

Kate Maclean (Dundee West) (Lab)

Mrs Margaret Smith (Edinburgh West) (LD)

Kay Ullrich (West of Scotland) (SNP)

*attended

WITNESSES

Robert Mackay (Restorative Justice Consortium)

Susan Matheson (Safeguarding Communities Reducing Offending)

Maggie Mellon (NCH Scotland)

Dr Bruce Ritson (Howard League for Penal Reform in Scotland)

Dr Jacqueline Tombs (Scottish Consortium on Crime and Criminal Justice)

CLERK TO THE COMMITTEE

Alison Taylor

SENIOR ASSISTANT CLERK

Claire Menzies Smith

ASSISTANT CLERK

Jenny Goldsmith

LOCATION

Committee Room 1

Scottish Parliament

Justice 1 Committee

Tuesday 12 November 2002

(Afternoon)

[THE CONVENER opened the meeting at 13:38]

Items in Private

The Convener (Christine Grahame): I remind members to turn off mobile phones and pagers. I have received apologies only from Wendy Alexander, who will arrive later, and Michael Matheson.

I propose that we take agenda item 4, on our lines of questioning to witnesses in the inquiry into alternatives to custody, in private. Are members agreed?

Members indicated agreement.

The Convener: Item 5 is on the committee's approach to the Prostitution Tolerance Zones (Scotland) Bill. We are the secondary committee on the bill; the Local Government Committee is the lead committee. We could freely consider in detail our approach to the work programme if item 5 is taken in private. Any decisions that the committee takes will be minuted. Do members agree to take that item in private?

Members indicated agreement.

The Convener: Finally, I propose that we consider in private at our next meeting questions for witnesses on the Council of the Law Society of Scotland Bill. That will enable us to consider our detailed questioning. The questions will, of course, be put in public.

Members indicated agreement.

The Convener: We shall now move into private session for the next four agenda items, which include our draft reports on the Mental Health (Scotland) Bill and the Title Conditions (Scotland) Bill. We previously agreed to discuss those reports in private. The final versions of the reports will be published as public documents. I ask the member of the public to leave the room.

13:40

Meeting continued in private.

14:41

Meeting continued in public.

Convener's Report

The Convener: We now proceed to agenda item 6, on the convener's report. Members will be pleased that I will be brief. The stage 1 report on the Title Conditions (Scotland) Bill will be published on Friday 15 November and the stage 1 debate will be on 21 November. The debate will last for three hours and will be for insomniacs anonymous.

Donald Gorrie (Central Scotland) (LD): Who decided that we will have a three-hour debate?

The Convener: To the best of my knowledge, the Parliamentary Bureau makes such decisions.

Donald Gorrie: The decision is absolutely insane. Can we make representations to the bureau that the debate will dry up within an hour?

The Convener: I would be content to make representations through my business manager and I suggest that other members speak to their business managers. Sometimes I have had to fight for fair debates. Only two hours was allocated to the debate on prison estates, so I am astonished that the debate on the Title Conditions (Scotland) Bill has been given so much time. The debate will be all morning on a Thursday. I am content to say that other business should be discussed. Are members content with that? I do not know how long the debate should be. Perhaps we should ask for it to be truncated to two hours at the most.

Lord James Douglas-Hamilton (Lothians) (Con): I would be content with that.

Donald Gorrie: I suggest that the debate should be an hour and a half. I would have great difficulty in speaking at length about the bill.

The Convener: That is saying something. Donald Gorrie is a master of speaking—I mean that as a compliment. I will make a formal approach to the business managers and I ask members to speak informally to their business managers.

Petition

Carbeth Hutters (PE14)

The Convener: Agenda item 7 is on petition PE14.

Lord James Douglas-Hamilton: I should again declare an interest that does not directly relate to the Carbeth hutters. I am an unpaid director of a family company that has a number of properties that either have or have had ground rents.

On the petition, I think that the recommendation in paragraph 11 of J1/02/38/9 is fine.

The Convener: Before we proceed, I refer members to that paper and to the options in paragraphs 10 and 11. I would like members' views; Lord James Douglas-Hamilton has just given his view, although I am not sure what proposal he is content to accept.

Lord James Douglas-Hamilton: Paragraph 11 is fine.

The Convener: Right. Our course of action is that we will ask how many responses were received and whether an analysis of responses was carried out. We will also ask what issues were raised in the responses, whether there was support for legislation to protect hutters in Scotland and what action has been taken since the consultation period ended.

Does anyone have any other suggestions?

Maureen Macmillan (Highlands and Islands) (Lab): I am happy to go along with the recommendations in paragraph 11. It is ridiculous that the issue has died. A lot of work was put into it, a consultation document was produced with recommendations—I remember filling in my suggestions—and the whole topic appears to have vanished.

14:45

The Convener: I have a copy of the original report from the Justice and Home Affairs Committee, and I think that it is important to put on record again what it says in paragraph 24:

“With the exception of one committee member, Phil Gallie, we therefore support the introduction of statutory measures to give hutters increased security of tenure so that they may not be deprived of their property without due cause and explanation.”

I will also read out an answer from Jim Wallace to a written question, which he gave on 24 April, because it links to how the matter has dragged on. My question was:

“To ask the Scottish Executive, further to the answer to question S1W-23288 by Mr Jim Wallace on 20 March 2002,

when it will report to (a) the Justice Committees and (b) the Parliament on its conclusions from its consultation exercise on Huts and Hutters and the report on the Carbeth Hutters by the former Justice and Home Affairs Committee.”

I received a holding answer on 4 April and a substantive answer on 24 April, which was:

“I am aware that constructive discussions are taking place at local level to resolve the difficulties at Carbeth which prompted the committee's report. All of us who are keen to see a fair and amicable settlement to this issue will hope for a positive outcome to the current discussions. I would not, however, wish to intervene in private negotiations, nor would it be appropriate to do so.

I expect within the next few weeks to announce conclusions on the committee's report and the subsequent consultation. It is already clear however that there would be substantial drawbacks to any attempt to legislate in this area. Some of these were recognised by the committee itself. Such legislation would be contrary to fundamental principles of Scots law, in particular that leased land under a short lease reverts to the landlord at expiry of the lease and that property built on leased land belongs to the landlord. Moreover, legislation could not be retrospective or applicable to hutters only, and its promotion might precipitate changes to the ownership and management of comparable estates in Scotland which would be profoundly damaging to the interests of hutters.”—[*Official Report, Written Answers*, 24 April 2002; p 485.]

I apologise to members that that was not in their papers. It is the most recent answer that we have had on the Carbeth hutters. As far as I understand, we have not yet had a full conclusion, but the hints in the answer are not good. I read that by way of information and against the background of a long time ago when the committee was keen to see some legislation. Ministers cannot keep saying, “I will do this shortly.” That answer was in April.

Do we want to refer to the parliamentary answer and to point to the fact that there has still not been any other formal response?

Members indicated agreement.

Alternatives to Custody Inquiry

The Convener: We now move on to item 8 on the agenda, which is our alternatives to custody inquiry. I welcome our witnesses, Jackie Tombs, director of the Scottish Consortium on Crime and Criminal Justice, and Dr Bruce Ritson, who is president of the Howard League for Penal Reform in Scotland. I believe that he has been elected convener of the group to allocate questions.

Dr Bruce Ritson (Howard League for Penal Reform in Scotland): That seems to be the case.

The Convener: That is useful.

I welcome also Sue Matheson, chief executive of Safeguarding Communities Reducing Offending in Scotland, which is otherwise known as SACRO, and Maggie Mellon, head of policy at NCH Scotland. There are some familiar faces, and I thank them for coming back again.

I get to ask the general warm-up question. For the committee and the record, will you tell us about the background to your organisation and your interests in alternatives to custody?

Dr Ritson: The Scottish Consortium on Crime and Criminal Justice represents a range of different bodies with an interest in looking again at criminal justice in Scotland. The new Scottish Parliament gives us the opportunity to think of new ways of dealing with a problem that is clearly not being addressed effectively at present. The best person to speak about that is Jacqueline Tombs, as she is currently the director of the consortium and is familiar with its workings.

Dr Jacqueline Tombs (Scottish Consortium on Crime and Criminal Justice): Bruce Ritson has explained what the consortium is about. We have primarily been examining evidence on current practices in dealing with crime and criminal justice. We take what we call an evidence-based approach, rather than a specific ideological stance. We draw on research evidence and knowledge, but we also take into account the years of experience of agencies such as NCH, SACRO, Apex Scotland and all the other agencies represented on the consortium. We are trying to bring together research evidence with the professional experience that those agencies have had and come up with different and more effective ways of addressing the problems.

The Convener: Thank you for your submission and your supplementary submission, which are among the papers for today's meeting.

Maureen Macmillan: I would like to ask about the range of programmes that are available and how they are rolled out across the country. Do you believe that the number of programmes to deliver

alternatives to custody is adequate? If not, is lack of provision the major obstacle with regard to the type of sentences that are handed down in the criminal justice system, or is it that the programmes are available but not being used?

Dr Ritson: That is one of the reasons why we keep reverting to the tired old solution of custody. There is always a dearth, and sometimes a virtual absence, of appropriate alternative resources, which in many ways have not been properly tried. Sue Matheson may want to comment further.

Susan Matheson (Safeguarding Communities Reducing Offending): Only a small proportion of the money that is spent on the criminal justice system is spent on programmes to back up community sentences, and provision across the country is patchy. Sheriffs would often like to use community sentences, but they may either not be aware of what is available locally or know that nothing is available locally for the sort of sentence they want to use. Sheriffs are therefore unable to use all the powers that are available to them in every part of the country. As we have said in our submission, there needs to be huge investment in rolling out programmes even more thoroughly than has been the case to date. There has been some investment recently, particularly in youth justice services.

On the adult side, however, provision is very patchy. Actually, we do not know what the provision is: we know from experience that it is patchy, but we have been trying to get proper information. The Executive has been trying to conduct some sort of mapping exercise, to create a directory, but it seems to be very difficult to get the facts together. Any sheriff, or other sentencer, should have available not just a list of all the options, including new sentences that they may not be aware of, but a list of programmes that are available locally. They should also have general information about the effectiveness of those programmes and specific information and feedback on the outcome of the sentences that they pass.

Maureen Macmillan: Why do people not know what is going on? If the Executive does not know what is happening, who decides that there will be a certain kind of community programme in a certain area?

Susan Matheson: As I understand it, the Executive has asked local authorities to conduct an audit, but not all the information from that has been returned.

The Convener: When did the Executive ask local authorities to conduct that audit?

Susan Matheson: I think that it has asked several times. An audit of alternatives to custody on the youth side is being done at the moment.

Dr Ritson: Perhaps Maggie Mellon will answer that question, as she has a lot of experience of certain programmes that are effective. I am sure that she would encourage the wider availability of those programmes.

Maggie Mellon (NCH Scotland): Absolutely. We said in our written submission that there is a dearth of programmes.

I think that the education department is conducting an audit under the auspices of the youth crime review. The information that is coming through from that is showing that both the range of programmes and their availability across the country is lacking. In certain areas, young people may be completely disadvantaged by the absence of programmes for alternatives to custody.

That lack was one reason for the recent announcement of, I think, an extra £15 million for programmes and other options for young offenders who come through the hearings system or the courts. It is recognised that provision is lacking. Audit Scotland is due to produce an interesting report on 5 December, which will spell out where the lacks are and where the positives are in the system.

Susan Matheson: Even on the adult side, sheriffs do not always have confidence in, for example, community service orders. That might be because the local social work department does not have adequate resources either to ensure that the order is started as soon as the sheriff deems necessary or to ensure that, if people are breached, they are breached immediately. More resources should be made available for those orders so that sheriffs can be confident that they will work as they are supposed to.

Maureen Macmillan: A minute or two ago, Susan Matheson said that sheriffs sometimes do not know what programmes exist. Whose job is it to tell them? How are sheriffs supposed to know about the programmes?

Dr Tombs: That is the central problem: there is no central strategic oversight of the objectives of sentencing. Some people are unaware of the positive things that are happening. There is no co-ordination to direct which services should be developed. To the best of our knowledge, 3 per cent of expenditure is currently spent on community sentences, whereas vast amounts are spent on imprisonment.

I would make two points. Although the range of community sentences on the statute book in Scotland—they range from probation right through to electronic monitoring—looks good, there are problems with their roll-out. When feasibility studies are done in one area, it might take years before that kind of sentence is available nationally, despite the fact that the sentence may have been

evaluated in other jurisdictions. For example, drugs courts have been shown to work for the past 10 or 15 years in other jurisdictions, but we will only gradually get one drugs court and then perhaps another. That is because of the lack of investment.

The other point is that all the different agencies that operate within the “criminal justice system”—I put the phrase in inverted commas—are like a feudal collection of powers, in that they do not necessarily have any common objectives. It is perhaps quite right that the police and sentencers should have different objectives at the operational level, but I would have thought that the system should have overall objectives, such as reducing reoffending and ensuring public safety. However, there is no agreement about that and there is no one to say what the cake is and how it should be divided up.

Paul Martin (Glasgow Springburn) (Lab): I want to ask about a related issue. Is there an argument for a single gateway to the programmes that we want to be delivered by the court system? Some people might wonder how the judges could possibly know the best way in which to dispose of sentences if there are a great variety of programmes in the system. For example, the new deal is a one-stop shop Government programme, but various agencies run it.

You have said that there has been additional funding, but is the money ring-fenced to ensure that it is spent on what it has been allocated to deal with?

15:00

Dr Tombs: I would not like to give an opinion on the single gateway issue off the top of my head, but I believe that it is an issue that needs to be considered. It relates to a question that we have about a situation in which community sentences are the norm and custody has to be justified. You would need to consider an overall strategy. I would like to support the committee's work in relation to this issue. Some years ago, when I worked in the Scottish Office, we set up a criminal justice strategic planning group, which became the criminal justice forum. However, that is not what is required in relation to the issue that you raise.

On the question of ring-fencing, the 100 per cent funding initiative that was introduced with the national objectives and standards for social work services in the criminal justice system in 1991 was ring-fenced in the sense that central Government refunded 100 per cent of the money that local government spent on various community service initiatives. I believe that I am right in saying that; I trust that others will correct me if I am wrong. The question is not to do with whether the money is

ring-fenced; it is to do with the fact that there is a lack of strategy and of resources to back up a strategy.

Dr Ritson: Our view is that prison holds much too central a place in our thinking about criminal justice, when it should be a marginal part of the response. That would mean that there could be a reallocation of resources to give more strength to the alternatives to prisons. As has been said today, the alternatives are currently the marginal part. Prisons should be not only a last resort but a marginal part of our thinking on the criminal justice system.

Donald Gorrie: If more resources were put into this sort of work, would there be a way of identifying best practice? Is there a list or something that enables you to see that, for example, Angus Council does this well and Stirling Council does that well or that one organisation does something better than another? Will we have to reinvent the wheel every time we get another pound or two?

Dr Ritson: That is an important point. It is increasingly recognised that we must adopt evidence-based practice in the criminal justice system. That means that the people conducting the system will get regular feedback on the outcomes on an individual and on a group basis. It also means that we will not go on re-inventing the wheel and giving small amounts of money to small projects rather than encouraging an even distribution of projects that we know will work. I think that Maggie Mellon has experience in this area.

Maggie Mellon: It is an area about which we feel quite strongly and I am sure that SACRO does as well. Community alternatives to imprisonment is one of the most researched areas: the outcomes of various approaches are consistently put in the public domain by the various agencies, most of which are charities and use charitable income to fund the programmes, and demonstrate that they work.

We evaluate all the projects we run. We can tell you how many young people have been through a project, what has happened to them during it and what the outcomes were for them. Sometimes, we follow the young people for a time afterwards. Despite that, there is a consistent failure to invest in the projects. We wonder whether the problem is one of research and evidence or whether it is something else that prevents a rational approach to the issue from being taken.

Dr Ritson: Having worked in the addictions field for many years and in medicine in general—wearing another hat—I know what a long time it takes for evidence to influence practice. If we could make evidence influence practice more

quickly in Scotland, that would be a great step forward. However, that does not happen any more quickly elsewhere.

Susan Matheson: SACRO's adult reparation and mediation services were researched in the 1980s and 1990s and have been shown to be very effective. We run only three such services in Scotland and there has been no drive to roll those out across the country. However, the evidence shows that the services are a good measure at the stage of diversion from prosecution, which is the better stage at which to involve people.

The Convener: You will see from the remit of our inquiry that that is exactly what we are about—establishing what is out there and where it is. We cannot do all the mapping ourselves, but we can trigger the Executive into doing something.

I have a couple of supplementary questions. You said that sheriffs want to use alternatives to custody. What empirical evidence do you have of that? We have heard anecdotal evidence, but what research has been done?

Dr Tombs: None in Scotland. However, studies have been undertaken elsewhere and there is anecdotal evidence, as you suggest. The research concerning sentencers shows that sentencers need to be educated on the range—

The Convener: That is a separate issue and we may come to it. We have all heard that if the alternatives were available sheriffs would use them, but what is the evidence—the cold facts—in Scotland?

Dr Ritson: That is an extremely good question. It would be a good idea for us to organise a rapid investigation to find out the answer. Anecdotally, we regularly hear sheriffs say that they are dispirited by the fact that brief periods of imprisonment are having no effect. Some evidence to support that would be helpful.

Maggie Mellon: We have more than anecdotal evidence from the areas in which we have projects. I have with me the evaluation of our latest project, the Glasgow partnership community project, which we run with Glasgow City Council and Apex Scotland. The evaluation has not been launched yet, but I have it here.

There was a good process of giving information to the Glasgow sheriffs before the programme started and our workers were in court, picking up appropriate referrals. There is clear evidence that the sheriffs took that option as often as not. Rather than being determined to imprison young people, they were prepared to consider other options. The reconviction rates are very low for those who are given community sentences—much lower than for those who have been imprisoned.

The Convener: That is another issue. What you are saying is that we do not have a Scotland-wide picture.

Maggie Mellon: Not for sheriffs.

Dr Tombs: You are absolutely right. We do not have a Scotland-wide picture specifically of sentencers' views on community sentences. However, we have a lot of little studies such as those that Maggie Mellon has mentioned, in which sheriffs tell us their views on this community service scheme, that project, or whatever.

The Scottish Consortium on Crime and Criminal Justice will publish a report on drugs crime and penal policy on 19 December. Our next phase of work will be on sentencing and redirecting sentencing policy. With another hat on, I am just starting a study of sentencers' views on sentencing—

The Convener: We will come to that. Another issue is the lack of investment. You give two figures in your submission. The first figure is

“£48.7 million for Criminal Justice Social Work”.

The second is to be found in paragraph 4 of your supplementary paper, where you set out that expenditure is

“63% on Police, 18% on Prison, 9% on Criminal Legal Aid, 7% on Courts, and 3% on Community Sentences.”

I am trying to get at the figure, if you know it, for what can be called alternatives to custody. The figure of £48.7 million is not for that.

Dr Tombs: I am trying to find the right bit of the paper.

The Convener: You do not need to give us the figure today. We are trying to get an idea of the amount of investment that will be made in cash.

Dr Tombs: The problem is that that cannot be done. Section 306 of the Criminal Procedure (Scotland) Act 1995 requires the Executive to publish figures about the costs that are associated with the different criminal justice agencies. The figures in our three-page paper are drawn from the latest of those publications, but it is not possible to break them down. No information is published to answer your question.

The Convener: Could it be done, or is it just too difficult to extricate the figures from the general criminal justice and social work budgets?

Dr Tombs: My suspicion is that it would be possible to get the social work budget figures, but money comes into projects from other sources, including from what used to be called urban aid funding. Nowadays, everything is described as social inclusion partnership funding. As my colleagues said, money also comes from the charities that run programmes.

The Convener: That is a different matter. I am considering the money that comes from the coalition Government under the alternatives to custody heading. It may be difficult for the committee to discover what the figure is. I want to move on, but I just wanted to ask—

Dr Tombs: It is worth asking. I have asked the question before and I have not got an answer—or I am still waiting.

The Convener: I wish that the camera had got your face as you said that.

Lord James Douglas-Hamilton: Can I take it from what has been said that more research, which could be commissioned by the Scottish Administration or other bodies, would be welcomed?

Dr Ritson: Yes, but in the way that we have outlined. We need more data about effectiveness. We also need to explore why things that are known to be effective are not implemented. We all have ideas about what we would like to see researched. Jackie Tombs has given a lot of thought to the subject, so I am sure that she would like to reply.

Dr Tombs: That is why the consortium is moving on to consider sentencing. All the other bits of the system seem to be considering things, but if we do not find out what the judges think, we could be on a hiding to nothing. That is our first priority.

Susan Matheson: As a former researcher, I value research highly, but there is a danger that research can be used—people can say, “We are researching that, so we do not need to take any action.” Jackie Tombs has pulled together a lot of evidence for the consortium. Although there is always a need for more research, we need action and investment in the things that we know work.

Lord James Douglas-Hamilton: You stated in your written evidence that decision makers need to have a fundamental change in thinking when it comes to sentencing. What changes in thinking would you like to see take place and how do you think that those changes could best be achieved?

Dr Ritson: That is a key question. We need to begin to think of imprisonment as a last resort. The judiciary should be required to justify in writing its decision for imprisonment. I am thinking about the large number of people who are sentenced for a short period of time, for whom the prospect of the sentence being used rehabilitatively is nil.

If we are serious about redirecting resources, we will have to invest heavily in ensuring that proper community provision is made and that such provision is not seen as a soft option or as no option at all—it must be seen as a real alternative. We do not seem to have made that shift yet,

although the Justice 1 Committee seems to be moving towards thinking in that way.

Dr Tombs: We are asking what prison is for. If the aim of prison is to protect the public, people should think about it in that way and realise that prison is not the only available punishment. Research evidence shows that plenty of people who have served community sentences find them a lot more difficult than spending time in custody because they have to address issues about their lives that they would rather not examine.

We must turn everything on its head and ask what we are trying to achieve through the criminal justice system. The research evidence shows that members of the public want the aim to be public safety and the reduction of offending. However, the public do not think in terms of deterrence, rehabilitation or retribution; they think about being safe or about somehow reducing reoffending. All the evidence shows that community sentences are better at reducing reoffending than prison is.

15:15

The Convener: Before we move on, I refer you to the report of our civic participation event, which shows that the public expect an element of punishment. I think that you missed that out. They do not want only safe streets; they want to feel that a wrong has been righted in some way.

Dr Tombs: Absolutely.

Susan Matheson: That is absolutely right. People want wrongs to be righted, but prison does not necessarily do that, whereas restorative justice does. Victims who participate in restorative justice schemes get answers to their questions and have a say in how the wrong is to be righted. We want a shift in the judiciary's thinking about community sentences away from the idea that because everything else has been tried, the offender must be sent back to prison repeatedly. Prison has a detrimental effect on people because it is a school for crime, so a series of short sentences are unlikely to have a rehabilitative effect. A high proportion of people who go to prison—76 per cent, I think—are reconvicted within four years. Even the most pessimistic evidence about community sentences suggests that they are at least as effective as prison sentences and probably a lot more effective, if social inclusion and other factors are taken into account.

We want more reviewable sentences at which people can fail and try again, such as the drug treatment and testing orders. Breaches of community sentences should be investigated properly to discover why the breach occurred and whether the sentence should be more flexible, perhaps because the person is a chaotic drug user. We must introduce thinking that allows

repeated use of sentences that might have a positive outcome, rather than sentences that we know will not have a positive outcome.

Maureen Macmillan: At the committee's public event on sentencing, there was a feeling that community sentences should have input from the community where the crime took place. In a way, the community should decide what sentence is required. That has serious implications. People might be put in stocks, for example. How much input should communities have to community sentences?

Dr Ritson: The principle seems reasonable and is in line with the concepts of restorative justice.

Susan Matheson: Volunteers from the community can be part of the restorative justice process as facilitators of conferences or as mediators. The victim is also central to the process and is involved at an early stage. We go ahead with our restorative justice services for young people only if the victim states that the crime has had a significant impact on them. The victim is central in deciding that the method is appropriate. If victims want to participate, we will give them the support that they need to go through the process. We are discussing the matter with Victim Support Scotland.

Dr Tombs: May I add something? I do not want to disagree with my colleagues, but I am wary of the question that was just asked. Criminal law is about the state arrogating to itself the right to punish. I suppose that the other side of the question is that one must be concerned about vigilantism and that kind of thing. To elaborate on what my colleagues said, I think that there is much more scope for community mediation for many problems that should be taken out of the criminal justice system altogether.

The Convener: Will you give an example of something that could be dealt with by community mediation?

Dr Tombs: Young people's disorderly behaviour is an example, but Maggie Mellon could probably speak better about that.

Maggie Mellon: I agree that one must have strong caveats about community responses to individual crimes and criminals, but with community issues such as youth disorder, mediation is often a useful approach. Sometimes, it might lead to a war between generations or different interests. However, people are right to be upset and anxious about gangs of young people running around. A process of mediation can mean that those gangs of young people address what they need to address to stop their disorderly behaviour. If they say that they hang around a place for reason X, and they are offered something else, they are shown examples of

citizenship and justice, and so are other people in the community.

Disputes between neighbours can be resolved by mediation instead of being dealt with through the criminal justice system and having neighbours at war. Communities should be consulted on what happens in the justice system so that they feel that justice is happening, but it is probably unrealistic to expect a just community response to individual crimes.

Susan Matheson: May I put on record my agreement with that? My earlier comments were not intended to disagree with that position.

The Convener: I do not think that we took them as such. Paul Martin has a supplementary question.

Paul Martin: I want to pick up on Susan Matheson's point. She said that community volunteers are already involved in community mediation, but other witnesses seem to suggest that community mediation does not happen. We should be practical about community mediation. For example, does Susan Matheson know of any examples in Springburn in Glasgow of the kind of mediation to which Maggie Mellon referred? Victims would want the follow-through of rehabilitation for the offending young person. That would be the community perspective.

Community involvement could be termed as vigilantism, but I do not envisage a difficulty with a community member whose car or home has been vandalised having the right to ask what kind of rehabilitation has taken place and wanting that to be followed through. Susan Matheson talked about where mediation is being practised, but I want to know where that is being translated into communities.

Susan Matheson: I am not quite sure that I follow your question. SACRO runs community mediation services in several areas—I can list them later—but not in Glasgow. We are trying to be proactive. We have a community mediation consultant who will give consultancy and training to any local authority and housing association in Scotland. The service is not yet available in Glasgow. Staff and volunteers from the community run adult mediation and reparation schemes, but only in three areas. Another two mediation services are run in-house by local authorities, but I do not know whether they use community mediation.

Paul Martin: Thank you. So the point is that the services are available but are not being delivered in certain areas.

Susan Matheson: That is right. They are not being delivered in most areas. Certainly, the adult diversion scheme—

Paul Martin: The point that I want to clarify is that we can—

Dr Tombs: The general point is that there are demonstration projects in two or three areas, which are not being rolled out beyond those areas.

Paul Martin: That is the point. It is one thing to say what can be and what is being done through such projects, but the point is where the services are being delivered. I suppose that that is more of a political point.

The Convener: I want to clarify a point about community engagement in sentencing. Am I right in saying that, as the final discretion rests with the sheriff, we will not have a situation in which the community can say, "This is the disposal"? Am I also right in saying that your aim is to make community sentencing more embracing of the community requirement and of its effect on the offender? The ultimate aim is not to touch on the sheriff's discretion.

Dr Tombs: Yes. Absolutely. About 10 years ago, before the days of 100 per cent funding, Gill McIvor of the University of Stirling undertook a study of community service orders and their impact, in which community representatives were interviewed as well as offenders. The community representatives were as positive about the benefit to communities as were the offenders.

The Convener: But ultimately, the sheriff directs the offender to take up the community service order. The sheriff says, "I have considered what the community wants and I feel that the balance is right." You are saying that it is up to the sheriffs to make that judgment.

Dr Tombs: Yes. Absolutely.

Susan Matheson: We need to be clear about what the public want and about their views, however complex they might be. We also need to be clear about the results of all the studies, including the one that the Parliament undertook. What the public want is often not what is portrayed in the tabloid press.

Community mediation happens at an early stage, before the criminal justice system has even been touched. Restorative justice might take place before an offender has been convicted. Those two stages would not be up to the sheriff.

The Convener: I understand that. I just wanted to be clear that we are not talking about touching the sheriff's discretion in relation to disposals.

Lord James Douglas-Hamilton: Do the witnesses envisage that there will be difficulties in communicating to the public the fundamental change in thinking that they agree is required? How can the popular idea that alternatives to custody are soft options be turned around? How

do they recommend that we deal with offenders who default on the terms of community service orders, supervised attendance orders or drug treatment and testing orders? Are the present sanctions sufficient? Is the reality of those orders communicated sufficiently to the public?

Dr Ritson: About 18 months ago, the Howard League examined in detail the role of the media in the portrayal of crime. It was clear that it would be desirable to have a change in the way that the Crown is portrayed in the media. Very often the position of the public is portrayed as more extreme than is found in public surveys about attitudes to crime. It would be good to try to narrow the gap.

Jackie Tombs has some thoughts about how we can overcome the difficulties of community sentences being perceived as soft options.

Dr Tombs: As Sue Matheson said, public attitudes are complex. We have to start from an understanding that those attitudes are multidimensional. The public—whatever that is—do not have a single view that we have to change. The fact that the general public are ignorant about crime and about how the criminal justice system operates should not be a surprise, as most people do not have a direct involvement in it.

We are talking about the media portrayal of what the public think. Apart from the event that Sue Matheson was involved in with the Parliament, which included the survey to which she referred, we do not have a lot of knowledge about public attitudes. We know that in low-crime areas, it is possible to have tolerant and liberal attitudes towards crime—I do not like to use the word liberal, but I cannot think of a better one at the moment. I am talking about well-educated, middle-class people. Those who express the more punitive attitudes are the ones who suffer most, because they tend to live in high-crime areas.

However, once that is broken down, we see that things are more complex than that. Even in high-crime areas, the victims of crime just want to see something done. I am not advocating that there should be no punishment, but punishment is about communication of wrongdoing and acceptance of responsibility for wrongdoing. There are examples of irresponsible media portrayals of crime and disorder in criminological research. I can cite an excellent article in a book by Mike Hough and Julian Roberts, which suggests that media people should be named and shamed for their portrayal of events, in the same way that offenders should be named and shamed.

15:30

The Convener: Who would name and shame them? The papers will certainly not name and shame themselves.

Dr Tombs: I am not sure what the answer to that is.

The Convener: Who keeps the keepers? Can we address how to change thinking?

Dr Tombs: I suppose that I have given a long answer to say that thinking is not unidimensional. Who are the shapers? The media and politicians are. There should be a shift in policy. Civic leaders are given responsibility for leadership in society and must develop a way of portraying our approach to crime and justice more positively.

Lord James Douglas-Hamilton: How convinced are you that there is a culture of what I would describe as traditional sentencing within the Scottish criminal justice system, whereby objectives tend to be based around punishment, protection of the public and deterrents? Does rehabilitation have a lesser priority? Is that simply due to a lack of resources, or is it due to a lack of credible alternatives or simply a reluctance to use the alternatives that are available?

Dr Tombs: I teach a judicial studies refresher course and have spoken to judges about those issues and about alternatives to imprisonment. They have all the sentencing objectives that you mentioned in different mixes, but they often think that they send people to prison for rehabilitative purposes rather than for punishment. For example, they send women to Cornton Vale, where they believe that the women will receive treatment rather than being put back on the streets. That is the reality that we are dealing with.

Dr Ritson: From speaking to judges, I think that having realistic and well-funded alternatives would influence their perception. The evidence is purely anecdotal, but I think that they feel that there is a dearth of meaningful alternatives in some areas, which tilts them towards imprisonment.

Susan Matheson: Some years ago, there was an increase in the use of community service orders and, at the same time, an increase in prison use. Perhaps we need to go further and pass legislation that says that imprisonment should not be used for fine defaults or for certain offences. Perhaps there should be more reviewable sentences, which I mentioned, and a statutory limitation on short sentences. Obviously, investment in programmes would need to go in parallel with that approach.

Dr Tombs: It is imperative that sentencers be educated about the implications of community sentences and about the circumstances in which the people to whom they give such sentences live, as they do not know about such matters. We have seen such involvement in the drugs courts and it is imperative.

The Convener: We could raise that with the Sheriffs Association when it gives evidence to the committee.

Ms Wendy Alexander (Paisley North) (Lab): I would like to probe Bruce Ritson on why the existing alternatives to custody are not more widely used. If the committee simply produces a report that advocates greater use of current measures and replicates what you believe to be the case, we will not advance the debate in Scotland. That goes to the heart of the matter. We have already heard expert testimony from our advisers that a wider range of alternatives to custody is available in Scotland than in almost any other country in Europe, although we also continue to have the largest prison population.

The issue is not that alternatives are not available—factually, there is not a lack of credible alternatives—but that there is a reluctance to use them. Is the issue that they are now so varied, so cluttered and so episodically distributed around the country that they are not part of the mainstream thinking of judges? There are two different issues. Do we have so much clutter that people do not understand, or is there a reluctance to use the available measures, either because the criminal justice system still wants a retributive regime or because, as Jackie Tombs suggested, it believes that prison provides a rehabilitative context, even though it may not?

Dr Ritson: My understanding is that although we have a broad range of measures, they are not particularly deep, in that they are not evenly distributed. The important point that you made is that there are lots of innovative, little projects that are not learned from and built upon.

The other issue is that often, sentencers try a community sentence once and then try prison sentences numerous times, but we rarely have individuals who go for a community sentence numerous times, which is interesting and may contribute to the situation.

The Convener: If you will forgive me, Wendy, I think that we have covered that issue pretty well, because we covered it under resourcing and information. We have determined that the issue is a bit of all those factors. That is what the committee is trying to uncover. Do you mind if I move on?

Ms Alexander: No, sure.

Donald Gorrie: Am I right in thinking that the witnesses believe that restorative justice and mediation are good ways of changing people's behaviour? Should not we apply those at an earlier stage? Our inquiry is limited to the alternatives to justice, which is a title that—quite rightly—you do not like. Should not we have a system such that before people—and in particular

young people—are in such a bad way that they are up in front of a court, they can be involved in mediation and restorative justice?

Dr Ritson: Yes. In general, the earlier that issues can be addressed the better. One aspect of restorative justice is that the more the victim and the community understand the background to an offence, the more they build up a better understanding of the whole picture. Offences do not usually occur in isolation; they are part of a process that may have been going on in a particular area for years. Restorative justice enhances understanding on both sides. Maggie Mellon has been particularly concerned with young people and intervening early.

Maggie Mellon: We work with young people in the children's hearings system and the court system and we cover a wide range of ages—from 14 to 21 or 24. For that age range, we are badly supplied with funding for programmes that work to divert them from offending. The children's hearings system is successful to some degree, in that the majority of young people who offend do not reoffend. They do not need court approaches or lots of heavy-handed retributive responses. For young people who offend, the hearings system's approach to looking at their needs as well as their deeds is the right one, but it has not been resourced, which means that, in many instances, children's hearings have been toothless. Young people have been taken to hearings because of an absence of ordinary, good community provision.

The poorest young people tend to be the ones who end up before hearings in what is a desperate attempt to unleash resources to cope with their problems. We know that young people who offend have suffered. That is not true of all young people who offend—and most young people do something at some time in their lives—but most of those whose offending is a problem have suffered adverse circumstances.

One bad aspect of our system is that children's hearings usually draw a line when young people reach the age of 16. When those young people are offending, they are sent straight over into an adult court system, which is the worst place for immature young people between the ages of 16 and 21.

As NCH has said in its evidence, the messages that young people get in court are weird and are not about justice. For example, if the young person has a good brief and the police have made a mistake with a comma here or something there, they will get off. Alternatively, young people might learn not to turn up on a certain day. The courts are a lesson in absolute anarchy and playing the system; they are not a lesson in justice or citizenship.

We should concentrate on lessons in justice or citizenship with such young people. That would involve addressing a range of issues when they offend, such as empathy with and respect for others. It would also involve responses that not only make them—not force them physically, but have them—restore what they have undone, but restore to them what has been undone to them. If they have been denied education, decent housing or decent health, we must respond to those issues. If we want restorative justice, there must be restoration all round.

Susan Matheson: We would like a fundamental shift, so that restorative justice is tried at a very early stage. I agree with everything that Maggie Mellon said. Part of restorative justice can be ensuring that there is a gateway to the young person getting their needs met, as well as having their deeds dealt with. Only if restorative justice has failed should we go on to a court process and sentencing.

The Convener: That is an interesting line, but we are moving into diversions from prosecution—that is partly what you were talking about—rather than alternatives to custody. I know that that is difficult to tease out.

Susan Matheson: However, if we focus only on that issue, we do not look at the bigger picture, which would be a more fundamental and successful shift.

The Convener: I can see that. I wonder how much we know about diversion from prosecution schemes. Perhaps we could move on from that. I accept what you are saying; I am just trying to contain the discussion. You have made your points.

Donald Gorrie: I will pursue the point that Wendy Alexander made. The witnesses believe that many sheriffs labour under misapprehensions about what happens in prison and what alternatives to prison exist. Whose job is it to educate them? Could there be a better system? Are the sheriffs susceptible to education? Could they communicate with one another better? Could you communicate with them better?

Dr Tombs: There is now a Judicial Studies Committee, which is a recent development in Scotland. I gave a session on alternatives to imprisonment to the committee. Perhaps it could develop a bit more judicial training in that field and help the judiciary to know what exists. That goes back to Wendy Alexander's point about the range of community sentences in Scotland. Not every judge will know about them and not every judge will know what is available in their area. Even if they know that community service is available, they might be told that there are no social work resources to provide it. That is often true.

That relates to the point about rising tariffs. Some younger people—perhaps aged between 21 and 25—have done 10 or more short custodial sentences. However, if they have had one community service order and breached it, they are often not given another order, because they have gone up tariff.

We need to do some thinking and to keep returning to asking what prison is for. I believe—perhaps some of my colleagues share my view in general but do not hold it as strongly as I do—that statutory limitations on imprisonment, as well as resourcing, must accompany any thrust to use community sentences. A strategy that people can understand and be educated about must exist.

15:45

Maggie Mellon: I have some sympathy with sheriffs, because if no overall strategy exists and no resourcing is provided and a sheriff imposes imprisonment, they can be confident that a prison place will be found. If a sheriff faces the public or anybody who is angry, confused or worried, they will choose prison, because they cannot say that the person in court should have intensive community supervision and probation or that a psychiatrist must see that person tomorrow.

In that sense, we can see why sheriffs make their decisions. Provision must be available where sheriffs require it and when they know what they want to do and have been advised on the best course. If there is no provision, sheriffs will impose imprisonment. The public will want to know why the sheriff has taken a decision. A sheriff cannot say nothing or say, "I don't have the ideal disposal, so I'll do nothing and you won't go to prison." Sheriffs decide on prison for some of those reasons.

Susan Matheson: Those are important points. A minor point is that the sentencing information system, which helps towards some sentencing consistency, is available only in the High Court. Perhaps that should be rolled out to the sheriff court.

The Convener: Will you expand on that?

Susan Matheson: The sentencing information system holds data about cases and sentences that have been given. A judge can feed in criteria from cases similar to the one with which he is dealing to see what his brother judges have done.

The Convener: The system shows previous decisions.

Susan Matheson: Now that we have the Judicial Studies Committee, sheriffs receive some induction training. That is to be applauded, but I understand that sentencing exercises are only a small part of that. As Maggie Mellon said, if a

sheriff decides to send people to prison, prisons must take whomever the sheriff sends them. Perhaps we should consider limiting prison numbers.

Dr Tombs: I must clarify the description of the sentencing information system—I would not like the committee to have any misleading information, although I am not saying that Sue Matheson gave such information. The sentencing information system that is used in the High Court relates to sentencing decisions that have been made and contains no information on the effectiveness of sentencing or what is available.

The Convener: We understood that.

Dr Tombs: That is fine.

The Convener: The system contains information on criteria for disposals.

Dr Tombs: The problem with a sentencing information system that lacks the information on effectiveness and availability is that it can ossify and legitimise high-tariff disposals.

Lord James Douglas-Hamilton: I will again ask a question that I asked earlier. If a young person did not comply with a community service order, supervised attendance order or drug treatment and testing order, what message would you give sheriffs or those who deal with the young person's community service order if that person was brought before them again?

Dr Ritson: Drugs courts are an interesting example of sheriffs regularly reviewing progress so that a person does not have to reach a crisis or breach an order and return for a sentence. Instead, the individual is monitored continuously and more controls are imposed if they do not cooperate. It is quite a novel way of thinking for the sheriff court to have someone returning and for the sheriff to meet that person, along with the other people who are involved. That works quite well.

Lord James Douglas-Hamilton: What do you do when that continuous monitoring breaks down?

Dr Tombs: You keep trying. The High Court has upheld decisions on drug treatment and testing orders, for example.

Lord James Douglas-Hamilton: To avoid the charge of taking the soft option, what sanction should be available when a person does not follow the terms of the order that the court has made?

Dr Ritson: I think that, as you might be hinting, that is one of the ways in which one moves to imprisonment. Although repeated imprisonment seems a reasonable response, repeated community sentencing does not seem so reasonable.

Dr Tombs: I think that the question concerns what we do if prison is not seen as the last resort

for community sentences. That is the crux of the matter. It would be brave of someone to decide not to have a carceral clawback for community sentences and to say that people could not be put in prison as a last resort. However, we must go down that road if we seriously want to promote community sentences that will help to reduce reoffending in the long run. When judges ask me what to do with a person who has been given this, that and the next thing, my only answer is, "Try again."

Susan Matheson: What is the point of sending such people to prison for a short sentence when we know that so many of them will reoffend? They will not be rehabilitated. If they are sent to prison, they will probably lose their job, if they have one, and their house, suffer breakdowns in relationships and so on. Prison will do nothing to prevent them from reoffending. Despite that, people seem to think that it is logical to send offenders to prison for short sentences.

Dr Tombs: I am currently studying a sample of prisoners who are serving sentences of between six months and four years. Those people have been a terrible nuisance—indeed, some of them have done some pretty awful things—and they have been in prison many times. However, they have a huge number of problems to overcome. They might not need just one community sentence. If we could reduce their reoffending by making it less frequent and serious, we would still be making progress. It took them a long time to get to where they are and we cannot expect one community sentence to solve all their problems.

The Convener: I know that you are expressing your own views about the three-strikes-and-you-are-out idea behind community service orders. However, quite frankly, the fact that someone is off the streets and not in the neighbourhood for six months is pretty good news for the public. Although people might admit that prison will not do offenders any good and that offenders will come out worse, they probably feel that they are at least getting peace for six months.

Dr Tombs: I understand that reaction. However, we need not necessarily use the full panoply of the existing prison system. There could be reintegration centres and so on.

Maggie Mellon: I take your point, convener. However, we have found that young people will often opt for short prison sentences—either wholeheartedly or by default—instead of entering into a very challenging process. Some people should be in prison, particularly if they are a danger to others. Indeed, I have met people who have done certain things and should be locked up. That said, the test should be whether they pose a danger to the public, either because of the severity of their violence or the fear and alarm that they cause.

There are ways other than prison of restricting people's life opportunities and means of pleasure. For example, measures such as day attendance orders ensure that they are in a certain place from X time until Y time and other orders can restrict activities in the evening, the ability to drive cars, go into public houses—

The Convener: Yes, but Lord James's question was about what we do if everything else fails.

Lord James Douglas-Hamilton: Am I correct in thinking that you would see imprisonment as a last resort and that you would not necessarily rule it out, although you would much prefer other alternatives to be tried?

Maggie Mellon: The test has to be whether imprisonment is a necessity. We all believe that the proper options and sanctions, including certain restrictions of liberty, opportunities and pleasures, will work and will be cheaper. It might take five years of repeatedly returning to the matter, adding on extra dimensions and involving the person in discussing why the situation is still continuing, as the drugs courts do. We could restrict people's income, stipulate where they work and so on. We believe that such measures work, whereas prison does not.

Prison should certainly be available where a sheriff feels that he cannot let somebody go out on the streets again, not because that person has been repeatedly found with knives or has been cutting people up, which is an imprisonable offence—

The Convener: I am sorry, but I would like to move on. Donald Gorrie has another question.

Donald Gorrie: I had hitherto understood that, in the attempt to get the best outcome for each individual offender, the unequal and inadequate provision of alternative facilities and the attitude of some sentencers were factors that caused problems. You also mentioned the lack of a strategy. Ministers take the line that they cannot have a strategy because they cannot tell sentencers what to do. Could you elaborate a little on how a strategy would help the individual?

Dr Ritson: At present, we invest hugely in the prison service, but we have just been discussing the need to build up other kinds of sentences. One part of the strategy would be to try to change the balance of investment and commitment of resources, so that it fitted what we have just been talking about. That would give sheriffs and judges more alternatives, without asking them to behave in a different way. Others may have different views.

Dr Tombs: What you are really asking is what the independence of the judiciary means. The Government says that we cannot tell judges what

to do. On an individual case basis, that is absolutely right and proper. However, there are other countries—I am thinking of Finland, but my colleagues will have other examples—where Governments have worked with the judiciary to effect a policy of decarceration. That happened on quite a large scale in Finland over a 10-year period. That would be one element of the strategy.

We are recommending that, at the beginning of the 21st century, it is time to look at what we are trying to achieve with the criminal justice system. Once we know what we are trying to achieve, we might be able to set out some of the parameters of what we have to do to get there. At the moment—with all due respect to the committee's extraordinarily important inquiry—alternatives to custody are somewhat in a vacuum. You might address the question of what criminal justice is all about.

The Convener: Also with respect, what we are trying to determine within the time left during this session of Parliament is what is actually out there just now and the other questions in our remit. We hope that whoever is on our successor committee will proceed along that route—although we cannot bind them to it—and look into what prisons are for and what other routes we can take. We are doing the groundwork, for the very reasons that you are citing today—nobody knows what is out there and provision is patchy. That is the information that we are trying to elicit, so that is why our inquiry is narrow at this stage.

Dr Tombs: That is great.

Maureen Macmillan: What proportion of offenders who are currently in prison do you think could be serving sentences in the community rather than in prison?

Susan Matheson: The average daily prison population figures from 2000 show that 61 people were in prison for fine default every day, although the number of receptions over the year was much bigger. Very few of the crimes for which those people were paying fines would have merited a custodial sentence in the first instance, so we feel that the majority of such prisoners need not be in prison.

There were 894 remand prisoners in 2000 and we understand that the figure has risen substantially since then. I do not have the exact figure, but a large proportion of remand prisoners do not get a custodial sentence, so at least half of them could be in the community on bail supervision. There are 549 lifers, who obviously need to be in prison. There are also 1,686 people who are in prison for a sentence of more than four years. The majority of them would probably need a prison sentence, but a proportion of the 1,633 people who are serving a sentence of six months

to two years could be safe in the community. Finally, there are 451 people in prison for less than six months. We do not think that any of them needs to be in prison.

16:00

Maureen Macmillan: I am interested by what you said about remand, because it takes us back to your comment about women prisoners, in particular, being put in jail as a place of safety. You are saying that we should be looking at alternatives to custody for remand prisoners.

Susan Matheson: Yes, that is right. Only 11 per cent of those who go through the bail supervision scheme that we run end up with a custodial sentence. However, we can put through only a small number each year. The scheme costs a lot—although not compared with sending people to prison on remand—and there would need to be huge investment to make the throughput big enough to cut down even by half the number of remand receptions, which is about 15,000 a year. However, there would also be enormous savings, which would be immediate, because a remand prison would not need to be built and the remand wings could be used differently.

Maggie Mellon: Young people who are sentenced by the sheriff summary courts to imprisonment are another example of people who do not need to be in prison. The nature of the summary courts means that, to appear there, the young people have committed the less serious offences. However, summary courts are the biggest source of prison sentences for people under 21 and imprisonment is one of the likeliest outcomes for 16 and 17-year-olds who end up in those courts. If the power to imprison young people—or all people—was taken away from the sheriff summary courts, that would reduce the prison population.

Sheriff summary courts can sentence people to imprisonment for only up to six months, which means in effect that people serve fewer than three months. If they get a four-month sentence, they do eight weeks. That means that they just go into and out of prison. There is no education or rehabilitation; there are no classes and no attempt is made to talk to the offenders about their offending. That is a major reason for reoffending. We think that taking young people out of that loop, giving the sheriff summary courts alternatives and not having prison as an option would take a huge number of people out of the system and prevent them from reoffending. Prison is where they are introduced to drugs, bullying and criminal friends.

Maureen Macmillan: Why do you think that the sheriffs are doing that? Do they think that it gives the young people a short, sharp shock?

Maggie Mellon: As I said, the chaotic nature of those young people is such that they tend not to turn up when they should or not to appear when they have been lifted on warrants. The sheriffs are at the end of their tethers with them and feel that they have to be taught a lesson. Some of the young people will be homeless, leading chaotic lives and unemployed and I think that sheriffs sometimes think, "This'll teach you a lesson—a short, sharp shock. We'll get you in there and then you'll find out. You'll be up against it."

In fact, the evidence is that, although the shock is short and nasty, it quickly wears off. The young people do not think about prison the next time they are offending. When they come out of prison, they have lost their families and friendships. They have been introduced to drugs in prison, so they reoffend just to get the drugs, alcohol and buzz. They end up back in the sheriff court, where the sheriff thinks, "Oh dear, what are we going to do with you? Better make it six months." If that option was not there, and the offenders were subject to community disposals and proper supervision that brought them up against what they were doing with drink and drugs, that would take some of the heat out of the prison population.

Susan Matheson: I just want to add—

The Convener: I am sorry. We have to move on. I cannot remember the full details, but a parliamentary answer to me this week said that there is a lack of funding for and availability of bail supervision orders, which we will need to pursue. As I say, the details are in this week's *Written Answers* report.

Paul Martin: On the effectiveness of alternatives to custody, Maggie Mellon and other panel members have mentioned evaluations. We have talked about the need for a more comprehensive evaluation of the written evidence. Maggie Mellon mentioned that some cases have been tracked. How often do we track young offenders to clarify the effectiveness of the programme? Do we do that often?

Maggie Mellon: No. Such tracking can happen by default. If the young offenders do not show up again in the criminal justice system, we can hope or assume that the intervention has been successful, but tracking is not done as a matter of course. Young people can be tracked, however. I have brought with me a study that was done recently through Scottish Criminal Record Office figures.

The Convener: Which document are you talking about?

Maggie Mellon: I am talking about the "Evaluation of the Glasgow Partnership Community Justice and Employment Project", which was carried out by Stirling University. I referred to it earlier.

Paul Martin: How can we judge whether the project is successful? The main purpose of the project is to use alternatives to custody effectively, to ensure that the offender does not reoffend. How can we say that the project has been a success if we are not tracking a significant sample of offenders to ensure that they do not reoffend?

Maggie Mellon: Our project works to courts, which are in localities and so know if the young person turns up again a year later, for example. The research that has been done on follow-through shows that intensive probation and the kind of programmes that we run that offer young people intensive personal challenge, support and occupation—the young people are required to attend a lot—have a good effect for up to one to two years afterwards. The effect then seems to wear off. By that time, a lot of young people will be mature. If they have job opportunities and relationships and they settle, that is fine. If they do not have those things, they suffer from the loss of the support. At the end of the programme and when the effects of some of the relationships that they have made end, they can relapse into crime if they are still living in the same situation. They tend to show up back in courts. The evidence throughout the country is that, when people have been on such a programme, their offending is less severe the second time round.

Paul Martin: We do not know that for certain.

Dr Tombs: We do. A huge amount of information from a massive number of studies in various countries demonstrates the effectiveness of rehabilitation-oriented community sentences. Our statements about that approach are based on that information.

Paul Martin: But we need hard evidence.

Dr Tombs: It is hard evidence.

Paul Martin: You have referred many young offenders and other offenders to a particular programme. Can you provide evidence that shows where all the offenders are now, five years after the offence?

Dr Tombs: Do you mean in Scotland?

Paul Martin: Well, we are in the Scottish Parliament.

Dr Tombs: There are examples. Without going into the scientific detail, studies that have been done in a number of jurisdictions demonstrate that those—

The Convener: Paul Martin is trying to get to the information in this jurisdiction.

Dr Tombs: That is why I asked whether he was referring to Scotland.

The Convener: We are trying to evaluate what is out there and establish whether it is working.

Maggie Mellon: There has never been a mass study of the whole Scottish criminal population, but—

Paul Martin: That is the point.

The Convener: Please do not speak at the same time.

Paul Martin: With respect, the point that I am making is that no scientific process shows where, for example, 500 offenders who were referred to programmes in Glasgow five years ago are now. To know how effective the car that you bought a year ago is, you wait for a year and consider how the car is progressing. That is the issue that I am trying to tease out in respect of offenders.

How do we know that the programmes are successful if they have not been monitored over a significant period and the offenders have not been tracked? For example, where are the two offenders whom I visited the day that I met Maggie Mellon? I am not asking you to answer that today, but that is the kind of question that I am asking. What happens to the offenders after they have been referred to the programmes?

We can say that we have a very effective programme, but we cannot measure its effectiveness until, instead of having a study that states that a sample shows that five people are doing pretty well, we have hard evidence that shows that, five years on, the programme has been a significant success.

The Convener: I ask for short answers. Please tell us simply whether you have evaluated various programmes.

Maggie Mellon: We do not have the results of all programmes in Scotland or Glasgow, but we have the results for the programme to which I referred, one and a half years down the line.

Susan Matheson: In Fife, where the police helped us to track people, we were very successful in preventing and reducing reoffending.

Paul Martin: How many people have you tracked?

Susan Matheson: I do not have the figures with me, but I can supply them to the committee.

The Convener: It would be useful if you could provide us with the evidence for which Paul Martin asked on the projects of which you are aware and on any others that we have not considered. If the public are to have confidence in such funded programmes, they must not only do good, but be seen to be doing good.

Dr Ritson: Often the best-known measure is the incidence of reoffending. The data suggest that prison is conspicuously ineffective. The convener is right to suggest that we need to get a total picture of what has happened under the initiatives.

Susan Matheson: As Bruce Ritson says, we must consider the effectiveness of prison on the same basis as the effectiveness of community disposals.

The Convener: We have information on reoffending rates and turnover. We know that 82 per cent of prisoners reoffend within two years. However, we do not have the evidence for which Paul Martin asked.

Susan Matheson: The voluntary organisations that run some of the programmes need more resources, to ensure that we always have proper research and evaluation and good protocols with the police, who will help us to track people.

Dr Tombs: One reason that we do not know about the effectiveness of community sentences is that Scotland has been very slow to develop the sort of offender index that has existed in England and Wales for some time.

The convener is asking about the situation in Scotland. However, the scientific evidence is such that we have no reason to believe that programmes that have worked elsewhere would not work in Scotland. We have a massive amount of evidence from other jurisdictions that indicates that they do.

Paul Martin: Our point is that if you are good, you must prove with statistical evidence that you are good, instead of merely saying that you are good. You need to provide us with figures and to show us whom you have tracked. The issue of tracking is important, as it comes up in every organisation—whether that be an employment agency or a regeneration industry. I appreciate that you have difficulty in tracking offenders. We need to identify where tracking difficulties exist. Statistical evidence is required.

Dr Ritson: We agree with Paul Martin, who has made a good point.

The Convener: I ask Wendy Alexander to try to finish dealing with this point by a quarter past 4. By the time that we hear from our next witness, we will be half an hour behind schedule.

Ms Alexander: I will ditch my last question completely, as we have covered that point. I will try to be brief.

One reason for the reduced use of community disposals is the range of problems that offenders frequently have—addiction, psychological distress, homelessness and generally chaotic lifestyles. Can you say briefly how complementary programmes may be put in place, so that non-custodial programmes are tailored to meet the additional needs that often make a prison sentence the easier option?

Dr Tombs: We need to develop an holistic approach, such as the one that is being developed at the throughcare centre that is, ironically, attached to Edinburgh prison. The centre's work, which I am currently evaluating, could be replicated in the community. Maggie Mellon mentioned a similar programme in which NCH is involved.

Maggie Mellon: We have developed three or four new services. An increasing trend is to consider accommodation, employment, education, training and offending together. Any approach that deals with those issues in isolation will not work.

Susan Matheson: More drug treatment services should be available to young people.

The Convener: Could you provide us with a note of programmes that take an holistic approach, rather than concentrating on one facet of the problem?

Ms Alexander: We have been briefed on the extensive information technology system that the Scottish Prison Service is putting in place to deal with throughcare and discussions with other agencies. It would be a great shame if that system did not include people who benefit from community disposals. We may want to pursue that issue on another occasion.

The Convener: Is there a comprehensive directory of other programmes in Scotland, such as community programmes and diversionary programmes?

Susan Matheson: The interagency forum on women offending tried to draw up a directory for the Glasgow area, which should be available.

The Convener: There is nothing that covers the whole of Scotland.

Dr Tombs: There is nothing for the whole of Scotland. Stewart Asquith at the centre for the study of the child at the University of Glasgow did an audit of all the programmes that were available for young offenders, but that work is about 10 years out of date.

16:15

The Convener: Thank you for your evidence. I am sorry that we had to accelerate towards the end of the session—we have overrun by half an hour. I am sure that the Sheriffs Association will read the evidence avidly before it appears before the committee.

Our next witness is Robert Mackay, who is a representative of the executive board of the Restorative Justice Consortium. He has been extremely patient and has heard a great deal of the earlier evidence. We have his submission—the relevant paper is J1/02/38/6, which is dated 6

September. I invite Robert Mackay to provide some brief background information on his organisation and to explain its interest in alternatives to custody.

Robert Mackay (Restorative Justice Consortium): The Restorative Justice Consortium is a UK-based organisation that is concerned with developing understanding of restorative justice practices and procedures. It provides information to enable people to decide to get involved in and to engage with restorative justice practices.

The Convener: When was the organisation established?

Robert Mackay: The Restorative Justice Consortium has been established for about two or three years. Before that, it was an ad hoc organisation stemming from the wider organisation that is known as Mediation UK.

The Convener: Has your organisation considered becoming a consortium that is relevant to Scotland—in other words, has it considered having a separate Scottish dimension, given that there is a separate Scottish criminal justice system?

Robert Mackay: We have not thought of doing that. We have representation in Northern Ireland, Wales and Scotland, and we regard ourselves as a UK organisation. We have members in Scotland. Your invitation is something that the executive board would need to think about, but we would consider it seriously.

Maureen Macmillan: I am aware of some restorative justice programmes, particularly some that involve young people. Will you explain, using real-life examples, how restorative justice operates and what differentiates restorative justice from other types of alternatives to custody?

Robert Mackay: Certainly. The key differentiating feature of restorative programmes is the involvement of the victim and the focus on attempting to repair the harm that the offender has done to the victim. That is central to all restorative justice programmes.

There are a number of different models for the way in which restorative justice works. One such model is mediation reparation, which SACRO offers. There is also the model of family group conferencing, which is practised in different parts of the world, including England and Wales. We hope that the youth justice version of family group conferencing will soon be practised in Scotland.

I have a few practical examples. In Scotland, restorative justice might entail the reporter or the procurator fiscal diverting an offender to a mediation project where the offender will be invited to make amends to the victim of the crime. Sometimes the mechanism by which the

reparation or amends are agreed involves a direct meeting; sometimes it does not.

In the family group conferencing model, such a meeting will involve not only the victim and the offender, but their supporters. A supporter might be a relative or, in respect of an offender, a teacher or a relative. The meeting might also involve other people in the community who have a contribution to make to the resolution of the case, for example, a representative of the local authority.

Maureen Macmillan: I know that such meetings cannot be held unless the victim wants them to happen. Is it the same for the offender? Must the offender agree or can they be sentenced to attend the meeting?

Robert Mackay: Voluntary participation of the offender is critical to the effectiveness of mediation processes. It could be argued that the offender has a moral or legal obligation to make amends, but imposing a process of mediation is likely to be counterproductive. That seems to be the conventional wisdom within the restorative justice movement.

Maureen Macmillan: Your written evidence states that restorative justice is currently associated with pre-prosecution diversion. Could it be used successfully in other existing disposals without primary legislation being instigated?

Robert Mackay: That is my personal view. I am not a lawyer, but I think that it would be feasible to undertake mediation or conferencing in the context of sentencing, either through probation or a deferred sentence. Mediation or conferencing could also be used in relation to early release on parole or a similar release order. That might require primary legislation—I do not know.

Lord James Douglas-Hamilton: You stated in your written evidence that there is currently no material provision for restorative justice measures to be implemented in Scotland's courts. Can you explain why that might be so?

Robert Mackay: That invites me to read the minds of policy makers. The answer might be that there has been a strong emphasis, and rightly so, on interventions with the offender. If policy makers and service providers are considering how to reduce crime through alternative sentencing, they will naturally think of ensuring that probation orders and community service orders are effective. They will tend to think about the traditional rehabilitative model, which is understandable. It is also understandable that policy makers will try to find ways of affecting and influencing offender behaviour through the use of conventional methods such as cognitive behavioural programmes. They will also be thinking about reducing the risk to the community. It is comprehensible why people are going in that direction.

Lord James Douglas-Hamilton: Is there an adequate number of programmes available to deliver alternatives to custody in Scotland? If not, what are the major obstacles within the criminal justice system with regard to the types of sentences that are handed down?

Robert Mackay: That is a very broad question and I am not sure whether we have the information to answer it accurately. There is certainly an inadequacy of resources and opportunities to provide effective restorative justice measures at the level of alternatives to custody. As we indicated in our evidence, there are no opportunities within court disposals to undertake such restorative work.

Donald Gorrie: I have an all-embracing question. What is your take on the Scottish justice system and how best we can improve it by providing the right disposals for individuals and making use of successful programmes, such as yours appears to be, from other parts of the world?

Robert Mackay: An effective criminal justice system has to take on board the centrality of the offence and the need to deal with its consequences for the offender, the victim and the community. That means that instead of focusing only on the offender, providing victim support to the victim where possible and focusing on community safety, we should deal with the offence as an opportunity to deal with all those issues simultaneously. We are not saying that community safety, the offending behaviour and victims' hurt do not matter; we are saying that all those things matter, but that critically, we also have to find a way of dealing with the event itself. For us, that entails trying to see what can be done to remedy the harm that was perpetrated. If the criminal justice system can address that as its primary concern, we feel that the other issues that the public, the victim and the offender face, quite understandably, will be drawn into that resolution.

Donald Gorrie: Why are we so bad at adopting that attitude? Our justice system, such as it is, seems to have an entirely different attitude.

Robert Mackay: There is a view that the criminal justice system moved from an approach that was primarily retributive to one that was dominated by treatment and rehabilitative ideas. This entails thinking within a particular set of boxes. We have tended to say that we need to mix and match rehabilitation and retribution. The restorative justice model is saying, "Stand back from that a little bit and look at what's happening to the people involved in the process." People talk about the conflict between the offender and victim having been stolen by the state. We seem to rely on the state in that regard. It is true that the conventional system of prosecution and court processes is a way of imposing routine on a great

deal of social mayhem and trouble. The extent to which it deals with the problems concerned is debatable.

Ms Alexander: Given what we have just heard, is it the case that the central premise of sentencing is concerned with the protection of potential victims and that, in order to effect real change, it should be concerned with changing the behaviour of offenders? How effective do you believe that restorative justice would be in achieving some kind of balance between the two? I realise that you have already touched on that matter, but is there anything else that you would like to add?

16:30

Robert Mackay: I might have misheard the first part of your question, but I believe that I understand the broad outline. We would approach the issue by asking about the benefits to the victim, the offender and the community. Evidence from other jurisdictions suggests that victims are more satisfied with the sort of measures that we are talking about than they are with other conventional methods. In relation to offenders, the meta-analysis study that was conducted by the Department of Justice Canada records and statistics division suggests that there is an impact on recidivism and that there is a moderate effect on offender attitude. Obviously, then, the measures might be effective in ways that others are not.

Ms Alexander: You make a strong case that the methods that we are discussing suit both the offender and the victim, but that leaves the difficulty of public opinion, which, as you might be aware, we were struggling with in our previous evidence-taking session. How can the popular idea that restorative justice or other alternatives to custody are soft options be tackled?

Robert Mackay: I am aware that, in England, the Esmée Fairbairn Foundation gave a substantial grant to our organisation for work on the theme of rethinking crime and punishment. The aim of the project is to find ways of influencing public opinion.

Ms Alexander: That might be something that we should pursue.

The Convener: Yes.

Ms Alexander: It has been argued that many offenders, particularly female offenders, who are imprisoned are receiving a punishment that is disproportionate to the offence that they committed. Would you care to hazard a guess as to the proportion of prisoners who need not be in prison?

Robert Mackay: It would be hard to say. We need to ask ourselves about the criteria that we use for imprisoning people. The key criterion that the Restorative Justice Consortium would use relates to whether there would be a danger to the community if a person were to remain free.

In the previous evidence-taking session, important questions were asked about what can be done about recidivism. I tend to the view that one must try and try again, but that we should hold people to account for their failure to act in a pro-social way. However, I do not know whether that needs the person to be in custody.

I am concerned about the number of people in custody who suffer from mental illness.

Ms Alexander: Are there any statistics that you are comfortable with that identify the scale of that problem?

Robert Mackay: No. I am aware of the problem as a result of being involved in the field generally.

The Convener: Are you talking about Scotland or the UK?

Robert Mackay: Scotland.

Ms Alexander: We should return to that issue in our recommendations. We should find out whether the health records on the IT system fully capture that dimension.

The Convener: There must be crimes for which restorative justice is not appropriate. Is that so?

Robert Mackay: In principle, that is not the case.

The Convener: What if there were no victim? If someone were imprisoned for non-payment of a fine in relation to soliciting, where does restorative justice fit in? I cannot see who the victim would be in that case.

Robert Mackay: The classic example would involve a serious crime in which a victim has been badly hurt.

The Convener: I understand the concept of restorative justice in relation to such a crime or a crime involving damage to property, where the offender might have to repair the property. However, unless I am misunderstanding the concept of restorative justice, it seems to me that there are some crimes in relation to which restorative justice would not be appropriate as there is no victim—cases of fraud, for example.

Robert Mackay: Cases of fraud always involve a victim. There is always a dishonest gain in fraud, is there not?

The Convener: Yes, there is dishonesty, but to whom should reparation be made? To society at large? I am not trying to be difficult. I am just trying to think the matter through.

Robert Mackay: I accept that the question is legitimate. Even in cases in which there is not an obvious victim, there is a loss to society. In the absence of an identifiable victim, a restorative approach would try to encourage the offender to recognise the damage that they have done to the community as a whole and to find ways in which they might make amends or restitution for their action.

The Convener: What about someone who is convicted of soliciting and prostitution? Is there a victim in that crime?

Robert Mackay: In such a case, the offender herself may be the victim. That example tests the principle to the limit. However, there is a sense in which the offender could be viewed as the victim of society. We are considering reparation to victims, and sometimes the offender is the victim.

Paul Martin: We know, from written evidence, that there has been no real evaluation of the effectiveness of alternatives to custody. I questioned the previous witnesses about that, but I have a different question for you. Would the fact that no evaluation has been done of the effectiveness of the programmes discourage many sentencers from referring offenders to those programmes?

Robert Mackay: I hope that sentencers would be open to the possibility of pilot projects. However, there are no pilot projects in the Scottish courts. There has been an absence in Scotland of large-scale studies on restorative justice. The last serious study of which I am aware was done in the mid to late 1980s by Sue Warner at the University of Stirling and published in 1992. Since then, there has been no systematic study of restorative justice in Scotland. The Scottish Executive central research unit's evaluation of the young offender mediation project in Fife was not a thorough or sustained study.

Paul Martin: Would the lack of research discourage sentencers from referring someone to such a programme?

Robert Mackay: Yes. The absence of effective evaluation may well be holding us back.

Paul Martin: In your written evidence, you highlight the fact that studies of the effectiveness of penal measures do not address the extent to which the court disposals meet the needs and aspirations of victims. What are the reasons for that?

Robert Mackay: The reason is that most sentences do not involve the victims. In considering the effectiveness of probation orders, community service or imprisonment, sheriffs consider the indicators that relate to the offending behaviour of the offender—they do not consider the victims.

The Convener: There are no further questions. I am sorry that you had to wait for so long to give evidence. It is sometimes difficult to limit the debate when a panel of four witnesses want—quite rightly—to express their views. Thank you for coming.

We have caught up quite well; it feels late in the day, but we are only 10 minutes over time. The next committee meeting will be on 19 November in committee room 1, at which we will take oral evidence on the Council of the Law Society of Scotland Bill. I remind members that we will have a word with the business managers about the length of time that the committee recommends for the stage 1 debate on the Title Conditions (Scotland) Bill.

Meeting closed at 16:40.

Members who would like a printed copy of the *Official Report* to be forwarded to them should give notice at the Document Supply Centre.

No proofs of the *Official Report* can be supplied. Members who want to suggest corrections for the archive edition should mark them clearly in the daily edition, and send it to the Official Report, 375 High Street, Edinburgh EH99 1SP. Suggested corrections in any other form cannot be accepted.

The deadline for corrections to this edition is:

Monday 25 November 2002

Members who want reprints of their speeches (within one month of the date of publication) may obtain request forms and further details from the Central Distribution Office, the Document Supply Centre or the Official Report.

PRICES AND SUBSCRIPTION RATES

DAILY EDITIONS

Single copies: £5

Meetings of the Parliament annual subscriptions: £350.00

The archive edition of the *Official Report* of meetings of the Parliament, written answers and public meetings of committees will be published on CD-ROM.

WHAT'S HAPPENING IN THE SCOTTISH PARLIAMENT, compiled by the Scottish Parliament Information Centre, contains details of past and forthcoming business and of the work of committees and gives general information on legislation and other parliamentary activity.

Single copies: £3.75

Special issue price: £5

Annual subscriptions: £150.00

WRITTEN ANSWERS TO PARLIAMENTARY QUESTIONS weekly compilation

Single copies: £3.75

Annual subscriptions: £150.00

Standing orders will be accepted at the Document Supply Centre.

Published in Edinburgh by The Stationery Office Limited and available from:

The Stationery Office Bookshop
71 Lothian Road
Edinburgh EH3 9AZ
0131 228 4181 Fax 0131 622 7017

The Stationery Office Bookshops at:
123 Kingsway, London WC2B 6PQ
Tel 020 7242 6393 Fax 020 7242 6394
68-69 Bull Street, Birmingham B4 6AD
Tel 0121 236 9696 Fax 0121 236 9699
33 Wine Street, Bristol BS1 2BQ
Tel 01179 264306 Fax 01179 294515
9-21 Princess Street, Manchester M60 8AS
Tel 0161 834 7201 Fax 0161 833 0634
16 Arthur Street, Belfast BT1 4GD
Tel 028 9023 8451 Fax 028 9023 5401
The Stationery Office Oriol Bookshop,
18-19 High Street, Cardiff CF1 2BZ
Tel 029 2039 5548 Fax 029 2038 4347

The Stationery Office Scottish Parliament Documentation
Helpline may be able to assist with additional information
on publications of or about the Scottish Parliament,
their availability and cost:

Telephone orders and inquiries
0870 606 5566

Fax orders
0870 606 5588

The Scottish Parliament Shop
George IV Bridge
EH99 1SP
Telephone orders 0131 348 5412

sp.info@scottish.parliament.uk

www.scottish.parliament.uk

Accredited Agents
(see Yellow Pages)

and through good booksellers